

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

FILED

2010 APR 12 A 8:03

U.S. DISTRICT COURT
EASTERN DIST. TENN.

ROY L. DENTON,
Plaintiff

v.

STEVE RIEVLEY,
in his individual capacity
Defendant

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Case No. 1:07-CV-211

Chief Judge Curtis L. Collier

DEPT. CLERK

JURY DEMAND

PLAINTIFF'S OBJECTION TO THE DEFENDANT'S RELYING UPON THE DOCTRINE OF
"COMMON AUTHORITY"

Comes now the Plaintiff Roy L. Denton and hereby makes his objection to the defendant's claim to rely upon "common authority" and respectfully submits the following:

Third-party consent is when another person gives permission to the police to search another individual's property. Most commonly, these cases involve landlords granting police access to search a tenant's apartment; and parents allowing police to search their children's room. There are three general rules for third-party consent to searches: *(1) husbands and wives may grant consent to search for each other; (2) parents can consent to search their children's room; and (3) children are not allowed to consent to a search of their parents' property because they are underage.* (Worrall, 2004). Clearly, Brandon Denton does not fit into any of those categories.

For the sake of argument, suppose the defendant actually "believed" that Brandon had "common authority", then as a reasonable "cautious" police officer, as he states he is, then he should have known that the law is clearly established that once he drove to the Mr. Denton's

home and Mr. Denton was there, while Brandon was hanging around at the jail, then Defendant Rievley knew full well he needed a warrant. But at the very instance Mr. Rievley saw Mr. Denton open his front door, he knew that any claimed “common authority” claimed by Brandon, or any other person on the planet, any such “common authority” was automatically REVOKED. The entry and search on Mr. Denton’s home was clearly in violation of the constitution, period.

THEREFORE, as a matter of law, the Defendant Steve Rievley cannot rely upon the doctrine of “common authority” the United States Supreme Court says he can’t. Any inferences or reliance upon any claim that Brandon Denton, a fully grown adult male, had “common authority” to support a jury instruction or even to be used as a defense, should be disregarded and not considered. Defendant Steve Rievley clearly did not have the consent of the property owner, Roy L. Denton, to enter his home and search it.

Additionally, to preserve the record, the Plaintiff Roy L. Denton incorporates a direct reference and citation to a United States Supreme Court case within this document and also attaches a Syllabus to case entitled:

GEORGIA v. RANDOLPH

Facts of the Case:

Scott Randolph was arrested for drug possession after police found cocaine in his home. *The police did not have a warrant to search the home, but Randolph's wife consented to the search. Randolph was also present at the time of the search, however, and objected to the police request.* At trial, his attorney argued that *the search was unconstitutional because of Randolph's objection*, while the prosecution argued that the consent of his wife was sufficient. The trial court ruled for the prosecution, but *the appellate court and Georgia Supreme Court both sided with Randolph, finding that a search is unconstitutional if one resident objects, even if another resident consents.* (emphasis added)

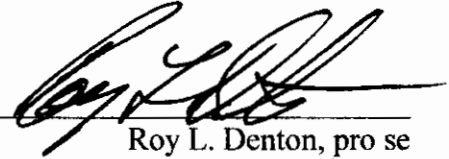
Question:

- *Can police search a home when one physically present resident consents and the other physically present resident objects?*

Conclusion:

- **No.** In a 5 to 3 decision, the Supreme Court held that when two co-occupants are present and one consents to a search while the other refuses, *the search is not constitutional*. Justice David Souter, in the majority opinion, compared the reasonableness of such a search to a more casual interaction. Souter wrote, "*it is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out.'* Without some very good reason, no sensible person would go inside under those conditions." A police search in such circumstances, Souter wrote, would therefore not meet the reasonableness requirement of the Fourth Amendment. (*emphasis added*) See also attached Syllabus of *GEORGIA v. RANDOLPH*, No. 04-1067. Argued November 8, 2005 — Decided March 22, 2006.

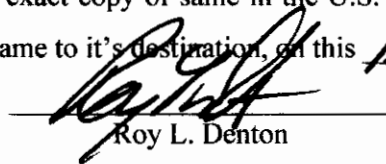
Respectfully submitted, this 12th day of April, 2010.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to its destination, on this 12th day of APR, 2010.



Roy L. Denton

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