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Court of Appeals of New York, People v. Burton

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COURT OF APPEALS OF NEW YORK

People v. Burton[1]
(decided May 2, 2006)

Thomas Burton was convicted of fourth degree criminal possession of a controlled substance.[2] Burton motioned to suppress the drugs claiming he was stopped and searched "for no apparent lawful reason."[3] Burton professed four reasons as to why the search and seizure was unlawful: (1) Burton claimed that the contraband was not "in plain view;" (2) he did not consent to the search; (3) a warrant was not issued for the search; and (4) the police officer did not have probable cause to initiate the search.[4] Burton claimed he had standing for a suppression hearing because these acts violated his right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution[5] and article I, section 12 of the New York State Constitution.[6]

The court held there is justification for the suppression of

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[1] 848 N.E.2d 454 (N.Y. 2006).

[2] *Id.* at 456.

[3] *Id.* (quotation omitted). A bag of crack cocaine was retrieved from the pocket of the sweatpants Burton wore under his jeans. *Id.*

[4] *Id.*

[5] U.S. CONST. amend. IV states in pertinent part: "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 . . . ."

[6] N.Y. CONST. art. I, § 12 states in pertinent part: "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 . . . ."; *Burton*, 848 N.E.2d at 456, 457.

evidence if "the accused alleges facts that, if true, demonstrate standing to challenge the search or seizure."[7] Furthermore, "[s]tanding exists where a defendant was aggrieved by a search of a place or object in which he or she had a legitimate expectation of privacy."[8] The court found that Burton had a reasonable expectation of privacy in the place searched, his pants pocket.[9] Accordingly, the court reversed the order of the appellate division, vacated the plea, and remitted the case to the trial court for a hearing on the suppression of evidence.[10]

On January 16, 2001, Thomas Burton was approached by a police officer[11] who searched him, and recovered a bag of cocaine from his sweatpants pockets which were worn under his jeans.[12] Burton was indicted by the grand jury.[13] He sought to suppress the evidence alleging the search and seizure was unlawful under the Fourth Amendment and article I, section 12 of the New York State Constitution.[14] The trial court denied Burton's motion without a hearing.[15] Burton plead guilty and "agreed to be sentenced as a second felony offender to a minimum indeterminate prison term of 3 to 6 years."[16] Burton would have been able to withdraw his plea had

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[7] *Burton*, 848 N.E.2d at 457.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 459-60.

[11] *Id.* at 456.

[12] *Burton*, 848 N.E.2d at 456.

[13] *Id.* The indictment charged Burton "with one count of criminal possession of a controlled substance in the fourth degree." *Id.*

[14] *Id.*

[15] *Id.* The court found that he lacked standing "in the absence of his personal affirmation that the drugs were recovered from his person." *Id.*

[16] *Id.*

he complied with the terms of the plea negotiation; however, since he did not, Burton was sentenced to an imprisonment term of 3½ to 7 years.[17] Then, Burton appealed the denial of his suppression motion.[18] The appellate division found the trial court properly denied the motion because Burton's "factual allegations did not establish a legal basis for the motion."[19] The appellate division stated, "[a]lthough defendant necessarily had direct knowledge of the relevant facts, he did not sufficiently allege that he was aggrieved by an unlawful search and seizure."[20]

In terms of standing, the *Burton* court held that an issue as to whether a Fourth Amendment violation occurred "does not arise from a defense motion to suppress that merely states, as attested by police, that the arresting officer conducted a search of the accused's person and allegedly found narcotics in an article of clothing."[21] The New York Court of Appeals held that Burton was not required to admit to possessing the drugs,[22] but the defendant could prove standing by relying on "statements made by law enforcement officials in an accusatory instrument."[23] However, because "automatic standing" for the suppression of evidence is no longer followed in this state,[24] "[a] defendant must additionally assert that the search was not legally justified and there must be sufficient factual allegations to support

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[17] *Burton*, 848 N.E.2d at 456.
[18] *Id.*
[19] People v. Burton, 790 N.Y.S.2d 871, 871 (App. Div. 1st Dep't 2005).
[20] *Id.*
[21] *Burton*, 848 N.E.2d at 459.
[22] *Id.* at 457.
[23] *Id.* at 458.
[24] *Id.* at 459.

that contention."[25] Hence, a criminal defendant generally has standing when the defendant has a legitimate expectation of privacy of the place searched and that expectation is violated.[26] Here, Burton had such an expectation for the contents of his pants pocket, since "anything concealed in the pocket was in his sole possession and hidden from public view."[27] Thus, because Burton maintained he was "standing on the street doing nothing suspicious or illegal when the police detained him and searched his person,"[28] the court reversed the appellate division, vacated the plea, and remitted the case to the trial court for a suppression hearing.[29]

The *Burton* court closely followed *United States v. Salvucci*,[30] which held that a defendant must show he had a reasonable expectation of privacy in the place that was searched.[31] In *Salvucci*, defendants Salvucci and Zackular were charged with twelve "counts of unlawful possession of stolen mail."[32] The checks which were the foundation of the indictment were recovered during a warranted search of Zackular's mother's apartment.[33] Salvucci and Zackular motioned to suppress the checks alleging that the affidavit advancing the search warrant was insufficient to show probable cause.[34] The

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[25] *Id.*

[26] *Burton*, 848 N.E.2d at 457. This burden is satisfied if the accused subjectively manifested an expectation of privacy with respect to the location or item searched that society recognizes to be objectively reasonable under the circumstances. *Id.*

[27] *Id.*

[28] *Id.* at 459.

[29] *Id.* at 459-60.

[30] 448 U.S. 83 (1980).

[31] *Burton*, 848 N.E.2d at 457.

[32] *Salvucci*, 448 U.S. at 85.

[33] *Id.*

[34] *Id.*

district court granted the motion.[35] The government then motioned the district court to reevaluate the decision, asserting the "respondents lacked 'standing' to challenge the constitutionality of the search."[36] However, the district court upheld the suppression of the checks.[37] On appeal, the Fifth Circuit Court of Appeals affirmed the suppression, finding "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 . . . ."[38]

The Supreme Court reversed, overruling the "automatic standing" rule and held "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."[39] The Court reasoned that the two purposes for automatic standing have faded and "no alternative principles exist to support retention of the rule."[40]

The first purpose of automatic standing was to protect the defendant from "the risk of providing the prosecution with self-incriminating statements admissible at trial,"[41] considering that "in order to establish standing . . . [a] defendant would often be forced to

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[35] *Id.*

[36] *Id.*

[37] *Salvucci*, 448 U.S. at 85.

[38] *Id.* at 85-86.

[39] *Id.* at 85. The automatic rule: "[W]here 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 have been violated, but only that the search and seizure of the evidence was unconstitutional." *Id.* at 87.

[40] *Id.* at 88-89.

[41] *Id.* at 88.

allege facts"[42] of his unlawful possession. This potential danger no longer exists since the Court's decision in *Simmons v. United States*,[43] which held "that testimony given by a defendant in support of a motion to suppress cannot be admitted as evidence of his guilt at trial."[44] Automatic standing's second purpose was to protect the defendant from the government's " 'advantage of contradictory positions,' "[45] since the government could potentially "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."[46] However, the Court came to this determination on the "assumption that a defendant's possession of a seized good [was] sufficient to establish criminal culpability . . . [as well as] Fourth Amendment 'standing.' "[47] The Court then clarified, that the "possession of a seized good [cannot be used] as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched."[48] Thus, because respondents in *Salvucci* "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,"[49] the Court remanded the case allowing them a chance to establish a violation of their Fourth

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[42] *Salvucci*, 448 U.S. at 87 (quotation omitted).
[43] 390 U.S. 377 (1968).
[44] *Salvucci*, 448 U.S. at 88 (citing *Simmons*, 390 U.S. at 394).
[45] *Id.* (quoting Jones v. United States, 362 U.S. 257, 263 (1960)).
[46] *Id.* at 88.
[47] *Id.* at 90.
[48] *Id.* at 92.
[49] *Salvucci*, 448 U.S. at 95.

Amendment rights.[50]

Burton relied on *People v. Ponder*[51] in rejecting the automatic standing doctrine "as a matter of state law."[52] In *Ponder*, a store owner was shot during the robbery of his store.[53] The two arriving officers obtained a description of the shooter from the victim, and a detective obtained the defendant's identity from an eyewitness who was acquainted with the assailant.[54] The eyewitness told the officer that she "noticed a black and silver object protruding from [the assailant's] jacket."[55] The detective, being familiar with the defendant's criminal past, knew the assailant had previously been apprehended at his grandmother's home.[56] The three officers went to the residence where they apprehended the defendant and found a rifle inside a washing machine located in the basement.[57] The defendant was convicted and the issue on appeal was whether the search was valid based on the automatic standing rule.[58] The appellate division denied the defendant's motion[59] and the New York Court of Appeals affirmed the decision. In following *Salvucci*, the court of appeals declined to continue the application of the automatic standing rule under article I, section 12 of the New York State Constitution.[60]

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[50] *Id.*
[51] 429 N.E.2d 735 (N.Y. 1981).
[52] *Burton*, 848 N.E.2d at 459.
[53] *Ponder*, 429 N.E.2d at 736.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Ponder*, 429 N.E.2d at 736.
[59] People v. Ponder, 433 N.Y.S.2d 288, 293 (App. Div. 4th Dep't 1980).
[60] *Ponder*, 429 N.E.2d at 736-37.

Furthermore, *Ponder* asserted "section 12 of article I of the New York State Constitution conforms with the Fourth Amendment regarding the proscription against unreasonable searches and seizures, and this identity of language supports a policy of uniformity in both State and Federal courts."[61]

Burton, also followed *People v. Ramirez-Portoreal*,[62] in finding the existence of standing where an individual is violated "by a search of a place or object in which" there was a rightful expectation of privacy.[63] In *Ramirez-Portoreal*, "three law enforcement officers were on a drug interdiction assignment at the bus terminals in the City of Albany."[64] The officers were "looking for drug couriers travelling [sic] from New York City."[65] Defendant arrived from New York City, carrying one bag of luggage.[66] After noticing the three officers, who were in "plainclothes" and wearing their badges "prominently," the "defendant placed the bag he carried in an overhead luggage compartment located one row behind his seat and across the aisle from it."[67] The officers identified themselves and asked all passengers aboard the defendant's bus to show their ticket and identification.[68] The defendant did not have identification, and when asked if he brought any luggage onboard, he answered in the

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[61] *Id.* at 737.
[62] 666 N.E.2d 207 (N.Y. 1996).
[63] *Burton*, 848 N.E.2d at 457.
[64] *Ramirez-Portoreal*, 666 N.E.2d at 210.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

negative.[69] The officers asked the defendant about the luggage they saw him place on the rack, and he denied owning it.[70] An officer then asked the passengers of the bus if any of them owned the bag and "whether anyone objected to his opening it to learn its ownership."[71] No one objected, and the officer opened the bag and discovered bags of heroin.[72] The defendant was removed from the bus and a subsequent search revealed marijuana.[73] The county court granted defendant's motion to suppress the evidence because he did not abandon the bag and had standing to challenge the officer's questioning of ownership since the police lacked suspicion of criminal activity.[74] The appellate division reversed, finding the defendant lacked standing,[75] and the New York Court of Appeals reversed the appellate division because the defendant had a reasonable expectation of privacy as to the bag's contents.[76] The court stated, "it cannot be said that society would deem an expectation of privacy in a closed piece of luggage unreasonable merely because it was not stowed in the luggage rack immediately above the traveler."[77]

In conclusion, New York and federal courts harmoniously apply standing for the suppression of evidence as a result of a search

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[69] *Ramirez-Portoreal*, 666 N.E.2d at 210.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Ramirez-Portoreal*, 666 N.E.2d at 210.
[75] *Id.*
[76] *Id.* at 214.
[77] *Id.*

and seizure, under the Fourth Amendment of the United States Constitution and article I, section 12 of the New York State Constitution. A defendant, seeking suppression of evidence recovered from a search and seizure, is not privileged to an automatic standing.[78] Rather, to have standing one must demonstrate a violation of his or her right to privacy provided under both constitutions.[79]

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[78] *Salvucci*, 448 U.S. at 85; *Burton*, 848 N.E.2d at 459.
[79] *Salvucci*, 448 U.S. at 92; *Burton*, 848 N.E.2d at 459.