

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Argued November 19, 2024

Decided January 7, 2025

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1443

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PIERRE BURNETT, III,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:22-cr-00059-MPB-MG-01

Matthew P. Brookman,
Judge.

ORDER

After escaping an attempted traffic stop by police, Pierre Burnett parked near an apartment building and stashed his backpack and a trash bag outdoors in the bushes. Before Burnett could retrieve those bags, police arrived and, with a tip from a witness, discovered them. Inside the bags, they found cocaine and a large sum of cash. Burnett was charged with one count of possession with intent to distribute controlled substances. The district court denied Burnett's motion to suppress the drugs and cash, reasoning that he had abandoned the bags and thus the Fourth Amendment's

protections did not apply. Burnett later pleaded guilty, expressly reserving the right to appeal the suppression issue.

On appeal, Burnett maintains that he did not abandon the bags because he sought to hide them and because, he says, a reasonable observer would conclude that he meant to retrieve them later. We disagree. Burnett separated the bags from his person and his home—the classic sites protected by the Fourth Amendment—and left them in public, for the apparent purpose of temporarily hiding his link to them (even if he had hoped that he could later retrieve them when the coast was clear). In doing so, he relinquished the interests protected by the Fourth Amendment, so the officers did not need a warrant before searching the bags. Therefore, we affirm the district court’s decision denying Burnett’s motion to suppress.

I.

Because the parties waived an evidentiary hearing on the suppression motion, the facts are undisputed. On July 22, 2021, agents of the Drug Enforcement Administration and the Indianapolis Metro Drug Task Force surveilled an Indianapolis apartment. That afternoon, they saw a Dodge Ram truck park nearby. Burnett exited the truck and entered the apartment. A few hours later, agents saw Burnett leave the apartment with a black trash bag. Burnett got in the truck and drove away.

Later, Indiana State Police attempted to stop Burnett’s truck for going 55 m.p.h. in a 30-m.p.h. zone—but Burnett fled. Officers ended the pursuit after Burnett nearly struck three vehicles at an intersection.

Though the State Police ended their chase, agents of the DEA and Metro Drug Task Force headed to an apartment building “associated” with Burnett. (The nature of this association is not clear from the record.) Once agents arrived at the building, a “concerned citizen” told them that the driver of the Ram had thrown two bags into some nearby bushes. Following up on this tip, the agents found an orange backpack and a black trash bag in the bushes about 30 feet from the truck, as shown in these photos:



The agents searched the bags, finding 4 kilograms of cocaine in the orange backpack and 2.2 kilograms of cocaine plus \$71,500 in the trash bag. Agents then arrested Burnett on an apartment balcony. The government later charged Burnett with possession with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(ii).

Burnett moved to suppress the evidence from the backpack and trash bag, arguing that the warrantless search of the bags violated his Fourth Amendment rights. The district court denied the motion, ruling that Burnett had abandoned the backpack and trash bag and had thereby renounced any expectation of privacy in those items for purposes of the Fourth Amendment.

Burnett then entered a conditional guilty plea, *see* FED. R. CRIM. P. 11(a)(2), reserving his right to appeal the denial of his suppression motion. The district court sentenced him to 10 years' imprisonment and 5 years' supervised release.

II.

The sole issue on appeal is the lawfulness of opening the backpack and trash bag without a warrant. The facts are undisputed, and we review the legal conclusions in the district court's suppression ruling *de novo*. *See United States v. Swinney*, 28 F.4th 864, 866 (7th Cir. 2022).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Generally, police must obtain a warrant before searching or seizing private property without consent. *Camara v. Municipal Court*, 387 U.S. 523, 528–29 (1967). This requirement extends to places and items where the defendant has a reasonable expectation of privacy. *United States v. Basinski*, 226 F.3d 829, 836 (7th Cir. 2000). But a defendant does not have a reasonable expectation of privacy in an item he has "abandoned." *Id.*

The government bears the burden of showing abandonment.* "To demonstrate abandonment, the government must prove by a preponderance of the evidence that the

* Yet caselaw also says that the defendant bears the burden of proving a legitimate expectation of privacy in the item searched. *See Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980); *United States v. Yang*, 478 F.3d 832, 835 (7th Cir. 2007). In the

defendant's voluntary words or actions would lead a reasonable person" to understand that the defendant had relinquished his Fourth Amendment interests in the searched object. *United States v. Alexander*, 573 F.3d 465, 472 (7th Cir. 2009) (quoting *United States v. Pitts*, 322 F.3d 449, 456 (7th Cir. 2003)). This is an objective test: We consider only "the external manifestations of the defendant's intent as judged by a reasonable person possessing the same knowledge available to the government agents involved in the search." *Pitts*, 322 F.3d at 456.

We have identified three illustrative, "general types of abandonment cases": (1) when the fleeing defendant tosses evidence aside; (2) when the defendant places items near a trash-pickup area; and (3) when the defendant tells police (often falsely) that the objects are not his. *Basinski*, 226 F.3d at 837. Although these categories are non-exhaustive, the district court placed Burnett's case in the first category: in *Basinski's* terms, it involved "a fleeing defendant who relinquishes an object to make his flight easier or because discarding the item might make it easier for him to later claim that he never possessed it." *Id.* In that circumstance, *Basinski* says, there is "easy access to the public," and reasonable persons would see the defendant's Fourth Amendment interests as "eroded." *Id.*

Burnett argues that the district court erred in placing his case in the first category. In his view, the time gap between the car chase and him hiding his bags makes him unlike the fleeing defendant ditching objects throughout a chase. We agree that Burnett was not necessarily fleeing at the precise moment he stashed his bags; the car chase had ended. And to be sure, an objective observer might infer that Burnett hoped to circle back to the bags later if the police gave up, or found nothing in a search of his person or home and let him go.

But that does not end the Fourth Amendment analysis. Burnett left the unsecured bags in a public area, exposing them to anyone who spotted them and was curious enough to open them. *California v. Greenwood*, 486 U.S. 35, 40–41 (1988) (bags left in trash-pickup area are "readily accessible to animals, children, scavengers, and snoops," and "society would not accept as reasonable" a defendant's "claim to an expectation of privacy" in those bags). He had no affirmative right to exclude others

government's view, it is not clear who should bear the burden in this case. But we need not further address the burden of proof because, as discussed below, the government has shown that Burnett lacked any Fourth Amendment privacy interests in his bags at the time the bags were searched.

from this outdoor area or store his things there. And his apparent attempt to keep the bags away from his home and person (without giving them to anyone for safekeeping) was akin to verbally denying to a police officer (even if temporarily and unpersuasively) that he was the bags' owner. Cf. *Basinski*, 226 F.3d at 837 (no abandonment when defendant entrusted his locked briefcase to a friend for safekeeping). Burnett may have intended to return to the bags later, but his subjective desire to later reclaim the bags is irrelevant to the abandonment analysis. See *Pitts*, 322 F.3d at 456. All things considered, Burnett abandoned any reasonable expectation of privacy in the bags—and any right to be secure against a search of them.

Burnett insists that he did not relinquish his privacy interest in the bags because he remained nearby and attempted to conceal the bags near his truck. But this argument only highlights the fact that he did not keep the bags on his person, leave them in the truck, take them into his apartment, or hand them to someone for safekeeping—recognized ways to protect privacy interests under the Fourth Amendment. See, e.g., *Basinski*, 226 F.3d at 837.

Burnett also relies on *United States v. Whiteside*, No. 3:22-cr-00040-FDW-DSC, 2022 WL 16707978 (W.D.N.C., Nov. 4, 2022), where a court concluded that the defendant did not abandon his backpack for purposes of the Fourth Amendment. Aside from the fact that *Whiteside* is a case from a district court in another circuit, it does not lend the support Burnett seeks. The defendant in *Whiteside*, unlike Burnett, placed his backpack where his friends were gathered and “took active steps to ensure it would remain hidden.” *Id.* at *7. The backpack “was neither alone nor readily accessible” to the public and so was not abandoned. *Id.* at *8. Here, however, Burnett’s bags were alone (even if he was watching somewhere nearby) and readily accessible to the public.

Because Burnett placed his bags in the apartment building’s bushes and did not take active steps to guard them or give them to another for safekeeping, he abandoned his Fourth Amendment interests in them. Police therefore did not need a warrant to search the bags.

For these reasons, we AFFIRM the district court’s judgment and uphold its denial of Burnett’s motion to suppress.