



1988

Recent Developments: California v. Greenwood: Warrant Not Needed for Search and Seizure of Garbage Left for Collection on Public Street

Gloria S. Wilson

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Wilson, Gloria S. (1988) "Recent Developments: California v. Greenwood: Warrant Not Needed for Search and Seizure of Garbage Left for Collection on Public Street," *University of Baltimore Law Forum*: Vol. 19 : No. 1 , Article 8.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol19/iss1/8>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

Recent Developments

California v. Greenwood: WARRANT NOT NEEDED FOR SEARCH AND SEIZURE OF GARBAGE LEFT FOR COLLECTION ON PUBLIC STREET.

In *California v. Greenwood*, ___U.S.___, 108 S. Ct. 1625, (1988), the United States Supreme Court held that warrantless searches and seizures of garbage left for collection on a public street do not infringe upon a reasonable expectation of privacy under the fourth amendment. The Court explained that a state law right to be free from warrantless searches of trash, balanced against the cost of excluding reliable evidence of criminal activity, does not create a reasonable "privacy" expectation that must be recognized under either the fourth amendment or the Due Process Clause of the fourteenth amendment.

Billy Greenwood and Dyanne Van Houten were arrested on felony narcotics charges in early 1984 after police discovered quantities of cocaine and hashish in the Greenwood home. Prior to the search of the house, police received information indicating that Greenwood might be engaged in narcotics trafficking. Acting on the information received from a federal drug enforcement agent, police conducted a surveillance of the house. On two separate occasions, the police asked the regular trash collector to pick up plastic garbage bags left on the curb in front of Greenwood's house and to turn over the bags to the police without mixing their contents. During a search through the rubbish, the Laguna Beach Police Department found items indicative of narcotics use. An affidavit in support of a search warrant was issued based upon the items seized. In the respondent's presence, police discovered controlled substances which subsequently led to the arrest of Greenwood and Van Houten.

Following his release, the police continued its surveillance of Greenwood during which they observed many late night visitors to his residence. In the same manner as before, the police searched garbage left for collection by Greenwood and found more evidence of narcotics use. Consequently, a second search warrant was exe-

cuted and while searching the house, police found more narcotics and evidence of narcotics trafficking and arrested Greenwood.

Finding that probable cause to search the house would not have existed without the evidence obtained from the trash searches, the state superior court dismissed the charges against the respondents under the authority of *People v. Krivda*, 5 Cal. 3d 357, 486 P.2d 1262 (1971). That court held that a warrantless search of trash bags violated the fourth amendment and the California Constitution. *California v. Greenwood*, 108 S. Ct., at 1628 (1988). The California Court of Appeals affirmed. The appellate court noted that the "fruits of warrantless trash searches could no longer be suppressed" under the state's constitutional amendment eliminating the exclusionary rule regarding evidence seized in violation of the California law but not federal law. *Id.* The court of appeals also noted that under *Krivda*, "warrantless trash searches were also to be excluded under federal law." *Krivda*, 182 Cal. App. 3d at 735, 227 Cal. Rptr., at 542, (quoted in *Greenwood*, at 1628). At the same time, the court granted Van Houten standing to seek the suppression of evidence seized during the first search of Greenwood's home. *Greenwood*, 108 S.Ct. at 1629, n.1.

The state petitioned the California Supreme Court to review the court of appeals' decision; however, this petition was denied. The Supreme Court granted certiorari and reversed.

Writing for the majority, Justice White focused on the issue of whether the fourth amendment prohibited the warrantless search and seizure of garbage left for the collection outside the curtilage of the home. In holding that the warrantless search and seizure of garbage bags left at the curb would violate the fourth amendment only if respondents manifested a subjective expectation of privacy in their garbage, Justice White declared that society does not recognize trash voluntarily discarded in areas suited for public inspection as a reasonable expectation of privacy. The Court reasoned that based on "common knowledge that plastic garbage bags... are

readily accessible to animals, children, scavengers, snoops, and other members of the public," it would not be reasonable to expect trash to be free from intrusion. *Id.* at 1628-29. In so holding, the Court rejected the respondents' main contention that an expectation of privacy exists in garbage left on the street for collection at a fixed time, when contained in opaque plastic bags, expected to be picked up with the trash of others and deposited at the garbage dump. *Id.* at 1628.

In determining that the warrantless search of garbage did not give rise to a "societal expectation of privacy," the Court declared that "an expectation of privacy does not give rise to fourth amendment protection... unless society is prepared to accept that expectation as objectively reasonable." *Id.* The Court further determined that the respondents voluntarily left their trash for collection in an area for an express purpose of conveying it to a third party, the trash collector, who might himself have sorted through it or permitted others, such as the police, to do so. Thus, a claim in the inculpatory items discarded could not be subject to fourth amendment protection. *Id.* at 1629.

Recognizing that what a person knowingly exposes to the public, even in his own home or office, is not subject to fourth amendment protection, the Court added that "police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public." *Id.* Persuasive to the Court on this proposition were the holdings in the cases of *Smith v. Maryland*, 442 U.S. 735 (1979) and *California v. Ciraolo*, 476 U.S. 207 (1986). In *Smith*, the Supreme Court held that an individual "has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Id.* In *Ciraolo*, the Court held that protection of the home under the fourth amendment had never required police to obtain a search warrant before conducting a surveillance of the home, based on observations made from a public vantage point where any member of the public could make the same

observations. *Id.* Thus, the Court concluded that in Greenwood's case, an expectation of privacy in trash left on a public street did not deserve protection from police warrantless searches and seizures as an expectation society was prepared to honor. *Id.*

Rather, than conclude that Greenwood's expectation had been frustrated, the Court relied on the unanimous rejection of similar claims by the Federal Courts of Appeal. In each of these cases, the courts found that a reasonable expectation of privacy did not exist with respect to trash discarded outside the home and the curtilage thereof, thus being accessible to warrantless searches and seizures. *Id.* [Citations omitted.]

On the issue of whether an expectation of privacy in garbage should be deemed reasonable as a matter of federal law when the warrantless search and seizure of garbage is impermissible as a matter of state law, the majority stated that state law may impose more stringent constraints in police conduct involving searches than federal law. *Id.* at 1630. However, the Court declared that "there is no such understanding with respect to garbage left for collection at the side of a public street." *Id.* at 1630-31.

Finally, the Court noted that evidence obtained in violation of state law need not be suppressed within the scope of the fourth amendment exclusionary rule when the benefits of deterring police misconduct do not outweigh the costs of excluding reliable evidence of criminal activity. *Id.* at 1631. Since the state may eliminate the exclusionary rule as a remedy for violations of that right, the majority held that it may also adopt a similar balancing approach in concluding that "the benefits of excluding relevant evidence of criminal activity do not outweigh the costs when police conduct at issue does not violate federal law." *Id.* Therefore, the Court found no merit in Greenwood's argument that because California eliminated the exclusionary rule for evidence seized in violation of state, but not federal law, the state violated the Due Process Clause of the fourteenth amendment. *Id.*

Justice Brennan, with Justice Marshall, dissented. Brennan opined that individuals have the reasonable expectation that the aspects of their private lives are concealed safely in a trash bag free from examination and inspection wherever they may be as long as the contents are not in "plain view," thus enjoying protection under the fourth amendment. *Id.* at 1633. In concluding that an expectation of privacy attaches to any container unless "it so clearly announces its contents," the dissent

argued that trash bags are to be afforded fourth amendment protection. Citing *Robbins v. California*, 453 U.S. 420 (1981), Brennan contended:

[E]ven if one wished to import such a distinction into the fourth amendment, it is difficult if not impossible to perceive any objective criteria by which that task might be accomplished. What one person may put into a suitcase, another may put into a paper bag. . . . And. . . no court, no constable, no citizen, can sensibly be asked to distinguish the relative "privacy interests" in a closed suitcase, briefcase, portfolio, duffle bag, or box.

Id. at 426-27, quoted in *California v. Greenwood*, at 1632.

The dissent found the majority's analysis to be unpersuasive on the theory that trash is abandoned and therefore not entitled to an expectation of privacy. Brennan explained that an expectation of privacy cannot be negated when a person seeks to preserve as private the disposal of refuse. *Greenwood*, 108 S.Ct. at 1637. He reasoned that the voluntary relinquishment of possession or control over an item does not lose fourth amendment protection, even if placed in a mailbox, and therefore the possibility of such an intrusion by third parties should not justify a warrantless search by police. Thus, as viewed by Brennan and Marshall, it was unreasonable for the majority to have concluded that Greenwood had no expectation of privacy in his trash. To hold that the warrantless search of disposed trash was consistent with the fourth amendment, the court "paints a grim picture of our society." *Id.* at 1636-37.

In *Greenwood*, the Court failed to address whether the curtilage question should be resolved with particular reference to the proximity of the area claimed to be "curtilage" to the home. Additionally, the Court did not give effect to the fact that trash bags used by Greenwood were opaque and not in "plain view," a factor generally recognized as constituting items free from police warrantless searches and seizures under the fourth amendment.

While the Court rejected the notion that an expectation of privacy may not extend to garbage placed on a public street, and that its contents may be seized without a warrant, it necessarily follows that persons engaged in noncriminal activity will no longer be able to dwell in reasonable security and freedom from surveillance, as such is an expectation no longer protected by the courts as one society now honors.

—Gloria S. Wilson

***B.N. v. K.K.*: FRAUD, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND NEGLIGENCE APPLICABLE WHEN RESULTING FROM SEXUAL TRANSMISSIONS OF DANGEROUS, CONTAGIOUS AND INCURABLE DISEASE**

In *B.N. v. K.K.*, 312 Md. 135, 538 A.2d 1175 (1988), the Court of Appeals of Maryland, in a case certified by the United States District Court for the District of Maryland, held that Maryland does recognize causes of action for fraud, intentional infliction of emotional distress and negligence, resulting from the sexual transmission of a dangerous, contagious, and incurable disease, such as genital herpes. Each named cause of action, however, is subject to the proper factual showing by the plaintiff and any defense raised by the defendant.

Ms. N. was employed as a nurse at Johns Hopkins Hospital in Baltimore, Maryland, between July and December, 1983. Dr. K. also worked at Hopkins Hospital for part of that period. From July through October, 1983, Ms. N. and Dr. K. "were involved in an intimate boyfriend-girlfriend relationship" and "engaged in acts of sexual intercourse." *Id.* at 138, 538 A.2d at 1177. While this was going on, Dr. K. knew he had genital herpes, but did not disclose this to Ms. N., who neither knew nor had any reason to believe that Dr. K. was a carrier of genital herpes. *Id.* On or about October 1, 1983, Ms. N. and Dr. K. engaged in sexual intercourse. On that date Dr. K. knew that his disease was active and would probably be transmitted to Ms. N. through sexual intercourse. That result in fact occurred and was caused by Dr. K.'s conduct, inasmuch as Ms. N. never engaged in sexual contact with anyone but Dr. K. during the relevant period. *Id.* at 138-9, 538 A.2d at 1177.

Ms. N. brought suit against Dr. K. in the United States District Court for the District of Maryland, alleging fraud, intentional infliction of emotional distress, negligence and assault and battery. The case was then certified to the Court of Appeals of Maryland by the U.S. District Court pursuant to the Maryland Uniform Certification of Questions of Law Act, Md. Cts. & Jud. Proc. Code Ann., §§12-601 through 12-609 (1984 Repl. Vol.).

The question certified asked:

Does Maryland Recognize A Cause Of Action For Either Fraud, Intentional Infliction of Emotional Distress, Or Negligence Resulting From the Sexual Transmission Of A Dangerous, Contagious, and Incurable Disease, Such As Genital Herpes?