


10-1987

California v. Greenwood

Lewis F. Powell Jr.

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CFR

Hold

Still hold

PRELIMINARY MEMORANDUM

December 12, 1986 Conference
List 1, Sheet 3

No. 86-684

CALIFORNIA

OK

Cert to Cal. Ct. App.
(Wallin, Trotter,
Sonenshine)

v.

GREENWOOD, et al.
(drug dealers)

state/criminal

Timely

1. SUMMARY: Petr challenges Cal. ca ruling upholding suppression of evidence obtained pursuant to a warrant based upon evidence acquired by searching resps' trash. This case presents the same questions presented in California v. Rooney, No. 85-1835, cert granted October 14, 1986.

CFR to hold for California v. Rooney,
85-1835

Ronald

2. FACTS AND DECISION BELOW: Through a tip, the police were informed, in February, 1984, that a U-Haul truck full of drugs was to be delivered to a particular address. It was later determined that this address was resps'. Police did not find the U-Haul truck, but a neighbor of resps contacted the police and told them that an unusual amount of traffic had been visiting resps' home, and that a U-Haul truck had been parked in front of resps' house for four days.

The police began monitoring resps' trash in February, 1984. On one day in April, 1984, the police observed a man from resps' residence take some trash out to the curb. The police obtained this trash from the trash collector who was cooperating with the police. This trash contained evidence of drug trafficking. On April 6, 1984, the police obtained a warrant based upon this evidence, executed the warrant, and discovered a substantial quantity of cocaine. The police arrested resps and they were released on bail.

Resps' neighbor reported to police that a heavy volume of traffic continued to visit resps' house after their arrest. One police officer who visited the residence in response to a disturbance complaint noticed suspicious activity. On May 4, 1984, the police again acquired resps' trash, discovered evidence of further drug trafficking, and obtained another warrant on May 9, 1984. Three days later, the warrant was executed and the police discovered more drugs and arrested resps.

Resps moved to suppress evidence obtained from their home on the grounds that the affidavits used to obtain the evidence did

not contain probable cause. In particular, resps argued that the only evidence sufficient to establish probable cause was obtained through searching resps' trash, and, based upon the California case of People v. Krivda, 5 Cal. 3d 357 (1971), these trash searches violated resps' Fourth Amendment rights. The tc reluctantly granted resps' motion, stating as follows:

"It's difficult when you find a case on the federal level that is much more well-reasoned than the California Supreme Court case involving People v. Krivda. And it's difficult for a trial court when you look at the rationality, in my opinion, of the Krivda decision (R.T. 26.).

"I think I'm bound distastefully to grant your [motion].... Quite frankly, I hope this is one time that the California Supreme Court overturns this trial court." Pet. 4.

The ac affirmed. The ac noted that it was bound by Krivda. The ac noted that Krivda was based both upon the state constitution and the Fourth Amendment, but that by enactment of Proposition 8, an accused in California can no longer suppress evidence based upon the California Constitution. Thus, the ac only relied upon the Cal. sc's Fourth Amendment holding in Krivda in concluding that the evidence in this case must be suppressed. The sc declined to review the ac's decision.

3. CONTENTIONS: Petr argues that every federal circuit considering the question has rejected the position adopted in Krivda. Most of the state courts also have concluded that warrantless trash searches do not violate the Fourth Amendment.

4. DISCUSSION: The petn was filed just six days after this Court granted cert in California v. Rooney, No. 85-1835, cert granted October 14, 1986. This case raises the same questions presented in Rooney.

5. RECOMMENDATION: I recommend CFR and then a hold for Rooney.

There is no response.

November 28, 1986

Westfall

Opin in petn.

March 6, 1987

Court..... Voted on....., 19.....
Argued....., 19..... Assigned....., 19.....
Submitted....., 19..... Announced....., 19.....

No. 86-684

CALIFORNIA

vs.

GREENWOOD

Also motions for ifp.

Hold
Calif v
Romey
PS-1835

HOLD FOR	DEFER		CERT.			JURISDICTIONAL STATEMENT				MERITS		MOTION	
	RELIST	CVSG	G	D	G&R	N	POST	DIS	AFF	REV	AFF	G	D
Rehnquist, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Stevens, J.													
O'Connor, J.													
Scalia, J.													

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

9f B R W
wants to grant
this trash
"search" case,
I'll join him.
Otherwise,
I'll dissent

June 17, 1987

MEMORANDUM TO THE CONFERENCE

Re: Case held for California v. Rooney,
No. 85-1835

California v. Greenwood, No. 86-684

On April 6, 1984, Laguna Beach, California, police sought a search warrant for the home (described as a two-story house with a detached guesthouse) of respondent Greenwood. The affidavit in support of the warrant included a number of factors, most of which dealt with the many late night visitors Greenwood was receiving at his home for short periods of time. There had also been an informant's tip that a truck full of drugs was en route to Greenwood's address, but the truck had never been found. The most important item in the affidavit related to a trash search. In February 1984 the police had begun to monitor and search the trash set out for collection in front of Greenwood's home, and on April 6, at 6 a.m., an officer observed a man put some trash out. After the officer told the trash collector that she wanted the trash, the collector cleaned his truck bin of other refuse, collected Greenwood's trash, and gave it to the officer. The search of the trash revealed evidence of drug trafficking.

A search warrant was granted and executed. The police found a substantial quantity of cocaine in the house, and arrested Greenwood, as well as respondent Van Houten, who was found to have drugs in her purse. Both were released after posting bail.

After the release on bail the police's suspicion was again triggered by the steady stream of people paying short visits to Greenwood's home. On May 4 an officer saw a man put trash out for collection, and

This case appears to present the issue the Court wished to consider in Rooney. Although my recollection is that you did -

the officer took possession of the trash in the same manner as the other officer had before. The trash again contained evidence of drug trafficking. The police obtained a new search warrant based on all of this evidence, found more drugs in the house, and again arrested Greenwood.

At a preliminary hearing, the magistrate upheld both search warrants. The Superior Court disagreed, however, and granted Greenwood's and Van Houten's motion to set aside the information, concluding that the search warrants were invalid. The Court of Appeal affirmed the Superior Court's dismissal of the information. Before deciding whether the trash searches were legal, the court explored whether the search warrant could be sustained without regard to the evidence found in the trash:

Each warrant is dependent on the information from the two trash searches. In other words, if the fruits of the trash searches are excised from the warrant affidavits, those affidavits lacked probable cause to search because there was no information supporting a reasonable conclusion narcotics would be found in Greenwood's house at that time. ... Without the evidence of current trafficking found in the trash, the remaining information in the warrant affidavits was stale and fell short of establishing probable cause to search."
App. to Pet. for Cert. 12.

In light of People v. Krivda, 5 Cal. 3d 357, 486 P. 2d 1262 (1971), the court held that the trash search was invalid, and that the search warrants should have been quashed.

The passage quoted above demonstrates that this case is far different from Rooney. Here, the court's refusal to consider the trash search was clearly central to its judgment. Thus, it would appear that this petition fairly presents the issue on which certiorari was granted in Rooney. Nonetheless, I

shall vote to deny. There is no split among the federal courts on the issue, and my own view is that only in exceptional circumstances should our discretionary jurisdiction be used to review a lower state court decision which arguably overprotects the State's citizens.

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Respectfully,

John

Court..... Voted on....., 19.....
 Argued....., 19..... Assigned....., 19.....
 Submitted....., 19..... Announced....., 19.....

No. 86-684

CALIFORNIA

vs.

GREENWOOD

Heretofore held for 85-1835, California v. Rooney

*Granted
(Cheers)*

HOLD FOR	DEFER		CERT.			JURISDICTIONAL STATEMENT				MERITS		MOTION	
	RELIST	CVSG	G	D	G&R	N	POST	DIS	AFF	REV	AFF	G	D
Rehnquist, Ch. J.			✓										
Brennan, J.				✓									
White, J.			✓										
Marshall, J.				✓									
Blackmun, J.						<i>join 3</i>							
Powell, J.			✓										
Stevens, J.				✓									
O'Connor, J.			✓										
Scalia, J.				✓									