

People v. Tran

(2019) __ Cal.App.5th __ [2019 WL 5958335]

Issue

Did an officer violate the Fourth Amendment by seizing a dashcam from a driver who had just caused an injury accident?

Facts

Tran was driving a car that crossed into the oncoming lane and struck a motorcycle. The motorcycle rider suffered critical injuries. At the scene, CHP officers examined the tire marks and concluded that Tran was speeding and driving recklessly. They also learned from a witness that Tran had removed a dashcam from his car before they arrived, and that he had put it inside his backpack. At the request of one of the officers, Tran removed the dashcam and handed it to the officer. The officer kept the camera and, three days later, obtained a warrant to search it. The search revealed evidence that confirmed that Tran had been driving recklessly.

After Tran was charged with reckless driving, he filed a motion to suppress the evidence contained in the camera. The court denied the motion, and Tran was convicted.

Discussion

On appeal, Tran did not attack the validity of the search warrant. Instead, he argued that the officer's seizure of his dashcam was unlawful for two reasons: (1) there was insufficient proof that the warrantless seizure of his dashcam was necessary, and (2) a three day delay in seeking a warrant was unreasonable. The court rejected both arguments.

WAS THE SEIZURE NECESSARY? At the outset, the court explained that the requirements for seizing property are less strict than the requirements for searching it because "a search implicates a person's right to keep the contents of his or her belongings private, a seizure only affects their right to possess the particular item in question." For these reasons, the Supreme Court has ruled that officers may seize a container pending issuance of a warrant if (1) they had probable cause to believe that evidence of a crime was inside, and (2) they had reasonable suspicion that the evidence would be destroyed or otherwise corrupted if they permitted the owner to retain possession while they sought a warrant.¹

Tran argued that reasonable suspicion did not exist because there was "no evidence that [he] was going to destroy the camera or the camera's SD card." The court disagreed, pointing out that the officer knew the following: (1) dashcams usually have removable an internal recording device, (2) that these devices "are breakable and easily hidden," (3) Tran would have had a motive to destroy the data because he was aware that he had caused the accident and that the motorcycle rider had been critically injured, and (4) Tran had apparently tried to hide the dashcam from the officers by removing it from his car and putting it in his backpack before they arrived.

Consequently, the court ruled that "all the circumstances, and the rational inferences stemming from them ... would have caused a reasonable officer to believe that

¹ *United States v. Place* (1983) 462 US 696, 706.

immediate acquisition of the camera was necessary to preserve potential evidence on it,” and therefore the seizure of the dashcam was lawful.

THE DELAY IN SEEKING A WARRANT: As noted, Tran also argued that the seizure of his dashcam was unlawful because the officers retained it for three days before seeking a warrant. It is true that a delay may render a seizure unlawful. As the Seventh Circuit observed, “When officers fail to seek a search warrant, at some point the delay becomes unreasonable and is actionable under the Fourth Amendment.”²

This issue typically arises when officers seize luggage, cell phones, or computers. This is because the removal of such things may substantially interfere with people’s jobs and lives. As the Supreme Court observed in *United States v. Place*,³ “seizures of property can vary in intrusiveness, some brief detentions of personal effects may be so minimally intrusive of Fourth Amendment interests that strong countervailing governmental interests will justify a seizure based only on specific articulable facts that the property contains contraband or evidence of a crime.”

In *Place* officers at LaGuardia Airport seized an airline passenger’s luggage on a Friday afternoon but did not apply for a warrant until after the weekend. The Court ruled that the three day delay was unreasonable because the seizure of luggage is highly intrusive and inconvenient, and because the only reason for the delay was to wait until after the weekend. Although the officer in Tran also waited three days, the court ruled that this did not render the seizure unlawful because the seizure of a dashcam is much less intrusive and inconvenient than the seizure of luggage.

For these reasons, the court ruled that the seizure of Tran’s dashcam was lawful, and it affirmed his conviction. POV

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² *U.S. v. Burgard* (7th Cir. 2012) 675 F.3d 1029, 1032.

³ (1983) 462 U.S. 696, 705.