

U.S. v. Tuggle

(7th Cir. 2021) __ F.3d __ [2021 WL 2946100]

Issue

Under what circumstances must officers obtain a search warrant to conduct surveillance by means of pole cameras?

Facts

In the course of a federal investigation into a large methamphetamine operation in Central Illinois, federal agents installed three pole cameras outside the home of Travis Tuggle, one of the suspects. The cameras, which covered only the front of Tuggle's home and an adjoining parking area, were in operation around the clock for 18 months, and they were equipped with "rudimentary lighting technology"¹ and the ability to "remotely zoom, pan, and tilt."

As the result, agents obtained recordings of "individuals arriving at Tuggle's home, carrying various items inside, and leaving only with smaller versions of those or sometimes nothing at all." Then, soon after each "drop," other people would arrive, "enter the home, and purportedly pay for and pick up methamphetamine." Among other things, the cameras recorded an estimated 100 suspected deliveries of over 20 kilograms of "highly pure methamphetamine."

Tuggle was subsequently charged with conspiracy to distribute at least 500 grams of methamphetamine. When his motion to suppress the evidence was denied, he pled guilty and was sentenced to 360 months in prison.

Discussion

A search warrant is not required to install a pole camera outside a suspect's home if the camera recorded only places, things, and activities that passersby could have seen. Thus, the court in *Tuggle*, having noted that such cameras—which are "in the hands and pockets of virtually all Americans, on the doorbells and entrances of homes, and on the walls and ceilings of businesses"—did not constitute a search because they captured only "the outside of his house and his driveway [which] were plainly visible to the public."

Of particular importance, the court addressed concerns that the extended use of pole cameras—even if they recorded only things in plain view—should be subject to a more restrictive rule. Summarizing these concerns the D.C. Circuit observed that "prolonged surveillance reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly, what he does not do, and what he does ensemble. These types of information can each reveal more about a person than does any individual trip viewed in isolation."² But, as the court in *Tuggle* observed, "No federal circuit court has found a Fourth Amendment search based on long-term use of pole cameras on public property to view plainly visible areas of a person's home."

The court acknowledged that the Supreme Court has "expressed concerns about surveillance leading to a precise, comprehensive record of a person's public movements

¹ See *People v. Lieng* (2010) 190 Cal.App.4th 1213, 1228 [night vision technology "is no more 'intrusive' than binoculars or flashlights, and courts have routinely approved the use of flashlights and binoculars by law enforcement officials"].

² *U.S. v. Maynard* (D.C. Cir. 2010) 615 F.3d 544, 562.

that reflects a wealth of detail about” their lives and activities.³ But that did not happen here because the cameras “exposed no details about where Tuggle traveled, what businesses he frequented, with whom he interacted in public, or whose homes he visited.”

Accordingly, the court ruled that the use of the cameras did not require a warrant because the government only used “commonplace technology, located where officers were lawfully entitled to be,” and they only used the cameras to “identify who visited Tuggle’s house and what they carried, all things that a theoretical officer could have observed without a warrant.” POV

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³ Quoting from *United States v. Jones* (2012) 565 U.S. 400, 415 (Sotomayor, J. concurring).