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ADVANCE SHEET HEADNOTE

September 13, 2021

2021 CO 63

No. 20SC47, *People v. Sanchez* – Searches and Seizures – Expectation of Privacy – Search of a Curtilage.

In this case, the supreme court considers whether the police's use of a pole camera constituted a warrantless search. Having received information that Mr. Sanchez's co-defendant was involved in illegal drug sales, the police installed a video camera near the top of a utility pole across the street from the co-defendant's home, which the Defendant routinely visited, without first obtaining a warrant. The police continuously surveilled the property, including the co-defendant's fenced-in backyard, for three months and stored the footage for later review. Later, based on observations obtained from the pole camera footage, the police obtained a warrant to search the co-defendant's home. During the subsequent search, the police seized illegal drugs, which were connected to Sanchez through the video footage. As in *People v. Tafoya*, 2021 CO 62, __ P.3d __, the supreme court holds that police use of a pole camera continuously for a three-month-long video surveillance

of fenced-in curtilage, stored indefinitely for later review constituted a warrantless search in violation of the Fourth Amendment. Accordingly, the supreme court affirmed the judgment of the court of appeals and the defendant's convictions are reversed.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 63

Supreme Court Case No. 20SC47
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 17CA2178

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Gabriel Sanchez.

Judgment Affirmed

en banc

September 13, 2021

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CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 The People challenge the court of appeals decision reversing Gabriel Sanchez’s convictions for two counts of possession. Specifically, they argue that police use of a pole camera to surveil Rafael Tafoya’s property – which Sanchez routinely visited – did not violate Sanchez’s Fourth Amendment right to be free from unreasonable searches.

¶2 Before trial, Sanchez moved to suppress all evidence obtained as a result of the pole camera surveillance, including the evidence seized pursuant to a search warrant based on activity police observed from the camera’s footage. The trial court found that, while Sanchez had standing to move to suppress, the use of the camera did not constitute a “search” within the meaning of the Fourth Amendment. The court of appeals reversed. It agreed that Sanchez had standing and held that the use of the camera constituted a warrantless search. *People v. Sanchez*, No. 17CA2178, ¶¶ 20–23 (Dec. 5, 2019). Accordingly, it reversed Sanchez’s convictions. *Id.* at ¶ 24. The People appealed, and we granted certiorari to decide whether the use of the camera constituted a warrantless search in violation of the Fourth Amendment.¹

¹ We granted certiorari to review the following issue:

Whether the court of appeals erred in concluding that video surveillance through a camera mounted to a utility pole constituted a warrantless search in violation of the Fourth Amendment.

¶3 Our opinion in *People v. Tafoya*, 2021 CO __, __ P.3d __, which we also announce today, resolves this issue. As we explain in *Tafoya*, under the shared facts of these cases, police use of the pole camera constituted a warrantless search in violation of the Fourth Amendment. Accordingly, we affirm the judgment of the court of appeals.

I. Facts and Procedural History

¶4 We examine the facts and legal issues in this case in more detail in *Tafoya*. For clarity, we briefly summarize the facts and procedural history of this case.

¶5 Based on a tip from a confidential informant, police installed a video camera near the top of a utility pole across the street from Tafoya's property without first obtaining a warrant. For three months, police continuously surveilled the property through the camera and stored the footage for later review. The area surveilled included portions of Tafoya's backyard and driveway—enclosed by a six-foot-high wooden privacy fence and gate—that constituted curtilage.

¶6 On June 25 and August 24, 2015, police observed Tafoya open the gate in his privacy fence to allow Sanchez to drive into the enclosed portion of the driveway. Based on what police observed, they applied for a search warrant and subsequently searched Tafoya's property, where they discovered large amounts of methamphetamine and cocaine. The People charged Sanchez and Tafoya each

with two counts of possession with intent to distribute a controlled substance and two counts of conspiracy.

¶7 Sanchez moved to suppress all evidence obtained as a result of the pole camera surveillance, arguing that the use of the camera was a warrantless search in violation of the Fourth Amendment. The People argued, among other things, that Sanchez did not have standing to challenge the use of the pole camera to surveil Tafoya's property. In a written order, the trial court made factual findings about Sanchez's personal relationship with Tafoya and connection to Tafoya's property. It found that Sanchez had a "degree of acceptance into the [Tafoya] household" under *United States v. Rhiger*, 315 F.3d 1283, 1286 (10th Cir. 2003), as a "social guest." Thus, the trial court found that Sanchez had standing to challenge the use of the pole camera.

¶8 In a separate order, the trial court determined that the use of the pole camera was not a "search" because any expectation of privacy was not reasonable given the public exposure of the area surveilled. The court thus denied Sanchez's motion to suppress. At trial, the footage from June 25 and August 24, money seized on June 25, and the evidence seized pursuant to the search warrant were introduced as evidence. Sanchez was subsequently convicted on all counts.

¶9 He appealed. The court of appeals upheld the trial court's standing determination, concluding that the trial court's findings on standing were

supported by the record and indicated Sanchez’s connection to Tafoya’s property went “far beyond a mere ‘social guest.’” *Sanchez*, ¶¶ 20–21. Accordingly, the court of appeals deferred to the trial court’s determination that Sanchez had standing to challenge the use of the pole camera. *Id.* at ¶¶ 20–22. On the merits, the court of appeals reversed Sanchez’s convictions. *Id.* at ¶¶ 1, 24. It incorporated its analysis from the companion case, *People v. Tafoya*, 2019 COA 176, 490 P.3d 532, holding that police use of the pole camera was a warrantless search in violation of the Fourth Amendment. *Sanchez*, ¶ 23.

¶10 The People did not challenge the court of appeals’ ruling that Sanchez had standing to contest the search; consequently, that issue is not before us. Instead, they sought certiorari review only of the court of appeals’ determination that the use of the pole camera constituted a “search.” We agreed to review that issue.

II. Analysis

¶11 For the same reasons outlined in *Tafoya*, we hold that the police use of the pole camera here — three-month-long, continuous, video surveillance of fenced-in curtilage, stored indefinitely for later review — constituted a warrantless search in violation of the Fourth Amendment. Accordingly, we affirm the judgment of the court of appeals.

III. Conclusion

¶12 Consistent with our opinion today in *Tafoya*, the judgment of the court of appeals—insofar as it held that police use of the pole camera constituted a warrantless search in violation of the Fourth Amendment—is affirmed, and Sanchez’s convictions are reversed. The matter is remanded to the court of appeals with instructions to return the matter to the trial court for further proceedings consistent with this opinion.