



LEGAL UPDATE

WIRETAP VIOLATION REQUIRES INTENT TO SECRETLY RECORD

Commonwealth v. Grimaldi, 497 Mass. 615 (2026).

RELEVANT FACTS

At 11:30 PM on March 14, 2024, the defendant was stopped at a sobriety checkpoint in Springfield. He was directed into the pit area for further observation. In the immediate area where drivers were directed into the pit there was a big, highly reflective, orange or yellow sign that said something like “Checkpoint, video and audio recording.”

The pit was in a parking lot that was lit up with bright floodlights. There were marked MSP cruisers and at least 12 uniformed troopers in the pit area. The troopers wore body-worn cameras attached to their jackets at chest level with red lights that lit up when the camera was recording. The interaction with the defendant was recorded by the body-worn cameras.

Troopers administered field sobriety tests to the defendant. During the nine-step walk and turn test, one of the troopers stood 10 – 15 feet to the right of the defendant. This trooper removed his body-worn camera from his jacket and held it near his torso, pointed toward the defendant to record the defendant’s feet during the test.

During the one-leg stand, two troopers stood several feet in front of the defendant facing him with their body-worn cameras attached to the front of their jackets. After the field sobriety tests, the defendant was arrested and charged with operating under the influence of alcohol.

The defendant moved to suppress the footage from the body-worn cameras arguing that the recording violated the wiretap statute. The judge concluded that the troopers violated the wiretap statute when they recorded the defendant with their body-worn cameras and allowed the motion. The Commonwealth appealed.

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

DISCUSSION

M.G.L. c 272, § 99, commonly referred to as the wiretap statute, makes it a crime to “willfully commit an interception... of any...oral communication.” An “interception” occurs when someone “secretly records...the contents of ..oral communication through the use of any intercepting device” without the permission of all parties to the communication. A body-worn camera is an intercepting device.¹

The wiretap statute authorizes the suppression of interceptions that are committed “willfully.” The court defines “willfully” as “intentional rather than accidental.” Commonwealth v. McDonald, 462 Mass 236, 242 (2012).

Willfulness requires not merely an intent to record, but rather an intent to secretly record – i.e., an intent to record someone without their knowledge.

Based upon the facts of this case, the court determined that the troopers did not willfully commit an interception. The court relied on several facts in reaching this conclusion. First, the police had placed a large, reflective sign in the pit area advising that the checkpoint was being audio and video recorded. This demonstrated that, “the troopers intended to, and did, notify motorists that they were being audio-video recorded.” The troopers also openly used body-worn cameras during their interaction with the defendant. The cameras were attached to the front of their jackets, and in the case of one trooper, held in his hand while standing 10 – 15 feet in front of the defendant during the walk and turn test. This indicated that troopers did not intend to secretly record the defendant. In addition, this all occurred in the brightly lit pit area, which also demonstrated that police did not intend to hide their use of body-worn cameras.

Because the court found that that the troopers did not “willfully” commit an interception, the recordings should not have been suppressed.

Important Note:

The decision in this case focused on whether the troopers intended to secretly record the defendant. It remains an open question whether the open use of body-worn cameras would constitute a secret recording for purposes of the wiretap statute. Officers may avoid the issue by advising individuals they come into contact with that the body-worn camera is recording. Officers should be familiar with their department’s policy with respect to body-worn cameras and comply with that policy.

¹ Commonwealth v. Rainey, 491 Mass. 632 (2023).

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