UNITED STATES v. BELL

294 F. Supp. 1314 (1968) | Cited 0 times | N.D. Illinois | December 13, 1968

MEMORANDUM OPINION

Motions of Defendant to Suppress Confession and Physical Evidence

This is a criminal action under 18 U.S.C. § 1709 chargingdefendant, Clarence W. Bell, an employee of the Post Office,with theft of mail matter. Defendant was arrested by postalinspectors at the Main United States Post Office Building,Chicago, Illinois, on Friday, August 9, 1968. At the time ofthe arrest, defendant was interrogated by the postalinspectors, apparently made incriminating statements and eitherturned over or had taken from his person various articlesincluding some allegedly stolen letters. Defendant has moved tosuppress said confession and evidence.

The Government, in its brief in opposition to defendant'smotions, has stated that defendant's detention at the PostOffice Building extended from approximately 5:40 PM until 8:30PM on the same day when defendant was taken to Chicago PoliceHeadquarters at 11th Street and State Street for furtherdetention. Defendant was arraigned before the United StatesCommissioner at the United States Courthouse, Chicago,Illinois, on the next morning, August 10, 1968, atapproximately 11 AM. Defendant has not challenged theGovernment's calendar of events and we will accept it for thepurpose of ruling on defendant's motions.

Defendant's position is that postal inspectors do not havethe authority to make arrests and, consequently, that theinspectors' search and interrogation of defendant were illegaland the evidence and confession unconstitutionally obtainedfrom defendant. A postal inspector's duties andresponsibilities are stated in 39 U.S.C. § 3523(a)(2)(C), (K):

"(C) Investigates violation of postal laws, including, but not limited to, armed robbery, mailing of bombs, burglary, theft of mail, embezzlements, obscene literature and pictures, and mail fraud.

(K) In any criminal investigation, develops evidence, locates witnesses and suspects; apprehends and effects arrest of postal offenders, presents facts to United States attorney, and collaborates as required with Federal and State prosecutors in presentation before United States Commissioner, grand jury, and trial court." (Emphasis added.)

Defendant relies heavily on Alexander v. United States,390 F.2d 101 (5th Cir. 1968). In that case, a conviction for mailtheft was reversed when the court held, among other things,that federal law, 39 U.S.C. § 3523(a)(2)(K), did not grantpostal inspectors the authority to make arrests and

thatdefendant's arrest was also improper under state (Texas) law.

Without elaboration, a couple of cases have stated thatsubsection (K) authorizes a postal inspector to make anarrest. In Kelley v. Dunne, 344 F.2d 129 (1st Cir. 1965), itwas said:

"Under 39 U.S.C. § 3523(a)(2)(C) and (K) he [a postal inspector] had authority to investigate, develop evidence, locate witnesses, and make arrest." 344 F.2d at 130.

Similarly, in Neggo v. United States, 390 F.2d 609 (9th Cir.1968) the court considered the contentions of a convicted mailembezzler and said:

"We find that the arrest was lawful. There was probable cause. We hold that postal inspectors were authorized to make the arrest as private citizens under California Penal Code Section 837, and under 39 U.S.C. § 3523(a)(2)(K). The latter section defines duties of a postal inspector." 390 F.2d at 610.

The Alexander decision, upon which defendant heavily relies,discussed theKelley statement unfavorably. The Fifth Circuit court pointedout that arresting authority was not the central issue inKelley. Moreover, it characterized the statement quoted aboveas "an occasional iteration," "unanalytical," and therefore"inconclusive" and of "little * * * significance." 390 F.2d at105. The Fifth Circuit did not, of course, mention the Neggodecision which, while decided a month before Alexander, wasreported a short time afterwards. Referring to Kelley, theFifth Circuit did say that it had found no court to be "souncritically docile when the point has been in issue." Id. Yet,in Neggo the authority to arrest was the only issue andthe court unequivocally, if not elaborately, held that a postalinspector has that authority under federal law.

Thus, the First and Ninth Circuits have somewhat easilyreached the conclusion that 39 U.S.C. § 3523(a)(2)(K) empowersa postal inspector to make arrests while the Fifth Circuitholds otherwise. We would agree with the Fifth Circuit thatthere was no real analysis of the relevant statute in Kelleyor, for that matter in Neggo. Yet we must disagree with theFifth Circuit's conclusion that such lack of analysis precludesa meaningful conclusion as to the validity of a postalinspector's arrest power. That there has been no realexamination of this law may only indicate that there was and isno real need for such an exercise. In light of the split ofopinion among the circuits, however, it seems best for us tomake explicit our understanding of this law.

The Alexander decision states that "39 U.S.C. § 3523(a)(2)(C)and (K) cannot justify arrests without warrants by postalinspectors." 390 F.2d at 104. Essentially, the Fifth Circuitsuggests that the sections were enacted as part of legislationdesigned to increase the compensation of postal employees andthat the legislation merely described and classified postalduties, but did not create new authority for employees. Id. Thecourt reads 39 U.S.C. § 903, which permits the PostmasterGeneral to authorize a postal inspector to search mailablematter transported illegally, as "clearly indicating thatCongress did not intend to vest postal inspectors witharresting powers." Id.

The second line of thought presented by the Fifth Circuit isthat the "authorizing" language of § 3523(a)(2)(K) is "weak andambiguous," unlike other arrest statutes which explicitly statethat certain personnel of the Federal Bureau of Investigationand United States marshalls and their deputies may, among otherthings, "make arrests without warrants." See 18 U.S.C. § 3052,3053. After suggesting that it would be ironic to believe thatCongress restricted the F.B.I. while unleashing postalinspectors, the Fifth Circuit proclaimed that the "onlyplausible explanation of Section 3523" is that the words do notgive arrest authority to a postal inspector, but merely allowhim to furnish the predicate for others who make the arrest,aiding them in the "arresting process." 390 F.2d at 105.

Most respectfully, we must question the logic and semanticsof such an approach. If, as the Fifth Circuit seems to grant,postal inspectors have certain powers with respect to thearresting process, from where are these powers derived?Apparently from Section 3523. Yet, this implies that Section3523 is not merely a descriptive or classification statute,but an authorizing statute. Accepting, then, that postalinspectors have the power to act and to apprehend and effectthe arrest of postal offenders, it becomes necessary to definethe scope of that power.

To our minds, a common sense reading of the power toapprehend a postal offender means the power to make an arrestof a postal offender. To apprehend is to take hold of, to"take or seize (a person) by criminal process; to arrest; as,to apprehend a thief." Webster's New International Dictionaryof the English Language (2d Ed. 1953). Thus, the commonunderstanding of thepower to apprehend someone, at the least, gives rise toanother plausible interpretation of Section 3523. Happily,there is a consistency between ordinary usage and legalwriting.

"`Apprehension' is defined as the `seizure, taking, or arrest of a person on a criminal charge.' The term `apprehension' is applied exclusively to criminal cases and `arrest' to both civil and criminal cases. Black's Law Dictionary, 4th edition." People of the State of Colorado v. Maxwell, 125 F. Supp. 18, 22 (D.Col. 1954).

See, e.g., cases collected in 3A Words and Phrases for similarjudicial constructions. From this we can conclude that it isnot only plausible but highly probable that the power toapprehend a postal offender is the power to arrest him.

An analysis of the power to effect arrests reinforces thisconclusion. To effect a particular result is to bring to passor accomplish that result. Webster's New InternationalDictionary of the English Language (2d Ed. 1953). Standingalone, the power to effect arrest would not necessarily implythe power to make an arrest. However, section 3523(a)(2)(K)provides that a postal inspector may apprehend and effect thearrest of postal offender. Linked together in the same clause,we gather that Congress meant that a postal inspector couldeffect the arrest of a suspect by apprehending, that is,arresting him. Defendant's case, United States v. Helbock,76 F. Supp. 985, 986 (D.Ore. 1948) is not controlling for thatdecision preceded enactment of 39 U.S.C. § 3523.

We share the concern of the Fifth Circuit that the arrestingauthority should not be vested by inference. But see, UnitedStates v. Jones, 204 F.2d 745, 754 (7th Cir. 1953). However,we do not think that the statute is as oblique as that Circuitwould have us believe. Moreover, we know of no principle oflaw of statutory construction which requires laws with similarpurposes to be cast in a linguistic mold. We venture to saythat Congressional legislative draftmen are intelligent,flexible, and creative enough to devise a variety of phraseswith which to express a particular Congressional intent.

When other courts avoided the question of a postalinspector's power under federal law to make an arrest, theyfound it necessary to examine the power of a private citizento arrest. See, e.g., Wion v. United States, 325 F.2d 420, 423(10th Cir. 1963), cert. denied, 377 U.S. 946, 84 S.Ct. 1354,12 L.Ed.2d 309 (1964); Ward v. United States, 316 F.2d 113,118 (9th Cir. 1963), cert. denied, 375 U.S. 852, 84 S.Ct. 132,11 L.Ed.2d 89 (1963). Our discussion and holding under39 U.S.C. § 3523 makes a discussion of the Illinois arrestprovisions, 38 I.R.S. § 107-3 unnecessary and improper.

Assuming Illinois law to be applicable, defendant hadcontended that the postal inspectors failed to bring thedefendant before the "nearest and most accessible judge.""without unnecessary delay," 38 I.R.S. § 109-1(a), and,consequently, that the confession and evidence which wereobtained must be suppressed. People v. Harper, 36 Ill.2d 398,223 N.W.2d 841 (1967). Though state law is not applicable, thefederal rules of criminal procedure provide a similar standard:

"(a) Appearance before the Commissioner. An officer making an arrest under a warrant issued upon a complaint of any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States * * *" Rule 5(a), Fed.R.Crim.P.

What constitutes unnecessary delay is highly dependent onthe facts in each case. Gray v. United States, 394 F.2d 96,100 (9th Cir. 1968). Courts have rendered inconsistent rulingseven in relatively similar situations. Inthe instant case, defendant was arrested at the Post Officeafter the regular working hours of the Commissioner. He wasinterrogated for approximately three hours and then taken toa local police station where he was held until the nextmorning when he was arraigned before the Commissioner. InUnited States v. Taylor, 374 F.2d 753 (7th Cir. 1967), Chicagopolice arrested Taylor at 2:30 PM. Federal agents took custodyat 5:00 PM and informed Taylor of his rights. Taylor wasinterrogated at a Secret Service office where at approximately7:30 PM, he signed a written confession. He was taken beforethe Commissioner on the following day. 374 F.2d at 755. Thecourt held:

"* * * the unavailability of a Commissioner until the next morning may explain the necessity for delay, and failure to make presentment for that reason does not violate Rule 5(a)." Id. at 757.

United States v. Price, 345 F.2d 256, 262 (2d Cir. 1965),cert. denied, 382 U.S. 949, 86 S.Ct. 404, 15

L.Ed.2d 357(1966). Neither does the three hour period of questioning bypostal inspectors seem improper. See, e.g., United States v.Taylor, 374 F.2d 753 (7th Cir. 1967); Morales-Gomez v. UnitedStates, 371 F.2d 432 (10th Cir. 1967); United States v.Swartz, 357 F.2d 322 (4th Cir. 1966); Mohler v. United States,312 F.2d 228 (7th Cir. 1963).

Defendant has not alleged that the arresting officers failedto warn him of his constitutional rights or that theythreatened or abused him. There is no evidence at this stagein the proceedings which indicates that defendant's confessionwas involuntary.

Under these circumstances, it would be improper for us tosustain defendant's motions to suppress a confession andphysical evidence. Cf. United States v. Taylor, 374 F.2d 753(7th Cir. 1967); Evans v. United States, 325 F.2d 596, 603(8th Cir. 1963); Gardiner v. United States, 116 U.S.App.D.C.270, 323 F.2d 275 (1963).

The motions of defendant are denied.