

Syllabus

CALIFORNIA v. KRIVDA ET AL.

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 71-651. Argued October 10, 1972—Decided October 24, 1972

It not being clear whether the judgment of the California Supreme Court affirming the lower court is based on federal or state constitutional grounds, or both, and whether this Court has jurisdiction on review, that judgment is vacated and the case remanded.

5 Cal. 3d 357, 486 P. 2d 1262, vacated and remanded.

Russell Iungerich, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Evelle J. Younger*, Attorney General, *Edward A. Hinz, Jr.*, Chief Assistant Attorney General, *William E. James* and *S. Clark Moore*, Assistant Attorneys General, and *William R. Pounders*, Deputy Attorney General, joined by *John D. LaBelle* for the State of Connecticut and by the following Attorneys General: *William J. Baxley* of Alabama, *Gary K. Nelson* of Arizona, *Ray Thornton* of Arkansas, *Duke W. Dunbar* of Colorado, *W. Laird Stabler, Jr.*, of Delaware, *Robert L. Shevin* of Florida, *Arthur K. Bolton* of Georgia, *George Pai* of Hawaii, *W. Anthony Park* of Idaho, *Theodore L. Sendak* of Indiana, *Richard C. Turner* of Iowa, *Jack P. F. Gremillion* of Louisiana, *Francis B. Burch* of Maryland, *A. F. Summer* of Mississippi, *Robert L. Woodahl* of Montana, *Clarence A. H. Meyer* of Nebraska, *Robert List* of Nevada, *Warren B. Rudman* of New Hampshire, *George F. Kugler, Jr.*, of New Jersey, *Louis J. Lefkowitz* of New York, *Helgi Johanneson* of North Dakota, *William J. Brown* of Ohio, *J. Shane Creamer* of Pennsylvania, *Richard J. Israel* of Rhode Island, *Daniel R. McLeod* of South Carolina, *Gordon Myland* of South Dakota, *David M. Pack* of Tennessee, *Crawford C.*

Per Curiam

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Martin of Texas, *Vernon B. Romney* of Utah, *James M. Jeffords* of Vermont, *Andrew P. Miller* of Virginia, *Ronald H. Tonkin* of the Virgin Islands, *Slade Gorton* of Washington, *Robert W. Warren* of Wisconsin, and *Clarence A. Brimmer* of Wyoming.

Roger S. Hanson, by appointment of the Court, 406 U. S. 904, argued the cause for respondents. With him on the brief was *George R. Milman*.

Briefs of *amici curiae* were filed by *William J. Scott*, Attorney General, and *James B. Zagel*, Assistant Attorney General, for the State of Illinois; by *Frank G. Carrington, Jr.*, *Alan S. Ganz*, *Glen Murphy*, and *Wayne W. Schmidt* for Americans for Effective Law Enforcement, Inc., et al.; by *Melvin L. Wulf*, *Sanford J. Rosen*, *Joel M. Gora*, *A. L. Wirin*, *Fred Okrand*, and *Lawrence R. Sperber* for the American Civil Liberties Union et al.; by *Sheldon Portman* and *Rose Elizabeth Bird* for the California Public Defenders Assn.; and by *Theodore A. Gottfried* and *Marshall J. Hartman* for the National Legal Aid and Defender Assn.

PER CURIAM.

On the basis of evidence obtained in a police search of respondents' trash, respondents were charged with possession of marihuana in violation of § 11530 of the California Health & Safety Code. The Supreme Court of California affirmed the superior court's judgment of dismissal and order suppressing the evidence on the grounds that, under the circumstances of this case, respondents "had a reasonable expectation that their trash would not be rummaged through and picked over by police officers acting without a search warrant." *People v. Krivda*, 5 Cal. 3d 357, 366-367, 486 P. 2d 1262, 1268 (1971) (*en banc*). We granted certiorari. 405 U. S. 1039.

After briefing and argument, however, we are unable to determine whether the California Supreme Court based its holding upon the Fourth and Fourteenth Amendments to the Constitution of the United States, or upon the equivalent provision of the California Constitution, or both. In reaching its result in this case, the California court cited pertinent excerpts from its earlier decision in *People v. Edwards*, 71 Cal. 2d 1096, 458 P. 2d 713 (1969) (*en banc*), which relied specifically upon both the state and federal provisions. 5 Cal. 3d, at 367, 486 P. 2d, at 1269. Thus, as in *Mental Hygiene Dept. v. Kirchner*, 380 U. S. 194, 196-197 (1965), "[w]hile we might speculate from the choice of words used in the opinion, and the authorities cited by the court, which provision was the basis for the judgment of the state court, we are unable to say with any degree of certainty that the judgment of the California Supreme Court was not based on an adequate and independent nonfederal ground." We therefore vacate the judgment of the Supreme Court of California and remand the cause to that court for such further proceedings as may be appropriate. *Mental Hygiene Dept. v. Kirchner*, *supra*; *Minnesota v. National Tea Co.*, 309 U. S. 551 (1940); *State Tax Comm'n v. Van Cott*, 306 U. S. 511 (1939). We intimate no view on the merits of the Fourth and Fourteenth Amendment issue presented.