

1994

## Constitutional Law - Fourth Amendment - Search and Seizure - Standing - Co-Conspirator Exception

James M. Ginocchi

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### Recommended Citation

James M. Ginocchi, *Constitutional Law - Fourth Amendment - Search and Seizure - Standing - Co-Conspirator Exception*, 32 Duq. L. Rev. 897 (1994).

Available at: <https://dsc.duq.edu/dlr/vol32/iss4/11>

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CONSTITUTIONAL LAW—FOURTH AMENDMENT—SEARCH AND SEIZURE—STANDING—CO-CONSPIRATOR EXCEPTION—The United States Supreme Court held that the Fourth Amendment contains no co-conspirator exception and maintained that the proper determination is whether each respondent had either a property interest or a reasonable expectation of privacy which was invaded by the search and seizure.

*United States v. Padilla*, 113 S. Ct. 1936 (1993).

On September 26, 1989, Officer Russel Fifer of the Arizona Department of Public Safety was patrolling on Interstate Highway 10 near Casa Grande, Arizona, when a Cadillac passed him.<sup>1</sup> The Cadillac was moving at a high rate of speed, then slowed as it passed the officer's car.<sup>2</sup> The Cadillac continued to slow down, and ultimately Officer Fifer pulled the car over to the side of the highway for going too slowly.<sup>3</sup>

Luis Arciniega ("Arciniega") was the driver and sole occupant of the car.<sup>4</sup> On request, he furnished Fifer with a driver's license in his own name and also an insurance card in the name of Donald Simpson.<sup>5</sup> Officer Robert Williamson arrived to aid Officer Fifer and together they asked to search the Cadillac.<sup>6</sup> Arciniega consented to the search of the vehicle.<sup>7</sup> The officers opened the trunk and discovered 560 pounds of cocaine inside the compartment.<sup>8</sup>

After his arrest, Arciniega cooperated with the authorities and agreed to make a mock delivery of the cocaine.<sup>9</sup> From his motel room in Tempe, Arizona, Arciniega called Jorge and Maria Pa-

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1. Brief for the United States at 5, *United States v. Padilla*, 113 S. Ct. 1936 (1993) (No. 92-207) [hereinafter Brief].

2. *United States v. Padilla*, 113 S. Ct. 1936, 1937 (1993). The driver appeared to be acting suspiciously, so the officer followed the car for several miles. *Padilla*, 113 S. Ct. at 1937.

3. *Id.* Due to a miscommunication, the police radio dispatcher informed Officer Fifer that the license plates on the Cadillac were registered to a different make of car. Brief at 5.

4. *Padilla*, 113 S. Ct. at 1937.

5. *Id.* The officers called in Simpson's card and discovered he was a United States Customs Agent. *Id.*

6. *Id.* Both officers thought Arciniega matched a "drug courier profile." *Id.*

7. *Id.*

8. *Id.*

9. *Padilla*, 113 S. Ct. at 1937. This was done in order to identify other possible participants of the illegal project. *Id.*

dilla.<sup>10</sup> Shortly thereafter, Jorge and Maria Padilla came to the motel and were arrested when they tried to drive away in the Cadillac.<sup>11</sup> In similar fashion, the police convinced Maria Padilla to help them find the remainder of the drug-smuggling group.<sup>12</sup> Ms. Padilla directed the authorities to a house where her husband, Xavier Padilla, was staying.<sup>13</sup>

After all the suspects were arrested, the police learned that the Cadillac, filled with the illegal drugs, belonged to Donald Simpson.<sup>14</sup> Subsequent investigation showed that Donald Simpson's wife, Maria Sylvia Simpson, was also involved in the operation.<sup>15</sup>

Arciniega, Jorge, Maria, and Xavier Padilla, Donald and Maria Simpson, and Warren Strubbe ("Respondents") were charged with violating two federal conspiracy statutes.<sup>16</sup> Prior to trial, Respondents moved to suppress all of the evidence found during the investigation.<sup>17</sup> The district court agreed with the challenge presented by all Respondents that because they were operating a joint venture, Respondents were responsible for the control of the contraband.<sup>18</sup> Upholding Respondents' challenge, the court decided their Fourth Amendment interests in the car should be pre-

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Padilla*, 113 S. Ct. at 1937.

15. *Id.* The search found evidence to indicate Warren Strubbe was linked to Xavier Padilla. *Id.* at n.1. Strubbe did not appeal the court of appeals ruling that he did not have standing to challenge the search, therefore the Supreme Court did not address his challenge to the search. *Id.*

16. *Id.* at 1937-38. All Respondents were charged with violating The Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 846 and 841(a)(1) (1988). *Id.* at 1938. These statutes prohibit conspiracy to distribute and possess with intent to distribute cocaine, and possession of cocaine with intent to distribute respectively. *Id.* Xavier Padilla was also charged with the violation of a third statute, The Drug Abuse Prevention and Control Act. *Id.* That statute reads in pertinent part: "Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment . . ." 21 U.S.C. § 848(a) (1988 & Supp. III 1992). As noted, the Supreme Court did not address Warren Strubbe's convictions. See note 15.

17. *Padilla*, 113 S. Ct. at 1938. Respondents argued that any evidence found subsequent to the stop should necessarily be suppressed because the search of Arciniega's vehicle violated their Fourth Amendment rights. *Id.* The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

18. *Padilla*, 113 S. Ct. at 1938. The Court stated that this fact led to the conclusion that all Respondents were responsible for control of the illegal drugs. *Id.*

served.<sup>19</sup> The district court decided that Xavier Padilla, Maria Padilla, and Jorge Padilla were entitled to challenge the stop based solely on the joint venture aspect of the case.<sup>20</sup> At the conclusion of the suppression hearing, the court held that the search of Arciniega's car and all evidence obtained from the search should have been suppressed because Officer Fifer had no reason to stop Arciniega.<sup>21</sup>

The court of appeals affirmed the suppression order as to Respondents Xavier Padilla, Donald Simpson, and Maria Simpson; it remanded for further findings with respect to Jorge and Maria Padilla; and it reversed as to Respondent Warren Strubbe.<sup>22</sup> In finding that the Simpsons and Xavier Padilla were entitled to challenge the stop of Arciniega, the court relied on a line of Ninth Circuit cases holding that leaders or supervisors of a joint criminal venture enjoy a legitimate privacy interest in the persons or places involved in the conspiracy by virtue of their role in the joint venture.<sup>23</sup> Using the co-conspirator exception, the court of appeals then assessed the role of each Respondent in the venture to determine whether he or she exercised sufficient ownership and control over the operation to give any of them standing to challenge the stop.<sup>24</sup>

The court concluded that the Simpsons and Xavier Padilla had standing, not simply because the Simpsons owned the car and jointly possessed the drugs with Xavier Padilla, but also because they participated in the organization of the operation, particularly on the day of the stop.<sup>25</sup> The court also held that Donald Simpson had standing by virtue of his position as a customs agent.<sup>26</sup> Be-

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19. *Id.*

20. *Id.* The Supreme Court stated, "[t]he district court reasoned that, as owners, the Simpsons retained a reasonable expectation of privacy in their car, but that the Padillas could contest the stop solely because of their supervisory roles and their 'joint control over a very sophisticated operation.'" *Id.* (citation omitted).

21. *Id.*

22. *Id.*

23. *Padilla*, 113 S. Ct. at 1938. The court of appeals maintained that in order "[t]o contest the legality of a search and seizure, the defendants must establish that they had a 'legitimate expectation of privacy' in the place searched or the property seized." *Id.* (citing *United States v. Padilla*, 960 F.2d 854, 858-59 (9th Cir. 1992), *rev'd*, 113 S. Ct. 1936 (1993)).

24. *Id.* At this point the court of appeals stated its co-conspirator exception: "[A] co-conspirator's participation in an operation or arrangement that indicates joint control and supervision of the place searched establishes standing." *Id.* (citing *United States v. Padilla*, 960 F.2d at 859).

25. *Padilla*, 113 S. Ct. at 1938.

26. *Id.* The court inferred that because of Donald Simpson's status as a customs agent, his role in the transportation of the drugs between the United States and Mexico was

cause Maria Simpson was the go-between, playing the role of planner and supervisor of the drug project, the court concluded she also had standing.<sup>27</sup> Lastly, the court determined that Xavier Padilla's privacy expectation arose out of his connection in purchasing the drugs and his delivery of the illegal substance throughout the state.<sup>28</sup>

On appeal, the Supreme Court asserted that traditional interpretation of the Fourth Amendment<sup>29</sup> consistently demonstrated that defendants were not entitled to seek suppression of evidence seized as a result of the violation of a third party's rights.<sup>30</sup> In this case, however, the Ninth Circuit held that Respondents could obtain suppression of the cocaine Arciniega was transporting, as well as other evidence developed in the course of the investigation under the Ninth Circuit's "co-conspirator exception" to the traditional rules of Fourth Amendment standing.<sup>31</sup> The Supreme Court noted that this "co-conspirator exception" conflicts with the rules in other circuits,<sup>32</sup> and therefore, the Supreme Court granted certiorari to resolve this conflict.<sup>33</sup>

In the opinion, the Court emphasized that a defendant may not seek suppression of evidence seized in violation of the Fourth Amendment unless he or she was a victim of the illegal search or seizure.<sup>34</sup> The Supreme Court decided that membership in a joint venture to deliver drugs should not give co-conspirators a privacy or property interest or right.<sup>35</sup> Therefore, the Supreme Court held

imperative and thus Donald Simpson had standing. *Id.*

27. *Id.*

28. *Id.* As noted earlier, the Court remanded for further findings on the role of Jorge and Maria Padilla in the conspiracy. *Id.* The record was not clear as to whether the Padillas shared any responsibility for the project or just worked for the Simpsons. *Id.*

29. *Id.* at 1939. Fourth Amendment search and seizure claims are governed by expectations of privacy and property interests. *Id.*

30. *Padilla*, 113 S. Ct. at 1939 (citations omitted).

31. *Id.* at 1938 (citing *United States v. Padilla*, 960 F.2d at 859-61).

32. *Padilla*, 113 S. Ct. at 1939. The Court noted that "[t]he First, Second, Fifth, Sixth, Eighth, Eleventh, and District of Columbia Circuits have declined to adopt an exception for co-conspirators or codefendants." *Id.* at n.3 (citations omitted).

33. *United States v. Padilla*, 113 S. Ct. 404 (1992).

34. *Padilla*, 113 S. Ct. at 1939. The Court cited *Alderman v. United States*, 394 U.S. 165, 171-72 (1969), which outlined the defendant's rights under the Fourth Amendment holding that there is no standing for those who are aggrieved solely by the introduction of the evidence. *Alderman*, 394 U.S. at 171-72. In *Alderman*, the Court decided that third parties to a conspiracy may not suppress evidence that may incriminate them unless the search and seizure of the evidence violated their intimate privacy interests. *Id.* at 173. See notes 92-99 and accompanying text for full discussion of the *Alderman* case.

35. *Padilla*, 113 S. Ct. at 1939. The Court found that the co-conspirator exception used by the Ninth Circuit offended both the holding in *Alderman* and the established prin-

that the decision of the court of appeals allowing Respondents to challenge both the evidence found in the investigatory stop of one of the members of the conspiracy, as well as the subsequent search of the car he was driving, should be reversed.<sup>36</sup>

The Fourth Amendment<sup>37</sup> was created in response to specific grievances against British colonial abuse.<sup>38</sup> These complaints related to the issuance of Writs of Assistance which permitted unrestricted searches of colonists' homes and possessions.<sup>39</sup> Such writs were usually employed to permit searches of persons suspected of smuggling, tax evasion, or anti-British political activity.<sup>40</sup>

Across the Atlantic, a similar search and seizure tactic was being practiced where general warrants were being issued against printers, publishers, and others opposing tax laws or government policies.<sup>41</sup> In 1765, Lord Camden, in *Entick v. Carrington*,<sup>42</sup> relied upon traditional concepts of common law property rights to award damages in trespass against royal officers who broke into a home to execute a general warrant.<sup>43</sup>

Just as *Entick* relied in its holding on property concepts, the United States also attempted a similar solution in its Constitution.<sup>44</sup> *Boyd v. United States*<sup>45</sup> became the model for the property rights view of the Fourth Amendment. The Supreme Court in *Boyd* considered whether a statute which required an individual to produce certain records and books for government inspection violated the Constitution.<sup>46</sup> Because the defendant's property was be-

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ciple that privacy and property interests govern search and seizure claims. *Id.* Only if a respondent's rights were violated by the search itself may a respondent claim suppression of evidence under the Fourth Amendment. *Id.*

36. *Id.* The Court remanded the case so that the Ninth Circuit could consider "whether each respondent had either a property interest protected by the Fourth Amendment that was interfered with by the stop of the automobile driven by Arciniega, or a reasonable expectation of privacy that was invaded by the search thereof." *Id.*

37. See note 17 for full text of the Fourth Amendment.

38. *Payton v. New York*, 445 U.S. 573, 583-84 n.21 (1980) (stating that the crux of the Fourth Amendment provides that a defendant may retreat into his own home and, there, be free from unreasonable government intrusion of his property or person).

39. *Payton*, 445 U.S. at 584 n.21.

40. *Id.*

41. *Entick v. Carrington*, 2 Wils. K.B. 275 (1763).

42. 2 Wils. K.B. at 275.

43. *Entick*, 2 Wils. K.B. at 276. Once the Bench established the plaintiff's superior right to the property, the trespass was established and the agents were liable. *Id.* at 292. The Bench reasoned that property interests were the interests affected. *Id.*

44. See note 17 for the full text of the Fourth Amendment.

45. 116 U.S. 616 (1886), *overruled by* *Warden v. Hayden*, 387 U.S. 294 (1967).

46. *Boyd*, 116 U.S. at 633. *Boyd* did not involve an actual seizure, but rather involved an order to turn over certain papers. *Id.* The Supreme Court held this to be the equivalent

ing seized for the purpose of using that property against the defendant at trial, the Court reasoned that the attempted seizure was the equivalent of forcing Boyd to testify against himself.<sup>47</sup> The *Boyd* Court firmly established the principle that the Fourth Amendment can only be invoked by a defendant when that defendant has a specific proprietary right in the goods seized.<sup>48</sup> Without possession of the goods, the evidence could be used against the defendant and the seizure would be constitutional.<sup>49</sup>

The first Supreme Court case authorizing suppression of illegally seized evidence in a criminal case was *Weeks v. United States*.<sup>50</sup> In this case, involving the unlawful use of the mails, the Court questioned whether the government should return illegally seized evidence to the defendant.<sup>51</sup> The rationale for such an order was that since the government seized the property through an illegal trespass, the defendant's proprietary right to that evidence was superior to that of the government.<sup>52</sup> *Weeks* also made the same distinction as *Boyd*, holding that the Fourth Amendment would not apply to search and seizure of stolen property because the defendant would lack a lawful property interest in such goods.<sup>53</sup>

The requirement of a property right for assertion of the Fourth Amendment right was formalized and refined in *Hester v. United States*<sup>54</sup> and *Olmstead v. United States*.<sup>55</sup> In *Hester*, federal agents watched as the defendant was handling bottles of what appeared to be illegal moonshine in an open field surrounding defendant's house.<sup>56</sup> The issue before the Court was whether the agents violated the defendant's Fourth Amendment rights during the investigational surveillance of an illegal moonshining operation in the area surrounding the defendant's home.<sup>57</sup> The agents pro-

of a seizure for Fourth Amendment purposes. *Id.* at 634.

47. *Id.* at 633.

48. *Id.* at 624.

49. *Id.* at 633.

50. 232 U.S. 383 (1914).

51. *Weeks*, 232 U.S. at 390-92. The letters were taken from the defendant's home by the government, and the defendant put in a timely application to retrieve the letters and private documents seized in his house in his absence. *Id.* at 393.

52. *Id.* at 389.

53. *Id.* at 391-92. In its conclusion, the *Weeks* Court established the exclusionary rule to require evidence obtained in violation of an individual's Fourth Amendment rights be suppressed. *Id.* at 397.

54. 265 U.S. 57 (1924), *overruled by* *Katz v. United States*, 389 U.S. 347 (1967).

55. 277 U.S. 438 (1928), *overruled by* *Berger v. New York*, 388 U.S. 41 (1967).

56. *Hester*, 265 U.S. at 58.

57. *Id.*

ceded to traverse onto defendant's land without a warrant and seized the bottles.<sup>58</sup> By reasoning that the fields surrounding the defendant's home were not a "private place," the Court established that not only was the defendant required to have a proprietary right in the area searched, but that the area itself had to be a private place for the Fourth Amendment protections to apply.<sup>59</sup> The Supreme Court concluded that the trespass on the defendant's land did not result in a Fourth Amendment violation.<sup>60</sup>

*Olmstead* not only reiterated the "private place" standard of *Hester*, but further established a requirement that an actual physical intrusion into the "private place" was necessary before Fourth Amendment rights could be asserted.<sup>61</sup> In *Olmstead*, the defendants were charged with a conspiracy to import and sell liquor unlawfully.<sup>62</sup> This information was largely obtained by federal agents intercepting messages on the telephones of conspirators.<sup>63</sup> The question was whether the phone tapping used to discover the activity was admissible as evidence, or whether it encroached on the defendants' Fourth Amendment rights.<sup>64</sup> The Court ruled that evidence received under long distance surveillance was admissible and did not impair upon Fourth Amendment rights.<sup>65</sup> The Court reasoned that property law was conclusive as to both the substantive issues of Fourth Amendment rights and the question of who was entitled to assert those rights.<sup>66</sup>

While the property rights view of the Fourth Amendment was adequate for the Nineteenth Century, new technological advances in electronics, photography and wiretapping made actual physical trespass outdated as a means of conducting searches. Justice Brandeis discussed this facet of the Fourth Amendment in his dissent

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58. *Id.*

59. *Id.*

60. *Id.* at 58-59.

61. *Olmstead*, 277 U.S. at 466. The Court indicated that wiretapping, electronic bugging, and long distance surveillance were not within the scope of the Fourth Amendment. *Id.*

62. *Id.* at 455.

63. *Id.* at 464.

64. *Id.* at 457.

65. *Id.* at 466. The Court reiterated that prior decisions had held that a defendant's Fourth Amendment right had only been violated when a specific property interest was involved. *Id.*

66. *Olmstead*, 277 U.S. at 466. The defendant's privacy interest in being personally free from unreasonable searches and seizures was never considered by the courts. Moreover, the concept of standing had not yet been applied in a Fourth Amendment context. See *Goldstein v. United States*, 316 U.S. 114, 121 (1942). See note 74 for a discussion of *Goldstein*.

in *Olmstead*.<sup>67</sup> Justice Brandeis stressed that the wiretaps and other electronic devices introduced in *Olmstead* showed the futuristic trend toward a non-physical surveillance for which the property rights view of the Fourth Amendment was wholly inadequate.<sup>68</sup>

*Jones v. United States*<sup>69</sup> provided the first major step from a property law view of the Fourth Amendment to recognition of an individual, constitutional right to privacy.<sup>70</sup> The Court granted Fourth Amendment protection to any persons legitimately on the premises during a search.<sup>71</sup> The Court shifted the focus from the property seized to the individual rights of the person claiming Fourth Amendment protection.<sup>72</sup> A significant effect of the *Jones* shift of Fourth Amendment emphasis to personal privacy was the introduction of the concept of Fourth Amendment standing.<sup>73</sup> With the addition of the standing requirement, *Jones* established a two-step inquiry for deciding Fourth Amendment actions.<sup>74</sup> First, the Court focused upon the legal status of the individual against whom the evidence was being used.<sup>75</sup> The next step was to deter-

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67. *Olmstead*, 277 U.S. at 474 (Brandeis, J., dissenting).

68. *Id.* at 478 (Brandeis, J., dissenting). Justice Brandeis' view of the Fourth Amendment as protecting privacy rights was rejected by the majority in *Olmstead*, and was not formally accepted until *Katz* was decided almost 40 years later. See notes 78-85 and accompanying text for the decision of the *Katz* case.

69. 362 U.S. 257 (1960).

70. *Jones*, 362 U.S. at 257-59. This case involved a search of an apartment pursuant to a warrant. *Id.* at 259. At the time the warrant was executed, the defendant was present as a visitor. *Id.* The police found heroin in a bird's nest outside a window and charged the defendant with possession of the drugs. *Id.* At trial, the defendant moved to suppress the evidence. *Id.* at 258-59.

71. *Id.* at 266-67.

72. *Id.*

73. Standing has traditionally dealt not with the merits of a constitutional claim, but with the personal qualifications of a specific person to that claim. *Flast v. Cohen*, 392 U.S. 83, 99-101 (1968). In federal criminal cases, issues of standing to raise a Fourth Amendment claim were decided in the context of Rule 41(e) of the Federal Rules of Criminal Procedure, which stated: "[a] person aggrieved by an unlawful search or seizure may move the district court . . . for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized." FED. R. CRIM. P. 41(e).

74. *Jones*, 362 U.S. at 265-67. While standing to assert Fourth Amendment claims had been mentioned as early as 1942 in *Goldstein v. United States*, the sole question then was the defendant's right to property searched or seized. *Goldstein*, 316 U.S. 114, 121 (1942). However, when the Fourth Amendment was based on property rather than privacy concerns, the concept of standing, which is an inquiry into a party's personal qualifications, was meaningless. *Goldstein*, 316 U.S. at 120. A claim did not even exist for persons without a property right. *Id.* For those who did not have such a right, the property interest was dispositive of the claim. *Id.* Hence, there was no distinction between standing to assert a Fourth Amendment claim and the substantive merits of such a claim. *Id.* at 120-22.

75. *Jones*, 362 U.S. at 266. The Court reasoned if the defendant was legitimately on

mine if the officers acted with probable cause in carrying out the search.<sup>76</sup> By removing property law limitations on Fourth Amendment standing, the Supreme Court was able to deduce that the possibility of a conviction for criminal possession in and of itself made the defendant a person aggrieved by the search and seizure which produced the evidence.<sup>77</sup>

The Supreme Court in *Katz v. United States*,<sup>78</sup> established a personal right of privacy flowing from the Fourth Amendment.<sup>79</sup> In *Katz*, the defendant had been convicted of violating a statute proscribing interstate transmission by wire communication of bets and wagers.<sup>80</sup> The issue in *Katz* was whether the defendant, who had been subject to warrantless electronic eavesdropping while in a public telephone booth, could properly be regarded as the victim of a search.<sup>81</sup> The Court ruled that the government's activities in electronically listening to and recording defendant's words spoken into a telephone receiver in a public telephone booth violated the privacy interest that the defendant expected during his use of the phone booth.<sup>82</sup> The Court explained that Fourth Amendment pro-

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the premises at the time of the search, he had standing to challenge the search. *Id.*

76. *Id.* at 269-70. Thus the Court established an automatic standing rule whereby any defendant charged with possession of an item would automatically be granted standing to move to suppress that item. *Id.*

77. *Id.* at 263. The automatic standing rule did not decide the merits of any Fourth Amendment claims, but merely held that where possession will convict, it will also confer standing to suppress. *Id.* At first, the Court was reluctant to switch to the privacy interest that *Jones* established. See *Silverman v. United States*, 365 U.S. 505 (1961), where the Court recognized the right of privacy in a case dealing with electronic eavesdropping, but still based its decision on the existence of a property right. *Silverman*, 365 U.S. at 510-11. Finally, the Court abandoned the property-based view of the Fourth Amendment and focused upon the privacy interest involved. See *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294 (1967). In that case, the Court stated:

The premise that property interests control the right of the Government to search and seize has been discredited. Searches and seizures may be unreasonable within the Fourth Amendment even though the Government asserts a superior property interest at common law. We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property and have increasingly discarded fictional and procedural barriers rested on property concepts.

*Warden*, 387 U.S. at 304.

78. 389 U.S. 347 (1967).

79. *Katz*, 389 U.S. at 351. The Court recognized that the Fourth Amendment protects people and their interests, not places. *Id.* The Court stated that, "[w]hat a person knowingly exposes to the public, even in his home or office, is not a subject of Fourth Amendment protection . . . [b]ut what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. *Id.* at 351 (citations omitted).

80. *Id.* at 349-50.

81. *Id.*

82. *Id.* at 351-52. This constituted a search and seizure within the scope of the Fourth Amendment. *Id.*

tection extends beyond property lines to areas in which one has a reasonable expectation of freedom from government intrusion.<sup>83</sup> Since the bugging of the phone booth "violated the privacy upon which the defendant justifiably relied," the Court found the deprivation of a Fourth Amendment interest, notwithstanding defendant's lack of a proprietary interest in the telephone booth.<sup>84</sup> Thus, *Katz* firmly established a personal right of privacy flowing from the Fourth Amendment.<sup>85</sup>

The privacy expectation doctrine of *Katz* was extended to the standing issue in *Mancusi v. DeForte*.<sup>86</sup> Defendant, a union official who shared an office with other employees, attempted to suppress papers seized during a search of the office.<sup>87</sup> The Court questioned whether the papers seized could be admissible as evidence or should be suppressed because they were the personal property of the defendant.<sup>88</sup> The Court reasoned that defendant's office was a place in which the defendant had a legitimate expectation of freedom from illegal search and seizures.<sup>89</sup> Upon finding that the defendant had an established interest in the documents and the office, the Court reasoned that the defendant had a privacy interest that must be protected by the Fourth Amendment.<sup>90</sup> The Court determined that defendant's expectation of privacy was similar to that of the defendant in *Jones*, and was therefore sufficient to accord him standing, despite the fact that he neither owned the seized papers nor had title to the searched premises.<sup>91</sup>

The 1969 decision of *Alderman v. United States*<sup>92</sup> constituted the Supreme Court's most extensive discussion to date of the general standing requirement for the exclusionary rule, and dealt in particular with the question of third party standing. *Alderman* was a multi-defendant case in which all defendants moved to suppress tapes of telephone conversations.<sup>93</sup> Unlike *Katz*, *Alderman* dealt

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83. *Id.* at 350.

84. *Katz*, 389 U.S. at 352-53.

85. *Id.*

86. 392 U.S. 364 (1968).

87. *Mancusi*, 392 U.S. at 365.

88. *Id.* at 366.

89. *Id.* at 368-69.

90. *Id.* at 368-69.

91. *Id.* at 367-70. Justice Black, dissenting, contended that the logical extension of the Court's holding would do away with standing entirely. *Id.* at 376 (Black, J., dissenting).

92. 394 U.S. 165 (1969).

93. *Alderman*, 394 U.S. at 167. The conversations had been made by some of the accused in a store belonging to another defendant. *Id.* at 167-68.

specifically with the question of standing.<sup>94</sup> The issue the Court faced involved the admissibility against one defendant of evidence obtained from an illegal wiretap of another defendant's conversation.<sup>95</sup> In the Court's opinion, each individual's privacy rights allowed standing to those defendants who were actual participants in the conversations.<sup>96</sup> The co-conspirators argued that the evidence against them should be suppressed because the evidence was illegally obtained as to one of the conspirators and therefore, inadmissible against all.<sup>97</sup> The Court rejected this theory based on the principle that only the defendant whose rights have been violated during the search for evidence has a claim to suppress under the Fourth Amendment.<sup>98</sup> The Court concluded by stating that a defendant aggrieved by the introduction of damaging evidence secured by an illegal search and seizure of a third person's premises or property has not had any of *his* or *her* Fourth Amendment rights infringed upon.<sup>99</sup>

The decision in *Rakas v. Illinois*<sup>100</sup> reflected the Court's dissatisfaction with both the theoretical foundation and practical implications of the existing law of standing.<sup>101</sup> In *Rakas*, the defendants moved to suppress evidence obtained in an illegal search and seizure based on the automatic standing rule.<sup>102</sup> The Court considered whether the defendants had a legitimate expectation of privacy in property placed in the glove compartment of the car, if they were not the owners of the car.<sup>103</sup> The Supreme Court af-

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94. *Id.* Petitioners were convicted of conspiring to transmit murderous threats over the telephone and through interstate commerce. *Id.* These phone calls were made from Al Alderisio's store. *Id.* Alderisio wanted the evidence suppressed as to his involvement because he contended that he was not involved in the calls under question. *Id.* at 174.

95. *Id.* at 175.

96. *Id.* at 177-78. The owner of the store was therefore allowed to raise a Fourth Amendment claim solely by virtue of his property right. *Id.* Standing was denied to all other defendants against whom the tapes were being introduced as evidence. *Id.* at 178.

97. *Alderman*, 394 U.S. at 171-72.

98. *Id.* at 172 n.5. The Court determined that only a victim of the search has standing and that only one whose privacy has been invaded can properly call himself a victim of the search. *Id.* at 174-75.

99. *Id.* at 174.

100. 439 U.S. 128 (1978), *reh'g denied*, 439 U.S. 1122 (1979).

101. *Rakas*, 439 U.S. at 130. In *Rakas*, police stopped a car in which the defendants were passengers, suspecting that the car might have been used in a recent robbery. *Id.* The police searched the interior of the car and found a sawed-off rifle under the front passenger seat and a box of rifle shells in the locked glove compartment. *Id.* Neither of the defendants claimed ownership of either the automobile, the rifle, or the shells. *Id.* at 130 n.1.

102. *Id.* at 132-33.

103. *Id.* at 148.

firmed the lower court decision that the defendants lacked standing to object to the search and seizure, but the Court based its holding on the interests in the Fourth Amendment, not standing.<sup>104</sup> The *Rakas* opinion determined that the concept of standing served no useful purpose in the Fourth Amendment context because standing was "invariably intertwined" with substantive Fourth Amendment law.<sup>105</sup> The Court reasoned that neither defendant claimed a property or possessory interest in the automobile or the items seized.<sup>106</sup> The Court concluded that neither defendant enjoyed a legitimate expectation of privacy in the searched car, and thus neither party had the interest necessary to contest the legality of the search and seizure.<sup>107</sup>

The Supreme Court's abandonment of treating the standing rule as a separate issue from substantive Fourth Amendment privacy and property claims was solidified in *United States v. Salvucci*.<sup>108</sup> The defendants in *Salvucci* were indicted for possession of stolen mail.<sup>109</sup> The issue the Court considered was whether the defendants were entitled to automatic standing to suppress the evidence.<sup>110</sup> The Supreme Court reversed, holding that the automatic standing rule of *Jones* had outlived its usefulness and was therefore overruled.<sup>111</sup> The Court rationalized that the question was not merely whether the defendants had a possessory interest in the items seized, but also whether the defendants had an expectation of privacy in the area searched and whether the expectation had been violated.<sup>112</sup> By overturning the automatic standing rule, the Court rejected the contention that possession of the seized prop-

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104. *Id.* at 140. The Court stated that, "we think that definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than within that of standing." *Id.*

105. *Id.* at 138-40.

106. *Rakas*, 439 U.S. at 148. The Court stated that since the Fourth Amendment protects areas or items in which individuals have established a reasonable expectation of privacy, the question then becomes whether the defendants have such an interest in the area searched. *Id.* at 143-44.

107. *Id.* at 148-50.

108. 448 U.S. 83 (1980).

109. *Salvucci*, 448 U.S. at 85. The charges were predicated upon 12 stolen checks seized by police during the search of an apartment leased to a defendant's mother. *Id.* In upholding the motion to suppress, the First Circuit Court of Appeals held that the automatic standing rule was the sole basis for allowing these defendants to assert a Fourth Amendment claim. *United States v. Salvucci*, 599 F.2d 1094, 1097 (1st Cir. 1979), *rev'd*, 448 U.S. 83 (1980).

110. *Salvucci*, 448 U.S. at 86.

111. *Id.* at 95.

112. *Id.* at 91-92.

erty is enough to establish automatic standing under the Fourth Amendment.<sup>113</sup> In conclusion, the Court defined personal Fourth Amendment rights in terms of proprietary and privacy interests.<sup>114</sup>

In the same year, the Court decided *Rawlings v. Kentucky*,<sup>115</sup> a case in which a defendant was accused of possessing drugs that were seized from his girlfriend's purse.<sup>116</sup> Thus, like *Rakas* and *Salvucci*, *Rawlings* involved a guilty defendant and questionable police action which could lead to suppression of the drugs and dismissal of the indictment.<sup>117</sup> The Court had to determine whether a proprietary interest in the area searched was needed to decide if the defendant had a reasonable expectation of privacy.<sup>118</sup> The Court in *Rawlings* began its analysis by quoting with approval the language in *Katz* and *Rakas*, that the trial court should determine whether the defendant had a legitimate privacy interest in the area searched.<sup>119</sup> The Court reasoned that ownership of the seized property alone, without more, was not sufficient to vest the defendant with Fourth Amendment protection.<sup>120</sup> Given that the defendant had not established a specific proprietary right in the area searched, his girlfriend's purse, the Court concluded that the defendant was not protected under the Fourth Amendment.<sup>121</sup>

The Supreme Court had expressly refused to extend Fourth Amendment standing to parties other than the immediate victim of the illegal search and seizure.<sup>122</sup> The Court's determination to apply this principle strictly was reflected in its 1980 decision in *United States v. Payner*.<sup>123</sup> In *Payner*, an Internal Revenue Service agent made an illegal seizure of a briefcase belonging to an officer of a Bahamian bank, and copied numerous documents con-

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113. *Id.* at 90-91.

114. *Id.* at 83.

115. 448 U.S. 98 (1980).

116. *Rawlings*, 448 U.S. at 100. The defendant was present at the time of the search and seizure and admitted to ownership of the drugs. *Id.* at 100-02.

117. *Id.*

118. *Id.* at 103-04.

119. *Id.* at 104.

120. *Id.* at 105. *Rawlings* thereby explained the Court's ability to decide Fourth Amendment issues based upon privacy rights by permitting a selective use of property law. *Id.* The Court added that ownership of the property will not necessarily confer the right to challenge the search and seizure, but rather serves merely as a factor to be considered in determining a party's expectation of privacy in the relevant area. *Id.*

121. *Rawlings*, 448 U.S. at 104-05.

122. See *Rakas*, 439 U.S. at 132-38; *Alderman*, 394 U.S. at 174-75. See also notes 92-107 and accompanying text.

123. 447 U.S. 727, *reh'g denied*, 448 U.S. 911, and *on remand*, 629 F.2d 1181 (6th Cir. 1980).

tained therein.<sup>124</sup> Information obtained from the documents illegally seized by the Internal Revenue Service agent led to an indictment and prosecution of defendant, a customer of the bank, on tax evasion charges.<sup>125</sup> The question considered by the Court was whether the defendant's Fourth Amendment privacy rights were violated by the seizure of the documents.<sup>126</sup> Although the lower courts found that no Fourth Amendment rights of the defendant were violated by the illegal seizure, the evidence was excluded at trial.<sup>127</sup> The Supreme Court reversed the lower courts' decisions, ruling that the defendant had no expectation of privacy in the seized documents and thus was unable to show the violation of a Fourth Amendment right.<sup>128</sup> The Court reasoned that the defendant could not assert vicarious standing to challenge evidence obtained through illegal conduct by agents of the United States because the defendant did not satisfy the standing requirement of the Fourth Amendment.<sup>129</sup> Further reasoning by the Court showed that defendant's Fourth Amendment rights were violated only when the challenged conduct invaded *his* legitimate expectation of privacy rather than that of a third party.<sup>130</sup> In sum, the Court allowed the evidence to be admitted on the ground that it was not protected by the Fourth Amendment.<sup>131</sup>

In 1992, the Court made it clear that interest in property is just as important as the privacy interest when dealing with Fourth Amendment claims. In *Soldal v. Cook County, Illinois*,<sup>132</sup> a mobile home owner brought a suit against his landlord and police officers for attempting to disconnect and move petitioner's mobile home from the trailer park.<sup>133</sup> The Court fielded the question of whether

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124. *Payner*, 447 U.S. at 730.

125. *Id.* at 729-30.

126. *Id.* at 731.

127. *Id.* at 730-31. The Court determined that the government's knowing, willful, and bad-faith violation of the bank officer's constitutional rights required the exclusion of the evidence by virtue of the inherent supervisory powers of the federal courts. *Id.*

128. *Id.* at 732 n.4.

129. *Payner*, 447 U.S. at 733-36. The Court thus rejected the dissent's contention that the federal courts should not sanction the deliberate and intentional violation of the law of search and seizure by the government, despite the inability of a particular defendant to challenge the action. *Id.* at 736 n.8.

130. *Id.* at 735.

131. *Id.*

132. 113 S. Ct. 538 (1992).

133. *Soldal*, 113 S. Ct. at 542-43. The petitioner claimed that his Fourth Amendment rights were violated because he had a significant property interest in the mobile home. *Id.* at 543. The respondents argued that although the petitioner did have a property interest, no invasion of privacy was implicated, and therefore the petitioner had no standing. *Id.* at 542.

the Fourth Amendment protects against unreasonable seizures of property when no privacy interest was present.<sup>134</sup> The Court ruled that seizure of property occurs when there is some meaningful interference with an individual's possessory interest in that property.<sup>135</sup> The fact that the petitioner owned and lived in the trailer was enough to establish standing and a viable property interest.<sup>136</sup> The Court reasoned that an unlawful seizure, even in the absence of a privacy issue, can still invade a proprietary interest.<sup>137</sup> Thus, the Court revived the notion that Fourth Amendment search and seizure issues are governed by both property *and* privacy interests.

The decision from the court of appeals in *Padilla* upholding the co-conspirator exception squarely contradicts the Supreme Court's position on the Fourth Amendment.<sup>138</sup> The Ninth Circuit's approach is irreconcilable with the settled principle that Fourth Amendment violations are personal, and that only those whose rights have been violated by a search and seizure may seek suppression of evidence obtained as a result of that violation.<sup>139</sup>

The Court has established the fundamental principle that a defendant's Fourth Amendment rights are violated only when the challenged conduct invades the defendant's legitimate expectation of privacy rather than that of a third party.<sup>140</sup> That principle follows from the general rule that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.<sup>141</sup>

By focusing on each Respondent's role in the drug smuggling scheme rather than whether each Respondent was the victim of an illegal seizure, the court of appeals committed a fundamental error.<sup>142</sup> Under settled Fourth Amendment principles, a defendant's status as a co-conspirator, no matter how significant his or her role in the conspiracy, is irrelevant to the question of whether the defendant's Fourth Amendment rights have been violated.<sup>143</sup> Only a

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134. *Id.* at 541.

135. *Id.* at 545.

136. *Id.* at 545-47.

137. *Id.* at 545.

138. *Padilla*, 113 S. Ct. at 1936-37.

139. *Id.* at 1937-38.

140. *Payner*, 447 U.S. at 731.

141. *Rakas*, 439 U.S. at 133-34 (quoting *Alderman*, 394 U.S. at 174). In short, in order to obtain suppression, a person must be a victim of a search or seizure rather than one who claims a violation based on the search of another. *Alderman*, 394 U.S. at 173.

142. *Padilla*, 113 S. Ct. at 1938-39.

143. *Id.* at 1939.

person whose privacy and/or property interests are affected by a seizure may contest its lawfulness.<sup>144</sup> An individual's Fourth Amendment interests are not affected by a seizure simply because a co-conspirator has been arrested or the contraband that is the subject of the smuggling conspiracy has been seized.<sup>145</sup>

In the instant case, the Respondents' status as co-conspirators cannot create an expectation of privacy where one otherwise would not exist. The fact that a respondent acts in league with others to accomplish the ends of a joint venture has no bearing on the basic Fourth Amendment question—whether law enforcement officials violated the respondent's rights to be free from unreasonable seizures of the respondent's person, property, or premises.<sup>146</sup>

No circuit other than the Ninth Circuit has accepted the notion that a person's role in a joint venture can give rise to a legitimate Fourth Amendment interest in a search and seizure affecting other members of the conspiracy.<sup>147</sup> In addition to being inconsistent with prior decisions of the Supreme Court and other circuit courts, the Ninth Circuit's recognition of joint venture standing can dramatically increase the cost of suppressing evidence in conspiracy cases. Because a single conspirator was unlawfully stopped, the court below had suppressed virtually all of the evidence against the leaders of the enterprise, including a corrupt law enforcement official, and had effectively terminated their prosecutions on serious drug trafficking charges.<sup>148</sup> This occurred despite that fact that Respondents were *not* the persons seized in the highway stop.<sup>149</sup> Whatever the additional benefits of extending the exclusionary rule to co-conspirators may be, they do not justify such a 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.

Not only did the Ninth Circuit's doctrine impose great costs on the criminal justice system, it did so in a particularly perverse fashion. To challenge the unlawful search or seizure of a co-conspirator, defendants in the Ninth Circuit must demonstrate that

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144. *Id.*

145. *Id.*

146. *Id.* The Court adopted the decision made in *Alderman* that “[c]oconspirators and codefendants have been accorded no special standing” under the Fourth Amendment. *Id.* (quoting *Alderman*, 394 U.S. at 171-72).

147. *Padilla*, 113 S. Ct. at 1938 (citations omitted).

148. *Id.*

149. *Id.*

they had a leadership or central role in the conspiracy. The most culpable participant in such an operation, like Xavier Padilla or the Simpsons, may therefore be effectively immunized from prosecution, while a relatively minor figure, such as Jorge Padilla, is left to face the full brunt of the government's evidence.<sup>150</sup> This doctrine thus has the anomalous result of rewarding conspirators for assuming a leading role in the conspiracy! To permit respondents to suppress evidence based on a challenged stop is an unsupported and unsound rule that serves only to confer a Fourth Amendment windfall on defendants like Respondents. The Supreme Court in this case has effectively reaffirmed that the focus on the role of each respondent in the conspiracy is irrelevant, and that the proper consideration is one of privacy and property interests that may have been violated during the investigation.

*James M. Ginocchi*

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150. See notes 5-28 and accompanying text for the roles of the respective Respondents. See also Brief at 5.

