

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 20-0202
)
 RYAN JOSEPH HAHN,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
HONORABLE TAMRA ROBERTS, JUDGE
(MOTION TO SUPPRESS)
HONORABLE PATRICK A. MCELYEA (TRIAL)

APPELLANT'S REPLY BRIEF AND ARGUMENT

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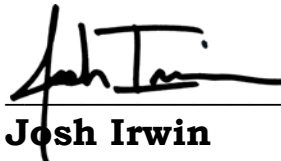
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CERTIFICATE OF SERVICE

On the 30th day of September, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Ryan Hahn, 703 Davenport St., Dixon, IA 52745.

APPELLATE DEFENDER'S OFFICE

A handwritten signature in black ink, appearing to read "Josh Irwin", is written over a horizontal line.

Josh Irwin
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JI/lb/09/20

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Authorities

I. The Greenwood Court did not conclude that individuals abandon their garbage by placing it at the curb for collection.

California v. Greenwood, 486 U.S. 35, 40 (1988)

State v. Henderson, 435 N.W.2d 394 (Iowa Ct. App. 1988)

State v. Skola, 634 N.W.2d 687 (Iowa Ct. App. 2001)

State v. Wright, No. 19-0180, 2020 WL 564938 at *2-3
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State v. MacKenzie, No. 14-1509, 2016 WL 6651866 at *4
(Iowa Ct. App. November 9, 2016)

State v. May, No. 13-0628, 2014 WL 1714460 at *3
(Iowa Ct. App. April 30, 2014)

II. Hahn had not abandoned his garbage when the police seized it.

State v. Bumpus, 459 N.W.2d 619, 625 (Iowa 1990)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about September 9, 2020. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. The Greenwood Court did not conclude that individuals abandon their garbage by placing it at the curb for collection.

According to the State, “[t]he key to *Greenwood*'s rationale is that police had seized and searched garbage that was . . . abandoned” State's Brief, p. 46. The State further asserts that “abandonment of property is a critical ingredient in *Greenwood*'s holding” State's Brief, p. 48.

The word “abandon,” however, is entirely absent from the Greenwood majority opinion. The State asserts, without any supporting citation, that Iowans collectively believe that they are abandoning their garbage when they take it to the curb.

State's Brief at p. 54. The State also asserts that, because when Iowans place their garbage out for collection they are abandoning it, they extend "an open invitation for anyone to collect and remove that trash," citing Greenwood. State's Brief, p. 43 (citing 40–41).

Greenwood said no such thing. While the cited passage makes reference to "strangers" picking up garbage, the preceding sentence makes it clear that those strangers are not just anyone, but trash collectors. California v. Greenwood, 486 U.S. 35, 40 (1988) ("[R]espondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector").

Additionally, neither State v. Henderson, 435 N.W.2d 394 (Iowa Ct. App. 1988) nor State v. Skola, 634 N.W.2d 687 (Iowa Ct. App. 2001), the only published appellate decisions from Iowa courts dealing with warrantless garbage searches, contain the word "abandon." Only three Iowa decisions which cite Greenwood contain the word "abandon." See State v.

Wright, No. 19-0180, 2020 WL 564938 at *2–3 (Iowa Ct. App. February 5, 2020); State v. MacKenzie, No. 14-1509, 2016 WL 6651866 at *4 (Iowa Ct. App. November 9, 2016); State v. May, No. 13-0628, 2014 WL 1714460 at *3 (Iowa Ct. App. April 30, 2014). In both Wright and MacKenzie, “abandon” only appears in quotations from either the district court decision being appealed or other appellate jurisdictions; neither opinion expressly concludes that garbage placed at the curb has been “abandoned” or contends that Greenwood made any such conclusion. May similarly merely states in passing that it “agree[s] with the [district] court's conclusion [that] . . . May did not have a reasonable expectation of privacy in the abandoned garbage.” May, 2016 WL 1714460 at *3. No abandonment analysis is present in May, or any other Iowa appellate decision dealing with a warrantless search of garbage.

Abandonment was not the basis for the Greenwood decision. Greenwood determined that an expectation of

privacy in garbage placed for collection is not objectively reasonable for three reasons: that it is *possible* that the container might be disturbed and its contents revealed to the public, that it is *possible* garbage collectors might rummage through the garbage once they have it; and that garbage in closed containers is somehow exposed to the public and therefore police need not avert their eyes. Greenwood, 486 U.S. at 40–41. These justifications are markedly different from the concept of abandonment, and the State’s claim that the Greenwood decision relied on a theory of abandonment is incorrect.

II. Hahn had not abandoned his garbage when the police seized it.

Property is abandoned when an individual voluntarily and intentionally places that property “outside the realm of his control.” State v. Bumpus, 459 N.W.2d 619, 625 (Iowa 1990). “[I]ntent [to abandon] may be inferred from words, acts, and other objective facts.” Id. The circumstances of Hahn’s case

do not support a conclusion that the garbage was abandoned when the police seized it.

Even assuming the garbage can was located within arm's reach of the alley at the time the police seized the garbage bag (a claim which Hahn disputes), the can was located in his yard, days before trash collection was going to occur.

(Hearing on Supp. Motion p. 18 L. 7–10; p.18 L. 25–p. 19 L. 1; p. 34 L. 19–23). This was still within Hahn's control; at any time prior to collection he could have decided to remove the garbage from the can. Additionally, the State's theory of abandonment ignores a crucial fact: Hahn's garbage was contained in his closed garbage can, which was going to remain on his property and in his control even after the bag within was picked up by garbage collectors. No fact indicates his intent to abandon his garbage can, and the police had to search that can in order to retrieve the bag within. A finding that Hahn had abandoned his garbage, and thereby relinquished any expectation of privacy in it, necessarily

requires a conclusion that Hahn had also abandoned his garbage can. Such a finding finds no support in the facts of this case.

The State's abandonment theory fails because the police retrieved Hahn's garbage while it was located on his property and still within his control. The abandonment theory also fails because in order to retrieve the garbage, the police conducted a search of his garbage can, which no fact indicates he had abandoned. This Court should reject the claim that Hahn had abandoned his garbage prior it being seized by the police.

CONCLUSION

Contrary to the State's contention, the Greenwood decision was not based on the conclusion that individuals abandon their garbage when they place it at the curb for collection. Additionally, assuming the garbage can was at the alleyway when the police seized his garbage, the facts of this case do not indicate that Hahn had abandoned his garbage,

because it was still within his control and it was contained in his garbage can, which was to remain in his control even after the garbage was collected. This Court should find that the trash pull was a warrantless search in violation of Hahn's rights under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Iowa Constitution.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.40, and that amount has been paid in full by the Office of the Appellate Defender.

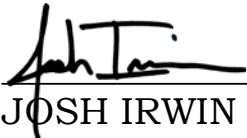
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,051 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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