

GREENWOOD v. CALIFORNIA

BE CAREFUL WHAT YOU THROW OUT! DO YOU OWN YOUR TRASH?

SUMMARY

The Supreme Court, by a vote of six to two, ruled that police do not need a warrant to search the garbage left for collection at the curb, and can use any evidence they uncover to prepare a court case. (Justice Kennedy did not participate in the case.)

BACKGROUND

The Fourth Amendment of the Constitution protects individuals against unreasonable searches and seizures by law enforcement officers. If a search is found to be unconstitutional, the evidence seized cannot be used in court.

In reviewing such cases, courts must determine what constitutes a reasonable search. Rummaging through your bedroom dresser clearly is a search, which cannot be carried out by police without a warrant. The constitutionality of searches outside the home are less clear cut. At issue in *Greenwood v. California* was the search of a discarded bag of trash.

The Supreme Court, in determining whether a search was “reasonable”, has focused on the reasonable expectation of privacy a person might have under the circumstances.

For instance, if someone flies an airplane over a home and notices marijuana plants growing in the backyard, is that a legal search? That precise question was before the justices two years ago.

Acting in a California case, the Supreme Court said the fly-over search was constitutional. The decision had a number of similarities with the *Greenwood* case.

In the 1986 case, police in Santa Anna received a tip that marijuana was being grown in the backyard of a home. When the agents drove by the house, they found the yard enclosed by a ten foot high fence. They then flew over the residence in a plane, where they were able to spot clusters of eight to ten feet high marijuana plants. Police used this information to obtain a warrant. The homeowner appealed his arrest and later conviction, claiming his right to be free from unreasonable searches and seizures was violated.

But by a five to four vote, the Supreme Court said that a homeowner cannot have a reasonable expectation of privacy from all those who may be able to see his backyard from the air.

It is a lot easier to see a trash bag while walking down the street than it is to spot a marijuana plant from an airplane. But, once you are in the air, the marijuana plants may be easily visible. Police, however, are likely to have to rummage through a trash bag to uncover evidence. How important is the method in which the search was conducted in determining whether it was constitutional? If the bag were labeled “marijuana,” few would object to a police search of its contents. But, given an ordinary garbage bag, can the police open it up and rummage through its contents?

While state courts have generally permitted searches of trash, the Supreme Court never before has addressed this specific issue.

One can learn a great deal by riffling through someone’s trash. The contents can be of interest to more than law enforcement officials.

In 1975, a reporter for a weekly newspaper achieved notoriety when he picked through the trash outside the home of former Secretary of State Henry Kissinger. The act was generally deplored by the public and media. In determining what is legal and what is not in this area, courts turn to the Fourth Amendment of the Constitution.

CONSTITUTIONAL PROVISIONS

“The right of 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.”

FACTS

In early 1984, a federal narcotics agent received a tip that a truck filled with illegal drugs soon would be arriving at Billy Greenwood’s house in Laguna Beach, California. In addition, neighbors told the agent that there was a lot of late night traffic in front of the single-family residence, and that many vehicles stopped in front of the house for only a few minutes.

As part of the investigation, the narcotics agent asked the neighborhood’s regular trash collector to pick-up the sealed opaque plastic bags deposited at the curb in front of the Greenwood house and turn them over to law enforcement officials. The officers searched the bags and discovered drug paraphernalia and residue. Based on the contents of the trash bags, a warrant to search Greenwood’s home was obtained.

When police entered the house, they found Greenwood and a friend, Dyanne Van Houten, as well as cocaine and hashish. The two were arrested and later freed on bail.

After continuing to receive reports of late night activity by visitors to the Greenwood home, police again searched the house’s trash uncovering further evidence of narcotics use. After a search warrant was obtained, Greenwood and Van Houten again were arrested.

But the judge threw-out the case against the two, finding that the police broke the law by searching Greenwood's trash without first obtaining a warrant. The California Court of Appeals agreed. The police appealed to the Supreme Court, which said it would hear the case.

In *State of California v. Greenwood*, the Supreme Court takes a step toward further clarification of what constitutes permissible search and seizure procedures.

ANALYSIS

A person's Fourth Amendment right to be free from unreasonable searches and seizures can be violated only when they demonstrate that the object searched is generally viewed as private in nature.

This line of reasoning dates back to the case decided in 1967 by the Supreme Court. The case involved a man from Los Angeles who was accused of placing illegal bets across state lines. Evidence of telephone conversations he had with contacts in Boston and Miami were discovered by FBI agents, who attached a listening and recording device to a public telephone the suspect frequently used.

The Supreme Court overturned the man's conviction, explaining that the defendant, and society in general, expect to have privacy while using a public telephone.

In the Greenwood case, the justices had to determine whether Greenwood, and society in general, view curbside trash as a private object. Is it like a phone booth? Do you expect your trash to be left alone just like you expect to have a private phone conversation, even while using a pay phone? Is such an expectation reasonable?

The court concluded that while Greenwood may have considered his trash a private matter, society, in general, does not. In fact, the justices said, people place their refuse at the curbside intending that it be removed by an unknown third person (the trash collector), who may look through the trash before disposing of it.

Consequently, the Court said police cannot be expected to turn their eyes from possible evidence of criminal activity that can be easily observed by the public.

The two justices who disagreed with the ruling in the case said that attention must be given to where Greenwood's trash was located. Had police, searching the city dump, uncovered incriminating evidence that they could trace to Greenwood, they would have encountered evidence through a legal search. That scenario, they said, is totally different from invading sealed bags found at the curbside.

The dissenters also said that it should not matter how the trash was packaged. They noted that in the past, the Supreme Court has upheld the right of privacy against searches of a double locked foot locker, a small unlocked suitcase, a totebag, and opaque plastic wrappings.

Courts generally have found the right to privacy increases as you get closer to the home. Would narcotics agents have acted legally if, acting with a warrant, they had rummaged through the garbage can Greenwood kept in his kitchen? No. Could the police have looked through Greenwood's trash without a warrant if the garbage bags had been inside his garage? Probably not.

Could Greenwood's trash have been searched if it had been left at the curbside inside a firmly secured trash can? That is a more difficult question.

EXCERPTS FROM THE MAJORITY OPINION (Justice White wrote the opinion for the court.)

“It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops and other members of the public.”

. . . “Having deposited their garbage in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it . . . (Greenwood and Van Houten) could have had no reasonable expectation of privacy in the inculpatory (incriminating) items that they discarded.”

EXCERPTS FROM THE DISSENTING OPINION (Written by Justice Brennan, who was joined by Justice Marshall.)

“Scrutiny of another's trash is contrary to commonly accepted notions of civilized behavior.”

“A single bag of trash testifies eloquently to the eating, reading and recreational habit of the person who produced it. A search of trash like a search of the bedroom, can relate intimate details about sexual practices, health and personal hygiene. Like riffling through desk drawers or intercepting phone calls, rummaging through a trash can can divulge the target's financial and professional status, political relationships and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the intimate activity associated with the sanctity of a man's home and privacies of life, which the Fourth Amendment is designed to protect.”