10-1979

United States v. Salvucci

Lewis F. Powell Jr.

Resp has waived right to Respond

Documents Rawlings 5146 and Conway 79-393

Grant (Goodcase to follow)

In Jones v U.S. (1960) Court established a rule of "automatic standing" (as distinguished from "actual standing") whenever a party in charged with an offense based on his possession of a contraband or ~~unlawful~~ any unlawful possession (e.g. of a weapon by a felon)

Zackular's wife.

Here ~~the~~ stolen checks were seized by Agents from an apartment rented by ~~Zack~~. CA1, following Jones, held there was "automatic standing" to challenge the validity of seizure.

PRELIMINARY MEMORANDUM

Summer List 27, Sheet ~~2~~ Court has construed Jones

No. 79-244 cert to CA1 (Aldrich, Campbell, Gignoux [DJ])

UNITED STATES We are now asked to over-rule it.

v.

SALVUCHI and ZACKULAR Who? Federal/Criminal Timely

SUMMARY: In Jones v. United States, 362 U.S. 257 (1960), the Court held that criminal defendants have "automatic standing" to challenge Fourth Amendment violations in the seizure of items underlying a charge of a possessory offense. The SG asks the Court to decide whether Jones remains good law.

Responses ask Court to uphold the Jones rule. Jon

FACTS AND PROCEEDINGS BELOW: Zackular and Salvucci were indicted for unlawful possession of checks stolen from the

CFR w/ view to grant — lower cts. need guidance & there is no longer good reason for Jones' "per se" rule.

Greg

mails. 18 U.S.C. § 1708. Agents, acting pursuant to a warrant, had seized the checks from an apartment rented by Zackular's wife. The district court held that the affadavit supporting the warrant did not establish probable cause. CA1 agreed and also concluded that Jones gave resps "automatic standing" to seek exclusion of the evidence.

It wrote:

> To contest a search and seizure on Fourth Amendment grounds, a defendant must have either "actual standing" or "automatic standing." To have actual standing, a defendant must establish a legitimate and reasonable expectation of privacy in the premises searched or the property seized. *Rakas* v. *Illinois*, 47 U.S.L.W. 4025 (U.S. Dec. 5, 1978); *see Brown* v. *United States*, 411 U.S. 223, 229 (1973). We agree with the Government that neither defendant has actual standing to contest the lawfulness of the search and seizures. Neither defendants has established a reasonable expectation of privacy in the premises searched or the property seized, nor has either of them ever claimed a proprietary or possessory interest in the premises or the checks. *Id.*
>
> Both defendants, however, have automatic standing to object to the search and seizures under *Jones* v. *United States*, 362 U.S. 257 (1960). In *Jones*, the Supreme Court held that a defendant has automatic standing to challenge the legality of a search or seizure if charged with a crime that includes, as an essential element of the offense charged, possession

?

no actual standing

neither Δ claimed either a proprietary or possessory interest in the apartment or the checks

of the seized evidence at the time of the contested search and seizure. The Court offered a twofold rationale in support of this rule: (1) the unfairness of requiring the defendant to assert a proprietary or possessory interest in the premises searched or the items seized when his statements could later be used at trial to prove a crime of possession; and (2) the vice of prosecutorial self-contradiction, that is, allowing the Government to allege possession as part of the crime charged, and yet deny that there was possession sufficient for standing purposes. *Id.* at 261-65; *Brown* v. *United States*, *supra* at 229.

The first part of this twofold rationale was essentially eliminated by the Supreme Court's holding in *Simmons* v. *United States*, 390 U.S. 377, 389-94 (1968), that a defendant's testimony in support of a motion to suppress may not be used against him at trial. The Supreme Court itself has questioned, but unfortunately not decided, whether the second prong of the *Jones* rationale, prosecutorial self-contradiction, alone justifies the continued vitality of the doctrine of automatic standing. *See Rakas* v. *Illinois*, *supra* at 4027 n.4; *Brown* v. *United States*, *supra* at 228, 229. Since the Supreme Court first questioned the vitality of this doctrine in *Brown*, there has been a split of authority as to whether the doctrine survives. *Compare United States* v. *Riquelmy*, 572 F.2d 947, 950-51 (2d Cir. 1978), *and United States* v. *Boston*, 510 F.2d 35, 37-38 (9th Cir. 1974), *cert. denied*, 421 U.S. 990 (1975) (doctrine survives) *with United States* v. *Delguyd*, 542 F.2d 346, 350 (6th Cir. 1976) (doctrine does not survive). Until the Supreme Court rules on this question, we are not prepared to hold that the automatic standing rule of *Jones* has been implicitly overruled by *Simmons*. That is an issue which the Supreme Court must resolve.

first part of Jones' rationale was eliminated in Simmons that held a D's testimony in support of motion to suppress can't be used against him

The SG cites other cases involving this issue. Compare United States v. Grunsfeld, 558 F.2d 1231, 1241-42 (6th Cir. 1978), cert. denied, 434 U.S. 872, 1016 (1978) (following Delguyd; alternate holdings); United States v. Smith, 495 F.2d 668, 670 (10th Cir. 1974) (Brown mandates inquiry into existence of "personal right protected by Fourth Amendment"); United States v. Edwards, 577 F.2d 883, 896 (5th Cir. 1978) (en banc) (dissenting opinion of five judges) (automatic standing should be rejected; "Simmons . . . gave all but the coup de grace); id. at 892 (majority opinion) ("serious doubts" in light of Simmons, but finding standing on alternate ground), with United States v. Ullrich, 580 F.2d 765, 768 (5th Cir. 1978) (judges dissenting in Edwards feel bound by Jones and prior Fifth Circuit authority to apply automatic standing rule); United States v. Oates, 560 F.2d 45, 52 (2d Cir. 1977) ("misgivings," but rule persists in circuit pending Supreme Court rejection of Jones); United States v. Galante, 547 F.2d 733, 737 (2d Cir. 1976) ("overruling Jones is properly a matter for the Supreme Court"); United States v. Anderson, 552 F.2d 1296, 1299 (8th Cir. 1977) (Simmons does not remove "vice of prosecutorial self-contradiction"; rule to be retained "in the absence of a clear mandate from the Supreme Court"). See also United States v. Alewelt, 532 F.2d 1165, 1167 (7th Cir. 1976) (7th Cir. 1976) (articulating rule but distinguishing case); United States v. Powell, 587 F.2d 443, 446 (9th Cir. 1978) (same); United States v. Dye, 508 F.2d 1226, 1232-34 (6th Cir. 1974), cert. denied, 420 U.S. 974 (1975).

DISCUSSION : This case appears to raise a substantial and recurring question that divides the circuits, interests the SG,

and has generated specific invitations from the lower courts to reevaluate a precedent that this Court has itself questioned. I recommend a CFR.* Unless resps identify a procedural obstacle to effective review, I also recommend a grant.

There is no response. Response waived.

9/11/79 Coenen opn in petn

*The respondents have filed a waiver of their right to respond. I assume that, under these circumstances, a CFR might still be appropriate in a seemingly certworthy case.

JS 11/30/79

MEMORANDUM

To: Mr. Justice Powell

Re: No. 79-244, United States v. Salvuchi & Zackular, No. 79-5146, Rawlings v. Kentucky, No. 79-393, United States v. Conway.

No. 79-244 and No. 79-5146 raise the question whether the automatic standing rule of Jones v. United States, 362 U.S. 257 (1960) should be overruled. The Jones question is the only issue presented in No. 79-244, but 79-5146 also raises an illegal arrest issue. Therefore, I would grant No. 79-244 and hold No. 79-5146.

No. 79-393 raises the closely related question whether a possessory interest in contraband confers actual standing to challenge a search and seizure. As the cert. memo notes, there are some problems with the record with this case, but they do not appear substantial enough to prevent the Court from deciding the actual standing issue. Accordingly, I would grant No. 79-393 and set it down for argument with No. 79-244.

December 7, 1979

Court .... | Voted on ...., 19...
Argued ...., 19... | Assigned ...., 19... No. 79-244
Submitted ...., 19... | Announced ...., 19...

UNITED STATES

vs.

SALVUCCI

Also motions of respondents for leave to proceed ifp. Response requested and received.

Byron - conflict
& Q is imp.
Related to Jones v. U.S.
WHR agrees with
Learned Hand's view on this issue

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.						Pass							
Brennan, J.			✓										
Stewart, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓											

DOS

MEMORANDUM

TO: Mr. Justice Powell

FROM: David

DATE: March 21, 1980

RE: No. 79-244, United States v. Salvucci and Zackular; No. 79-5146, Rawlings v. Kentucky

Main Question Presented:

Whether the Court should abandon the "automatic standing" doctrine of Jones v. United States, 362 U.S. 257 (1960), which permits a defendant charged with a possessory offense to seek suppression of evidence regardless of his relationship to its seizure?

INTRODUCTION:

The Salvucci case involves only automatic standing. Rawlings, however, concerns an arrest issue as well as a couple of miscellaneous questions. I will focus first on automatic standing, and pick up the additional issues in Rawlings at the end of the memo.

BACKGROUND:

Salvucci -- Pursuant to a search warrant, the Massachusetts State Police found 12 checks in the apartment of Zackular's mother. The checks had been stolen from the mails. The opinion below and the briefs submitted in this case provide no direct information as to the methods employed in the search. Indeed, the opinion of CA 1 repeated the error in the application for a search warrant, which had identified the apartment as belonging to Zackular's wife rather than his mother. In any event, we do not know how the police came across the checks, or how the checks had been stored. This lack of facts may make responsible resolution of the case somewhat difficult.

Salvucci and Zackular successfully argued before the DC and CA1 that the stolen checks should be suppressed as evidence because the affidavit underlying the warrant was inadequate. CA 1 rejected the Government's claim that they had no standing to challenge the search of a third party's apartment, citing Jones. The Court of Appeals conceded that there was some tension between the rule in Jones and the Court's opinion in Rakas v. Illinois, 439 U.S. 128 (1978), but concluded that until this Court resolved that tension, Jones should be followed.

Rawlings -- Rawlings was in the home of Marquess with four other people when the Kentucky State Police arrived with an arrest warrant for Marquess. Immediately before their arrival, Rawlings had asked Vanessa Cox to store his drugs in her purse. She agreed reluctantly, and then asked him to remove the drugs. He agreed to take back the drugs, but said he had to use the bathroom first. When he returned, the police had already arrived. The police walked through the apartment looking for Marquess. They did not find him,

but smelled burnt marijuana and saw what appeared to be marijuana seeds on a mantel. The police then detained Rawlings and the four others while a search warrant was obtained. During the detention period, the police told the five that they were free to leave if they consented to a personal search. Two of the people agreed and left. After forty-five minutes, the police returned with a search warrant for the apartment, but not for any of the people in it. The police then ordered Vanessa Cox to empty her handbag. The drugs were exposed. She turned to Rawlings and said, "Take what is yours." Rawlings then claimed the drugs and was placed under arrest. The police found $4500 on him a a knife in a sheath.

Rawlings unsuccessfully attempted to suppress the evidence before and during his trial, but the Kentucky Court of Appeals reversed his conviction. The Kentucky Supreme Court reversed yet again, in an extraordinary opinion. The court stated, "All in all we confess that we find the concept of 'standing' totally incomprehensible and, to the extent of overlap with Fourth Amendment rights, equally incapable of understanding." The court determined that Rawlings "probably" did not have standing, and then went on to make a rather convoluted finding that Rawlings had no "automatic" standing to make a Fourth Amendment challenge because he admitted on the spot that he owned the drugs. Finally hitting on a rational idea, the Court added that, in any event, Rawlings had no "legitimate or reasonable expectation of freedom from governmental intrusion" in Vanessa Cox's purse.

AUTOMATIC STANDING

The automatic standing doctrine flows from two perceived dangers when a defendant charged with a possessory offense attempt to suppress evidence as illegally seized. 1) "The Dilemma of Self-Incrimination" -- By arguing at a suppression hearing that he had standing to challenge the search and seizure due to his property interest in the seized material, the defendant would prejudice his case on the substantive charge of possession. 2) "The Vice of Prosecutorial Self-Contradiction" -- By opposing standing to make a suppression motion in a possessory case, the Government is placed in the position of arguing pretrial that a defendant has no interest in the seized material and at trial that he indeed possessed it.

The dilemma of self-incrimination is decidedly less now, after the Court's decision in Simmons v. United States, 390 U.S. 377 (1968), which held that a defendant's testimony at a pretrial hearing could not be used in the prosecution's case-in-chief. The defendants in these cases insist that the dilemma is still very real because the statements are still admissible for impeachment, for showing prior inconsistent statements in some jurisdictions, and as the basis of prosecutorial "fishing expeditions." The SG responds that the proper solution to those problems -- if indeed they be problems -- is to extend Simmons to impeachment situations, etc., not to grant "automatic standing" to pursue a pretrial motion. Of course, these cases do not present the question of extending Simmons, so the Court could not reach a holding on that suggestion. In addition, the strongest claim of petrs -- the fear of self-incrmination through impeachment -- is not the sort of claim that has appealed very much

to the Court in recent years. In Harris v. New York, 401 U.S. 222 (1971), the Court permitted impeachment with statements taken in violation of Miranda. The theory of that case was that a defendant should not be free to change his story without facing impeachment. And in Havens v. United States this Term, the Court has tentatively resolved to permit admission of otherwise inadmissable evidence for impeachment on cross-eximination.

The vice of prosecutorial self-contradiction is a thornier issue. First, I am not sure just how grievous a vice it is. After all, we permit litigants to argue all sorts of inconsistent propositions. There may be something a bit superficially unsavory about having the Government bloodthirstily changing its story back and forth in order to acquire a conviction. But, then again, the current focus of Fourth Amendment doctrine on personal "expectations of privacy" may undermine this apparent claim. The inconsistency that Jones saw in the law was that the Government would argue pretrial that the defendant did not have a sufficient possessory interest in the object to challenge the seizure. At trial, however, the Government's claim would be that the defendant did indeed possess the object. The SG goes through a lengthy argument based on "constructive possession" to demonstrate that there is in fact little inconsistency between the two positions. I find the SG's position somewhat tortured and eventually unpersuasive. Instead, I would commend the State of Kentucky's view. Kentucky argues that Jones responded to the Fourth Amendment doctrine of the day, which was based on property law concepts. Now, however, the Court looks to legitimate expectations of privacy in each circumstance to determine

new 4th amend law

no longer in 4th Amend doctrine based on "property"

whether there is a Fourth Amendment violation. The actual possession of a particular item is simply one element of that general determination. Under this view, the Government argues at pretrial only that the petr had no legitimate expectation of privacy, not that he did not possess the seized items.

On balance, I think that Kentucky's approach makes the most sense. The Court seems quite resolved to apply the "legitimate expectation of privacy" standard across the board in Fourth Amendment cases. Indeed, the law certainly needs a single principle for such cases. Rakas jettisoned the "legitimately-on-the-premises" strand of Jones, and I think it clearly foreshadowed a similar junking of automatic standing. The nagging question in my mind is how this outcome might affect defendants in setting trial strategy. A defendant would be in the position of arguing at the pretrial hearing that a search violated his legitimate expectation of privacy in a particular place at a particular time under certain circumstances. The determination of how legitimate his expectation was might well take into account the nature of the object -- e.g., keeping an elephant in your backyard would not likely raise a legitimate expectation that the police would not become aware of the elephant's existence. To the extent that the inquiry focused on the particular item, there would be the same logical inconsistency that troubled the Jones Court. But the inconsistency seems much less telling in this context, where a constellation of factors must be considered. The ruling on the suppression motion will also turn on the nature of the premises, the relationship of the defendant to the premises, and how the item was stored. Indeed, the Government is far more likely to

David would hold

focus on those questions than to attempt to disprove the defendant's possession of the seized material, so prosecutorial self-contradiction seems unlikely.

Thus, the reasons initially given by the Jones Court for automatic standing have almost all paled. Simmons reduced the self-incrimination problem, and the expectation-of-privacy theory has limited the Government's self-contradictions. For resolution of this question in this case, I would endorse the approach taken in Rakas. I would hold that Fourth Amendment standing doctrine is superseded by the privacy-expectation decision. Thus, the inquiry on a suppression motion should center on whether the officials invaded the defendant's legitimate expectations of privacy.

Salvucci -- This outcome would resolve the question raised in Salvucci, and would most likely require a remand to the District Court for findings on this point. The record in Salvucci does not reflect the relationship between the defendants and the apartment of Zackular's mother, nor is there any indication of how the police came upon the stolen checks or how the checks had been stored. All of those factors would be relevant to a determination on the substantive question.

Rawlings -- The record in this case is probably sufficient to rule on the merits of the suppression motion. Rawlings clearly placed the drugs in Vanessa Cox's purse in order to remove them from public view. He was seeking privacy. I would question whether any expectation of privacy was reasonable. He knew that she did not want

to hold the drugs, and also knew that if she consented to a search they would be found. Thus, I would affirm the denial of the motion to suppress.

Rawlings also involves a challenge to the detention of the five people in the Marquess apartment while the police acquired a search warrant. The detention may well have taken place in violation of the standards outlined in Brown v. Texas last Term. Certainly the knife taken from Rawlings did not provide any basis for a Terry stop, since he made no menacing gestures. Still, I do not think that Rawlings can win on this argument. He needs to suppress the drugs seized during the search of Vanessa Cox. I do not think he can challenge her detention, since Fourth Amendment rights are personal, not "vicarious." (Admittedly, an element of standing begins to creep in here; I think the Court would be well-advised to avoid using the terminology, however.) Once the police had the drugs in her purse, Rawlings said they were his. I see no constitutional infirmity in this, since there is every reason to believe she would have told the police they were his, thereby giving the police ample cause to arrest him. To the extent that the detention of Rawlings was unconstitutional, he can point to no particular harm that resulted from it, since presumably the police could have arrested him anywhere in the state once Vanessa Cox identified the drugs as his. Consequently, I would also affirm Rawlings' conviction.

79-244 U.S. v. SALVUCCI CA1 Argued 3/26/80

Automatic standing case
Checks stolen from mail
found in Mothers apt

Levy (SG)

Checker was found in "mothers" apt.

Contraband standing rule of Jones based on two grounds.

First was risk of self-incrimination, by in Simmons. Sup Ct. held that a Δs admission at suppression hearing are not admissible at trial.

Second was the prosecution would be in a self-contradictory position if it prosecuted on ground that Δ possessed the contraband but then denied standing of Δ to object to illegal search. SG argues this reasons is no longer relevant in light of case holding that one can complain of 4th Amend violation only if his rights were violated, & there is no violation unless Δ had reasonable expectation of privacy

A possessory interest alone is not a basis alone for standing.

Certainly, possessory interest in a contraband is not a basis

~~Davis~~ (cont)

<u>Davis</u> (for Salvucci)

This a case of a "possessory crime" that is dif. from other crimes

<u>Simmons</u> applies only ~~to~~ to non-possessory crimes.

Rehnquist noted that ^in view^ (<u>Brown</u>, <u>Rakkas</u> + <u>Simmons</u> undercut <u>Jones</u>

<u>McBride</u>

Relies on "prosecutorial contradiction".

Rev. & Remand - 7-2

79-244 U.S. v. Salvucci Conf. 3/28/80

The Chief Justice Remand

Should complete burial of automatic standing rule.

Need not remand

Mr. Justice Brennan Affirm

(No discussion)

Mr. Justice Stewart Reverse & Remand

Primary basis of Jones was removed by Simmons

The secondary basis (Gov't taking inconsistent positions) is not substantial enough to support Jones.

But would remand & afford opportunity for Ds to prove other violations. They relied on Jones

Mr. Justice White Rev. + Remand

Agrees with P.S.

Mr. Justice Marshall Affirm

Should affirm Jones.
Possession confers standing

Mr. Justice Blackmun Rev + Remand

Sympathetic with Jones, but
Summons removed the premises
basis for Jones

~~Robbins~~ Rakas is relevant.

Mr. Justice Powell Rev. & Remand

As were justified in relying on Jones & should have opportunity to advance other reasons.

Mr. Justice Rehnquist Rev & Remand

Mr. Justice Stevens Rev & Remand

Second reason for Jones never was substantial.

LFP

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: APR 17 1980

Recirculated: _____

BR 5,7,9

1st DRAFT

Revised
4/17
LFP
John

SUPREME COURT OF THE UNITED STATES

No. 79-244

United States, Petitioner, v. John M. Salvucci, Jr. and Joseph G. Zackular. } On Writ of Certiorari to United States Court of Appeals for the First Circuit.

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Relying on *Jones* v. *United States*, 362 U. S. 257 (1960), the Court of Appeals for the First Circuit held that since respondents were charged with crimes of possession, they were entitled to claim "automatic standing" to challenge the legality of the search which produced the evidence against them, without regard to whether they had an expectation of privacy in the premises searched. *United States* v. *Salvucci*, 599 F. 2d 1094 (1979). Today we hold that defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated. The automatic standing rule of *Jones* v. *United States*, *supra*, is therefore overruled.

Jones overruled

I

Respondents, John Salvucci and Joseph Zackular, were charged in a federal indictment with 12 counts of unlawful possession of stolen mail, in violation of 18 U. S. C. § 1708. The 12 checks which formed the basis of the indictment had been seized by the Massachusetts police during the search of an apartment rented by respondent Zackular's mother. The search was conducted pursuant to a warrant.

Respondents filed a motion to suppress the checks on the ground that the affidavit supporting the application for the

search warrant was inadequate to demonstrate probable cause. The District Court granted respondents' motions and ordered that the checks be suppressed.[1] The Government sought reconsideration of the District Court's ruling, contending that respondents lacked "standing" to challenge the constitutionality of the search. The District Court reaffirmed its suppression order and the government appealed.

The Court of Appeals affirmed, holding that respondents had "standing" and the search warrant was constitutionally inadequate. The court found that the respondents were not required to establish a legitimate expectation of privacy in the premises searched or the property seized because they were entitled to assert "automatic standing" to object to the search and seizure under *Jones* v. *United States, supra*. The court observed that the vitality of the *Jones* doctrine had been challenged in recent years, but that "[u]ntil the Supreme Court rules on this question, we are not prepared to hold that the automatic standing rule of *Jones* has been . . . overruled. . . . That is an issue which the Supreme Court must resolve." 599 F. 2d, at 1098. The Court of Appeals was obviously correct in its characterization of the status of *Jones*, and we granted certiorari in order to resolve the controversy.[2] — U. S. — (1979).

II

As early as 1907, this Court took the position that remedies

[1] The District Court held that the affidavit was deficient because the affiant relied on double hearsay, and failed to specify the dates on which information included in the affidavit had been obtained.

[2] The courts of appeals have divided on the continued applicability of the automatic standing rule. The Sixth Circuit abandoned the rule after our decision in *Simmons* v. *United States*, 390 U. S. 377 (1968). See, *e. g., United States* v. *Hunter*, 550 F. 2d 1066 (CA6 1977). Most of the remaining circuits appear to have retained the rule, but many with "misgivings." See, *e. g., United States* v. *Oates*, 560 F. 2d 45, 52 (CA2 1977); *United States* v. *Edwards*, 577 F. 2d 883, 892 (CA5), cert. denied, 439 U. S. 968 (1978).

for violations of constitutional rights would only be afforded to a person who "belongs to the class for whose sake the constitutional protection is given." *Hatch* v. *Reardon*, 204 U. S. 152, 160. The exclusionary rule is one form of remedy afforded for Fourth Amendment violations, and the Court in *Jones* v. *United States* held that the *Hatch* v. *Reardon* principle properly limited its availability. The Court reasoned that ordinarily "it is entirely proper to require of one who seeks to challenge the legality of a search as the basis for suppressing relevant evidence that he . . . establish, that he himself was the victim of an invasion of privacy." 362 U. S., at 261. Subsequent attempts to vicariously assert violations of the Fourth Amendment rights of others have been repeatedly rejected by this Court. *Alderman* v. *United States*, 394 U. S. 165, 174 (1969); *Brown* v. *United States*, 411 U. S. 223, 230 (1973). Most recently, in *Rakas* v. *Illinois*, 439 U. S. 128 (1978), we held that, "[i]t is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the [exclusionary] rule's protections." *Id.*, at 134.

Even though the Court in *Jones* recognized that the exclusionary rule should only be available to protect defendants who have been the victims of an illegal search or seizure, the Court thought it necessary to establish an exception. In cases where possession of the seized evidence was an essential element of the offense charged, the Court held that the defendant was not obligated to establish that his own Fourth Amendment rights had been violated, but only that the search and seizure of the evidence was unconstitutional.[8] Upon such a showing, the exclusionary rule would be available to prevent the admission of the evidence against the defendant.

Jones – an exception to E/R

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[8] In *Brown* v. *United States*, 411 U. S., at 229, this Court clarified that the automatic standing rule of *Jones* was applicable only where the offense charged "possession of the seized evidence at the time of the contested search and seizure."

The Court found that the prosecution of such possessory offenses presented a "special problem" which necessitated the departure from the then-settled principles of Fourth Amendment "standing."[4] Two circumstances were found to require this exception. First, the Court found that in order to establish standing at a hearing on a motion to suppress, the defendant would often be "forced to allege facts the proof of which would tend, if indeed not be sufficient, to convict him," since several Courts of Appeals had "pinioned a defendant within this dilemma" by holding that evidence adduced at the motion to suppress could be used against the defendant at trial. 362 U. S., at 262. The Court declined to embrace any rule which would require a defendant to assert his Fourth Amendment claims only at the risk of providing the prosecution with self-incriminating statements admissible at trial. The Court sought resolution of this dilemma by relieving the defendant of the obligation of establishing that his Fourth Amendment rights were violated by an illegal search or seizure.

The Court also commented that this rule would be beneficial for a second reason. Without a rule prohibiting a government challenge to a defendant's "standing" to invoke the exclusionary rule in a possessory offense prosecution, the government would be allowed the "advantage of contradictory positions." *Id.*, at 263. The Court reasoned that the government ought not to be allowed to assert that the defendant possessed the goods for purposes of criminal liability, while simultaneously asserting that he did not possess them for the purposes of claiming the protections of the Fourth Amendment. The Court found that, "[i]t is not consonant with the

[4] In *Rakas*, this Court discarded reliance on concepts of "standing" in determining whether a defendant is entitled to claim the protections of the exclusionary rule. The inquiry, after *Rakas*, is simply whether the defendant's rights were violated by the allegedly illegal search or seizure. Because *Jones* was decided at a time when "standing" was designated as a separate inquiry, we use that term for the purposes of re-examining that opinion.

amenities, to put it mildly, of the administration of criminal justice, to sanction such squarely contradictory assertions of power by the Government." *Id.*, at 263–264. Thus in order to prevent both the risk that self-incrimination would attach to the assertion of Fourth Amendment rights, as well as to prevent the "vice of prosecutorial self-contradiction," see *Brown* v. *United States*, 411 U. S., at 229, the court adopted the rule of "automatic standing."

In the 20 years which have lapsed since the Court's decision in *Jones*, the two reasons which led the Court to the rule of automatic standing have likewise been affected by time. This Court has held that testimony given by a defendant in support of a motion to suppress cannot be admitted as evidence of his guilt at trial. *Simmons* v. *United States*, 390 U. S. 377 (1968). Developments in the principles of Fourth Amendment standing, as well, clarify that a prosecutor may, with legal consistency and legitimacy, assert that a defendant charged with possession of a seized item did not have a privacy interest violated in the course of the search and seizure. We are convinced not only that the original tenets of the *Jones* decision have eroded, but also that no alternative principles exist to support retention of the rule.

A

The "dilemma" identified in *Jones*, that a defendant charged with a possessory offense might only be able to establish his standing to challenge a search and seizure by giving self-incriminating testimony admissible as evidence of his guilt, was eliminated by our decision in *Simmons* v. *United States*, *supra*. In *Simmons*, the defendant Garrett was charged with bank robbery. During the search of a codefendant's mother's house, physical evidence used in the bank robbery, including a suitcase, was found in the basement and seized. In an effort to establish his standing to assert the illegality of the search, Garrett testified at the suppression hearing that the

suitcase was similar to one he owned and that he was the owner of the clothing discovered inside the suitcase. Garrett's motion to suppress was denied, but his testimony was admitted into evidence against him as part of the government's case-in-chief at trial. This Court reversed, finding that "a defendant who knows that his testimony may be admissible against him at trial will sometimes be deterred from presenting the testimonial proof of standing necessary to assert a Fourth Amendment claim." 390 U. S., at 392–393. The Court found that in effect, the defendant was

> "obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another. We therefore hold that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." *Id.*, at 394.

This Court's ruling in *Simmons* thus not only extends protection against this risk of self-incrimination in all of the cases covered by *Jones*, but also grants a form of "use immunity" to those defendants charged with nonpossessory crimes. In this respect, the protection of *Simmons* is therefore broader than that of *Jones*. Thus as we stated in Brown v. *United States*, 411 U. S., at 228, "[t]he self-incrimination dilemma, so central to the *Jones* decision, can no longer occur under the prevailing interpretation of the Constitution [in *Simmons*]."

B

This Court has identified the self-incrimination rationale as the cornerstone of the *Jones* opinion. See *Brown* v. *United States*, 411 U. S., at 228. We need not belabor the question

of whether the "vice" of prosecutorial contradiction could alone support a rule countenancing the exclusion of probative evidence on the grounds that someone other than the defendant was denied a Fourth Amendment right. The simple answer is that the decisions of this Court, especially our most recent decision in *Rakas* v. *Illinois*, *supra*, clearly establish that a prosecutor may simultaneously maintain that a defendant criminally possessed the seized good, but was not subject to a Fourth Amendment deprivation, without legal contradiction. To conclude that a prosecutor engaged in self-contradiction in *Jones*, the Court necessarily relied on the unexamined assumption that a defendant's possession of a seized good sufficient to establish criminal culpability was also sufficient to establish Forth Amendment "standing." This assumption, however, even if correct at the time, is no longer so.[8]

The person in legal possession of a good seized during an illegal search has not necessarily been subject to a Fourth Amendment deprivation.[9] As we hold today in *Rawlings* v. *Kentucky*, *post*, at —, legal possession of a seized good is not a proxy for determining whether the owner had a Fourth Amendment interest for it does not invariably represent the protected Fourth Amendment interest. This Court has repeatedly repudiated the notion that "arcane distinctions developed in property and tort law" ought to control our Fourth

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[8] Respondent Salvucci cite this court's decision in *United States* v. *Jeffers*, 342 U. S. 48 (1951), as support for the view that legal ownership of the seized good was sufficient to confer Fouth Amendment "standing." In *Rakas*, however, we stated that "[s]tanding in *Jeffers* was based on Jeffers' possessory interest in *both* the premises searched and the property seized." 439 U. S., at 136. (Emphasis added.)

[9] Legal possession of the seized good may well be sufficient to entitle a defendant to claim the benefits of the exclusionary rule if the seizure, as opposed to the search, was illegal. See, *e. g.*, *United States* v. *Lisk*, 522 F. 2d 228 (CA7 1975), cert. denied, 423 U. S. 1078 (1976) (STEVENS, J.). Respondents, however, did not challenge the constitutionality of the seizure of the evidence.

Amendment inquiry. *Rakas* v. *Illinois*, 439 U. S., at 143. In another section of the opinion in *Jones* itself, the Court concluded that, "it is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from unreasonable searches and seizures subtle distinctions, developed and refined by the common law in evolving the body of private property law. . . ." 362 U. S., at 266. See also *Mancusi* v. *DeForte*, 392 U. S. 364 (1968); *Warden* v. *Hayden*, 387 U. S. 294 (1967).

While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, see *Rakas*, *supra*, 439 U. S., at 144, n. 12, property rights are neither the beginning nor the end of this Court's inquiry. In *Rakas*, this Court held that an illegal search only violates the rights of those who have "a legitimate expectation of privacy in the invaded place." *Rakas*, *id.*, at 140. See also *Mancusi* v. *DeForte*, *supra*.

We simply decline to use possession of a seized good as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched. In *Jones*, the Court held not only that automatic standing should be conferred to defendants charged with crimes of possession, but alternatively, that Jones had actual standing because he was "legitimately on the premises" at the time of the search. In *Rakas*, this Court rejected the adequacy of this second *Jones* standard, finding that it was "too broad a gauge for measurement of Fourth Amendment rights." 439 U. S., at 142. In language appropriate to our consideration of the automatic standing rule as well, we reasoned that:

> "In abandoning 'legitimately on premises' for the doctrine that we announce today, we are not forsaking a time-tested and workable rule, which has produced consistent results when applied, solely for the sake of fidelity to the values underlying the Fourth Amendment,

> Rather, we are rejecting blind adherence to a phrase which at most has superficial clarity and which conceals underneath that thin veneer all of the problems of line drawing which must be faced in any conscientious effort to apply the Fourth Amendment. Where the factual premises for a rule are so generally prevalent that little would be lost and much would be gained by abandoning case-by-case analysis, we have not hesitated to do so. . . . We would not wish to be understood as saying that legitimate presence on the premises is irrelevant to one's expectation of privacy, but it cannot be deemed controlling." *Id.*, at 147–148.

As in *Rakas*, we again reject "blind adherence" to the other underlying assumption in *Jones* that possession of the seized good is an acceptable measure of Fourth Amendment interests. As in *Rakas*, we find that the *Jones* standard "creates too broad a gauge for measurement of Fourth Amendment rights" and that we must instead engage in a "conscientious effort to apply the Fourth Amendment" by asking not merely whether the defendant had a possessory interest in the items seized, but whether he had an expectation of privacy in the area searched. Thus neither prosecutorial "vice," nor the underlying assumption of *Jones* that possession of a seized good is the equivalent of Fourth Amendment "standing" to challenge the search, can save the automatic standing rule.

C

Even though the original foundations of *Jones* have crumbled, respondents assert that principles not articulated by the Court in *Jones* support retention of the rule. First, ~~petitioners~~ respondents maintain that while *Simmons* v. *United States*, *supra*, eliminated the possibility that the prosecutor could use a defendant's testimony at a suppression hearing as substantive evidence of guilt at trial, *Simmons* did not eliminate other risks to the defendant which attach to giving testimony at a

motion to suppress.[7] Principally, respondents assert that the prosecutor may still be permitted to use the defendant's testimony to impeach him at trial.[8] This Court has not decided whether *Simmons* precludes the use of a defendant's testimony at a suppression hearing to impeach his testimony at trial.[9] But the issue presented here is quite different from the one of whether "use immunity" extends only through the government's case-in-chief, or beyond that to the direct and cross-examination of a defendant in the event he chooses to take the stand. That issue need not be and is not resolved here, for it is an issue which more aptly relates to the proper breadth of the *Simmons* privilege, and not to the need for retaining automatic standing.

Respondents also seek to retain the *Jones* rule on the grounds that it is said to maximize the deterrence of illegal police conduct by permitting an expanded class of potential challengers. The same argument has been rejected by this Court as a sufficient basis for allowing persons whose Fourth Amendment rights were not violated to nevertheless claim

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[7] The respondents argue that the prosecutor's access to the suppression testimony will unfairly provide the prosecutor with information advantageous to the preparation of his case and trial strategy. This argument, however, is surely applicable equally to possessory and nonpossessory offenses. This Court has clearly declined to expand the *Jones* rule to other classes of offenses, *Alderman* v. *United States*, *Brown* v. *United States*, and thus respondents' rationale cannot support the retention of a special rule of automatic standing here.

[8] A number of courts considering the question have held that such testimony is admissible as evidence of impeachment. *Gray* v. *State*, 43 Md. App. 238, 403 A. 2d 853 (1979); *People* v. *Douglas*, 66 Cal. App. 3d 998, 136 Cal. Rptr. 358 (1977); *People* v. *Sturgis*, 58 Ill. 2d 211, 317 N. E. 2d 545 (1974). See also *Woodie* v. *United States*, — U. S. App. D. C. —, 379 F. 2d 130, 131–132 (BURGER, J.), cert. denied, 389 U. S. 961 (1967).

[9] This Court has held that, "the protective shield of *Simmons* is not to be converted into a license for false representations. . . ." *United States* v. *Kahan*, 415 U. S. 239 (1974).

the benefits of the exclusionary rule. In *Alderman* v. *United States, supra,* 394 U. S., at 174–175, we explicitly stated that:

> "The deterrent values of preventing the incrimination of those whose rights the police have violated have been considered sufficient to justify the suppression of probative evidence even though the case against the defendant is weakened or destroyed. We adhere to that judgment. But we are not convinced that the additional benefits of extending the exclusionary rule to other defendants would justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth."

See also *Rakas* v. *Illinois,* 439 U. S., at 137; *United States* v. *Ceccolini,* 435 U. S. 268, 275–276 (1978); *United States* v. *Calandra,* 414 U. S. 338, 350–351 (1974). Respondents' deterrence argument carries no special force in the context of possessory offenses and we therefore again reject it.

We are convinced that the automatic standing rule of *Jones* has outlived its usefulness in this Court's Fourth Amendment jurisprudence. The doctrine now serves only to afford a windfall to defendants whose Fourth Amendment rights have *not* been violated. We are unwilling to tolerate the exclusion of probative evidence under such circumstances since we adhere to the view of *Alderman* that the values of the Fourth Amendment are fully preserved by a rule which limits the availability of the exclusionary rule to defendants who have been subjected to a violation of their Fourth Amendment rights.

This action comes to us as a challenge to a pretrial decision suppressing evidence. The respondents relied on automatic standing and did not attempt to establish that they had a legitimate expectation of privacy in the areas of Zackular's mother's home where the goods were seized. We therefore think it appropriate to remand so that respondents will have

April 18, 1980

79-244 U.S. v. Salvucci

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 22, 1980

Re: 79-244 - United States v. Salvucci
and Zackular

Dear Bill:

Please join me.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 28, 1980

Re: No. 79-244 - United States v. Salvucci

Dear Bill:

In due course I hope to circulate a dissent in this one.

Sincerely,

T.M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 28, 1980

Re: No. 79-244 - United States v. Salvucci

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1980

Re: No. 79-244, U.S. v. Salvucci

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 12, 1980

Re: 79-244 - U.S. v. Salvucci

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1980

Re: No. 79-244 - United States v. Salvucci

Dear Bill:

Please join me.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1980

Re: No. 79-244 - United States v. Salvucci

Dear Bill:

Please join me.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
							3/31/80	
Join WHR 5/12/80	Join TH 6/18/80	Join WHR 4/30/80	Join WHR 4/28/80	will dissent 4/28/80	Join WHR 5/12/80	Join WHR 4/18/80	1st draft 4/17/80 2nd draft 4/30/80	Join WHR 4/22/80
				tipped draft dissent 6/16/80				
				1st printed draft 6/18/80				
				79-244 U.S. v. Salvucci				