



RESOURCES

# Pole Camera – Sixth Circuit

By **Daigle Law Group**

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**DAIGLE LAW GROUP**

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It's safe to say that in our modern world no matter where you are you are being recorded in one way or another. One of the ways that we can be recorded in our day-to-day lives is through a pole camera. In today's legal update we will look at a recent case out of the 6th Circuit dealing with the use of surveillance cameras by investigators. An important piece of context to note before we review this case is the following: the 1st Circuit ruled that the use of pole cameras by investigators that recorded activity in a public place *did not* violate 4th Amendment protections. The Supreme Judicial Court in Massachusetts, however, ruled that a four to six month use of a pole camera to record a suspect's activities *did* in fact violate Massachusetts constitutional protections, even though the recorded activity took place in a public area.

So, let's take a look at what the 6th Circuit had to say about this often-used police resource.

## Facts

A regional narcotics unit made three controlled buys of heroin from the defendant, Raheim Trice. The last of these buys took place at apartment B-5 at 114 Espanola Avenue. Investigators attempted to substantiate that the apartment was Trice's residence, but were unable to do so. They attempted to confirm the residence through the vehicle registration but that came back listed to a Cradonda Trice at that address.

In an effort to confirm apartment B-5 as the defendant's address, an investigator entered the common hallway and placed a camera, disguised as a smoke detector, on the wall opposite Trice's apartment. The camera was set to record for a period of two to three minutes when anyone entered or exited apartment B-5.

Officers then set up another controlled buy, and watched Trice exit the apartment, walk to the meeting place, make the drug sale, and then return to the apartment. Following the last buy officers returned to the apartment building and retrieved the camera. In total, the camera had been operational for four to six hours. The court noted that the video footage showed Trice enter and exit the apartment three or four times, and when the apartment door was opened the person watching the recording could not see into the apartment.

Officers sought a search warrant that included information gained from the hall camera. Officers executed the search warrant and seized cocaine, heroin, and methamphetamine in various quantities,

as well as scales and other devices. Trice was indicted on drug distribution charges and filed a motion to suppress the evidence. Trice argued that the use of the hidden camera violated his 4th Amendment protections.

During the suppression hearing the apartment manager testified that there was no fence surrounding the property, the exterior doors had no locks and are often ajar, and there is no lock or intercom system within the building. Following testimony by the property manager and the investigators the trial court denied the motion, and Trice accepted a conditional plea and received a sixteen-year sentence. This appeal followed.

### **6th Circuit Findings**

On appeal, Trice argued that the 4th Amendment prohibits officers from using the camera within the hallway of the apartment building. The 6th Circuit review began with the court noting the two factors required to constitute a 4th Amendment intrusion: a person must “exhibit an actual expectation of privacy in the place or thing searched” and the “expectation must be one that society recognizes as reasonable”.

The court then listed four factors to determine whether the expectation of privacy is reasonable. These include:

- Whether the defendant was legitimately on the premises;
- The defendant’s proprietary interest in the place to be searched;
- Whether the defendant had the right to exclude others from the place; and
- Whether the defendant took reasonable precautions to maintain his privacy.

The Appellate Court cited several 6th Circuit cases that held a person has a reasonable expectation of privacy in an apartment building’s locked common area. Previous cases also identified a reasonable expectation of privacy in a duplex basement “where the duplex residents lived there as one family and treated the property as a single unit”.

The court also cited another 6th Circuit case – *United States v Dillard* – where the court found that a person did not have a reasonable expectation of privacy in an apartment hallway where there were no locks on the exterior doors, the doors were often ajar, and there was no doorbell or intercom system.

Trice’s apartment, like the apartment in *Dillard*, required any member of the public to enter the hallway area and knock on the apartment door of the person they wished to visit. Under these circumstances, the hallway effectively became a “common area”, and Trice took no action to control access, thereby

neutralizing his privacy interests.

Finally, the court cautioned that the ruling here was narrowly tailored to the facts of the case. The hallways were open to the public, there were no systems that allowed a visitor to alert the resident, and Trice took no action to secure his apartment from the general public. The court then affirmed the trial court's ruling.

### **Takeaways**

Certainly, the use of electronic resources in police investigations will continue to be a subject of judicial review. As we have previously discussed, there are examples of some jurisdictions limiting a police officer's ability to use these resources to surveil a suspect.

Officers should check with their local jurisdiction to assure the use of surveillance cameras in their area will pass state constitution requirements. Moreover, if the facts in this case had been slightly different and the hallways had been secured, the court may not have ruled in the officer's favor.

### **United States v. Trice, No. 19-1500 (6th Cir. 2020)**

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