

# The Burger Court Opinion Writing Database

*United States v. Salvucci*

448 U.S. 83 (1980)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 31, 1980

RE: No. 79-244 United States v. Salvucci  
No. 79-5146 Rawlings v. Kentucky

Dear Thurgood:

From the conference vote I gather that Jones is going to be deeply interred. Only you and I disagree. Would you care to undertake the opinions for the two of us?

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 18, 1980

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

Dear Thurgood:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

✓  
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  
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 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,

*JM*  
T.M.

Mr. Justice Rehnquist

cc: The Conference

16 JUN 1980

1st Draft

79-244 United States v. Salvucci

MR. JUSTICE MARSHALL, dissenting.

Today the Court overrules the "automatic standing" rule of Jones v. United States, 362 U.S. 257 (1960), because it concludes that the rationale underpinning the rule has been "eroded," ante, at 5. I do not share that view.

A defendant charged with a possessory offense who moves to suppress the items he is charged with possessing must now establish at the suppression hearing that the police conduct of which he complains violated his personal Fourth Amendment rights. In many cases, a defendant will be able to make the required showing only by taking the stand and testifying about his interest in the place searched and the evidence seized; the need for the defendant's own testimony may, in fact, be more likely to arise in possession cases than in cases involving other types of offenses. The holding in Jones was premised, in part, on the unfairness of "pinion[ing] a defendant within th[e] dilemma," id., at 262, of being able to assert his Fourth Amendment claim only by relinquishing his Fifth Amendment privilege against self-incrimination. The Court finds that this dilemma no longer exists because Simmons v. United States,

p. 3

18 JUN 1980

*printed*  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-244

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

[June —, 1980]

MR. JUSTICE MARSHALL, dissenting.

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A defendant charged with a possessory offense who moves to suppress the items he is charged with possessing must now establish at the suppression hearing that the police conduct of which he complains violated his personal Fourth Amendment rights. In many cases, a defendant will be able to make the required showing only by taking the stand and testifying about his interest in the place searched and the evidence seized; the need for the defendant's own testimony may, in fact, be more likely to arise in possession cases than in cases involving other types of offenses. The holding in *Jones* was premised, in part, on the unfairness of "pinion[ing] a defendant within th[e] dilemma," *id.*, at 262, of being able to assert his Fourth Amendment claim only by relinquishing his Fifth Amendment privilege against self-incrimination. The Court finds that this dilemma no longer exists because *Simmons v. United States*, 390 U. S. 377 (1968), held that testimony given by a defendant in support of a motion to suppress "may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." *Id.*, at 394.

I cannot agree that *Simmons* provides complete protection against the "self-incrimination dilemma," *Brown v. United*

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,

*HB*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 18, 1980

79-244 U.S. v. Salvucci

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

38 579

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  
 APR 17 1980

Circulated: \_\_\_\_\_

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1st DRAFT

## 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.

### 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

7911

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: \_\_\_\_\_

Recirculated: 30 APR 1980

**2nd DRAFT**

**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.

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**I**

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 16, 1980

MEMORANDUM TO THE CONFERENCE

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

For purposes of assisting in orderly disposition of the matters that come up at Tuesday's 11:00 a.m. Conference, I anticipate no further changes in the proposed Court opinion in this case.

Sincerely,



## Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 20, 1980

## MEMORANDUM TO THE CONFERENCE

Re: Cases held for United States v. Salvucci, No. 79-244

Two cases have been held for Salvucci.

United States v. Conway, 79-393 (CA9). Law enforcement officer in San Francisco arrested respondent's codefendant, Mazzelli, and searched his suitcase without a warrant. Cocaine was found inside. Mazzelli was indicted on charges of possession and conspiracy, and respondent was indicted for conspiracy. Both defendants filed motions to suppress the cocaine, challenging the legality of the search of Mazzelli's suitcase. The district court granted the motions of both defendants without articulating its basis for concluding that both defendants had standing to challenge the search. The government did not appeal the decision to grant Mazzelli's motion, conceding that the search was unlawful and that Mazzelli had actual standing. The government argued, however, that the respondent did not have standing to challenge the illegality of the search of Mazzelli's suitcase. The CA affirmed the motion to suppress.

The CA found that even if the automatic standing rule of Jones were viable, it would not have supported the DC's ruling because possession was not an element of the offense charged. Although the CA noted that respondent had argued that he had actual standing based both on a possessory interest in the suitcase as well as a possessory interest in the cocaine itself, the CA held only that the respondent's possessory interest in the seized cocaine was sufficient to establish standing. The CA did not reach respondent's contention that he had a possessory interest in the suitcase. (He apparently produced evidence in the trial court that he purchased the suitcase.) Judge Bonsal dissented.

The CA's conclusion that a possessory interest in the cocaine alone was sufficient to confer standing is contrary to the decision in Rawlings v. Kentucky. Since the CA did not reach respondent's contention that he had a possessory interest in the suitcase, I recommend that we grant, vacate, and remand for reconsideration in light of Salvucci, and Rawlings v. Kentucky, so that respondent will have an opportunity, if he wishes to present alternative grounds for standing to the lower courts.

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