

SUPREME COURT OF SOUTH DAKOTA

State v. Stevens, 2007 SD 54

734 N.W.2d 344 (S.D. 2007) · No. No. 23898 · Decided June 13, 2007

SUMMARY

The Supreme Court of South Dakota reversed the suppression of evidence obtained after police searched the defendant's curbside trash and used the results to obtain a warrant for his home. The court held that the defendant had not established a constitutionally protected expectation of privacy in the trash under the two-part test adopted in *State v. Schwartz*, and that reasonable suspicion was not required for the trash search. Two justices dissented, concluding that society recognizes a reasonable expectation of privacy in household garbage.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Konen kamp, Justice; Zinter, Justice; Gilbertson, Chief Justice; Sabers, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	June 13, 2007
DOCKET	No. 23898
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed the circuit court's order suppressing evidence obtained from a warrantless trash search and a subsequent search of Stevens's home.
STANDARD OF REVIEW	Constitutional suppression questions and the application of legal standards to facts are reviewed de novo; factual findings are reviewed under the clearly erroneous standard.
PRECEDENTIAL VALUE	Published majority opinion reversing suppression of evidence; binding South Dakota Supreme Court precedent, subject to the separate concurrence and dissent.
PARTIES	State of South Dakota v. Wayne R. Stevens

TOPICS

fourth amendment

search and seizure

suppression of evidence

criminal procedure

appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Stevens had a constitutionally protected privacy interest in trash placed at the curb for municipal collection.
2. Whether law enforcement was required to possess reasonable or articulable individualized suspicion before searching Stevens's curbside trash.
3. Whether the evidence obtained from the trash search could support probable cause for the warrant to search Stevens's home.

HOLDINGS

1. A person has a constitutionally protected privacy interest in trash only if the person exhibited an actual subjective expectation of privacy and society is willing to recognize that expectation as reasonable. Stevens failed to establish the objective prong, so the officers' inspection of his curbside trash was not a constitutionally regulated search.
2. Reasonable or articulable individualized suspicion is not required before law enforcement conducts a trash search when the defendant lacks a constitutionally protected privacy interest in the trash.
3. Because the trash inspection did not violate a constitutionally protected privacy interest, the circuit court erred in suppressing the evidence and in concluding that the home-search warrant lacked probable cause on that basis.

KEY QUOTATIONS

“To establish a protected privacy interest in trash, a person (1) must have “exhibited an actual subjective expectation of privacy” and (2) society must be “willing to honor this expectation as being reasonable.””
(734 N.W.2d at 347)

“Absent satisfying these elements, such reasonable expectation of privacy does not exist and there is no “search” subject to constitutional scrutiny under the Fourth Amendment or the South Dakota Constitution.”
(734 N.W.2d at 347)

FACTUAL BACKGROUND

Police investigated an altercation between Stevens and Troy Klug, who later went missing, and suspected a possible connection to drugs. More than five months after interviewing Stevens, an officer arranged for Stevens's curbside trash to be diverted from the municipal collection route and searched it, finding methamphetamine residue and mail identifying Stevens. That evidence supported a warrant to search Stevens's home, where officers found methamphetamine and drug paraphernalia.

PROCEDURAL HISTORY

After officers searched Stevens's curbside trash and found methamphetamine, they obtained a warrant to search his home and found additional methamphetamine and drug paraphernalia. Stevens was indicted for possession of a controlled substance and possession of drug paraphernalia and moved to suppress the evidence. The circuit court granted suppression, ruling that Stevens had a limited privacy interest in his trash, that officers lacked reasonable suspicion to search it, and that the home-search warrant consequently lacked probable cause. The South Dakota Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- State v. Hess, 2004 SD 60, 680 N.W.2d 314
- State v. Herrmann, 2002 SD 119, 652 N.W.2d 725
- State v. Tofani, 2006 SD 63, 719 N.W.2d 391
- State v. Lamont, 2001 SD 92, 631 N.W.2d 603
- State v. Schwartz, 2004 SD 123, 689 N.W.2d 430
- State v. Christensen, 2003 SD 64, 663 N.W.2d 691
- Katz v. United States, 389 U.S. 347 (1967)
- California v. Greenwood, 486 U.S. 35 (1988)
- Cordell v. Weber, 2003 SD 143, 673 N.W.2d 49
- State v. Lowther, 434 N.W.2d 747 (S.D. 1989)
- Litchfield v. State, 824 N.E.2d 356 (Ind. 2005)
- State v. A Blue in Color, 1993 Chevrolet Pickup (A Blue Pickup), 328 Mont. 10, 116 P.3d 800 (2005)
- Treadway v. Schnauber, 1 Dak. 236, 46 N.W. 464 (1875)
- City of Sioux Falls v. Kirby, 6 S.D. 62, 60 N.W. 156 (1894)
- Donovan v. City of Deadwood, 538 N.W.2d 790 (S.D. 1995)
- Pennington County v. State ex rel. Unified Judicial System, 2002 SD 31, 641 N.W.2d 127
- City of Marion v. Schoenwald, 2001 SD 95, 631 N.W.2d 213
- Welsh v. Centerville Township, 1999 SD 73, 595 N.W.2d 622
- People v. Oates, 698 P.2d 811 (Colo. 1985)
- State v. Hempele, 120 N.J. 182, 576 A.2d 793 (1990)
- State v. Nagel, 320 Or. 24, 880 P.2d 451 (1994)
- State v. Morris, 165 Vt. 111, 680 A.2d 90 (1996)
- Dred Scott v. Sandford, 60 U.S. 393 (1856)
- Plessy v. Ferguson, 163 U.S. 537 (1896)
- United States v. Miller, 425 U.S. 435 (1976)

