109 S.Ct. 693
Supreme Court of the United States

FLORIDA, Petitioner,
v.
Michael A. RILEY.

No. 87–764.
|
Argued Oct. 3, 1988.
|
Decided Jan. 23, 1989.
|
Rehearing Denied April 3, 1989.
|
See 490 U.S. 1014, 109 S.Ct. 1659.

Synopsis
Defendant moved to suppress marijuana plants seized pursuant to execution of search warrant, which was based on aerial observations by police officer in helicopter 400 feet above defendant's greenhouse. The Circuit Court, Pasco County, W. Lowell Bray, Jr., J., granted motion to suppress, and State appealed. The District Court of Appeal, 476 So.2d 1354, reversed, and defendant appealed. The Florida Supreme Court, 511 So.2d 282, reversed and remanded, and State's petition for certiorari was granted. The Supreme Court, Justice White, held that officer's observation, with his naked eye, of interior of partially covered greenhouse in residential backyard from vantage point of helicopter circling 400 feet above did not constitute a "search" for which a warrant was required.

Reversed.

Justice O'Connor concurred in the judgment and filed an opinion.

Justice Brennan filed a dissenting opinion in which Justices Marshall and Stevens joined.

Justice Blackmun filed a dissenting opinion.

West Headnotes (1)

[1] **Searches and Seizures** Aerial surveillance

Officer's observation, with his naked eye, of interior of partially covered greenhouse in residential backyard from vantage point of helicopter circling 400 feet above did not constitute a "search" for which a warrant was required. (Per Justice White with the Chief Justice and two Justices concurring, and one Justice concurring in the judgment.) U.S.C.A. Const.Amend. 4.
225 Cases that cite this headnote

Opinion

Justice WHITE announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Justice SCALIA, and Justice KENNEDY join.

On certification to it by a lower state court, the Florida Supreme Court addressed the following question: "Whether surveillance of the interior of a partially covered greenhouse in a residential backyard from the vantage point of a helicopter located 400 feet above the greenhouse constitutes a 'search' for which a warrant is required under the Fourth Amendment and Article I, § 12 of the Florida Constitution." 511 So.2d 282 (1987). The court answered the question in the affirmative, and we granted the State's petition for certiorari challenging that conclusion. 484 U.S. 1058, 108 S.Ct. 1011, 98 L.Ed.2d 977 (1988).[1]

Respondent Riley lived in a mobile home located on five acres of rural property. A greenhouse was located 10 to 20 feet behind the mobile home. Two sides of the greenhouse were enclosed. The other two sides were not enclosed but the contents of the greenhouse were obscured from view from surrounding property by trees, shrubs, and the mobile home. The greenhouse was covered by corrugated roofing panels, some translucent and some opaque. At the time relevant to this case, two of the panels, amounting to approximately 10% of the roof area, were missing. A wire fence surrounded the mobile home and the greenhouse, and the property was posted with a "DO NOT ENTER" sign.

This case originated with an anonymous tip to the Pasco County Sheriff's office that marijuana was being grown on respondent's property. When an investigating officer discovered that he could not see the contents of the greenhouse from the road, he circled twice over respondent's property in a helicopter at the height of 400 feet. With his naked eye, he was able to see through the openings in the roof and one or more of the open sides of the greenhouse and to identify what he thought was marijuana growing in the structure. A warrant was obtained based on these observations, and the ensuing search revealed marijuana growing in the greenhouse. Respondent was charged with possession of marijuana under Florida law. The trial court granted his motion to suppress; the Florida Court of Appeals reversed but certified the case to the Florida Supreme Court, which quashed the decision of the Court of Appeals and reinstated the trial court's suppression order.

We agree with the State's submission that our decision in *California v. Ciraolo,* 476 U.S. 207, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986), controls this case. There, acting on a tip, the police inspected the back-yard of a particular house while flying in a fixed-wing aircraft at 1,000 feet. With the naked eye the officers saw what they concluded was marijuana growing in the yard. A search warrant was obtained on the strength of this airborne inspection, and marijuana plants were found. The trial court refused to

suppress this evidence, but a state appellate court held that the inspection violated the Fourth and Fourteenth Amendments to the United States Constitution, and that the warrant was therefore invalid. We in turn reversed, holding that the inspection was not a search subject to the Fourth Amendment. We recognized that the yard was within the curtilage of the house, that a fence shielded the yard from observation from the street, and that the occupant had a subjective expectation of privacy. We held, however, that such an expectation was not reasonable and not one "that society is prepared to honor." *Id.,* at 214, 106 S.Ct., at 1813. Our reasoning was that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion. " 'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.' " *Id.,* at 213, 106 S.Ct., at 1812, quoting *Katz v. United States,* 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967). As a general proposition, the police may see what may be seen "from a public vantage point where [they have] a right to be," 476 U.S., at 213, 106 S.Ct., at 1812. Thus the police, like the public, would have been free to inspect the backyard garden from the street if their view had been unobstructed. They were likewise free to inspect the yard from the vantage point of an aircraft flying in the navigable airspace as this plane was. "In an age where private and commercial flight in the public airways is routine, it is unreasonable for respondent to expect that his marijuana plants were constitutionally protected from being observed with the naked eye from an altitude of 1,000 feet. The Fourth Amendment simply does not require the police traveling in the public airways at this altitude to obtain a warrant in order to observe what is visible to the naked eye." *Id.,* at 215, 106 S.Ct., at 1813–1814.

We arrive at the same conclusion in the present case. In this case, as in *Ciraolo,* the property surveyed was within the curtilage of respondent's home. Riley no doubt intended and expected that his greenhouse would not be open to public inspection, and the precautions he took protected against ground-level observation. Because the sides and roof of his greenhouse were left partially open, however, what was growing in the greenhouse was subject to viewing from the air. Under the holding in *Ciraolo,* Riley could not reasonably have expected the contents of his greenhouse to be immune from examination by an officer seated in a fixed-wing aircraft flying in navigable airspace at an altitude of 1,000 feet or, as the Florida Supreme Court seemed to recognize, at an altitude of 500 feet, the lower limit of the navigable airspace for such an aircraft. 511 So.2d, at 288. Here, the inspection was made from a helicopter, but as is the case with fixed-wing planes, "private and commercial flight [by helicopter] in the public airways is routine" in this country, *Ciraolo, supra,* 476 U.S., at 215, 106 S.Ct., at 1813, and there is no indication that such flights are unheard of in Pasco County, Florida.[2] Riley could not reasonably have expected that his greenhouse was protected from public or official observation from a helicopter had it been flying within the navigable airspace for fixed-wing aircraft.

Nor on the facts before us, does it make a difference for Fourth Amendment purposes that the helicopter was flying at 400 feet when the officer saw what was growing in the greenhouse through the partially open roof and sides of the structure. We would have a different case if flying at that altitude had been contrary to law or regulation. But helicopters are not bound by the lower limits of the navigable airspace allowed to other aircraft.[3] Any member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet and could have observed Riley's greenhouse. The police officer did no more. This is not to say that an inspection of the curtilage of a house from an aircraft will always pass muster under the Fourth Amendment simply because the plane is within the navigable airspace specified by law. But it is of obvious importance that the helicopter in this case was *not* violating the law, and there is nothing in the record or before us to suggest that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to respondent's claim that he reasonably anticipated that his greenhouse would not be subject to ***452** observation from that altitude. Neither is there any intimation here that the helicopter interfered with respondent's normal use of the greenhouse or of other parts of the curtilage. As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, and no wind, dust, or threat of injury. In these circumstances, there was no violation of the Fourth Amendment.

The judgment of the Florida Supreme Court is accordingly reversed.

So ordered.