

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

CASE NO. 09-0364

Plaintiff-Appellant,

On Appeal from the
Montgomery County
Court of Appeals,
Second Appellate District

vs.

DARNELL JONES

**COURT OF APPEALS
CASE NO. 22558**

Defendant-Appellee.

APPELLANT'S REPLY BRIEF

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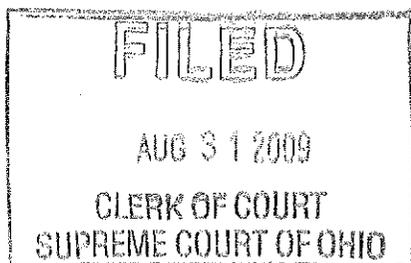


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Minnesota v. Carter (1998), 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373

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Reply Brief

The State responds to both the brief of Amicus Curiae filed by the Office of the Public Defender on August 7, 2009 and Appellee Darnell Jones' Merit Brief filed on August 14, 2009. The Fourth Amendment will not protect a person's privacy interests in property unless the person seeks to preserve and protect their property as private by containing their property in a place where they have a reasonable expectation of privacy or by otherwise acting to preserve their property as private. Jones did not do either.

The fact that Jones did not have an expectation of privacy in the motel room is not in dispute. The issue is whether or not Jones maintained a privacy interest in the bag itself, an issue not raised nor addressed by the trial court. At the suppression hearing, the issue addressed was whether or not Jones had standing to challenge the search of the motel room. At no time did Jones argue that he nevertheless maintained a privacy interest in the bag. The defendant has the initial burden of showing (1) governmental action and (2) a reasonable expectation of privacy. See *Minnesota v. Carter* (1998), 525 U.S. 83, 88, 119 S.Ct. 469, 142 L.Ed.2d 373. Then, and only then, does the burden shift to the State to show that the defendant does not have a right to privacy or that he intended to abandon his property. The State did not get this opportunity.

Jones argues that the police searched the bag without a warrant and without probable cause. The State does not dispute that when the officers opened the bag, it constituted a search. The issue is whether or not Jones has standing to contest that search. A defendant who does not have a right to privacy in a particular place searched has no standing to object to a search of that place, including anything found within that place. The bag was inside a motel room in which Jones had no expectation of privacy. Therefore, Jones did not have standing to contest the search of the room, or the bag found therein.

Jones also argues that he maintained a privacy interest in his bag because the officers observed him with the bag and knew he once had a possessory interest in it. The Office of the Public Defender adds that Jones maintained a privacy interest in his bag because he had a subjective intention to reenter the room and retrieve his bag because he left the door open, concealed the bag between the dresser and the bed, voluntarily talked to the police officers, and because there was nothing on the record to demonstrate that he would not have been able to reenter the room and retrieve his bag.

The appellate court, Jones, and the Office of the Public Defender are wrong for one reason: Regardless of a person's subjective intentions, an expectation of privacy must be objectively reasonable. Given the opportunity at the suppression hearing, the State would have proved that Jones intentionally and voluntarily left his bag in a place where he had no right to expect that it would remain private. In fact, he deliberately disowned the place where he left it — thereby giving up any right to privacy he may have had in the bag. Jones' claimed expectation of privacy in his bag at that point was not objectively reasonable. Because Jones did not have a personal Fourth Amendment expectation of privacy in the bag, it is of no consequence that the contents of the bag were not in plain view or that the bag itself did not infer its contents. He simply had no standing to challenge the search of the bag at all, no matter lack of probable cause or a warrant.

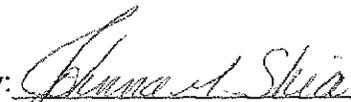
Finally, Jones argues that he did not abandon the bag because he did not leave it in a "public" place. A place where one has no expectation of privacy is the equivalent to a public place for Fourth Amendment purposes. A person, who intentionally and voluntarily leaves his property, even in a private place where they have no expectation of privacy, has relinquished any reasonable expectation that their property will remain private and has abandoned their property.

Conclusion

A person who does not have a right to privacy in a particular place searched has no standing to object to a search of that place, or any item in that place, unless that person can point to specific and objective facts that demonstrate his or her subjective intention of maintaining a privacy interest in the item that society is prepared to recognize as objectively reasonable. It is not objectively reasonable for society to recognize a privacy interest in an item that a person intentionally and voluntarily leaves in a place where he has no right to expect that it would remain private. Jones does not have standing to object to the search of the bag.

Respectfully submitted,

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PROSECUTING ATTORNEY

By:  _____

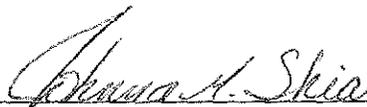
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Reply Brief was sent by first class on this 31st day of August, 2009, to Opposing Counsel: Lucas W. Wilder, 120 W. Second Street, Suite 400, Dayton, OH 45402 and Claire R. Cahoon, Assistant State Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215.

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