

SUPREME COURT OF THE UNITED STATES

California v. Sabo et al.

481 U.S. 1058 (1987) · No. No. 86-1289 · Decided May 19, 1987

SUMMARY

The United States Supreme Court denied certiorari in a California case involving helicopter surveillance of marijuana plants within a backyard greenhouse. The Court's order noted that the California Court of Appeal had held the observation violated the Fourth Amendment, while Justice White, joined by the Chief Justice, dissented and would have granted review.

CASE DETAILS

COURT	Supreme Court of the United States
JURISDICTION	Federal
DECIDED	May 19, 1987
DOCKET	No. 86-1289
DISPOSITION	cert_denied
PROCEDURAL POSTURE	California petitioned for a writ of certiorari to review a decision of the California Court of Appeal, Fourth Appellate District, affirming suppression of marijuana seized pursuant to a warrant based on helicopter observation of a greenhouse. The Supreme Court denied certiorari.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	California v. Ronald Lee Sabo, Angela Marie Zizzo

TOPICS

- fourth amendment
- search and seizure
- warrant requirement
- writ of certiorari
- appellate procedure

PRACTICE AREAS

- constitutional law
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court should grant certiorari to review the California Court of Appeal's holding that helicopter observation of marijuana plants in a backyard greenhouse violated the Fourth Amendment.

2. Whether the California Court of Appeal properly distinguished *California v. Ciraolo* based on the helicopter's altitude and the concept of navigable airspace.

HOLDINGS

1. The petition for a writ of certiorari was denied.

KEY QUOTATIONS

“The decision below is a highly questionable interpretation of our decision in California v. Ciraolo. I would grant certiorari.” (481 U.S. at 1058)

FACTUAL BACKGROUND

During a routine helicopter patrol, a deputy sheriff observed what he believed were marijuana plants inside a greenhouse in respondents' backyard. The helicopter hovered at approximately 400 to 500 feet and circled the greenhouse to improve the deputy's view. Based on the observation, a search warrant issued and deputies seized the marijuana.

PROCEDURAL HISTORY

A California trial court held marijuana seized after aerial observation inadmissible under the Fourth Amendment. The California Court of Appeal affirmed, concluding that the helicopter surveillance violated respondents' reasonable expectation of privacy and distinguishing *California v. Ciraolo*. California sought Supreme Court review, which was denied.

DISPOSITION

cert_denied

CASES CITED

- *People v. Sabo*, 185 Cal. App. 3d 845, 230 Cal. Rptr. 170 (1986)
- *California v. Ciraolo*, 476 U.S. 207 (1986)

OPINION

PER CURIAM.

481 U.S. 1058 107 S. Ct. 2200 95 L. Ed. 2d 855 CALIFORNIAv.Ronald Lee SABO and Angela Marie Zizzo No. 86-1289 Supreme Court of the United States May 18, 1987 On petition for writ of certiorari to the Court of Appeal of California, Fourth Appellate District.

The motion of respondent Ronald Lee Sabo for leave to proceed in forma pauperis is granted. The motion of respondent Angela Marie Zizzo for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is denied. Justice WHITE, with whom THE CHIEF JUSTICE joins,

dissenting. 1 During a routine helicopter patrol a deputy sheriff observed what he believed to be marijuana plants growing inside a 15 by 20 foot greenhouse located in respondents' back yard.

The helicopter hovered at 400 to 500 feet and circled the greenhouse in order to give the deputy a better look at the marijuana. Based on this observation a search warrant issued and deputies seized the marijuana. A trial court held the marijuana inadmissible as evidence and the California Court of Appeals affirmed, holding that the deputy's observation of the greenhouse from the hovering helicopter violated the Fourth Amendment.

People v. Sabo, 185 Cal. App. 3d 845, 230 Cal. Rptr. 170 (1986). The Court of Appeals distinguished California v. Ciraolo, 476 U.S. ----, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986), on the ground that there the observation of marijuana was made from a fixed-wing aircraft flying in navigable airspace at an altitude over 1,000 feet.

The court concluded that here the helicopter was not in navigable airspace as that term is defined at 49 U.S.C. § 1301(29), but recognized that the helicopter was lawfully positioned because federal regulations allow operation of helicopters at altitudes less than the minimum permitted to fixed-wing aircraft, provided that the helicopter operates without hazard to persons or property, see 14 CFR § 91.79(d) (1986).^{*} The court expressed concern about the capabilities of helicopters to furnish "a platform for aerial surveillance," *id.*, 230 Cal.Rptr. at 175, and held that the search in this case infringed on a reasonable expectation of privacy.

2 The Court of Appeals' holding that the helicopter was not in navigable airspace is questionable, and even if this is technically correct it remains true, as the court conceded, that the helicopter was lawfully positioned when the deputy observed the marijuana in respondents' greenhouse. While it is certainly possible that helicopter surveillance could be unreasonably intrusive on account of interminable hovering, raising clouds of dust, creating unreasonable noise, and so forth, nothing in the record indicates that any such factor was present in this case.

The decision below is a highly questionable interpretation of our decision in California v. Ciraolo. I would grant certiorari. ^{*} Title 49 U.S.C. § 1301(29) defines navigable airspace as "airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter,... includ[ing] airspace needed to insure safety in take-off and landing of aircraft."

The Court of Appeals reasoned that a helicopter flying below 1000 feet is not above a specified minimum flight altitude and hence not in navigable airspace.