

50 Days, No Warrant: Second Circuit Green? Lights Pole? Camera Surveillance of Storefronts

Description

The United States Court of Appeals for the Second Circuit recently addressed the intersection of modern surveillance technology and the Fourth Amendment in *United States v. Harry*, 130 F.4th 342 (2d Cir. 2025). As part of an ongoing investigation into suspected drug trafficking activities, DEA agents employed a stationary pole camera to continuously monitor the exterior of Action Audio Store for approximately 50 days without a warrant. The defendant was arrested and charged, and the lower court denied his suppression motion, which was grounded in admissibility challenges regarding use of the pole-camera footage. The defendant appealed to the Second Circuit, presenting a question of first impression for the circuit court: namely, “whether the warrantless use of a stationary pole camera to conduct extended surveillance of a defendant’s business constitutes a ‘search’ under the Fourth Amendment, necessitating the exclusion of any evidence discovered from use at a criminal trial.”

Factual Background

In March 2020, Drug Enforcement Administration (“DEA”) agents began investigating Taijh Wiley, who was identified as the leader of a drug-trafficking operation. A year after launching their investigation, agents tracked Wiley to Action Audio Store, an automotive business located in Hartford, Connecticut, that was owned by Kenston Harry. When agents arrived at the store, they witnessed Wiley receive boxes from a cargo van and deliver the boxes to Harry’s home in Bloomfield. Later that day, law enforcement officers in Yonkers, New York, conducted a traffic stop of Wiley’s vehicle and found a kilogram of cocaine, leading to his arrest. While incarcerated, Wiley called Harry, warning him that police “knew a lot” about their operation. Once Wiley was released, federal investigators obtained a wiretap on his cell phone and recorded incriminating conversations between Wiley, Harry, and others. In April 2021, DEA agents expanded their surveillance by installing a video surveillance camera on a utility pole located across the street from Action Audio. This camera was internet-connected, allowing DEA investigators to remotely control it—tilting, panning, and zooming as needed. The camera recorded continuously, 24 hours per day for approximately 50 days, capturing footage of Action Audio’s exterior, the parking lot, and occasionally, portions of the interior garage bay whenever the garage door was open. The exterior of Action Audio and its adjacent parking lot form a triangular area bordered by two streets. One side of the parking lot is enclosed by a low fence with railings spaced widely enough to allow clear visual access to the parking lot.

In June 2021, when Harry was arrested, law enforcement executed searches at Action Audio, his Bloomfield residence, his vehicles, and his cell phone—none of which were challenged by the defendant. At Action Audio, agents seized more than 1.5 kilograms of marijuana, a digital scale with powder residue, three loaded firearms, a semi-automatic assault rifle with two loaded, large-capacity magazines, a shotgun with ammunition, a revolver, and additional ammo. None of the firearms seized at Action Audio were registered to Harry, and the assault rifle along with its magazines were unlawfully possessed under Connecticut law. At the Bloomfield residence, which Harry shared with his brothers and cousin, investigators found kilogram quantities of fentanyl, cocaine, and marijuana. Found near the

narcotics, investigators discovered a pistol—not registered to Harry—and other assorted ammo.

Procedural Posture

Hearing the case at the outset, the United States District Court for the District of Connecticut denied Harry's motion to suppress the pole-camera evidence. Prosecutors presented twenty-eight minutes of video footage from the pole-camera recordings—showing Harry, Wiley, and another co-defendant transferring bags—allegedly containing controlled substances—into their vehicles. A jury convicted Harry of possession with intent to distribute fentanyl, cocaine, and marijuana, and of conspiracy to accomplish the same, leading to his appeal to the Second Circuit. When the case reached the high court, the Second Circuit was tasked with considering a novel question: “whether the government's warrantless use of a stationary pole camera situated outside an individual's business for approximately 50 days qualifies as a Fourth Amendment search,” which warranted suppression of the footage at trial.

United States Court of Appeals for the Second Circuit

Hearing the case on appeal, the Second Circuit affirmed the district court's denial of the defendant's motion to suppress the evidence, holding that the use of a stationary pole camera to monitor the publicly visible exterior of a defendant's business for approximately 50 days does not constitute a search under the Fourth Amendment requiring a warrant. The Court reasoned that the defendant did not have a subjective or objectively reasonable expectation of privacy in the publicly visible exterior of his business premises, which were open and accessible to the public. As such, law enforcement's use of the pole camera did not constitute a search under the Fourth Amendment.

First, the Court considered whether Harry had “manifested a subjective expectation of privacy” in the exterior of Action Audio and its parking lot. *California v. Ciraolo*, 476 U.S. 207, 211 (1986). Citing *United States v. Davis*, the Court explained that “what a person knowingly exposes to the public . . . does not receive Fourth Amendment protection, yet what a person tries to keep private may be entitled to constitutional protection.” Here, the Court found that Harry made almost no efforts to conceal the activities occurring outside Action Audio. A very low fence surrounded one side of the store's parking lot, and through the fence, the parking lot and the exterior of the store, along with its daily activities, were clearly visible to passersby. The Court distinguished the fence in this case from the 10-foot fence at issue in *California v. Ciraolo*, which was found to demonstrate the defendant's subjective expectation that passersby on foot would be unable to see what was hidden behind such a tall fence. The Court noted that a business owner cannot reasonably assert a subjective privacy interest in areas of the business premises that are openly exposed to the public during normal business hours. The Circuit concluded that Harry manifested no subjective expectation of privacy as to the exterior and parking lot around Action Audio.

Next, assessing the objective prong of the test, the Court considered “whether an expectation of privacy in the comings and goings outside of Harry's business is one that ‘society is willing to recognize as reasonable.’” Reinforcing precedent, the Court emphasized that no objectively reasonable expectation of privacy exists for areas easily viewed and accessed by the general public. Under the open fields doctrine, individuals “generally do not have a legitimate expectation of privacy in open and accessible areas that the public is prepared to recognize as reasonable.” *United States v. Lace*, 669 F.2d 46, 50 (2d Cir. 1982). Here, Action Audio's exterior storefront and parking lot were fully open and, importantly, visible to public pedestrians and passersby. As a general matter, “police are free to observe whatever

may be seen from a place where they are entitled to be.” *United States v. Fields*, 113 F.3d 313, 321 (2d Cir. 1997). The parking lot, exterior storefront, and garage were all within a public vantage point of which the officers had a right to be. The Court cited the principles established in *Florida v. Jardines*, explaining that the defendant’s privacy concerns are further weakened because the surveilled area was part of a business, not a home—where privacy expectations are “most heightened.” Although it is possible that some business owners might maintain an objectively reasonable expectation of privacy in certain parts of their business, the pole-camera footage in this case captured only what was openly visible to the public. Courts have long held that commercial premises receive less Fourth Amendment protection and allow for greater warrantless inspection by the government. As the pole camera only monitored what was publicly visible, the Court found that Harry had no objectively reasonable expectation of privacy in Action Audio’s parking lot and storefront. *Donovan v. Dewey*, 452 U.S. 594, 598 (1981).

Lastly, the Court tackled the defendant’s argument that the pole camera’s continuous recording for approximately 50 days was materially different from a DEA agent’s physical surveillance and, therefore, made his expectation of privacy objectively reasonable. The Second Circuit clarified that when modern technology is used to supplement traditional law enforcement surveillance methods, the Supreme Court has recognized that a Fourth Amendment search is triggered only when the technology employed by law enforcement is particularly invasive. Applying these principles, the Court held that the stationary pole camera trained only on Action Audio’s exterior did not parallel other, more intrusive technologies used for surveillance—such as thermal imaging, GPS tracking, or the collection of cell-site location data—which have traditionally raised stronger Fourth Amendment concerns. The Court affirmed the decision of the district court, finding no error in admitting the video from the camera’s feed at Harry’s trial.

Key Takeaways

This case will serve as precedent within the Second Circuit, outlining the permissible boundaries for law enforcement’s use of surveillance technology, applicable to those departments operating within the Second Circuit. As we saw here, the Court’s opinion emphasized that the defendant in this case had no reasonable expectation of privacy in areas or activities exposed openly and visibly to public observation. For police departments and law enforcement officials, the Court’s decision provides clarity and assurance regarding the lawful use of video surveillance cameras to observe and document activities occurring in public view, even over extended periods. The ruling confirms that extended duration surveillance—provided it remains confined to publicly observable spaces—does not inherently implicate Fourth Amendment concerns or require a search warrant.

United States v. Harry, 130 F.4th 342 (2d Cir. 2025)

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