

Search and Seizure—search of defendant’s apartment—refusal of consent by defendant—consent by wife—harmlessness of error

The decision of the Court of Appeals in a prosecution for conspiracy to traffic in MDA is reversed and remanded for determination if any error under *Georgia v. Randolph*, ___ U.S. ___, 164 L. Ed. 2d 208 (2006), in the search of defendant’s apartment based upon his wife’s consent after defendant refused consent was harmless beyond a reasonable doubt.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 181 N.C. App. 41, 638 S.E.2d 546 (2007) finding no error in judgments entered 12 April 2005 by Judge Jerry Cash Martin in Superior Court, Guilford County. On 11 October 2007, the Supreme Court allowed defendant’s petition for discretionary review as to an additional issue. Heard in the Supreme Court 14 February 2008.

Roy Cooper, Attorney General, by John P. Scherer II, Assistant Attorney General, for the State.

Irving Joyner for defendant-appellant.

PER CURIAM.

Defendant appeals to this Court from the decision of the Court of Appeals on the basis of a dissent. In light of the State’s concession of error, we reverse the decision of the Court of Appeals as to the appealable issue of right i.e. whether it was appropriate to dismiss defendant’s appeal on procedural grounds. The case is remanded to the Court of Appeals to determine if any error under *Georgia v. Randolph*, _ U.S. _, 164 L. Ed. 2d 208 (2006) was harmless beyond a reasonable doubt. The remaining issues addressed

by the Court of Appeals are not before this Court and its decision as to these issues remains undisturbed.

REVERSED IN PART AND REMANDED.

Supreme Court

Slip Opinion