

People v. Alvarez et al.

(2014) 229 Cal.App.4th 761

Issue

Under what circumstances may criminal charges against a defendant be dismissed if officers failed to investigate whether the crime had been captured on a nearby surveillance camera?

Facts

At about 1:30 A.M., five men approached Jose C. in the parking lot of a bar in a high-crime high-gang area in downtown Fullerton. One of the men, Jose Renteria, grabbed a gold chain from Jose's neck and the other men "made threatening statements," such as asking Jose what he was going to do about it. Jose promptly reported the crime and Fullerton officers quickly detained a group of five suspects nearby. Jose identified Renteria as the robber and two others, Daniel Alvarez and Michael Cisneros, as the ones who threatened him. The stolen chain was recovered a short distance from the men, and all three were arrested for robbery.

The central legal issue in the case pertains to what the officers did—or did not do—after arresting the men. In a motion to dismiss the charges, Cisneros and Alvarez contended that, shortly before Jose identified them as accomplices, an officer had a "lengthy" conversation with him and "encouraged" him to identify Cisneros and Alvarez as the two accomplices. Cisneros claimed to have overheard the conversation and immediately denied any involvement. More importantly, an audio tape of the detention revealed that he immediately told one of the officers, "Check the cameras, dude! There's gotta be cameras around here, man." The officer responded, "If I had video cameras of what took place, that's part of my job."

There were, in fact, nine police surveillance cameras in the downtown area, and one of them was located in the parking lot where the robbery occurred and another was situated directly across the street. Two days later (presumably at the arraignment), Cisneros's attorney asked the prosecutor about the video footage, and the prosecutor allegedly told him there was "no possibility" that any of the recordings would be destroyed. By this time, however, the recordings had been routinely deleted after having been held for two weeks.

When the attorneys for Cisneros and Alvarez learned of this, they filed a motion to dismiss the charges on grounds that the officers failed to preserve relevant evidence that might have exonerated them. At the conclusion of the hearing the trial judge granted the motion saying, "I'll be very candid, I find this entire case disturbing." The District Attorney's Office appealed.

Discussion

It is settled that officers do not have an absolute duty to gather and preserve all potentially relevant evidence that they obtained or might have obtained. This is because, as the Supreme Court explained, it would be unreasonable to impose on officers "an undifferentiated and absolute duty to retain and to preserve all material that might be of

conceivable evidentiary significance in a particular prosecution.”¹ Instead, the Court ruled that a due process violation based on a breach of the duty to preserve can occur in only two situations:

“Significant” evidence: A due process violation will result if officers failed to take reasonable measures to preserve any evidence that (1) “might be expected to play a significant role in the suspect’s defense,” (2) possessed “an exculpatory value that was apparent before it was destroyed,” and (3) was “of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.”²

“Potentially useful” evidence: If, on the other hand, the evidence was merely “potentially useful” to the defense, an officer’s failure to preserve it can constitute a due process violation only if the officer acted in “bad faith,” which appears to be akin to gross negligence.³ Said the court in *Alvarez*, “[I]f the best that can be said of the evidence is that it was ‘potentially useful,’ the defendant must also establish bad faith on the part of the police or prosecution.”

In this case it was unlikely that any video footage would have been deemed “significant” because it is doubtful that its exculpatory value was apparent before it was destroyed. But the court ruled the evidence qualified as “potentially useful” and, therefore, its destruction would constitute a violation of due process if the officers acted in bad faith.

Did the officers’ inaction constitute bad faith? Yes, said the court, mainly because Cisneros had notified an officer at the scene of the importance of any video footage, Cisneros had asked the officer to check on whether it existed, the officer said he would but he didn’t. Nor did anyone else. In addition, it appeared that the court believed that the officers on the scene should have known that the department routinely destroyed such evidence after only two weeks. Finally, although it had no bearing on the officers’ bad faith, the court also expressed concern that a prosecutor told a defense attorney that “there’s no possibility” that the video recordings would be destroyed when, in fact, they had already been destroyed.

¹ *Arizona v. Youngblood* (1988) 488 U.S. 51, 58. Also see *People v. Kelly* (1984) 158 Cal.App.3d 1085, 1101-1102 [“The police have no obligation to collect evidence for the defense; their duty is to preserve existing material evidence on the issue of the accused’s guilt or innocence.”]; *People v. Callen* (1987) 194 Cal.App.3d 558, 561 [“The law does not impose upon law enforcement agencies the requirement that they take the initiative, or even any affirmative action, in procuring evidence deemed necessary to the defense of an accused.”]; *People v. Harris* (1985) 165 Cal.App.3d 324, 329 [“To date there is no authority for the proposition that sanctions should be imposed for a failure to *gather* evidence as opposed to a failure to preserve evidence.”].

² *California v. Trombetta* (1984) 467 U.S. 479, 488-89. Also see *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 8; *Arizona v. Youngblood* (1988) 488 U.S. 51, 56 [“The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality”].

³ See *Arizona v. Youngblood* (1988) 488 U.S. 51, 58 [“unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law”]; *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 8 [“a different standard applies when the prosecution fails to *retain* evidence that is potentially useful to the defense. In the latter situation, there is no due process violation unless the accused can show bad faith by the government”].

In attempting to rebut the defendants' arguments, the prosecution claimed there were two reasons why the footage was not "potentially useful" to Cisneros and Alvarez. First, it was not known whether either of the cameras had actually recorded the holdup. To support this claim, the prosecution presented testimony that the cameras did not focus on a particular area but, instead, were remotely "moved and zoomed" and, therefore, they could have been pointed anywhere. But the court ruled that it was more sensible to infer "that the police would try to keep the cameras pointed where they would be the most useful." Said the court, "[I]t would be silly to assume that the cameras were pointing at trees or the ground."

Second, the prosecution argued that any video recording of the robbery would not have exonerated Cisneros or Alvarez because, as members of the group that had accosted Jose, the footage would have proven they were at least guilty of being accessories or aiding and abetting. But the court pointed out that unpreserved evidence need can be potentially useful to the defense even if, as here, it could only have resulted in a reduced sentence.

For these reasons the court ruled that the due process rights of Cisneros and Alvarez had been violated as the result of the officers' inaction, and it upheld the trial court's ruling that the proper remedy for the violation was dismissal. The court then concluded its discussion with the following observation which we think was noteworthy: "Police and prosecutors are more than willing to avail themselves of technology when it is to their advantage; there must be a level playing field that gives defendants equal access to the same evidence."

Comment

This was an especially important case because of the prevalence of police and private video surveillance cameras in many cities and counties, particularly in high-crime areas. Although such evidence usually assists prosecutors, there are some cases, as demonstrated in *Alvarez*, in which it may benefit the defendant. But it really shouldn't matter which side benefits—what matters is that the officers took all reasonable measures to learn the truth. POV

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