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Search & Seizure

Therefore, under the Federal and New York State Constitutions a search by a private person or non-governmental entity does not violate constitutional rights. There must be a significant nexus between the private conduct and the state.

KINGS COUNTY

People v. Postall[1842]
(decided January 7, 1992)

Defendant, a United States Postal Service police officer was indicted for second degree murder. He claimed that his rights to be protected from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution[1843] and article I, section 12 of the New York State Constitution[1844] were violated when his superior, a U.S. Postal Service police inspector, searched his locker without his consent, a search warrant, or reasonable suspicion to conduct the search.[1845] In a decision on a motion to suppress, the court held that the evidence obtained from the locker must be suppressed because the search was unreasonable despite a Postal Service regulation permitting Postal inspectors to search employees' lockers without their consent.[1846] Upon examination of the facts, the court determined that the People did not establish a reasonable nexus between the incident under investigation and the locker search that produced the evidence in question.[1847]

1842. 153 Misc. 2d 167, 580 N.Y.S.2d 975 (Sup. Ct. Kings County, 1992).

1843. U.S. CONST. amend. IV, provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ." *Id.*

1844. N.Y. CONST. art. I, § 12, provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ." *Id.*

1845. *Postall*, 153 Misc. 2d at 169-70, 580 N.Y.S.2d at 977.

1846. *Id.* at 170, 580 N.Y.S.2d at 977.

1847. *Id.* at 168-70, 580 N.Y.S.2d at 976-77.

Postal Police Officer Ashworth responded to shots he heard from the street outside a post office in downtown Brooklyn. Upon exiting the post office, he discovered a man lying in the street and a uniformed colleague holding a gun.[1848] The defendant, John Postall, told Ashworth that the man lying on the ground had attempted to grab a woman's purse and then grabbed him and threatened to kill him.[1849] In a dazed state, Postall told Ashworth that he had shot the man later identified as Robert Brown.[1850] At this time, Postal Inspector Biegelman arrived and inquired as to what had transpired. Again, Postall said he had shot Brown and explained the events a second time. But when asked whether Brown had a weapon, Postall did not answer. No weapon was found on or near the victim.[1851]

The woman Postall said he was protecting had left the scene, but Biegelman and Ashworth were able to catch up with her. She confirmed the statements that Postall had made and identified herself as Michelle Green. Postall was sent to a hospital because of the mental trauma caused by the shooting.[1852]

One hour after the incident, while the defendant was still in the hospital, Inspector Biegelman and other postal inspectors broke into Postall's locker.[1853] The inspectors discovered three photographs of Michelle Green, a letter addressed to her, a medical prescription bottle with her name on it, and her Postal Service identification card.[1854] This evidence was suppressed by the court because the People failed to prove authority to conduct the search of Postall's locker.[1855]

Inspector Biegelman testified during the suppression hearing that inspectors have the authority to open the lockers of

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1848. *Id.* at 168, 580 N.Y.S.2d at 976.
1849. *Id.* at 168-69, 580 N.Y.S.2d at 976.
1850. *Id.* at 169, 580 N.Y.S.2d at 976.
1851. *Id.*
1852. *Id.*
1853. *Id.* at 169, 580 N.Y.S.2d at 977.
1854. *Id.*
1855. *Id.* at 170, 580 N.Y.S.2d at 977.

employees pursuant to Postal Service regulations.[1856] However, the inspector told the court that he did not know what he was looking for while searching the defendant's locker.[1857] The court held that the administrative regulation cannot supersede the Fourth Amendment and Article I, section 12 of the New York State Constitution which protect citizens from unreasonable searches by the government.[1858] The court held that the fact that the defendant did not respond to some questions the inspector posed after the shooting, did not constitute reasonable suspicion justifying a warrantless, consentless search of the defendant's locker.[1859]

The court analogized *Postall* to the United State Supreme Court's decision in *O'Connor v. Ortega.*[1860] In *O'Connor,* the Court held that a doctor employed by a public hospital had a reasonable expectation of privacy in his desk and file cabinet and, while no warrant or probable cause was needed to search objects, the search still had to be justified by reasonableness which must be evaluated on a case by case basis.[1861] The plurality opinion stated, a search of a public employee's subjectively private spaces must be "'reasonably related to the circumstances which justified the interference in the first place . . . .'"[1862] Expanding on the issue, the *Postall* court cited *United States v. Blok*[1863] which held that a lawful warrantless, consentless search necessitates a connection between the employee's employment and the purpose of the search.[1864] The court thus concluded that the search of a desk which was assigned exclusively to a government employee where the search was intended to uncover personal effects not necessar-

1856. *Id.*; *see* Employee Relations Manual of the United States Postal Service, § 612.242. "Employee lockers are subject to inspection by authorized personnel. Provisions governing locker inspections are provided in applicable collective bargaining agreements." *Id.*

1857. *Postal*, 153 Misc. 2d at 170, 580 N.Y.S.2d at 977.

1858. *Id.* at 171, 580 N.Y.S.2d at 977-78.

1859. *Id.* at 172, 580 N.Y.S.2d at 978.

1860. 480 U.S. 709 (1987).

1861. *Id.* at 725.

1862. *Id.* at 726 (citation omitted).

1863. 188 F.2d 1019 (D.C. Cir. 1951).

1864. *Id.* at 1021.

ily related to her job performance was unreasonable and, therefore, illegal.[1865] The *Blok* court did, however, state that if the search was intended to recover government owned property or items relating directly to the defendant's employment, the search by her superiors would have been reasonable.[1866]

Following federal precedent, the *Postall* court deemed the defendant to have an expectation of privacy in the locker assigned to him for his exclusive use.[1867] As in *Blok*, the *Postall* court found that the inspector searched the defendant's locker despite the fact that there was no connection between the shooting, a function of his employment, and the contents of the locker, his private belongings.[1868] Because there was no clear nexus between the incident and the search, the search failed to rise to the level of reasonableness the Fourth Amendment requires.[1869]

Although the question of legality of warrantless searches of a government employee's locker is an issue of first impression in New York courts, the *Postall* court looked to other areas where the New York Court of Appeals has ruled that the rights of public employees are free from unreasonable searches. The court discussed *Patchogue-Medford Congress of Teachers v. Board of Education of the Patchogue-Medford Union Free School District*[1870] which held that conducting mandatory drug testing of probationary teachers without individualized reasonable suspicion constitutes an unreasonable search.[1871] In comparison, in *Caruso v. Ward*,[1872] the court of appeals held that a random drug testing scheme which required each member of an elite police corps to be tested periodically without prior warning was not an unreasonable search.[1873] Because membership in the corps was volun-

1865. *Id.*
1866. *Id.*
1867. People v. Postall, 153 Misc. 2d at 170, 580 N.Y.S.2d at 977.
1868. *Id.*
1869. *Id.*
1870. 70 N.Y.2d 57, 510 N.E.2d 325, 517 N.Y.S.2d 456 (1987).
1871. *Id.* at 69-70, 510 N.E.2d at 330-31, 517 N.Y.S.2d at 462.
1872. 72 N.Y.2d 432, 530 N.E.2d 850, 534 N.Y.S.2d 142 (1988).
1873. *Id.* at 442, 530 N.E.2d at 855, 534 N.Y.S.2d at 147.

tary[1874] and the great importance of a drug free police force was viewed as crucial to society's well being, the plan under which incoming members of the corps signed documents agreeing to be randomly tested, was upheld as reasonable under the Fourth Amendment and the New York State Constitution.[1875] Quoting from *O'Connor v. Ortega*, the *Caruso* court stated: "a search by a public employer may be justified at its inception 'when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose.'"[1876]

The *Postall* court looked to the United States Postal Service Inspection Service Manual for guidance as to what the proper bounds of employee locker searches might be.[1877] The manual provides that "in a criminal investigation an inspector may search an employee's postal locker for evidence of fruits of a crime or contraband. Searches of this type have been upheld when limited to property owned by the government."[1878] The manual continues and cites cases in which public employees were reasonably suspected of wrongdoing in connection with their government employment and, hence, the resulting searches were not violations of their reasonable expectations of privacy.[1879]

1874. *Id.* at 437, 530 N.E.2d at 852, 534 N.Y.S.2d at 137.

1875. *Id.* at 442, 530 N.E.2d at 855, 534 N.Y.S.2d at 147.

1876. *Id.* at 437, 530 N.E.2d at 852, 534 N.Y.S.2d at 144 (quoting O'Connor v. Ortega 480 U.S. 709, 726 (1987)).

1877. *Postall*, 153 Misc. 2d at 172, 580 N.Y.S.2d at 978.

1878. *Id.* at 172-73, 580 N.Y.S.2d at 978-79.

1879. American Postal Workers Union, Columbus Area Local AFL-CIO v. United States Postal Serv., 871 F.2d 556, 560-61 (6th Cir. 1989) (postal worker did not have reasonable expectation of privacy when he signed a document specifically giving his permission for warrantless searches to be conducted of his locker so long as a union steward was present); United States v. Bunkers, 521 F.2d 1217, 1220-21 (9th Cir.) (warrantless search of postal worker's locker was constitutionally valid because there was reasonable suspicion that employee was involved in postal crime and search was intended to uncover fruits of such crime), *cert. denied*, 423 U.S. 989 (1975); United States v. Collins, 349 F.2d 863, 867-68 (2d Cir. 1965) (Postal Service worker's jacket was reasonably searched while hanging in a common area when worker was suspected of stealing mail), *cert. denied*, 383 U.S. 960

The *Postall* court concluded that prior to the search of defendant's locker there was no reasonable suspicion on the part of the postal inspector that such a search would uncover evidence of a crime connected to the defendant's employment.[1880] Whether such evidence is subsequently uncovered by the search cannot be a factor in assessing the legality of the search because this evaluation must be made at the inception of the search and not at its culmination.[1881]

Finally, the *Postall* court disagreed with the People's argument that the defendant consented to the search of his locker when he accepted the terms of the Employee Relations Manual.[1882] Calling the language of the regulation ambiguous, the court said, "'Subject to search' can mean 'always', or it can mean 'under appropriate circumstances.'"[1883] The court refused to recognize the manual's admonition that employees are subject to warrantless locker searches as equal to prospective consent to a search or a waiver of the defendant's right to be protected from unreasonable searches as the Fourth Amendment and the New York State Constitution provide.[1884]

Hence, the Supreme Court, Kings County ruled that warrantless searches of defendant's assigned locker was not justified unless his supervisors had reason to suspect that such a search would produce evidence that defendant had committed a crime or somehow misbehaved in connection to his employment. Because the court held that no such reasonable suspicion was present prior

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(1966); United States v. Donato, 269 F. Supp. 921, 923-24 (E.D. Pa) (in process of legal search of all mint employees' lockers security guards found evidence of embezzlement in defendant's locker and search was deemed constitutionally valid and evidence admissible), *aff'd*, 379 F.2d 288 (3d Cir. 1967).

1880. *Postall*, 153 Misc. 2d at 170, 580 N.Y.S.2d at 977.

1881. *See, e.g.*, O'Connor v. Ortega, 480 U.S. 707, 726 (1987) (holding that a warrantless search conducted by an employer of an area to which a government employee has a reasonable expectation of privacy may be constitutional if the employer was justified at inception of the search by reasonable grounds to suspect work-related misconduct).

1882. *Postall*, 153 Misc. 2d at 174, 580 N.Y.S.2d at 979-80.

1883. *Id.* at 174, 580 N.Y.S.2d at 980.

1884. *Id.* at 174-75, 580 N.Y.S.2d at 979-80.

to the search in this case, the fruits of the warrantless search of defendant's locker were suppressed.