

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

United States of America

v.

John H. O'Reilly

Criminal No. 91-678
1992 U.S. Dist. Lexis 8187
7 I.E.R. Cases (BNA) 665

March 13, 1992

ORDER

And now, this 13th day of March, 1992, it is hereby ordered that defendant's motion to suppress is denied.

In conjunction with this order, I make the following findings:

Defendant seeks to suppress video recordings that were taken of him while he was working as a postal worker with the United States Postal Service.

The Postal Service originally set up a video camera for general observation of the work area. The camera was visible to all employees. The defendant does not contest the Postal Service's use of the camera in this function.

When the camera was in the general observation mode, the Postal Service was acting as an employer.

At some point, however, there were suspicions about the defendant and the camera was focused solely on him. Once the camera was focused, the Postal Service took on a law enforcement role in addition to its employer role. This change will not occur for every employer, but it did here because postal inspectors investigate crime and perform other law enforcement duties. In this case, focusing the camera was part of a criminal investigation.

The defendant claims his Fourth Amendment rights were violated when the camera was focused solely on him.

In *Mancusi v. DeForte*, 88 S. Ct. 2120 (1968), the Supreme Court held an employee enjoys Fourth Amendment protection in the workplace against searches

by law enforcement officials. More recently, *O'Connor v. Ortega*, 107 S. Ct. 1492 (1987), reiterated this principle in a case where an employer made the search. N. 1

Since the Fourth Amendment applies here, the question is whether Mr. O'Reilly had a legitimate expectation of privacy with respect to the focused camera.

Mr. O'Reilly knew the camera was performing general surveillance of his work area, and he knew the camera in its general mode would record his activity. As a result, focusing the camera had no effect on his reasonable expectation of privacy because the incremental change simply created more film of him. It did not alter the fact that he knew he was under observation.

Mr. O'Reilly did not have a legitimate expectation of privacy with respect to the focused camera, and therefore the Government was not obligated to obtain a search warrant before focusing the camera on Mr. O'Reilly.

Even if Mr. O'Reilly objected to the camera generally, and not just the focused surveillance, his motion to suppress would not prevail. First, the cases that deal with workplace searches distinguish between places employees intend to keep private and places to which many people have access. Under this analysis, the Third Circuit suppressed evidence obtained during a search of a police officer's locker, see *United States v. Speights*, 557 F.2d 362, 364 (3d Cir. 1977), and the Ninth Circuit held an employee had a reasonable expectation of privacy in his locked office, locked desk, and locked credenza. See *Schowengerdt v. General Dynamics Corp.*, 823 F.2d 1328, 1335 (9th Cir. 1987). By contrast, at least one court allowed video surveillance of an employee in his office, see *United States v. Humphrey*, 456 F. Supp. 51, 60 (E.D. Va. 1978), *aff'd* 629 F.2d 904 (4th Cir. 1980).

This camera only surveyed open work space, and therefore no warrant was necessary.

Second, if Mr. O'Reilly objected to the general observation, he would no longer be objecting to a search by law enforcement officials. Rather, he would be objecting to a search by an employer. At least a plurality of the Supreme Court has indicated that employer searches are subject to more lenient

Fourth Amendment review than law enforcement searches. See *O'Connor v. Ortega*, 107 S. Ct. 1492 (1987). Since his motion fails under the stricter review, it would necessarily fail under a less stringent analysis.

Notes

1. 1 See also *Oliver v. United States*, 104 S. Ct. 1735, 1741 n.8 (1984) ("The Fourth Amendment's protection of offices and commercial buildings, in which there may be legitimate expectations of privacy, is also based upon societal expectations that have deep roots in the history of the Amendment.").

By the Court

J. William Ditter