SUPREME COURT OF THE UNITED STATES

No. 97–1147

MINNESOTA, PETITIONER *v.* WAYNE THOMAS CARTER

MINNESOTA *v.* MELVIN JOHNS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

[December 1, 1998]

JUSTICE KENNEDY, concurring.

I join the Court's opinion, for its reasoning is consistent with my view that almost all social guests have a legitimate expectation of privacy, and hence protection against unreasonable searches, in their host's home.

The Fourth Amendment protects "[t]he right of the people to be secure in their . . . houses," and it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people. Security of the home must be guarded by the law in a world where privacy is diminished by enhanced surveillance and sophisticated communication systems. As is well established, however, Fourth Amendment protection, though dependent upon spatial definition, is in essence a personal right. Thus, as the Court held in *Rakas* v. *Illinois,* 439 U. S. 128 (1978), there are limits on who may assert it.

The dissent, as I interpret it, does not question *Rakas* or the principle that not all persons in the company of the property owner have the owner's right to assert the spatial protection. *Rakas*, it is true, involved automobiles, where the necessities of law enforcement permit more latitude to the police than ought to be extended to houses. The analysis in *Rakas* was not conceived, however, as a utili-

tarian exception to accommodate the needs of law enforcement. The Court's premise was a more fundamental one. Fourth Amendment rights are personal, and when a person objects to the search of a place and invokes the exclusionary rule, he or she must have the requisite connection to that place. The analysis in *Rakas* must be respected with reference to dwellings unless that precedent is to be overruled or so limited to its facts that its underlying principle is, in the end, repudiated.

As to the English authorities that were the historical basis for the Fourth Amendment, the Court has observed that scholars dispute their proper interpretation. See, *e.g.*, *Payton* v. *New York*, 445 U. S. 573, 592 (1980). *Semayne's Case*, 5 Co. Rep. 91a, 77 Eng. Rep. 194 (K. B. 1603), says that "the house of every one is to him as his castle and fortress" and the home is privileged for the homeowner, "his family," and "his own proper goods." *Id.*, at 91b, 93a, 77 Eng. Rep., at 195, 198. Read narrowly, the protections recognized in *Semayne's Case* might have been confined to the context of civil process, and so be of limited application to enforcement of the criminal law. Even if, at the time of *Semaynes's Case*, a man's home was not his castle with respect to incursion by the King in a criminal matter, that would not be dispositive of the question before us. The axiom that a man's home is his castle, or the statement attributed to Pitt that the King cannot enter and all his force dares not cross the threshold, see *Miller* v. *United States*, 357 U. S. 301, 307 (1958), has acquired over time a power and an independent significance justifying a more general assurance of personal security in one's home, an assurance which has become part of our constitutional tradition.

It is now settled, for example, that for a routine felony arrest and absent exigent circumstances, the police must obtain a warrant before entering a home to arrest the homeowner. *Payton* v. *New York*, *supra*, at 576. So, too,

the Court held in *Steagald* v. *United States*, 451 U. S. 204 (1981), that, absent exigent circumstances or consent, the police cannot search for the subject of an arrest warrant in the home of a third party, without first obtaining a search warrant directing entry.

These cases strengthen and protect the right of the homeowner to privacy in his own home. They do not speak, however, to the right to claim such a privacy interest in the home of another. See, *e.g.*, *id.*, at 218–219 (noting that the issue in *Steagald* was the homeowner's right to privacy in his own home, and not the right to "claim sanctuary from arrest in the home of a third party"). *Steagald* itself affirmed that, in accordance with the common law, our Fourth Amendment precedents "recogniz[e] . . . that rights such as those conferred by the Fourth Amendment are personal in nature, and cannot bestow vicarious protection on those who do not have a reasonable expectation of privacy in the place to be searched." *Id.*, at 219.

The homeowner's right to privacy is not at issue in this case. The Court does not reach the question whether the officer's unaided observations of Thompson's apartment constituted a search. If there was in fact a search, however, then Thompson had the right to object to the unlawful police surveillance of her apartment and the right to suppress any evidence disclosed by the search. Similarly, if the police had entered her home without a search warrant to arrest respondents, Thompson's own privacy interests would be violated and she could presumably bring an action under 42 U. S. C. §1983 or an action for trespass. Our cases establish, however, that respondents have no independent privacy right, the violation of which results in exclusion of evidence against them, unless they can establish a meaningful connection to Thompson's apartment.

The settled rule is that the requisite connection is an expectation of privacy that society recognizes as reason-

able. *Katz* v. *United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring). The application of that rule involves consideration of the kind of place in which the individual claims the privacy interest and what expectations of privacy are traditional and well recognized. *Ibid*. I would expect that most, if not all, social guests legitimately expect that, in accordance with social custom, the homeowner will exercise her discretion to include or exclude others for the guests' benefit. As we recognized in *Minnesota* v. *Olson*, 495 U. S. 91 (1990), where these social expectations exist– as in the case of an overnight guest– they are sufficient to create a legitimate expectation of privacy, even in the absence of any property right to exclude others. In this respect, the dissent must be correct that reasonable expectations of the owner are shared, to some extent, by the guest. This analysis suggests that, as a general rule, social guests will have an expectation of privacy in their host's home. That is not the case before us, however.

In this case respondents have established nothing more than a fleeting and insubstantial connection with Thompson's home. For all that appears in the record, respondents used Thompson's house simply as a convenient processing station, their purpose involving nothing more than the mechanical act of chopping and packing a substance for distribution. There is no suggestion that respondents engaged in confidential communications with Thompson about their transaction. Respondents had not been to Thompson's apartment before, and they left it even before their arrest. The Minnesota Supreme Court, which overturned respondents' convictions, acknowledged that respondents could not be fairly characterized as Thompson's "guests." 569 N. W. 2d 169, 175–176 (1997); see also 545 N. W. 2d. 695, 698 (Minn. Ct. App. 1996) (noting that Carter's only evidence– that he was there to package cocaine– was inconsistent with his claim that "he was

predominantly a social guest" in Thompson's apartment).

If respondents here had been visiting twenty homes, each for a minute or two, to drop off a bag of cocaine and were apprehended by a policeman wrongfully present in the nineteenth home; or if they had left the goods at a home where they were not staying and the police had seized the goods in their absence, we would have said that *Rakas* compels rejection of any privacy interest respondents might assert. So it does here, given that respondents have established no meaningful tie or connection to the owner, the owner's home, or the owner's expectation of privacy.

We cannot remain faithful to the underlying principle in *Rakas* without reversing in this case, and I am not persuaded that we need depart from it to protect the homeowner's own privacy interests. Respondents have made no persuasive argument that we need to fashion a *per se* rule of home protection, with an automatic right for all in the home to invoke the exclusionary rule, in order to protect homeowners and their guests from unlawful police intrusion. With these observations, I join the Court's opinion.