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KATZ, J., with whom SULLIVAN, C. J., and VERTEFEUILLE, J., join, dissenting. Previously, in my concurring opinion in *State* v. *Brunetti*, 276 Conn. 40, 82–83, 883 A.2d 1167 (2005), I concluded that the defendant should prevail, under *State* v. *Golding,* 213 Conn. 233, 239–40, 567 A.2d 823 (1989), on his unpreserved claim[1] that the search of his home was illegal under the federal constitution. Specifically, I decided that, under the federal constitution, a consent to search given by one co-occupant is invalid when another occupant on the scene has refused to consent. *State* v. *Brunetti*, supra, 82 (*Katz, J.,* concurring). I explained that I was unpersuaded by the reasoning of those courts sanctioning consent searches even when a co-occupant is present and objecting because they had invoked the third party consent doctrine from *United States* v. *Matlock*, 415 U.S. 164, 171, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974), ''without properly considering a significant distinction in that case—that the nonconsenting co-occupant was *absent,* albeit involuntarily, and thereby assumed the risk of the search. . . . I [was] persuaded . . . that the person whose property is the object of a search should have controlling authority to refuse consent. . . . Though a joint occupant should have authority to consent to a search of jointly held premises if the other party is unavailable, a present, objecting party should not have his constitutional rights ignored because of a leasehold or other property interest shared with another. . . . In other words, the ability to control access to one's home should not be subordinated to a co-occupant *when one remains on the premises and is able to object to access by others*. Therefore, when the police have obtained consent to search from an individual possessing control over the premises, that consent remains valid against a co-occupant only while the co-occupant is absent. If, however, the co-occupant should be present and objects, the police must obtain a warrant. Any other rule truly would [exalt] expediency over an individual's [f]ourth [a]mendment guarante[e]s.'' (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Brunetti*, supra, 82–83.

The United States Supreme Court thereafter decided *Georgia* v. *Randolph*, U.S. , 126 S. Ct. 1515, 1536, 164 L. Ed. 2d 208 (2006), specifically holding that, ''[a] warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident[2] cannot be justified as reasonable as to him on the basis of consent given to the police by another resident.''[3] Consistent with this decision, I reaffirm my view that the express denial of consent in this case by the mother of the defendant, Nicholas Brunetti, rendered the search illegal[4] and, accordingly, that the

clothing seized from the defendant's family's home should have been suppressed. Additionally, because the seizure of the defendant's clothing cannot serve as a significant intervening circumstance to cut off any causal connection between the initial illegal seizure and the defendant's confession, its suppression is also required. See *State* v. *Northrop*, 213 Conn. 405, 413, 568 A.2d 439 (1990) (''[i]t is well established that statements obtained through custodial interrogation following the seizure of a person without probable cause, in violation of the fourth amendment, should be excluded unless intervening events break the causal connection between the arrest and the confession''). Accordingly, I would reverse the defendant's judgment of conviction.

[1] For all of the reasons I previously articulated in my concurring opinion in *State* v. *Brunetti*, supra, 276 Conn. 68–74, I would conclude that the record is adequate for appellate review of the defendant's unpreserved claim regarding the constitutionality of the search of his home.

[2] The majority in *Georgia* v. *Randolph*, supra, 126 S. Ct. 1527, drew a distinction from the facts in the case before it and a case in which there exists a *potential* objector nearby, who has not been invited to take part in the threshold colloquy: ''So long as there is no evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection, there is practical value in the simple clarity of complementary rules, one recognizing the co-tenant's permission when there is no fellow occupant on hand, the other according dispositive weight to the fellow occupant's contrary indication when he expresses it. . . . [W]e think it would needlessly limit the capacity of the police to respond to ostensibly legitimate opportunities in the field if we were to hold that reasonableness required the police to take affirmative steps to find a potentially objecting co-tenant before acting on the permission they had already received.''

[3] The *Randolph* majority rejected the dissent's contention that the court's holding would impair the capacity of the police to protect domestic violence victims, noting that right of the police to protect such a victim was a distinct issue altogether from the conflicting consent issue. *Georgia* v. *Randolph*, supra, 126 S. Ct. 1525.

[4] As stated in both the *Brunetti* plurality opinion and my concurring opinion, I note that, ''by demonstrating his own legitimate expectation of privacy and challenging the search based on his mother's refusal to consent, the defendant is not vicariously asserting his mother's constitutional rights, but, rather, is vindicating his own.'' *State* v. *Brunetti*, supra, 276 Conn. 45–46 n.4; id., 83 (*Katz, J.,* concurring). I am mindful that, in a footnote in *Randolph*, specifically in response to Chief Justice Roberts' dissenting opinion, the majority stated that it had not addressed the issue of the constitutionality of a search as to an absent third co-occupant when there were conflicting responses from two present co-occupants, as in the case presently before this court, because it was ''decid[ing] the case before us, not a different one.'' *Georgia* v. *Randolph*, supra, 126 S. Ct. 1526–27 n.8. I ascribe no particular significance to this comment, however, other than the majority's recognition that fourth amendment jurisprudence is fact bound, especially as to reasonable expectations of privacy. To the extent that the majority's statement has any significance beyond that, I read it to suggest that the majority disagrees with Chief Justice Roberts' statement that the majority's rule necessarily ''implies entry and search would be reasonable 'as to' someone else, presumably the consenting co-occupant *and any other absent co-occupants*.'' (Emphasis added.) Id., 1536 (Roberts, C. J., dissenting).