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Some See Ruling on Search as ‘Step Back’; U.S. Supreme Court

By Staff and Wire Reports

The U.S. Supreme Court ruled Wednesday that police without a warrant cannot search a home when one resident says to come in but another tells them to go away.

Justices, in a 5-3 decision, said police did not have the authority to enter and search the home of a Georgia lawyer even though the man’s wife invited them in. The officers, who did not have a search warrant, found evidence of illegal drugs.

Washoe County District Attorney Richard Gammick’s first reaction was that the ruling would affect domestic violence situations.

“What happens when one spouse is the victim of another spouse?” Gammick said. “Of course that person isn’t going to want police in there.”

Gammick said by the time police obtain warrants to search homes, evidence could be gone.

“It’s nothing but another giant step back in law enforcement,” he said.

Sgt. Dave Evans of the Regional Street Enforcement Team said searches still could happen without evidence destruction if police seal the scene while waiting for warrants.

“It’s not like you have to take no for an answer,” Evans said. “You can always freeze the place.”

Evans said police still would be able to enter homes if they hear screaming or see physical signs of violence. “It makes sense when you think about it,” Evans said. “You’ve got to respect people’s privacy. When you have one person saying no, that’s where you’ve got to stop.”

The Supreme Court has never ruled on whether the Constitution’s ban on unreasonable searches covers a scenario when one home occupant wants to allow a search and another occupant does not.

The ruling by Justice David H. Souter stopped short of fully answering that question – saying only that in the Georgia case it was clear that Scott Fitz Randolph was at the door and objected to the officers entry.

In his first written dissent, Chief Justice John Roberts said that “the end result is a complete lack of practical guidance for the police in the field, let alone for the lower courts.”

The case fractured a court that has shown surprising unanimity in the five months since Roberts became chief justice. Justices swapped barbs in their writings, with Souter calling Roberts’ view a “red herring.”

Justices Antonin Scalia and Clarence Thomas filed separate dissents, and Justice John Paul Stevens and Stephen Breyer wrote their own opinions to explain their votes in favor of the man whose home was searched.

Stevens said that “assuming that both spouses are competent, neither one is a master possessing the power to override the other’s constitutional right to deny entry to their castle.”

Retired Reno police chief Jim Weston agreed the ruling would hamper police investigations and could make it harder for police to find evidence of domestic abuse and child abuse.

“It just doesn’t make sense,” he said. “You have two people that both have equal rights to a home, and why can’t one of them invite the officer in if they have equal standing? Why wouldn’t the wife have the right or vice-versa?”

Weston, who retired a year ago after 32 years in law enforcement, said police might be able to enter homes if they hear fighting or were able to see physical wounds or broken furniture or glass inside.

“Unless they hear somebody crying or screaming, that’s how you would get in,” Weston said. “You knock on the door and what normally happens is the aggressor may answer the door and say everything is OK. You may have a female in the background and she’s crying and says, ‘Everything is not OK’ and ‘Can you please come in.’ That’s all we needed in the past.”

Georgia had asked the court to allow it to use evidence obtained in the 2001 search in Americus, Ga., that followed a police domestic dispute call.

Scott Randolph and his wife, Janet, were having marital troubles. She led officers to evidence later used to charge her husband with cocaine possession. That charge was on hold while the courts considered whether the search was constitutional. Georgia’s Supreme Court ruled for Scott Randolph, and the high court agreed.

“This case has no bearing on the capacity of the police to protect domestic victims,” Souter wrote. “No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists.”

Justice Anthony M. Kennedy was the swing voter, joining the court’s four more liberal members.

Roberts' dissent was unusually long – almost as long as the main opinion. He predicted “severe” consequences for women who invite police in only to be overruled by their husbands.

Justice Samuel Alito did not participate in the case, because he was not on the court when it was argued.

The case is *Georgia v. Randolph*, 04-1067.

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