

# The Burger Court Opinion Writing Database

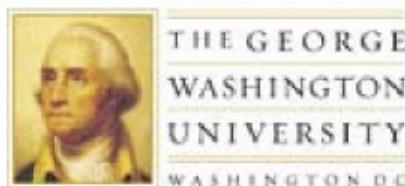
*California v. Krivda*

409 U.S. 33 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



*File*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 19, 1972

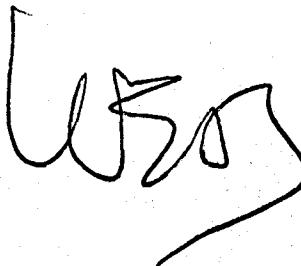
Re: 71-651 - California v. Krivda - per curiam

Dear Bill:

I can readily join your proposed per curiam if you will include somewhere in the text a statement generally as follows:

"We intimate no opinion as to the result this Court would reach under the 4th or 14th Amendments."

Regards,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

October 14, 1972

Dear Bill:

I will join your Per Curiam  
in No. 71-651 - California v. Krivda.

*WWD*  
William O. Douglas

Mr. Justice Brennan

CC: - The Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Reagan, J.

\_\_\_\_\_  
No. 71-651  
\_\_\_\_\_

Circulated: 10/11/72

Recirculated: \_\_\_\_\_

State of California, Petitioner,  
v.  
Judith Krivda and Roger T. Minor. } On Writ of Certiorari to  
} the Supreme Court of  
} California.

[October —, 1972]

**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 and 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, 96 Cal. Rptr. 62, 68, 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 Amendment 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, 80 Cal. Rptr. 663, 458 P. 2d 713 (1969), which relied specifically upon both the state and federal provisions. 5 Cal. 3d, at 367, 96 Cal. Rptr., at 69, 486 P. 2d, at 1269. Thus, as in *Mental Hygiene Dept. v. Kirchner*, 380 U. S. 194, 196-197 (1965),

7

*Please you're not*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 71-651

Circulated: \_\_\_\_\_

Recirculated: 10/13/72

State of California, Petitioner,  
v.  
Judith Krivda and Roger T. Minor.

On Writ of Certiorari to  
the Supreme Court of  
California.

[October —, 1972]

PER CURIAM.

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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, 80 Cal. Rptr. 663, 458 P. 2d 713 (1969), which relied specifically upon both the state and federal provisions. 5 Cal. 3d, at 367, 96 Cal. Rptr., at 69, 486 P. 2d, at 1269. Thus, as in *Mental Hygiene Dept. v. Kirchner*, 380 U. S.

See page 2

3rd DRAFT

*Please return  
Given to [redacted]  
for final*

16/11/72  
Mr. Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: BRENNAN, J.

Circulated: \_\_\_\_\_

No. 71-651

Recirculated: 10/19/72

State of California, Petitioner,  
v.  
Judith Krivda and Roger T. Minor.

On Writ of Certiorari to  
the Supreme Court of  
California.

[October —, 1972]

## 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 and 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, 96 Cal. Rptr. 62, 68, 486 P. 2d 1262, 1268 (1971) (*en banc*). We granted certiorari. 405 U. S. 1039.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 16, 1972

71-651 - Calif. v. Krivda

Dear Bill,

I am glad to join the Per Curiam you  
have prepared in this case.

Sincerely yours,

C. S.  
J.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 13, 1972

Re: No. 71-651 - California v. Krivda

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 16, 1972

Re: No. 71-651 - California v. Krivda and Minor

Dear Bill:

Please join me in your Per Curiam.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 16, 1972

Re: No. 71-651 - California v. Krivda

Dear Bill:

I am glad to join your proposed Per  
Curiam.

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 16, 1972

Re: No. 71-651 California v. Krivda

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 13, 1972

Re: No. 71-651 - California v. Krivda

Dear Bill:

Please join me in your Per Curiam in this case.

Sincerely,

*WBW*

Mr. Justice Brennan

Copies to Conference