

Scavenging for Probable Cause- Rewriting *California v. Greenwood*
By: Karli Behler, *Staff Editor, Vol. 32*¹

I. Introduction

People’s trash portrays intimate details about their lives. Rory Gilmore suggested that “[y]ou can tell a lot about people from their garbage. Think about it, trash is discarded aspects of people’s lives. It talks about their eating habits, what they read, do they go to concerts, are they responsible, do they pay their bills on time?”² Even with this common understanding that one’s trash contains intimate details about one’s life, in *California v. Greenwood*, the Supreme Court held that citizens relinquish their Fourth Amendment protections in their sealed household trash by placing it on their curb.³ Therefore, the warrantless search of trash left outside on the curb does not violate the Fourth Amendment.⁴

II. The Intrusion on Greenwood’s Fourth Amendment Rights

In *Greenwood*, a police investigator suspected that Billy Greenwood was engaged in narcotics trafficking.⁵ The basis of the investigator’s suspicion was a tip from a criminal suspect, in February 1984, who told federal drug enforcement that a truck filled with illegal drugs was en route to Greenwood’s residence.⁶ To bolster this suspicion, a neighbor reported that vehicles frequently made short, late-night, and early morning stops at Greenwood’s home.⁷ The investigator conducted surveillance of Greenwood’s home, which confirmed the neighbor’s

¹ Karli Behler is a second-year regular division law student at Widener University Delaware Law School. Karli is a native of Pennsylvania, and earned a B.S. and M.S. in criminal justice from West Chester University. Karli is the Internal Managing Editor of *Widener Law Review* for Volume 33, and Vice President of the Alternative Dispute Resolution Society. Karli intends to practice in Pennsylvania after graduation. Karli’s favorite tv show is *Gilmore Girls* and inspired her to write this.

² GILMORE GIRLS: *The Breakup, Part II* (Warner Bros. Television Mar. 15, 2001). *Gilmore Girls* is a popular American comedy-drama television show. The show follows the life of Lorelai Gilmore, a single mother and her daughter, Rory Gilmore.

³ *California v. Greenwood*, 486 U.S. 35, 37 (1988); see also Madeline Herdrich, *California v. Greenwood: The Trashing of Privacy*, 38 AM. U. L. REV. 993, 995 (1989).

⁴ *Greenwood*, 486 U.S. at 37.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

reports.⁸ In addition, the investigator recognized a truck that stopped at Greenwood's home as it was previously tied to narcotics trafficking.⁹

In April 1984, the investigator requested that the neighborhood's regular trash collector pick up Greenwood's trash left on the curb and deliver it to the investigator without mixing it with any other trash.¹⁰ The search of Greenwood's trash revealed "items indicative of narcotics use."¹¹ With that evidence, the investigator obtained a search warrant for Greenwood's home.¹² While executing the search warrant, officers discovered cocaine and hashish, leading to the arrest of Greenwood on felony narcotics charges.¹³ Greenwood posted bail.¹⁴ The investigation of Greenwood later resumed after police received reports of late-night traffic at Greenwood's home, and additional searches of his trash revealed evidence of narcotic use.¹⁵ Based on the evidence found within Greenwood's trash, police secured another warrant, which resulted in Greenwood's arrest.¹⁶

Greenwood's case made its way to the United States Supreme Court.¹⁷ The issue before the Court was whether society considers it reasonable for a person to expect privacy in their trash that is put out on the curb for collection.¹⁸ To determine whether the government's conduct constituted a search, the Court applied the test it developed in *Katz v. United States*.¹⁹ Both prongs of the *Katz* test must be satisfied for the conduct to be deemed a search and a violation of

⁸ *Greenwood*, 486 U.S. at 37.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 37-38.

¹² *Id.* at 38.

¹³ *Greenwood*, 486 U.S. at 38.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Mary Elizabeth Minor, *Was the Right of Privacy Trashed in California v. Greenwood*, 24 TULSA L.J. 401, 404 (1989).

¹⁸ *Id.*

¹⁹ See *id.* at 412.

one's privacy interests.²⁰ First, the person must "have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"²¹ The Court expressed that for the government's conduct to have violated Greenwood's Fourth Amendment right to privacy, Greenwood had to have manifested a subjective expectation of privacy in his trash that society accepted as objectively reasonable.²² However, the Court concluded that, although Greenwood may have manifested a subjective expectation of privacy in his trash, society is not prepared to accept Greenwood's expectation as objectively reasonable.²³ Accordingly, the police conduct did not equate to a search, and therefore, there was no violation of the Fourth Amendment.²⁴

The majority relied on the fact that Greenwood voluntarily exposed his trash to the public, leaving it "readily accessible to animals, children, scavengers, snoops, and other members of the public" to find that Greenwood had no reasonable expectation of privacy in his trash.²⁵ Further, the Court noted Greenwood voluntarily gave his trash to a third party, the trash collector, who could go through it at his own discretion.²⁶ Therefore, the Court reasoned that police should not be expected to ignore evidence of criminal activity exposed to the public.²⁷

²⁰ See *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J. concurring).

²¹ *Id.*

²² *California v. Greenwood*, 486 U.S. 35, 38 (1988).

²³ *Id.* at 39-40.

²⁴ See *id.* at 41.

²⁵ *Id.* at 40.

²⁶ *Minor*, *supra* note 17, at 413.

²⁷ *Greenwood*, 486 U.S. at 41.

III. Misapplication of *Katz*

The Court did not consider that mere intrusion into one's trash does not automatically negate a reasonable expectation of privacy.²⁸ Greenwood exhibited an expectation of privacy with respect to his trash that the police searched.²⁹ For example, Greenwood placed his trash in sealed, opaque plastic bags for collection at specific times for the trash collector to pick it up, mingle it with other bags, and take it to the landfill.³⁰ Greenwood did not flaunt intimate details of his life to the public by littering his trash all over the curb; instead, Greenwood contained his trash in non-transparent trash bags.³¹ Further, Greenwood placed his trash on the curb as required by county ordinance, not to allow a third party to go through it.³² So, even if Greenwood voluntarily relinquished his trash to a third party, he still retained his expectation of privacy.³³

The Court contradicted longstanding precedent which holds that the voluntary relinquishment of control over a package does not amount to a relinquishment of the expectation of privacy.³⁴ For example, when a person places a card in their mailbox intending for the postal officer to take it, they do not relinquish their reasonable expectation of privacy merely because the postal officer might sort through their cards.³⁵ Therefore, the Court ignored that “for at least 110 years that the possibility of such intrusion does not justify a warrantless search by police . .

”³⁶

Greenwood’s expectation of privacy regarding his trash is one that society is ready to recognize as reasonable.³⁷ When a tabloid reporter rummaged through then-Secretary of State

²⁸ See *Minor*, *supra* note 17, at 418.

²⁹ *Greenwood*, 486 U.S. at 39.

³⁰ See *Minor*, *supra* note 17, at 416-17.

³¹ See *Herdrich*, *supra* note 3, at 1013.

³² *Minor*, *supra* note 17, at 418.

³³ See *id.*

³⁴ *Greenwood*, 486 U.S. at 55. See also *United States v. Jacobsen*, 466 U.S. 109, 114 (1984).

³⁵ *Greenwood*, 486 U.S. at 55.

³⁶ *Greenwood*, 486 U.S. at 55. See also *Ex parte Jackson*, 96 U.S. 727, 735 (1877).

³⁷ *Minor*, *supra* note 17, at 416.

Henry Kissinger's trash and published his findings, the public condemned this act as "a disgusting invasion of personal privacy."³⁸ Therefore, since the public expresses disdain when third parties rummage through others' trash, it follows that the public would feel the same disgust toward the police who routinely searched Greenwood's trash.³⁹ The Court failed to acknowledge that society has a legitimate privacy interest in their trash, and as a result, misapplied *Katz*.⁴⁰

IV. Contradiction of the Container Rule

The Court's majority holding clashes with *United States v. Chadwick*, where the Supreme Court recognized that individuals hold a reasonable expectation of privacy in their personal containers that is protected by the Fourth Amendment.⁴¹ In *Chadwick*, the Court found that because the container, the defendant's luggage, was a repository for personal effects, it was afforded Fourth Amendment protections.⁴² Here, Greenwood's container, his sealed household trash, was a repository of personal effects as it held intimate details of Greenwood's life, yet the Court found no Fourth Amendment protections to Greenwood's trash.⁴³ The majority came to this conclusion by focusing on the location of the trash as it was out on the curb and therefore exposed to the public.⁴⁴ The Court disregarded precedent, which finds a privacy interest in containers regardless of their worth or location as long as the container is closed against inspection.⁴⁵ In addition, the Court rejected Greenwood's explicit manifestation of privacy as Greenwood sealed his trash in a non-transparent bag with the intention to preserve his privacy.⁴⁶

³⁸ *Greenwood*, 486 U.S. at 51-52.

³⁹ *Minor*, *supra* note 17, at 416.

⁴⁰ *See Herdrich*, *supra* note 3, at 1017.

⁴¹ *Id.* at 1002.

⁴² *Id.* at 1003.

⁴³ *See generally Greenwood*, 486 U.S. at 37.

⁴⁴ *See Herdrich*, *supra* note 3, at 1016.

⁴⁵ *Minor*, *supra* note 17, at 416.

⁴⁶ *Herdrich*, *supra* note 3, at 1017.

Thus, if precedent were applied, Greenwood's container of trash would have been granted protection by the Fourth Amendment and therefore shielded from warrantless police intrusion.

V. The Impact

The consequence of the broad majority holding is that society has no reasonable expectation of privacy in their trash for Fourth Amendment purposes.⁴⁷ The Justices' opinion does not mention guidelines police must follow, nor do they mention how the holding will apply to intrusions by private individuals or other government officials.⁴⁸ This holding allows for unconstrained exploratory searches of individuals' trash by police until something is found.⁴⁹ In addition, *California v. Greenwood* permits police to search citizens' trash without a search warrant and therefore without judicial oversight, inviting arbitrary and unpredictable surveillance of Americans through the intrusion of their trash.⁵⁰ The Court ignores societal expectations of acceptable and civilized behavior as it strips individuals of their privacy to their trash.⁵¹

VI. Conclusion

Police regularly and repeatedly searched through Greenwood's trash, and the Court ultimately found the warrantless intrusion did not violate Greenwood's rights under the Fourth Amendment. The Court should have found that the police conducted a search within the meaning of the Fourth Amendment and were therefore required to obtain a search warrant before rummaging through Greenwood's trash. Absent these intrusions, the police would not have had probable cause to search Greenwood's home, which ultimately led to his arrest. By reaching this conclusion, the Court ignores societal norms, disregards precedent, and narrows the scope of

⁴⁷ Minor, *supra* note 17, at 420.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Herdrich, *supra* note 3, at 1020.

⁵¹ *California v. Greenwood*, 486 U.S. 35, 54 (1988).

Fourth Amendment protections. Furthermore, this unfortunate holding allows police to scavenge for probable cause in Americans' trash simply sitting out on the curb for collection day.