



LEGAL UPDATE · RESOURCES

# Prolonged Pole Camera Surveillance

By **Daigle Law Group**

February 1, 2022

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In the past we have reviewed cases with pole cameras and their use in modern day policing. Today's case, *United States v. Tuggle*, examines how the length of time that one uses a device to perform surveillance to investigate someone can make the case a little trickier. The Supreme Court has argued this point before, specifically in *United States v. Jones* stating that "short-term monitoring of a person's movements does not violate an individual's expectation of privacy, but 'longer-term...monitoring in investigations of most offenses' does violate that expectation."

This idea brings up a term that our plaintiff uses, the "mosaic theory", which argues that much like a mosaic tile art piece, each small piece of information collected can be added up to make a much bigger picture that may not have otherwise been known. This idea was first brought up when it was discussed that the CIA was collecting large amounts of seemingly useless data; but it can of course be argued that in the court system these small details may be added up to paint a much larger and more intimate picture when needed.

Let's take a look at how these ideas apply to the pole camera in this case.

## FACTS

Between 2013 and 2016, several law enforcement agencies investigated a large methamphetamine distribution ring in central Illinois. As part of their investigation, officers installed three cameras on public property that viewed Travis Tuggle's home. Officers mounted two cameras on a pole in an alley next to Tuggle's residence and a third on a pole one block south of the other two cameras. The first two cameras viewed the front of Tuggle's home and an adjoining parking area. The third camera also viewed the outside of Tuggle's home but primarily captured a shed owned by another member of the ring. Together, the three cameras captured almost eighteen months of footage by recording Tuggle's property between 2014 and 2016.

While in use, the cameras recorded around the clock. Rudimentary lighting technology improved the quality of overnight footage, although the cameras did not have infrared or audio capabilities. Officers could also remotely zoom, pan, and tilt the cameras and review the camera footage in real time, though the footage captured only the exterior of Tuggle's house. While officers frequently monitored the live feed during business hours, they could later review all the footage at other times. In addition, the cameras had the practical advantage of enabling the officers to surveil Tuggle's home without

conspicuously deploying agents to perform traditional visual or physical surveillance on the lightly traveled roads of Tuggle's residential neighborhood.

The cameras provided substantial video evidence that supported the belief that Tuggle and others were trafficking methamphetamine. Specifically, the officers accumulated over 100 instances of what they suspected were deliveries of methamphetamine to Tuggle's residence. Camera footage depicted individuals arriving at Tuggle's home, carrying various items inside, and leaving only with smaller versions of those items or sometimes nothing at all. After these suspected "drops," different individuals would soon arrive, enter the home, and purportedly pay for and pick up methamphetamine. Several witnesses corroborated these activities. Relying heavily on the video evidence, the officers obtained and executed search warrants on several locations, including Tuggle's house. A grand jury subsequently indicted Tuggle on two drug-related offenses.

Prior to trial, Tuggle filed a motion to suppress the evidence obtained from the pole cameras, arguing that the use of the cameras constituted a warrantless search in violation of the Fourth Amendment. After the district court denied the motion, Tuggle entered a guilty plea. However, Tuggle reserved his right to appeal the court's denial of his motion to suppress the pole camera evidence.

## **SEVENTH CIRCUIT COURT OPINION**

On appeal, Tuggle first argued that the warrantless pole camera surveillance, regardless of the length of that surveillance, violated the Fourth Amendment.

The Seventh Circuit Court of Appeals held that the isolated use of pole cameras on public property, without a warrant, to observe Tuggle's home, did not violate the Fourth Amendment. A person's expectation of privacy generally does not extend to what a person "knowingly exposes to the public, even in his own home." In this case, the court noted that Tuggle knowingly exposed the areas captured by the three cameras. Specifically, the outside of his house and his driveway, which were plainly visible to the public. In addition, the court reasoned that the officers only used the cameras, a technology that is in "general public use," to identify who visited Tuggle's house and what they carried, all things that a theoretical officer could have observed without a camera. Consequently, the court held that Tuggle did not have a reasonable expectation of privacy in what happened in front of his home. The court added that the Fourth and Tenth Circuit Courts of Appeals have considered the use of cameras by police officers to observe the exterior of private homes and have held such uses to be constitutional.

Second, Tuggle argued that the prolonged and uninterrupted use of the pole cameras to conduct continuous surveillance of his house, for a period of approximately eighteen months, constituted a Fourth Amendment violation, under the "mosaic theory."

The court noted that Tuggle's argument was based on the belief that the "government can learn more from a given slice of information if it can put that information in the context of a broader pattern, a mosaic." The court stated that while it has garnered some passing endorsements from several Supreme Court justices in various opinions, the "mosaic theory" has not been adopted by the Court and the Court has not required the lower courts to apply it.

The court added that, even if it was bound to apply it, the pole camera surveillance in this case would not have constituted a search under the mosaic theory. In the cases where the mosaic theory was discussed, the Supreme Court was concerned with types of surveillance, like GPS tracking, that could create "a precise comprehensive record of a person's public movements," which would reveal "a wealth of detail" about a person's "familial, political, professional, religious, and sexual associations." In this case, the court recognized that the pole cameras captured an important sliver of Tuggle's life, but they did not paint an exhaustive picture of his every movement that concerned the Supreme Court in other cases. Unlike GPS and other technologies, the pole cameras exposed no details about where Tuggle traveled, what businesses he frequented, with whom he interacted in public, or whose homes he visited. If anything, instead of capturing Tuggle's public movements, the pole cameras only highlighted Tuggle's lack of movement, as they did not reveal what occurred when Tuggle left his home.

Next, the court recognized that the constitutionality of prolonged pole camera surveillance presented an issue of first impression in the Seventh Circuit. However, the court commented that no other federal circuit court of appeals has held that a Fourth Amendment search occurred based on long-term use of pole cameras on public property to view plainly visible areas of a person's home. The court agreed with the rationale behind these holdings and affirmed the district court's denial of Tuggle's motion to suppress the pole camera evidence.

In conclusion, the court added that the Fifth Circuit Court of Appeals held that the government's use of a pole camera for more than thirty days to record the exterior of the defendant's home constituted a search under the Fourth Amendment. Significantly, however, the government positioned the camera in that case to look over a ten-foot-tall fence and capture images unviewable to passersby. Finally, the court noted that several federal district courts outside the Seventh Circuit, as well as several state appellate and supreme courts have found that the use of pole cameras for varying durations violates the Fourth Amendment.

## **TAKEAWAYS**

So, what can we take from this case? A lot of the Appeal Court's argument surrounded the fact that this type of case has not been argued fully before. I think there are a few important notes to take from this:

when using a pole camera try to limit the length of time that you use this piece of technology to watch someone. If you are using it to argue the need for a warrant, you may not need that much surveillance to ensure that you secure a warrant. Another important detail is that the pole camera needs to be viewing the suspect in a way that the public would also be able to. This ensures that the expectation of privacy portion of the Fourth Amendment is not violated. Technology continues to be an important tool that is forever evolving in our profession. Be sure to double check your department's policies to ensure that they are up to date with these recent cases.

### **United States v. Tuggle, 2021 U.S. App. LEXIS 20841 (7th Cir. IL July 14, 2021): Prolonged Pole Camera Surveillance**

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Originally published at <https://dlglearningcenter.com/prolonged-pole-camera-surveillance/>

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