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# *California v. Greenwood*: Police Access to Valuable Garbage

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## *CALIFORNIA V. GREENWOOD:* POLICE ACCESS TO VALUABLE GARBAGE

IN EARLY 1984, an investigator with the Laguna Beach Police Department, Jenny Stracner, was informed of Billy Greenwood's possible involvement in the sale and distribution of illegal narcotics. In February of that year, a federal drug enforcement agent learned from an informant that a large shipment of illegal narcotics was enroute to Greenwood's residence.[1] In addition, Greeenwood's neighbors had complained of heavy vehicular traffic at Greenwood's home during the late night and early morning hours. His neighbors also stated that Greenwood's many visitors would remain at his residence for only a very short time. This erratic activity was confirmed by Stracner who had been closely watching Greenwood's home.[2]

In an effort to obtain incriminating evidence, Stracner asked Greenwood's regular trash collectors to gather Greenwood's plastic garbage bags, which had been left on the curb in front of his house, and deliver them to her without mixing their contents with other collected garbage.[3] The collectors willingly complied with her request. Upon receipt of the trash, Stracner searched through it and found items indicative of narcotics use.[4] She incorporated her findings into an affidavit which she used to obtain a search warrant for Greenwood's home. The ensuing police search of Greenwood's residence revealed quantities of cocaine and hashish. Greenwood and another individual at the house, Dyanne Van Houten, were arrested, charged with drug-related felonies, and released on bail.[5]

Despite his impending prosecution, Greenwood continued to conduct the same criminal activities which had led to his previous arrest. The police again began to receive reports of frequent late-night and early-morning visits to Greenwood's home. Consequently, on May 4, 1984, another police investigator, Robert Rahaeuser, obtained and inspected Greenwood's garbage. Since

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1. California v. Greenwood, 108 S. Ct. 1625, 1627 (1988).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*

the garbage again contained evidence indicating Greenwood's use of illicit narcotics, Rahaeuser obtained a second warrant. Not suprisingly, the ensuing police search produced more narcotics and additional evidence of narcotic trafficking, that again resulted in Greenwood's arrest.[6]

Although the evidence in question was obtained pursuant to a valid search warrant, the California trial court dismissed the charges against Greenwood and Van Houten based upon the decision in *People v. Krivda,* which held that trash searches violate the fourth amendment.[7] The trial court's decision was affirmed on appeal by the California Court of Appeal and was denied review by the California Supreme Court.[8] The United States Supreme Court, however, reversed the appellate court's decision and held that since the defendants had exposed their garbage to the public for collection, they did not possess an expectation of privacy that society could accept as objectively reasonable under the fourth amendment of the United States Constitution.[9] The following descriptive analysis will examine the precedent which led the Court to its conclusion and the various underlying rationales behind both the majority and minority opinions.

## HISTORY

The individual right at issue in the *Greenwood* controversy is succinctly set forth in the fourth amendment to the United States Constitution, which states as follows:

> 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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[10]

With respect to alleged violations of the fourth amendment rights, the primary issue is often whether a particular transgression constituted a search, and if so, whether the search was reasonable.

In the landmark case of *Katz v. United States,*[11] the Supreme

6. *Id.* at 1627-28.
7. *Id.* at 1628. For a discussion of the *Krivda* case, see *infra* notes 17-21.
8. *Id.*
9. *Id.* at 1628.
10. U.S. CONST. amend. IV.
11. 389 U.S. 347 (1967).

Court held that:

> [T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.[12]

In *Katz*, the defendant was convicted of transmitting wagering information by telephone, in violation of a federal statute. The evidence supporting the conviction was obtained through an electric listening and recording device that the federal agents had attached to the outside of a public telephone booth. The Supreme Court applied the above quoted principle and reversed the lower court's conviction.[13]

The broad approach adopted by *Katz* was implicitly limited by the Supreme Court in *California v. Ciraolo*.[14] In *Ciraolo*, the defendants were convicted of various drug-related offenses. The convictions were the result of observations made by police officers from an airplane 1,000 feet above the defendant's enclosed property. The defendants had been growing marijuana plants on their property and had encircled their crop with two tall fences. The Supreme Court concluded that any expectation of privacy the defendants may have had was unreasonable and one that society is not prepared to accept.[15]

Prior to the *Greenwood* controversy, the Supreme Court had not been presented with an opportunity to address the existence of a privacy expectation in discarded garbage. However, several opinions were rendered on the subject by state and federal appellate courts.[16] In *People v. Krivda*,[17] the California Supreme Court set forth the approach applied by the trial and appellate courts in the Greenwood prosecution. The court in *Krivda* concluded that the defendants had exhibited a reasonable expectation of privacy in the contents of their trash barrels which were left near their street for trash disposal purposes.[18] Apparently, the police, who had been informed that the defendants were in possession of illicit

12. *Id.* at 351-52.
13. *Id.* at 351-59.
14. 476 U.S. 207 (1986).
15. *Id.* at 212-15.
16. California v. Greenwood, 108 S. Ct. 1625, 1629-30 (1988).
17. 5 Cal. 3d 357, 486 P.2d 1262, 96 Cal. Rptr. 62 (1971), *cert. granted*, 405 U.S. 1039, *vacated*, 409 U.S. 33 (1972).
18. *Id.* at 367, 486 P.2d at 1268, 96 Cal. Rptr. at 68.

narcotics, seized and inspected the contents of the defendant's trash barrels and found evidence indicative of illicit drug use. In arriving at its decision, the court acknowledged that had the defendants "simply cast their trash onto the sidewalk for anyone to pick over and cart away, we would have no difficulty finding that defendants had thereby forsaken any reasonable expectation of privacy with respect thereto."[19]

The court in *Krivda* supported its conclusions by noting that many municipalities have enacted ordinances which restrict the right to haul trash solely to licensed collectors. Typically, these ordinances prohibit unauthorized persons from tampering with trash containers. In light of these ordinances, the court felt that when individuals place their refuse in trash containers, they expect their trash to be dumped, destroyed, and forgotten, not inspected by neighbors and other members of the general public.[20] The court stated that the warrantless inspection of trash was proper, however, once it had lost its identity and meaning by becoming part of a large, mixed conglomeration of trash elsewhere.[21]

Interestingly, most federal and state appellate courts have taken an opposite view. For example, Ohio courts considering this question have expressly refused to adopt the holding set forth in *Krivda*.[22] In *State v. Brown*,[23] the defendant was convicted for trafficking illegal narcotics based on evidence seized pursuant to a warrant. The warrant was supported by incriminating items found in the defendant's garbage. Apparently, the investigating enforcement officers obtained a garbage truck from the city's waste collection department, posed as garbagemen, and seized the defendant's garbage, which had been placed on the sidewalk in front of his apartment for collection.[24] In affirming the conviction, the Hamilton County Court of Appeals held that "any reasonable expectation of privacy that may arguably be present no longer exists once trash has been placed in a public area for collection."[25]

In rejecting the rationale of the California Supreme Court,

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19. *Id.* at 365-66, 486 P.2d at 1268, 96 Cal. Rptr. at 68.
20. *Id.* at 366, 486 P.2d at 1268, 96 Cal. Rptr. at 68.
21. *Id.*
22. California v. Greenwood, 108 S. Ct. 1625, 1629-30 (1988).
23. State v. Brown, 20 Ohio App. 3d 36, 484 N.E.2d 215 (1984).
24. *Id.* at 36-37, 484 N.E.2d at 217.
25. *Id.* at 38, 484 N.E.2d at 218. The court stated that its holding was consistent with the federal opinions in United States v. Shelby, 573 F.2d 971 (7th Cir. 1978) and Magda v. Benson, 536 F.2d 111 (6th Cir. 1976).

the court in *Brown* specifically stated that its decision, unlike *Krivda*, had "not been colored by the existence of a municipal ordinance prohibiting any person from removing trash set out on a public street for collection except with the consent of the owner."[26] The court explained that the ordinance in question was intended merely to secure the orderly removal of trash and was not intended to impede law enforcement. Similarly, the court stated that the mere violation of a state or local ordinance, in and of itself, could not trigger the invocation of the exclusionary rule.[27]

In light of the foregoing survey, the majority of states and federal appellate courts were already convinced that a reasonable expectation of privacy did not exist as to discarded trash.[28] Nonetheless, other jurisdictions, such as California, maintained the oppoisite viewpoint.[29] Thus, the *Greenwood* controversy presented the United States Supreme Court with an opportunity to fully clarify any discrepancies as to fourth amendment protection in this area.

## *California v. Greenwood*

### Opinion of the Court

In *California v. Greenwood*, the United States Supreme Court was given an opportunity to decide whether the fourth amendment of the United States Constitution prohibits the warrantless search and seizure of garbage left for collection outside the curtilage of one's home.[30] The defendants essentially argued that they had exhibited an expectation of privacy with respect to their searched trash.[31] The Court responded by turning to the principles established in *Katz* and its progeny. The Court reiterated the appropriate standard, stating that "[t]he warrantless search and seizure of the garbage bags left at the curb outside the Greenwood house would violate the Fourth Amendment only if respondents manifested a subjective expectation of privacy in their

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26. *Brown*, 20 Ohio App. 3d at 38, 484 N.E. 2d at 218.

27. *Id.* (As an alternative, the Court held that based upon the defendant's admissions, he had abandoned the objects in question and consequently could not object to a search and seizure of it. *Id.* at 37-38, 484 N.E. 2d at 218.

28. *See infra* notes 23-27.

29. *See infra* notes 17-21.

30. California v. Greenwood, 108 S. Ct. 1625, 1627 (1988).

31. *Id.* at 1628.

garbage that society accepts as objectively reasonable."[32] The Court concluded that a constitutionally protected expectation of privacy with respect to publicly exposed garbage was beyond objectively acceptable societal standards. Thus, based upon this conclusion and the standards set forth above, the Court reversed the dismissal.[33]

The Court supported its decision by asserting that an expectation of privacy for trash left on a street curb is, as a matter of common knowledge, unrealistic. The Court explained that the defendants knew or should have known that trash left on street curbs is "readily accessible to animals, children, scavengers, snoops and other members of the public."[34] Furthermore, the Court reasoned that one who places trash on the curb does so for the express purpose of conveying it to a third party, the trash collector. Clearly, a trash collector is perfectly capable of rummaging through the abandoned trash. With trash exposed, the Court determined that the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could be observed by any member of the public.[35]

The decision rendered in *Greenwood* was arguably consistent with the majority of the precedent. As an analogy, the Court discussed *Smith v. Maryland*,[36] wherein the police placed a mechanical device, a "pen register," on the suspect's phone line to record the numbers dialed from his phone. Interestingly, those devices did not enable the police to listen to the conversation once the numbers had been dialed.[37] In refusing to suppress that evidence, the Court stated that "even if petitioner did harbor some subjective expectation that the phone numbers he dialed would remain private, this expectation is not 'one that society is prepared to recognize as "reasonable." ' "[38] Consistent with the rationale expressed in *Greenwood*, the Court in *Smith* concluded that a privacy expectation in information voluntarily turned over to third parties, such as telephone operators or garbagemen cannot be accepted as reasonable.

In addition, the Court also looked to the decision rendered in

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32. *Id.*
33. *Id.* at 1628 & 1631.
34. *Id.* at 1628.
35. *Id.*
36. Smith v. Maryland, 442 U.S. 735 (1979).
37. *Id.* at 741.
38. *Id.* at 743 (quoting Katz v. United States, 389 U.S. 347, 361 (1967)).

*California v. Ciraolo*,[39] in which the Supreme Court refused to suppress evidence which was observed from a surveillance airplane.[40] Similar to *Greenwood*, the Court in *Ciraolo* reasoned that an expectation of privacy could not reasonably be supported when such information could be obtained by any member of the public who happened to glance down while flying over the defendant's property.[41]

Through its effective use of precedent, along with its supportive rationale, the majority opinion in *Greenwood* set forth a well reasoned opinion, which would hopefully provide national uniformity.

## Dissent

Despite the sound analysis set forth in the majority opinion, Justice Brennan, writing for the dissent, managed to marshal several rather convincing arguments on behalf of the dissenters. Brennan felt that the determination of expectations of privacy must be derived from "understandings that are recognized and permitted by society."[42] Asserting the existence of a reasonable expectation of privacy in discarded articles, Brennan stated that a "search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health and personal hygiene."[43] Consequently, he felt that most citizens would be "incensed" to discover that one's trash had been scrutinized by unsolicited intruders. Although he could not support this assertion with precedent, he pointed to an incident of public outrage that developed when a newspaper reported items found in a public official's trash.[44]

Similar to the policy arguments asserted in *Krivda*, the dissent also mentioned the existence of local and state ordinance, which prohibited unlicensed individual's from tampering with trash. The dissent also pointed out that under the applicable local ordinance, Greenwood was required to dispose of his trash by placing it on the street curb. The statute in question prohibited

39. *See supra* note 15 and accompanying text.
40. 476 U.S. 207 (1986).
41. *Id.* at 213-14.
42. California v. Greenwood, 108 S. Ct. 1625, 1635 (1988). (That rule was derived from Rakas v. Illinois, 439 U.S. 128, 143-44 (1978)).
43. *Id.* at 1634.
44. *Id.* at 1635.

alternate forms of disposal, namely burning. Brennan argued that because the defendants were compelled to expose their trash, they could not be faulted for it.[45] The dissent also asserted that simply because one's trash may be open to public intrusion does not mean that he or she has forsaken his or her expectation of privacy toward it.[46]

In the beginning of his dissent, Brennan surveyed judicially recognized expectations of privacy in containers. He then argued that precedent clearly would have warranted protection had the defendants been carrying their garbage bags. Thus, he concluded that defendants "deserve no less protection just because Greenwood used the bags to discard rather than to transport his personal effects."[47] Brennan explained that since the contents of the bags do not lose their private characteristics through disposal, the defendants' expectation of privacy was preserved.[48]

## ANALYSIS

As the dissent effectively pointed out, the contents of one's garbage, like one's bedroom, may reveal intimate details which are considered extremely personal. This argument is difficult to refute and significantly deflates the persuasiveness of the majority's opinion. As the majority stated, however, when an individual places his trash on the curb for disposal, he or she does so with the express intent of conveying those items to a third party, the trash collector. Based upon the Court's decision in *Greenwood,* such relinquishment was crucial to its holding. As the pre-existing case law indicates, the Court's opinion is clearly consistent with the vast majority of federal and state appellate courts. Thus, despite the compelling logic of the dissent's assertion, the majority has at least added uniformity through its adoption of a widely accepted view.

Both the court in *Krivda* and the dissent focus upon the existence of state and local ordinances which regulate the collection of trash. Those opinions essentially argue that the existence of these ordinances are a clear manifestation of society's interest in the protection of the privacy of its garbage. As pointed out by the majority and the Ohio Supreme Court in *Brown*, however, such

45. *Id.* at 1636-37.
46. *Id.* at 1636.
47. *Id.* at 1633.
48. *Id.* at 1633.

ordinances are only intended to ensure the orderly collection and disposal of waste and were clearly not intended to implicate the exclusionary rule as a means of impeding creative means of law enforcement. On this point, the majority is clearly more persuasive.

Furthermore, the dissent's argument that the contents of the defendants' trash were protected because they would have been protected had the defendants been carrying them is wholly unpersuasive. Although individuals undoubtedly have expectations of privacy in the contents of their containers, such expectations are abandoned when the containers are abandoned.

Additionally, the opinion set forth by the majority may also provide enforcement officers with an effective means of uncovering illicit activity. As the dissent notes, the contents of one's trash may be quite revealing. Hopefully, this decision will enable creative investigators to expose criminal behavior without fear of having their efforts prove unproductive due to the suppression of incriminating evidence.

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