104 S.Ct. 1652
Supreme Court of the United States

UNITED STATES, Petitioner
v.
Bradley Thomas JACOBSEN and Donna Marie Jacobsen.

No. 82-1167.
|
Argued Dec. 7, 1983.
|
Decided April 2, 1984.

**Synopsis**
Defendants were convicted in the United States District Court for the District of Minnesota of possession of an illegal substance with intent to distribute, and they appealed. The Court of Appeals for the Eighth Circuit, 683 F.2d 296, reversed, and petition was filed for certiorari. The Supreme Court, Justice Stevens, held that: (1) removal by federal agents, who had been informed by employees of a private freight carrier that they observed a white powdery substance in the innermost of a series of four plastic bags that had been concealed in a tube inside a damaged package, of the tube from the box, the plastic bags from the tube and a trace of powder from the innermost bag infringed no legitimate expectation of privacy and therefore did not constitute a "search" within meaning of Fourth Amendment and, while agents' assertion of dominion and control over the package and its contents did constitute a "seizure," that warrantless seizure was not unreasonable, and (2) federal agents were not required to have a warrant before testing small quantity of a powder to determine whether it was cocaine.

Reversed.

Justice White filed separate opinions concurring in part and concurring in the judgment.

Justice Brennan filed dissenting opinion in which Justice Marshall joined.

****1654 *109** *Syllabus*[*]

During their examination of a damaged package, consisting of a cardboard box wrapped in brown paper, the employees of a private freight carrier observed a white powdery substance in the innermost of a series of four plastic bags that had been concealed in a tube inside the package. The employees then notified the Drug Enforcement Administration (DEA), replaced the plastic bags in the tube, and put the tube back into the box. When a DEA agent arrived, he removed the tube from the box and the plastic bags from the tube, saw the white powder, opened the bags, removed a trace of the powder, subjected it to a field chemical test, and determined it was cocaine. Subsequently, a warrant was obtained to search the place to which the package was addressed, the warrant was executed, and correspondents were arrested. After respondents were indicted for possessing an illegal substance with intent to distribute, their motion to suppress the evidence on the ground that the warrant was the product of an illegal search and seizure was denied, and they were tried and convicted. The Court of Appeals reversed, holding that the validity of the warrant depended on the validity of the warrantless test of the white powder, that the testing constituted a significant expansion of the earlier private search, and that a warrant was required.

*Held:* The Fourth Amendment did not require the DEA agent to obtain a warrant before testing the white powder. Pp. 1656-1663.

(a) The fact that employees of the private carrier independently opened the package and made an examination that might have been impermissible for a Government agent cannot render unreasonable otherwise reasonable official conduct. Whether those employees' invasions of respondents' package were accidental or deliberate or were reasonable or unreasonable, they, because of their private character, did not violate the Fourth Amendment. The additional invasions of respondents' privacy by the DEA agent must be tested by the degree to which they exceeded the scope of the private search. Pp. 1656-1659.

(b) The DEA agent's removal of the plastic bags from the tube and his visual inspection of their contents enabled him to learn nothing that had not previously been learned during the private search. It infringed no legitimate expectation of privacy and hence was not a "search" within the meaning of the Fourth Amendment. Although the agent's assertion of dominion and control over the package and its contents constituted a ***110** "seizure," the seizure was reasonable since it was apparent that the tube and plastic bags contained contraband and little else. In light of what the agent already knew about the contents of the package, it was as if the contents were in plain view. It is constitutionally reasonable for law enforcement

officials to seize "effects" that cannot support a justifiable expectation of privacy without a warrant based on probable cause to believe they contain contraband. Pp. 1659-1661.

(c) The DEA agent's field test, although exceeding the scope of the private search, was not an unlawful "search" or "seizure" within the meaning of the Fourth Amendment. Governmental conduct that can reveal whether a substance is cocaine, and no other arguably "private" fact, compromises no legitimate privacy interest. ****1655** *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). The destruction of the white powder during the course of the field test was reasonable. The law enforcement interests justifying the procedure were substantial, whereas, because only a trace amount of material was involved and the property had already been lawfully detained, the warrantless "seizure" could have only a *de minimis* impact on any protected property interest. Under these circumstances, the safeguards of a warrant would only minimally advance Fourth Amendment interests. Pp. 1661-1663.

683 F.2d 296 (CA8 1982), reversed.

[redacted]

**Opinion**

***111** Justice STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

The relevant facts are not in dispute. Early in the morning of May 1, 1981, a supervisor at the Minneapolis-St. Paul airport Federal Express office asked the office manager to look at a package that had been damaged and torn by a forklift. They then opened the package in order to examine its contents pursuant to a written company policy regarding insurance claims.

The container was an ordinary cardboard box wrapped in brown paper. Inside the box five or six pieces of crumpled newspaper covered a tube about 10 inches long; the tube was made of the silver tape used on basement ducts. The supervisor and office manager cut open the tube, and found a series of four zip-lock plastic bags, the outermost enclosing the other three and the innermost containing about six and a half ounces of white powder. When they observed the white powder in the innermost bag, they notified the Drug Enforcement Administration. Before the first DEA agent arrived, they replaced the plastic bags in the tube and put the tube and the newspapers back into the box.

When the first federal agent arrived, the box, still wrapped in brown paper, but with a hole punched in its side and the top open, was placed on a desk. The agent saw that one end of the tube had been slit open; he removed the four plastic bags from the tube and saw the white powder. He then opened each of the four bags and removed a trace of the ***112** white substance with a knife blade. A field test made on the spot identified the substance as cocaine.[1]

In due course, other agents arrived, made a second field test, rewrapped the package, obtained a warrant to search the place to which it was addressed, executed the warrant, and arrested respondents. After they were indicted for the crime of possessing an illegal substance with intent to distribute, their motion to suppress the evidence on the ground that the warrant was the product of an illegal search and seizure was denied; they were tried and convicted, and appealed. [redacted]

I

The first clause of the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...." This text protects two types of expectations, one involving "searches," the other "seizures." A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.[4] A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interests in that property.[5] This Court has also consistently construed this protection as proscribing only governmental action; it is wholly inapplicable "to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Walter v.* ***114** *United States*, 447 U.S. 649, 662, 100 S.Ct. 2395, 2404, 65 L.Ed.2d 410 (1980) (BLACKMUN, J., dissenting).[6]

When the wrapped parcel involved in this case was delivered to the ****1657** private freight carrier, it was unquestionably an "effect" within the meaning of the Fourth Amendment. Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable.[7] Even when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.[8] Such a warrantless search could not be characterized as reasonable simply because, after the official invasion of privacy occurred, contraband is discovered.[9] Conversely, in this case the fact that agents of the private carrier independently opened the package and made an examination that might have been impermissible for a government agent ***115** cannot render otherwise reasonable official conduct unreasonable. The reasonableness of an official invasion of the citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred.

The initial invasions of respondents' package were occasioned by private action. Those invasions revealed that the package contained only one significant item, a suspicious looking tape tube. Cutting the end of the tube and extracting its contents revealed a suspicious looking plastic bag of white powder. Whether those invasions were accidental or deliberate,[10] and whether they were reasonable or unreasonable, they did not violate the Fourth Amendment because of their private character.

The additional invasions of respondents' privacy by the government agent must be tested by the degree to which they exceeded the scope of the private search. That standard was adopted by a majority of the Court in *Walter v. United States*, 447 U.S. 649, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980). In *Walter* a private party had opened a misdirected carton, found rolls of motion picture films that appeared to be contraband, and turned the carton over to the Federal Bureau of Investigation. Later, without obtaining a warrant, FBI agents obtained a projector and viewed the films. While there was no single opinion of the Court, a majority did agree on the appropriate analysis of a governmental search which follows on the heels of a private one. Two Justices took the position:

> "If a properly authorized official search is limited by the particular terms of its authorization, at least the same kind of strict limitation must be applied ****1658** to any official ***116** use of a private party's invasion of another person's privacy. Even though some circumstances-for example, if the results of the private search are in plain view when materials are turned over to the Government-may justify the Government's reexamination of the materials, surely the Government may not exceed the scope of the private search unless it has the right to make an independent search. In these cases, the private party had not actually viewed the films. Prior to the Government's screening one could only draw inferences about what was on the films. The projection of the films was a significant expansion of the search that had been conducted previously by a private party and therefore must be characterized as a separate search." *Id.*, at 657, 100 S.Ct., at 2401 (opinion of STEVENS, J., joined by Stewart, J.) (footnote omitted).[11]

Four additional Justices, while disagreeing with this characterization of the scope of the private search, were also of the view that the legality of the governmental search must be tested by the scope of the antecedent private search.

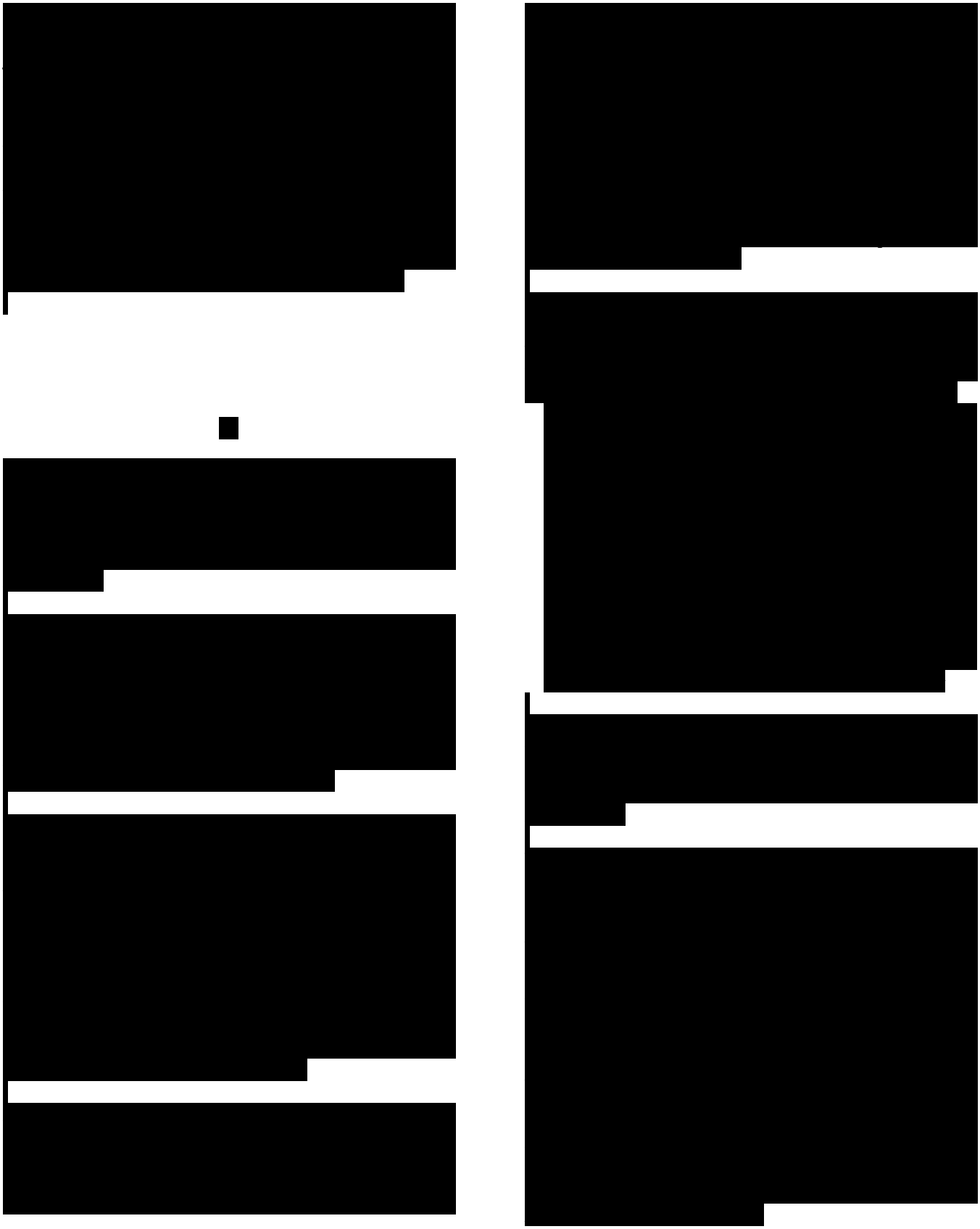
> "Under these circumstances, since the L'Eggs employees so fully ascertained the nature of the films before contacting the authorities, we find that the FBI's subsequent viewing of the movies on a projector did

not 'change the nature of the search' and was not an additional search subject to the warrant requirement." *Id.*, at 663-664, 100 S.Ct., at 2405-2406 (BLACKMUN, J., dissenting, joined by BURGER, C.J., POWELL and REHNQUIST, JJ.) (footnote omitted) (quoting ***117** *United States v. Sanders*, 592 F.2d 788, 793-794 (CA5 1979), rev'd *sub nom. Walter v. United States*, 447 U.S. 649, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980)).[12]

This standard follows from the analysis applicable when private parties reveal other kinds of private information to the authorities. It is well-settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information. Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information: "This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in a third party will not be betrayed." *United States v. Miller*, 425 U.S. 435, 443, 96 S.Ct. 1619, 1624, 48 L.Ed.2d 71 (1976).[13] The Fourth Amendment is implicated only if the authorities use information with respect ****1659** to which the expectation of privacy has not already been frustrated. In such a case the authorities have not relied on what is in effect a private ***118** search, and therefore presumptively violate the Fourth Amendment if they act without a warrant.[14]

In this case, the federal agents' invasions of respondents' privacy involved two steps: first, they removed the tube from the box, the plastic bags from the tube and a trace of powder from the innermost bag; second, they made a chemical test of the powder. Although we ultimately conclude that both actions were reasonable for essentially the same reason, it is useful to discuss them separately.



The judgment of the Court of Appeals is

*Reversed*.

**End of Document**