

U.S. v. Moore-Bush

(1st Cir. 2020) __ F.3d __ [2020 WL 3249060]

Issue

Must officers have a search warrant to install and monitor a pole camera across the street from a suspect's home?

Facts

While investigating a report that Daphne Moore-Bush was selling firearms illegally, ATF agents installed a camera atop a public utility pole across the street from her home in Massachusetts. The camera was in continuous operation for about eight months, and it was directed at the front of the home. But it could not see the inside of the house. The court also noted that the camera did not record audio, and that it was removed "soon after her arrest."

As the result of the surveillance, agents obtained proof that Moore-Bush was engaged in money laundering and was exchanging drugs for firearms. This information was later used by agents to obtain wiretap authorization, to conduct cellphone tracking, and to obtain court orders for the installation and monitoring of pen registers and phone traps. Based on the collected evidence, Moore-Bush was arrested and charged with, among other things, conspiracy to distribute and possess heroin and cocaine base.

Before trial, she filed a motion to suppress the evidence which the court granted because (1) the surveillance lasted eight months, (2) the camera focused on the driveway and front of the house, and (3) the camera had the ability to "zoom in so close that [it] could read license plate numbers." The Government appealed.

Discussion

For many years, officers did not need a warrant to install surveillance cameras if they only recorded things that could have been seen by passersby. This rule, however, was called into question in 2018 when the Supreme Court ruled in *Carpenter v. United States*¹ that a warrant was required to obtain cell site location information (CSLI) from cellphone providers. In its discussion of the issue, the Court said that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI." This ruling, according to Moore-Bush, meant that a warrant was required to utilize the pole camera outside her home because, per *Carpenter*, people can reasonably expect privacy from such surveillance.

The court disagreed, point out that the Supreme Court in *Carpenter* said it was not overturning its longstanding rule that a "search" does not result when police surveillance merely allows officers to see things that are exposed to public view. In addition, it explained that it was not calling into question "conventional surveillance techniques and tools, such as security cameras." Accordingly, the court in *Moore-Bush* ruled that, because pole cameras "are a conventional surveillance technique and are easily thought to be a species of surveillance security cameras," there was nothing in *Carpenter* that could be interpreted as requiring a search warrant to install them to monitor a suspect's front yard.

Finally, Moore-Bush argued that a warrant should be required if officers use a pole camera for an extended period of time, especially if the camera was monitored 24-hours

¹ (2018) __ U.S. __ [138 S.Ct. 2206].

a day. The court pointed out, however, that “[a]ny home located on a busy public street is subject to the unrelenting gaze of passersby, yet the Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares.”

Accordingly, the court ruled that the district court judge who ordered suppression of the pole camera images “transgressed a fundamental Fourth Amendment doctrine that what one knowingly exposed to public view does not invoke reasonable expectations of privacy protected by the Fourth Amendment.”²

Note

In another recent case, *U.S v. Trice*,³ the Sixth Circuit ruled that a warrant was not required to install a surveillance camera disguised as a smoke detector in the apartment hallway of a suspected drug dealer. The purpose of the camera was to confirm that the suspect, Trice, lived in the apartment. So the officers took steps to make sure that it did not record the interior of Trice’s apartment. Specifically, they rigged the camera so that it was triggered by a motion detector, and that it recorded only the doorway area.

Shortly after the camera was activated, it recorded Trice leave the apartment and walk directly to a nearby parking lot where he sold drugs to a CI. This information was used to obtain a warrant to search the apartment. During the search, officers found methamphetamine, heroin, and crack cocaine. When Trice’s motion to suppress the drugs was denied, he pled out.

On appeal, the court ruled that, because the front door to the apartment building was unlocked, the officers did not need a warrant to enter. It also ruled that the officers did not need a warrant to install and monitor the camera in the hallway since it recorded nothing that residents or visitors in the hallway could not have seen. Said the court, “[Trice] had no reasonable expectation of privacy in the apartment’s unlocked common hallway” and, furthermore, the camera “recorded nothing beyond the fact of Trice’s entry and exit in the apartment and did not provide law enforcement any information they could not have learned through ordinary visual surveillance.” POV

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² **NOTE:** The court also ruled that *Carpenter* did not apply for another reason: it applies only when the fruits of covert surveillance are in the hands of a third party, such as a cell phone provider. But in *Moore-Bush* (as in almost all pole camera cases) the images were in the possession of the police. Said the court, *Carpenter* “explicitly framed its holding in terms of the third-party doctrine, a doctrine not relevant here.”

³ (6th Cir. 2020) __ F.3d __ [2020 WL 4188041].