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Constitutional Law - Persons Entitled to Raise Constitutional Questions - Standing to Suppress Evidence Obtained in Violation of the Fourth Amendment

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CONSTITUTIONAL LAW — PERSONS ENTITLED TO RAISE CONSTITUTIONAL QUESTIONS — STANDING TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT — Federal officers arrested petitioner upon finding narcotics in an awning outside the window of *E*'s apartment which petitioner was using as "a friend" of *E*. Charged with possession of contraband narcotics, petitioner moved to suppress the evidence claiming the warrant to search the apartment was issued to the officers without probable cause. The district court denied petitioner's motion on the ground that he lacked standing to make it. At trial a renewed motion to suppress was denied, and on appeal the Court of Appeals for the District of Columbia[1] affirmed the ruling of the district court.[2] On certiorari to the United States Supreme Court, *held*, vacated and remanded, one Justice dissenting.[3] Whenever illegal possession is the basis for conviction, a defendant has sufficient standing to challenge the legality of the search or seizure by which the evidence of illegal possession was obtained. *Jones v. United States*, 362 U.S. 257 (1960).

Prior to the principal case, standing in the federal courts to petition for the suppression of evidence obtained by illegal search or seizure was available only to parties who could show a proprietary or possessory interest in the property alleged to have been unlawfully searched or seized.[4] This requirement of "standing," or qualifying as the "person aggrieved," has restricted[5] the availability of the motion to suppress illegally-obtained evidence in the federal courts with varied and often unusual results. There has never been any doubt that ownership or right to possession qualifies as a sufficient quantum of interest in the property searched or seized to provide standing, but as the quantum of such interest decreases, the problem increases in difficulty.[6] For example, it has generally been held that employees do not have standing to suppress evidence obtained by illegal search or seizure of the employer's property,[7] but where a desk was assigned exclusively to the defendant, it was held she had the requisite standing.[8] And where cor-

1 Jones v. United States, 262 F.2d 234 (D.C. Cir. 1958).

2 Petitioner was convicted of violating Narcotics Drugs Import and Export Act § 2(c), 35 Stat. 614 (1914), 21 U.S.C. § 174 (1958) (unlawful to facilitate the concealment and sale of narcotics imported illegally into the United States) and INT. REV. CODE OF 1954, § 4704(a) (unlawful to purchase, sell, dispense, or distribute narcotics except in original stamped package).

3 Justice Douglas joined the Court in the part of the opinion which deals with "standing," but dissented from the ruling that there was probable cause for issuing the search warrant based on hearsay. This note is concerned only with "standing."

4 Grainger v. United States, 158 F.2d 236 (4th Cir. 1946).

5 Grant, *Circumventing the Fourth Amendment*, 14 SO. CAL. L. REV. 359 (1941).

6 *E.g.*, Gibson v. United States, 149 F.2d 381 (D.C. Cir. 1945) (guest did not have standing); Ingram v. United States, 113 F.2d 966 (9th Cir. 1940) (lessee had standing but defendant did not have standing where it was codefendant's rights which had been invaded). Klee v. United States, 53 F.2d 58 (9th Cir. 1931) (trespasser did not have standing but tenant at sufferance had standing); Graham v. United States, 15 F.2d 740 (8th Cir. 1926) (son of owner did not have standing). *But see* McDonald v. United States, 335 U.S. 451 (1948) (denial of accused's motion to suppress was prejudicial as well to codefendant).

7 Connolly v. Medalie, 58 F.2d 629 (2d Cir. 1932).

8 United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951).

porate papers were illegally seized, the corporation could suppress,[9] but the president[10] or sole stockholder[11] could not. A peculiar situation is created when the accused must claim the property in order to suppress, but possession alone is enough to convict. The defendant has to "choose one horn of the dilemma."[12] In such situations, the courts have held that "one could have sufficient custody and control as to warrant conviction of unlawful possession . . . and yet not have sufficient interest therein to entitle him to raise the question of unlawful search and seizure."[13] In the principal case, the Court solved the dilemma by holding that where possession is the basis for conviction, such possession alone gives the defendant standing. The Court went on, however, and stated as a second ground for standing, that anyone legitimately on premises where a search occurs may challenge its legality. Thus, the principal case substantially departs from the course followed in the lower federal courts by assuring standing to many persons not previously held to be in the category of "persons aggrieved."

The fourth amendment provides for "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." The exclusion of evidence obtained in violation of the fourth amendment has been adopted by the federal courts[14] as the best means for giving effect to rights under this amendment.[15] Accordingly, it is suggested that fourth amendment rights would be afforded the greatest protection under a rule which excludes *any* evidence illegally obtained whether or not it violated the *particular* objecting defendant's constitutional rights. The abolition in this circumstance of the standing requirement would prevent law enforcement officers from trading the release of the one criminal who could challenge the evidence for the conviction of others by use of illegally-obtained evidence. The courts would no longer make profitable this violation of the rights of third parties by admitting the fruits of the violation. California has already taken this position[16] with successful results.[17]

[9] Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

[10] United States v. Antonelli Fireworks Co., 155 F.2d 631 (2d Cir. 1946).

[11] United States v. Hoyt, 53 F.2d 881 (S.D.N.Y. 1931).

[12] This is Judge Learned Hand's famous dilemma, Connolly v. Medalie, *supra* note 7, at 630. It has been suggested that such a choice should be unconstitutional. See Edwards, *Standing To Suppress Unreasonably Seized Evidence*, 47 Nw. U.L. REV. 471, 491 (1952).

[13] Kelley v. United States, 61 F.2d 843, 848 (8th Cir. 1932).

[14] Weeks v. United States, 232 U.S. 383 (1914).

[15] Those who support other remedies for controlling unreasonable searches and seizures may well heed the following lament of Justice Traynor quoted from People v. Cahan, 44 Cal. 2d 434, 447, 282 P.2d 905 (1955): "Experience has demonstrated, however, that neither administrative, criminal, nor civil remedies are effective in suppressing lawless searches and seizures."

[16] "Since all of the reasons that compelled us to adopt the exclusionary rule are applicable whenever evidence is obtained in violation of constitutional guarantees, such evidence is inadmissible whether or not it was obtained in violation of the particular defendant's rights." People v. Martin, 45 Cal. 2d 755, 761, 290 P.2d 855 (1955).

[17] Note, 9 STAN. L. REV. 515, 538 (1957).

One obstacle to the adoption of such a rule by the federal courts would be the self-imposed rule of the federal courts against allowing a person to invoke the constitutional rights of another. But there is respectable precedent allowing such vicarious assertion of constitutional rights where strong reasons are present. In *Barrows v. Jackson*[18] it was held the defendant had standing to raise the defense that court enforcement of a real estate covenant directed against non-Caucasians violated the equal protection clause of the fourteenth amendment although the defendant was not a member of the groups discriminated against. The Court declared: "Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained."[19] Indeed, under the principal case, to allow anyone legitimately on the premises to challenge the legality of the search is, in truth, to allow a third party to assert the rights of the owner. Another, and perhaps more compelling, objection is that the need for ascertaining the truth at a trial outweighs the need for allowing the accused to suppress evidence obtained in violation of the constitutional rights of a third party.[20] But implicit in this objection is the assumption that use of illegal evidence is necessary to uncover the truth at a trial. There is, however, an alternative to the use of illegally-obtained evidence to ascertain the truth, and that is, simply, to obtain the evidence *legally*. Adherence to the rules prescribed by society should not present an insurmountable obstacle to the operations of law enforcement agencies. The truth can be established and convictions secured either by legally or illegally-obtained evidence, but those convictions secured by the use of evidence obtained in violation of the fourth amendment should be invalidated "because they encourage the kind of society that is obnoxious to free men."[21]

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[18] 346 U.S. 249 (1953). See NAACP v. Alabama, 357 U.S. 449 (1958); Anti-Fascist Comm. v. McGrath, 341 U.S. 123 (1951); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

[19] Barrows v. Jackson, 346 U.S. 249, 257 (1953).

[20] McCormick, *The Scope of Privilege in the Law of Evidence*, 16 TEXAS L. REV. 447 (1938); Comment, 55 MICH. L. REV. 567 (1957).

[21] Mr. Justice Frankfurter speaking for the Court in Walder v. United States, 347 U.S. 62, 65 (1954).