

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH**

JOHN B. CLAYTON,
Plaintiff-Appellant,

v.

TROOPER CAROLYN MANSI, TROOPER EMILY NUGENT, and
CAPTAIN PI DOWNSBROUGH,
Defendants-Appellees.

On an appeal from a judgment of the Middlesex Superior Court
(Civil Action No. 2581CV00786)

Appeals Court No. 2026-P-0714

**APPLICATION OF THE PLAINTIFF-APPELLANT
FOR DIRECT APPELLATE REVIEW**

JOHN B. CLAYTON
Plaintiff-Appellant, Pro Se
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September 21, 2026

1. REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. A. P. 11(a) and G. L. c. 211A, § 10, plaintiff-appellant John B. Clayton respectfully requests that this Court order direct appellate review of the appeal now pending in the Appeals Court as No. 2026-P-0714, and transfer that appeal to the full Supreme Judicial Court.

The appeal was docketed in the Appeals Court on May 21, 2026. This application is filed after the twenty-one-day period prescribed by Rule 11(a). It is accompanied by a motion for leave to file it late. The ground is set out in that motion and is summarized here: the question for which direct review is sought is whether a general common-law good-faith immunity may operate alongside the specific, warrant-conditioned complete defense the Legislature wrote into G. L. c. 272, § 99 Q. This issue crystallized only once all three appellee briefs were on file, the last of them on September 1, 2026.

Moreover, Rule 11(f) independently permits the Court to transfer an appeal *sua sponte*. That course is pertinent here because the Court exercised that authority in *Commonwealth v. Grimaldi*, 497 Mass. 615 (2026), another appeal concerning G. L. c. 272, § 99. A majority of the Justices of the Appeals Court may likewise certify that direct review is in the public interest. Mass. R. A. P. 11(f).

2. STATEMENT OF PRIOR PROCEEDINGS

Appellant filed this civil action in the Middlesex Superior Court on March 31, 2025, Civil Action No. 2581CV00786. On April 9, 2025, the court allowed his motion to amend the complaint, which pleads four counts. Counts I through III seek relief under G. L. c. 272, § 99 Q for alleged unlawful interception, permitting the possession and use of intercepting devices, and unlawful disclosure. Count IV pleads a violation of the Massachusetts Declaration of Rights and was argued in the alternative under the Massachusetts Civil Rights Act (MCRA), G. L. c. 12, §§ 11H-11I.

Trooper Mansi answered and later moved for judgment on the pleadings under Mass. R. Civ. P. 12(c) (Paper No. 19). Trooper Nugent and Captain Downsbrough moved to dismiss under Mass. R. Civ. P. 12(b)(6) (Paper Nos. 17 and 16). Appellant opposed each motion. The motions were heard by Tingle, J., on March 23, 2026; the certified transcript of that hearing is separately docketed in the Appeals Court as Paper No. 6.

The judge allowed the three defendants' motions by endorsement, treating Mansi's Rule 12(c) motion as a motion to dismiss under Rule 12(b)(6). The endorsement on Paper No. 19 states that the complaint fails to state a claim because Trooper Mansi was a public employee acting in the course of her duties and engaged in discretionary decisions as to the manner in which to conduct the

investigation, and that the complaint fails to allege malice, bad faith, or corruption. The endorsements on Papers Nos. 16 and 17 allow those motions for the reasons stated on Paper No. 19. As to Count IV, the judge held that no private right of action lies directly under the Declaration of Rights and that, construed under the MCRA, the complaint fails to allege threats, intimidation, or coercion. The endorsements are dated March 24, 2026, and were entered on the docket March 25, 2026. Judgment of dismissal entered March 26, 2026 (Paper No. 21).

Appellant filed a timely notice of appeal, entered on the Superior Court docket April 9, 2026. The appeal was docketed in the Appeals Court on May 21, 2026. Appellant's principal brief, record appendix, and the certified hearing transcript were filed on June 29, 2026. Trooper Mansi's brief was filed July 29, 2026. Trooper Nugent and Captain Downsborough filed their briefs on August 31, 2026 and September 1, 2026 respectively, following allowed enlargements. On appellant's motion, the Appeals Court enlarged the time for filing appellant's reply brief to October 5, 2026 (Paper No. 13). The appeal has not been scheduled for argument, and the Appeals Court has issued no decision.

3. STATEMENT OF FACTS RELEVANT TO THE APPEAL

Because the judgment followed motions brought under Rules 12(b)(6) and 12(c), the well-pleaded factual allegations are accepted as true and all reasonable inferences are drawn in appellant's favor.

Troopers Mansi and Nugent met appellant at a restaurant while acting in an undercover capacity. They did not identify themselves as police officers. During that meeting they used two interception devices and recorded the conversation secretly. Appellant did not know he was being recorded and gave no one authority to record him. A warrant under § 99 was neither sought nor issued, and appellees have not contended otherwise.

Captain Downsborough is alleged to have procured the interception, authorized her subordinates to make the recordings, and permitted the possession and use of the two devices. An exhibit to the complaint places her in operational planning before the meeting and assigns the State Police team to set up the undercover operation with appellant. The complaint further alleges that the recordings were disclosed by Mansi and Nugent to Downsborough, by a State Police actor to a federal Food and Drug Administration agent, and by Downsborough to federal agents, and that the investigation was a joint State and Federal enterprise. The complaint also alleges that the recordings were altered by one or more of the appellees or by other actors. Only one of the two recordings was produced in discovery; its contents were deleted after the first few seconds, though the file remains timestamped the day of the undercover meeting. Copies of the original, unaltered recordings were retained by Trooper Mansi and attached to her report dated October 28, 2019. R.A. 13-14; Compl. ¶¶ 21-22.

The complaint alleges that appellees knew or should have known judicial authorization was required, that no warrant was obtained, and that appellees possessed no evidence that appellant either participated in organized crime as § 99 defines that term or committed a designated offense in connection with organized crime.

4. STATEMENT OF THE ISSUES OF LAW RAISED BY THE APPEAL

I. Whether the specific civil-remedy and defense scheme of G. L. c. 272, § 99 Q — which creates a civil action against any person, including a State officer, who unlawfully intercepts, and makes good-faith reliance on a warrant issued under the statute a complete defense — displaces by necessary implication a general common-law good-faith immunity invoked as a separate complete defense by officers who neither sought nor obtained a warrant.

II. Whether an alleged interception whose design, on the pleaded facts, was concealment — the intent *Commonwealth v. Grimaldi*, 497 Mass. 615, 620 (2026), identifies as the act § 99 C 1 reaches — may be characterized at the Rule 12 stage as a discretionary investigative act attended only by mistaken legal judgment, so that dismissal may rest on the absence of an express malice allegation without regard to the inferences the pleaded facts permit.

III. Whether affirmative defenses that appellees concede are unresolved on this record and which cannot be resolved without an evidentiary record — principally

the Federal-officer exemption, § 99 D 1 c, and the officer-safety exemption, § 99 D 1 e – may nevertheless supply a mandatory inference of the officers' subjective good faith sufficient to sustain dismissal.

IV. Whether final dismissal of Count IV was required, rather than vacatur and remand without prejudice to seeking leave to amend under Mass. R. Civ. P. 15.

Preservation

Each issue was raised and preserved below. Issues I, II, and III were presented in appellant's written oppositions to the three dispositive motions and argued at the March 23, 2026 hearing; the judge addressed the immunity and exemption questions from the bench and decided the motions by endorsement. Issue IV was presented in appellant's opposition to Mansi's motion, which identified the corrected constitutional provisions and argued that Count IV be construed under the MCRA; the judge reached and rejected that theory. *Grimaldi* issued only after the judgment below and was brought to the Appeals Court's attention in appellant's briefing.

5. ARGUMENT

A. Paragraph Q states when good faith is a complete defense, and the Legislature tied that defense to judicial authorization.

Section 99 Q creates a civil action for an aggrieved person against "any person" who intercepts, discloses, or uses a communication in violation of § 99,

and "person" includes an "officer, agent or employee" of a State or political subdivision. G. L. c. 272, §§ 99 Q, B 13. Public officers therefore fall within the class against whom the Legislature created the remedy.

The Legislature addressed good faith in the same paragraph: "Good faith reliance on a warrant issued under this section shall constitute a complete defense to an action brought under this paragraph." § 99 Q. The defense is conditioned on judicial authorization. Section 99 A likewise declares that law-enforcement electronic surveillance "must be conducted under strict judicial supervision." Paragraph Q identifies no other good-faith complete defense. No warrant was sought or issued here.

Appellees now invoke a second complete good-faith protection that operates precisely where the statutory one does not – when no warrant was obtained. Under *Chelsea Housing Authority v. McLaughlin*, 482 Mass. 579, 590-591 (2019), common law may yield by necessary implication when it cannot reasonably coexist with the statutory scheme. In the overlap presented here, the same defendant, interception, and Q action would be governed by two competing complete protections, one requiring judicial authorization and one dispensing with it.

Neither decision on which appellees rely answers that question. *Duarte v. Healy*, 405 Mass. 43 (1989), addressed claims under G. L. c. 12, §§ 11H-11I and G. L. c. 214, § 1B; *Nelson v. Salem State College*, 446 Mass. 525 (2006), addressed

a claim under § 1B. Neither case involves § 99. Neither statute conditions a good-faith defense on judicial authorization, and neither regulates law-enforcement surveillance as § 99 does. *Chelsea Housing* asks whether the common-law rule and the particular statutory scheme can reasonably coexist; that inquiry is statute-specific, and *Nelson's* analysis rested on a reasonable-expectation-of-privacy framework that both *Du* opinions held inapplicable to § 99.

In *Commonwealth v. Rainey*, 491 Mass. 632 (2023), the SJC reasoned that "if the remedy the defendant seeks is available, its basis must be found in the wiretap statute itself." *Id.* at 638. Examining §§ 99 P and Q, the SJC explained that "[t]hese provisions, which carve out specific remedies for certain individuals, belie the defendant's assertion that the statute entitles him to the remedy he seeks." *Id.* at 639. It thus relied on both exclusivity, *Fascione v. CNA Ins. Cos.*, 435 Mass. 88, 94 (2001), quoting 3 N.J. Singer, *Sutherland Statutory Construction* § 57.18, at 46 (5th ed. 1992) ("[W]here a statute creates a new right and prescribes the remedy for its enforcement, the remedy prescribed is exclusive"), and *expressio unius*, *Skawski v. Greenfield Investors Prop. Dev. LLC*, 473 Mass. 580, 588 (2016). *Rainey* did not decide whether official immunity is among the protections § 99 Q omits, and no Massachusetts appellate decision has.

B. Even if common-law immunity survives, it cannot be established by drawing reasonable inferences against appellant.

Appellees characterize the alleged violation as a discretionary investigative choice accompanied only by mistaken legal judgment. *Commonwealth v. Grimaldi*, 497 Mass. 615, 620 (2026), identifies the statutory act under § 99 C 1 as an intent not merely to record, but to record secretly. In *Grimaldi* secrecy was negated because the recording was announced and the cameras were visible. *Id.* at 620-622. The allegations here are the inverse: on the pleaded facts, concealment was the design of the operation. *Grimaldi* does not decide immunity, and appellant does not rely on it to supply an element of the civil claim: liability under Q does not require the criminal willfulness element at all. *Pine v. Rust*, 404 Mass. 411, 413-414 (1989) ("[t]o be actionable under § 99 Q ... an interception need not rise to the level of criminal conduct covered by the penal provisions of the law"). *Grimaldi* identifies what the statute treats as the operative act—intended concealment—and the alleged deliberate concealment here is materially different from the mistaken legal judgment that appellees contend common-law immunity protects.

The pleaded facts are taken as true and all reasonable inferences must be drawn in appellant's favor. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). Here, the motion judge himself asked whether the complaint could be read as alleging a conscious decision by officers cognizant of § 99 to proceed without a

warrant. Tr. 8-9. The question is not whether immunity can ever be resolved under Rule 12, but whether it can be resolved here by selecting an inference of subjective good faith over competing reasonable inferences from the pleaded facts.

The appellees' principal immunity authorities do not answer that question, because each authority determined good faith on an evidentiary record. *Nelson v. Salem State College*, 446 Mass. 525, 538 (2006), was decided on summary judgment and turned expressly on the record: "there is no evidence in the record" from which bad faith or malice could be inferred. *Duarte v. Healy*, 405 Mass. 43 (1989), and *South Boston Betterment Trust Corp. v. Boston Redevelopment Auth.*, 438 Mass. 57, 68-70 (2002), likewise arose on summary judgment; *Gildea v. Ellershaw*, 363 Mass. 800 (1973), followed trial. Those decisions establish what an evidentiary record can show about official good faith but do not authorize a court to reach the same conclusions from a pleading, and a presumption favoring official motives cannot reverse the Rule 12 standard.

C. Unresolved statutory exemptions cannot generate a mandatory inference of subjective good faith.

Appellees invoke the possible application of § 99 D 1 c and D 1 e. Section 99 D 1 c applies to "investigative and law enforcement officers of the United States of America" acting pursuant to federal law and within the scope of their federal authority. Section 99 D 1 e permits interception by investigative or

law-enforcement officers “for the purposes of ensuring the safety” of an undercover officer or Commonwealth witness. Nugent expressly characterizes these provisions as affirmative defenses and states that she “does not ask this Court to resolve them on this record.” Nugent Br. 21 n.3. She nevertheless argues that an officer could have believed one might apply. A defense cannot remain unresolved for purposes of statutory liability while operating as a compelled inference of subjective good faith against appellant.

The hearing confirms the factual gap. Asked whether anyone was actually monitoring the meeting for officer safety, Mansi's counsel responded that she expected so but that the fact was not in the complaint. Tr. 20:25-21:2. The judge then asked whether the exemptions were "more summary judgment issues" requiring "a more fully developed record," Tr. 21:13-18, and later stated that he was unsure he could determine whether the exemptions truly applied on the record before him. Tr. 29:15-20. Although appellees repeatedly invoked the federal-investigation and officer-safety exemptions, no appellee argued at the Rule 12 hearing that the ordinary one-party law-enforcement exception applied because the interception occurred during investigation of a § 99 B 7 designated offense in connection with organized crime.

D. Count IV should, at minimum, be vacated without prejudice to seeking leave to amend.

Count IV, which alleged that the same interception violated the Massachusetts Declaration of Rights, is subsidiary to Issues I through III. The motion judge dismissed it on the grounds that no private right of action lies directly under the Declaration of Rights and that, construed under the MCRA, the complaint failed to allege threats, intimidation, or coercion. Appellant does not ask this Court to create a new freestanding constitutional remedy. If Count IV as presently drafted is deficient, the narrower question is whether final dismissal was required where the trial judge did not exercise Rule 15 discretion on an actual proposed amendment or determine that every possible amendment would be futile. See Mass. R. Civ. P. 15(a); *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332, 341-343 (2021).

6. STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This appeal presents a question of first impression concerning the interaction of § 99 Q and common-law official immunity, and a question of substantial public interest concerning warrantless law-enforcement interception. Mass. R. A. P. 11(a)(1), (3).

A. The controlling § 99 Q question has never been decided, as the record below demonstrates.

No Massachusetts appellate decision holds whether common-law good-faith immunity is available to a public officer sued under § 99 Q, or whether Q's own warrant-reliance defense displaces it. At the outset of the Rule 12 hearing, the motion judge reported that he had searched and could not find a case on point. Tr. 5:14-19. Counsel for Downsborough, after a comparable Westlaw search, likewise reported that he had found no "apples-to-apples comparison." Tr. 5:20-23.

The appellees' briefs confirm the gap. While they analogize to *Duarte*, *Gildea*, and privacy-act cases, they fail to identify any decision holding that § 99 Q's warrant-reliance defense leaves general common-law immunity intact for a warrantless official interception. *Rainey* construed § 99's remedial provisions without reaching immunity. The Superior Court resolved the issue through general immunity authority without construing Q's defense structure. The issue is squarely presented, potentially dispositive of Counts I through III, and fully briefed.

B. Common-law immunity questions have reached this Court through direct appellate review.

Duarte, a principal immunity precedent invoked by appellees, reached this Court after the Supreme Judicial Court granted a request for direct appellate review. 405 Mass. at 44. The present question – whether that doctrine operates

within § 99 Q's distinct remedial and defense scheme – is comparably suited to direct determination.

C. The answer bears directly on the premise of recent § 99 decisions.

In *Commonwealth v. Du*, 103 Mass. App. Ct. 469, 482 (2023), *aff'd*, 495 Mass. 103 (2024), the Appeals Court answered the Commonwealth's concern about exposing undercover officers by pointing to protections the Legislature itself supplied – a warrant under § 99 D 1 d and the officer-safety exemption under § 99 D 1 e – and described § 99 as reflecting a "careful balancing of competing concerns." The court also observed that the statute provides both criminal penalties and civil remedies. If general common-law immunity may provide a complete bar even when no warrant was sought, the relationship between that immunity and the Legislature's specified protections requires authoritative resolution.

D. The Court has exercised *sua sponte* transfer authority in § 99 cases, including a civil § 99 Q action.

Grimaldi issued June 2, 2026, after the judgment below, and the SJC transferred that § 99 appeal from the Appeals Court on its own initiative. The Court likewise transferred *Pine v. Rust*, 404 Mass. 411 (1989), on its own motion. *Pine* is particularly pertinent because it was a civil action under § 99 Q. These cases demonstrate the Court's use of *sua sponte* direct review in construing § 99, including the very civil-remedy provision at issue here.

E. The question is of substantial public interest and likely to recur.

Paragraph Q is the Legislature's private civil-remedy provision for unauthorized interception, and § 99 A commits law-enforcement electronic surveillance to strict judicial supervision. Whether State and municipal officers who neither sought nor obtained a warrant may nevertheless invoke general common-law immunity affects the operation of that remedial scheme in all pending and future § 99 Q actions. A single authoritative answer would provide statewide guidance to courts, law-enforcement officers, and litigants.

F. Transfer would cause little or no material delay.

The appellee briefs have been filed, and appellant's reply brief is due October 5, 2026 under an enlargement allowed by the Appeals Court. Briefing therefore remains open under that court's own schedule, the appeal has not been scheduled for argument, and no decision has issued. Under Mass. R. A. P. 11(g)(1), the briefs already filed would stand after transfer, and appellant's reply brief could be served and filed on or before the date otherwise allowable, or within 14 days after the appeal is docketed in this Court, whichever is later. Direct review would therefore permit a single authoritative resolution without disrupting the existing appellate schedule.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court allow this application and order the appeal transferred to the full Supreme Judicial Court for direct appellate review, or, in the alternative, transfer the appeal on its own initiative under Mass. R. A. P. 11(f).

Dated: September 21, 2026

/s/ John B. Clayton

John B. Clayton, Plaintiff-Appellant, Pro Se

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APPENDED MATERIALS

Pursuant to Mass. R. A. P. 11(b), the docket entries and the written rulings of the lower court are appended as Addendums 1 through 3. Addendums 4 and 5 are appended for the convenience of the Court.

Add. 1 — Docket entries, Appeals Court No. 2026-P-0714.

Add. 2 — Docket entries, Middlesex Superior Court Civil Action No. 2581CV00786.

Add. 3 — Endorsements of Tingle, J., on Paper Nos. 16, 17, and 19, and Judgment (Paper No. 21), Middlesex Superior Court Civil Action No. 2581CV00786.

Add. 4 — G. L. c. 272, § 99 (relevant provisions).

Add. 5 — Excerpts from the certified transcript of the March 23, 2026 hearing (Tr. 5, 8-9, 20-21, 29).

Add. 1 — Docket entries, Appeals Court No. 2026-P-0714.

APPEALS COURT
Full Court Panel Case
Case Docket

JOHN B CLAYTON vs. TROOPER CAROLYN MANSI & others
2026-P-0714

CASE HEADER

Case Status	Red & Blue briefs filed
Status Date	09/01/2026
Nature	Governmental/municipal
Entry Date	05/21/2026
Appellant	Plaintiff
Case Type	Civil
Brief Status	
Brief Due	
Arg/Submitted	
Decision Date	
Panel	
Citation	
Lower Court	Middlesex Superior Court
TC Number	2581CV00786
Lower Ct Judge	Brent A. Tingle, J.
TC Entry Date	03/31/2025
SJ Number	
FAR Number	
SJC Number	

INVOLVED PARTY

John B Clayton
Pro Se Plaintiff/Appellant
Blue brief & appendix filed

Trooper Carolyn Mansi
Defendant/Appellee
Red brief filed

Trooper Emily Nugent
Defendant/Appellee
Red brief filed
1 Enl, 33 Days

Captain Pi Downsborough
Defendant/Appellee
Red brief filed
1 Enl, 33 Days

Office of the Attorney General
Other interested party

Worcester County District Attorney's Office
Other interested party

ATTORNEY APPEARANCE

[Karen Wells, Esquire](#)
[Mary Lemay, Esquire](#)

[Thomas R. Donohue, Esquire](#)
[Christina M. Bonelli, Esquire](#)
[Michelle Reid, Esquire](#)

[Timothy M. Burke, Esquire](#)
[Jared Burke, Esquire](#)

[Nicole Marie Nixon, A.A.G.](#)

[Nicole Marie Nixon, Esquire](#)

**Add. 2 — Docket entries, Middlesex Superior Court Civil Action No.
2581CV00786.**

2581CV00786 Clayton, John vs. Trooper Carolyn Mansi et al

- Case Type:
- Actions Involving the State/Municipality
- Case Status:
- Open
- File Date
- 03/31/2025
- DCM Track:
- A - Average
- Initiating Action:
- Tortious Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
- 03/31/2025
- Case Judge:
-
- Next Event:

[All Information](#)
[Party](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/31/2025	Attorney appearance On this date Pro Se added for Plaintiff John Clayton		
03/31/2025	Case assigned to: DCM Track A - Average was added on 03/31/2025		 Image
03/31/2025	Original civil complaint filed. * Exhibits 1-7 attached and exhibit 8 contained on DVD-R submitted with complaint. *	1	 Image
03/31/2025	Civil action cover sheet filed.	2	 Image
03/31/2025	Demand for jury trial entered.		 Image
03/31/2025	Plaintiff(s) John Clayton's Motion to Unseal Exhibit 7 Grand Jury Testimony in Complaint for Violation of the Massachusetts Wiretap Statute Introduction. (Exhibit not scanned)	3	 Image
04/02/2025	Plaintiff John Clayton's Motion to amend complaint for violation of the Massachusetts wiretap statue	4	 Image
04/09/2025	Endorsement on Motion to Unseal Exhibit 7 Grand Jury Testimony in Complaint for Violation of the Massachusetts Wiretap Statute (#3.0): No Action Taken No action taken as filed. To be served upon all required parties, including the Worcester County District Attorney's Office, and filed pursuant to Superior Court Rule 9A. Judge: Goldenberg, Hon. Keren E		 Image
04/09/2025	Endorsement on Motion to Amend Complaint for Violation of the Massachusetts Wiretap Statute (#4.0): ALLOWED Judge: Goldenberg, Hon. Keren E		 Image
04/29/2025	Service Returned for Other interested party Worcester County District Attorney's Office: Service through person in charge / agent;	5	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Tracy Defusco, Court Clerk at Worcester DA's Office for ADA David McShera to wit 225 Main Street Suite G301 Worcester, MA 01608 on 04/17/2025		
04/29/2025	Service Returned for Other interested party Office of the Attorney General: Service via certified mail; to 1 Ashburton Place Floor 20 Boston, MA 02108 on 04/17/2025	6	 Image
04/29/2025	Service Returned for Defendant Captain Pi Downsborough: Service made at last and usual; at 148 Main Street Boxford, MA 01921 on 04/18/2025	7	 Image
04/29/2025	Service Returned for Defendant Trooper Emily Nugent: Service made in hand; at 111 Moreland Street Worcester, MA 01609 on 04/17/2025	8	 Image
04/29/2025	Service Returned for Defendant Trooper Carolyn Mansi: Service made in hand; at 2 Service Road East Boston, MA 02128 on 04/17/2025	9	 Image
05/05/2025	Attorney appearance electronically filed.		 Image
05/05/2025	Attorney appearance On this date Karen Milne Wells, Esq. added for Defendant Trooper Carolyn Mansi		
05/05/2025	Attorney appearance On this date Mary E Lemay, Esq. added for Defendant Trooper Carolyn Mansi		
05/06/2025	Self-Represented Plaintiff John Clayton's Motion to amend the complaint and civil action cover sheet.	10	 Image
05/07/2025	Endorsement on Motion to amend the complaint and civil action cover sheet. (#10.0): No Action Taken for failure to comply with Superior Court Rule 9A. Judge: Goldenberg, Hon. Keren E		 Image
05/07/2025	Answer to original complaint Applies To: Trooper Carolyn Mansi (Defendant)	11	 Image
05/07/2025	Attorney appearance electronically filed.		 Image
05/07/2025	Attorney appearance On this date Timothy Michael Burke, Esq. added for Defendant Captain Pi Downsborough		
05/07/2025	Attorney appearance On this date Jared Burke, Esq. added as Private Counsel for Defendant Captain Pi Downsborough		
05/07/2025	Attorney appearance electronically filed.		 Image
05/07/2025	Attorney appearance electronically filed.		 Image
05/07/2025	Attorney appearance On this date Thomas R Donohue, Esq. added as Private Counsel for Defendant Trooper Emily Nugent		
05/07/2025	Attorney appearance On this date Christina M Bonelli, Esq. added as Private Counsel for Defendant Trooper Emily Nugent		
05/07/2025	Defendant Trooper Emily Nugent's Motion for Extension of Time to File a Responsive Pleading to Plaintiff's Complaint (Unopposed)	12	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/07/2025	Affidavit of Compliance Applies To: Trooper Emily Nugent (Defendant); Donohue, Esq., Thomas R (Attorney) on behalf of Trooper Emily Nugent (Defendant)	12.1	 Image
05/07/2025	Affidavit of compliance with Superior Court Rule 9C Applies To: Trooper Emily Nugent (Defendant)	12.2	 Image
05/07/2025	Endorsement on Motion for Extension of Time to File a Responsive Pleading to Plaintiff's Complaint (Unopposed) (#12.0): ALLOWED		 Image
05/08/2025	Defendant Captain Pi Downsbrough's Motion for extension of time to file a responsive pleading to plaintiff's complaint	13	 Image
05/12/2025	Endorsement on Motion for extension of time to file a responsive pleading to plaintiff's complaint (#13.0): ALLOWED Judge: Goldenberg, Hon. Keren E		 Image
05/22/2025	Plaintiff John Clayton's Motion to UNSEAL EXHIBIT 7 GRAND JURY TESTIMONY IN COMPLAINT FOR VIOLATION OF THE MASSACHUSETTS WIRETAP STATUTE INTRODUCTION	14	 Image
05/22/2025	Opposition to plaintiff's motion to unseal exhibit 7 grand jury testimony in complaint for violation of the Massachusetts wiretap statue filed by Worcester County District Attorney's Office	14.1	 Image
05/22/2025	Reply/Sur-reply Reply to Worcester County District Attorney's Opposition to the Plaintiff's motion to unseal exhibit 7 grand jury testimony in complaint for violation of the Massachusetts wiretap statue Applies To: Clayton, John (Plaintiff)	14.2	 Image
05/22/2025	Affidavit of Compliance with 9A Applies To: Clayton, John (Plaintiff)	14.3	 Image
05/23/2025	Attorney appearance On this date Nicole Marie Nixon, Esq. added for Other interested party Worcester County District Attorney's Office		
05/23/2025	Attorney appearance On this date Nicole Marie Nixon, Esq. added for Other interested party Office of the Attorney General		
05/28/2025	Defendant Trooper Emily Nugent's Notice of Motion	15	 Image
06/03/2025	Endorsement on Motion to unseal exhibit 7 grand jury testimony in complaint for violation of the Massachusetts wiretap statue filed by Worcester County District Attorney's Office (#14.0): DENIED without prejudice. This matter must be resolved in the Worcester Superior Court where the criminal case is pending. That court can grant permission for the plaintiff to file the grand jury minutes under impoundment in this civil action rather than unsealing the document. Judge: Goldenberg, Hon. Keren E		 Image
06/04/2025	Defendant Captain Pi Downsbrough's Motion to Dismiss Plaintiff's Amended Complaint and Memorandum in Support Thereof	16	 Image
06/04/2025	Opposition to Defendant Downsbrough's Motion to Dismiss filed by John Clayton	16.1	 Image
06/04/2025	Affidavit of Compliance with Superior Court Rule 9A Applies To: Burke, Esq., Timothy Michael (Attorney) on behalf of Captain Pi Downsbrough (Defendant)	16.2	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/04/2025	Certificate of Compliance Superior Court Rule 9C Applies To: Burke, Esq., Timothy Michael (Attorney) on behalf of Captain Pi Downsborough (Defendant)	16.3	 Image
06/09/2025	Defendant Trooper Emily Nugent's Motion to Dismiss	17	 Image
06/09/2025	Trooper Emily Nugent's Memorandum in support of her Motion to Dismiss	17.1	 Image
06/09/2025	Opposition to Defendant Nugent's Motion to Dismiss filed by John Clayton	17.2	 Image
06/09/2025	Request for hearing filed Applies To: Trooper Emily Nugent (Defendant)	17.3	 Image
07/14/2025	Defendant Trooper Carolyn Mansi's Notice of motion.	18	 Image
07/23/2025	Defendant Trooper Carolyn Mansi's Motion for judgment.	19	 Image
07/23/2025	Trooper Carolyn Mansi's Memorandum in support of motion for judgment.	19.1	 Image
07/23/2025	Opposition to Defendant Carolyn Mansi's motion for judgment (P#19) filed by John Clayton	19.2	 Image
07/23/2025	Defendant Trooper Carolyn Mansi's Request for hearing.	19.3	 Image
08/01/2025	Defendant Trooper Carolyn Mansi's Assented to Motion to stay discovery.	20	 Image
08/22/2025	Endorsement on Request to stay discovery (#20.0): ALLOWED		 Image
02/23/2026	Attorney appearance electronically filed.		 Image
02/23/2026	Attorney appearance On this date Michelle A Reid, Esq. added for Defendant Trooper Emily Nugent		 Image
02/24/2026	Event Result:: Rule 12 Hearing scheduled on: 02/24/2026 02:30 PM Has been: Not Held For the following reason: Court Closure Comments: Court closed due to winter storm. Hon. Brent A Tingle, Presiding Staff: Robin Petrucci, Assistant Clerk Magistrate		
03/23/2026	Matter taken under advisement: Rule 12 Hearing scheduled on: 03/23/2026 03:00 PM Has been: Held - Under advisement Hon. Brent A Tingle, Presiding Appeared: Plaintiff John Clayton Defendant Karen Milne Wells, Esq., Defendant Michelle A Reid, Esq., Defendant Jared Burke, Esq., Private Counsel Staff: Robin Petrucci, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/25/2026	Endorsement on Motion to Dismiss Plaintiff's Amended Complaint (#16.0): ALLOWED after hearing for the reasons stated in the Court's endorsement on Paper 19 (co-defendant Mansi's motion). Judge: Tingle, Hon. Brent A		 Image
03/25/2026	Endorsement on Motion to dismiss (#17.0): ALLOWED after hearing for the reasons stated in the Court's endorsement on Paper 19 (co-defendant Mansi's motion). Judge: Tingle, Hon. Brent A		 Image
03/25/2026	Endorsement on Motion for judgment (#19.0): ALLOWED after hearing. The Court treats this as a Rule12(b)(6) motion to dismiss. The plaintiff's complaint fails to state a claim against this defendant where Trooper Mansi, per the complaint, was a public employee of the Massachusetts State Police acting in the course of her official duties while engaged in discretionary actions as to the manner in which to conduct investigatory activities. See Gildea v. Ellershaw, 363 Mass. 800, 820 (1973). The complaint fails to allege that the defendant acted with malice, bad faith or corruption. See South Boston Betterment Trust Corporation v. Boston Redevelopment Authority, 438 Mass. 57, 69 (2002). Further, the Count 4 fails to state a claim for a private right of action against a government official, and even if it did so, it would fail where the complaint fails to allege that the defendant acted through threats, intimidation, or coercion to compel him to give up a protected right. See Doe v. Sex Offender Registry Board, 94 Mass. App. Ct. 52, 64-65 (2018). Judge: Tingle, Hon. Brent A		 Image
03/26/2026	JUDGMENT on Defendants, Trooper Carolyn Mansi, Trooper Emily Nugent, Captain Pi Downsborough 12(b) motion to dismiss against Plaintiff(s) John Clayton. It is ORDERED and ADJUDGED: Case dismissed. Judge: Tingle, Hon. Brent A	21	 Image
04/09/2026	NOTICE OF APPEAL FILED: Notice is hereby given that Plaintiff John Clayton appeals to the Appeals Court from the Judgment entered on March 26, 2026, dismissing the case, and from the March 25, 2026 endorsements allowing Defendant Carolyn Mansi's Motion for Judgment on the Pleadings, Defendant Emily Nugent's Motion to Dismiss, and Defendant Pi Downsborough's Motion to Dismiss. Applies To: Clayton, John (Plaintiff)	22	 Image
04/13/2026	Certification/Copy of Letter of transcript ordered from Court Reporter 03/23/2026 03:00 PM Rule 12 Hearing Applies To: Clayton, John (Plaintiff)	23	 Image
05/13/2026	CD of Transcript of 03/23/2026 03:00 PM Rule 12 Hearing received from Jill Kourafas. 1		
05/13/2026	Notice of assembly of record sent to Counsel	24	 Image
05/13/2026	Notice to Clerk of the Appeals Court of Assembly of Record	25	 Image
05/13/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).	26	 Image
05/27/2026	Appeal entered in Appeals Court on 05/21/2026 docket number NO: 2026-P-0714	27	 Image

Add. 3 — Endorsements of Tingle, J., on Paper Nos. 16, 17, and 19, and Judgment (Paper No. 21), Middlesex Superior Court Civil Action No. 2581CV00786.

Endorsements on Paper Nos. 16 (Downsbrough) and 17 (Nugent), Tingle, J. (Mar. 24, 2026), R.A. 110, R.A. 113 — “ALLOWED after hearing for the reasons stated in the Court’s endorsement on Paper 19 (co-defendant Mansi’s motion).”

Endorsement on Paper No. 19 (Mansi), Tingle, J. (Mar. 24, 2026), R.A. 116 — “ALLOWED after hearing. The Court treats this as a Rule 12(b)(6) motion to dismiss. The plaintiff’s complaint fails to state a claim against this defendant where Trooper Mansi, per the complaint, was a public employee of the Massachusetts State Police acting in the course of her official duties while engaged in discretionary actions as to the manner in which to conduct investigatory activities. See *Gildea v. Ellershaw*, 363 Mass. 800, 820 (1973). The complaint fails to allege that the defendant acted with malice, bad faith or corruption. See *South Boston Betterment Trust Corporation v. Boston Redevelopment Authority*, 438 Mass. 57, 69 (2002). Further, the Count 4 fails to state a claim for a private right of action against a government official, and even if it did so, it would fail where the complaint fails to allege that the defendant acted through threats, intimidation, or

coercion to compel him to give up a protected right. See Doe v. Sex Offender Registry Board, 94 Mass. App. Ct. 52, 64-65 (2018).”

Judgment (Middlesex Superior Court, Paper No. 21, Mar. 26, 2026), R.A.

119 — “JUDGMENT on Defendants, Trooper Carolyn Mansi, Trooper Emily Nugent, Captain Pi Downsborough 12(b) motion to dismiss against Plaintiff(s) John Clayton. It is ORDERED and ADJUDGED: Case dismissed.”

2/24/24
@ 2:30
hale

16

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY, ss.

SUPERIOR COURT
CIVIL ACTION NO: 2581CV00786

JOHN CLAYTON
Plaintiff

v.

TROOPER CAROLUN MANSI,
TROOPER EMILY NUGENT,
CAPTAIN PI DOWNSBROUGH.
Defendants

RECEIVED

6/4/2025

**DEFENDANT PI DOWNSBROUGH'S MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF**

Defendant Captain Pi Downsborough (Hereinafter "Captain Downsborough") hereby moves to dismiss Plaintiff John Clayton's ("Plaintiff") Complaint. Captain Downsborough submits this memorandum in support of her motion to dismiss the Plaintiffs' Complaint because each count against her fails to allege a cognizable legal claim. Mass. R. Civ. P. 12(b)(6).

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a complaint must state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To be plausible, the "[f]actual allegations must be enough to raise a right to relief above the speculative level" *Id.*

While this is not a probability requirement, it is one that requires "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009), quoting *Twombly*, 550 U.S. at 556. To determine if a complaint meets this standard, a court assumes all well-pleaded facts as true and gives the plaintiff the benefit of all reasonable inferences. See *Ruiz v. Bally Total Fitness Holding Corp.*, 496 F.3d 1, 5 (1st Cir. 2007).

Dismissal is appropriate if the complaint fails to set forth "factual allegations, either direct or

Allocated after hearing for the reasons stated in the court's endorsement on
Paper 19 (Co-Def, Mansi's Motion). Tingle, J. - 3/24/26

ALLOTTED after hearing for the reasons stated in the court's decision on Paper 19 (as-def, Mansi's motion). Trial, J - 3) 24/26

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2581CV00786

JOHN CLAYTON,

Plaintiff,

v.

TROOPER CAROLYN MANSI,
TROOPER EMILY NUGENT, CAPTAIN
PI DOWNSBROUGH,

Defendants.

RECEIVED

6/9/2025

**DEFENDANT TROOPER EMILY NUGENT'S
MOTION TO DISMISS UNDER RULE 12(b)(6)**

The Plaintiff's lawsuit fails to state a claim because Trooper Emily Nugent is protected by common law immunity. The Complaint does not contain any factual allegations from which a reasonable jury could infer that Trooper Nugent acted with malice toward the Plaintiff when she investigated him for sex trafficking. The felony charges are still pending. *See Commonwealth v. Clayton*, Worcester Co. Superior Court, Docket No.: 2085CR00010.

As such, all of counts in the Complaint fail under Rule 12(b)(6): three under the Massachusetts wiretap statute (1) M.G.L. c. 272, § 99 C.1; (2) M.G.L. c. 272, § 99 C.5; (3) M.G.L. c. 272, § 99 C.3; and a count titled (4) "The Violation of M.G.L. M.G.L. c. 272, § 99 Constituted an Unlawful Search and Denial of Due Process under Articles 12 and 15 of the Massachusetts Bill of Rights."

The claim under "Articles 12 and 15" also fails because the Plaintiff does not explain how the Bill of Rights creates a direct cause of action. And even if the Complaint contained a

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2581CV00786

JOHN CLAYTON,
Plaintiff,

v.

TROOPER CAROLYN MANSI,
TROOPER EMILY NUGENT, and
CAPTAIN PI DOWNSBROUGH

Defendants.

RECEIVED

7/23/2025

DEFENDANT CAROLYN MANSI'S MOTION FOR JUDGMENT

Defendant, Carolyn Mansi, moves pursuant to Mass. R. Civ. P. 12(c), for judgment on the pleadings in favor of Trooper Mansi. As grounds for her motion, Trooper Mansi states that Plaintiff's pleadings are legally insufficient because the Complaint fails to state a claim upon which relief can be granted.

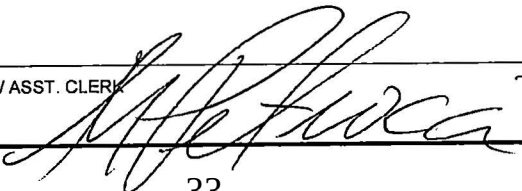
Plaintiff's complaint alleges three claims under the state wiretap statute, M.G.L. c. 272, § 99 (Counts 1-3), and one claim for "unlawful search and denial of due process under Articles 12 and 15 of the Massachusetts Bill of Rights" (Count 4). Plaintiff's allegations stem from Trooper Mansi's involvement in the investigation of him for sex trafficking. The felony charges against Plaintiff are still pending, *See Commonwealth v. Clayton*, Worcester Superior Court, Docket No.: 2085CR00010.

All claims against Trooper Mansi must be dismissed because 1) she is protected by common law immunity as the Complaint does not contain allegations to support an inference that she acted with malice, in bad faith, or corruptly towards the Plaintiff; and

that the defendant acted w/ malice, bad faith or corruption. See South Boston Betterment Trust Corp. v. BPA, 438 Mass. 57, 64 (2002). Further, the Count 4 fails to state a claim for a private right of action against a government official, and even if it did so, it would fail where the complaint fails to allege that the defendant acted through threats, intimidation or coercion to compel him to give up a protected right. See Ode v. Sex Offender Registry Board, 94 Mass App. Ct. 512, 64-65 (2018).

Taylor, J - 3/24/20

#21

JUDGMENT ON MOTION TO DISMISS		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER	2581CV00786	Michael A. Sullivan, Clerk of Court Middlesex County	
CASE NAME	Clayton, John vs. Trooper Carolyn Mansi et al	COURT NAME & ADDRESS Middlesex Superior - Lowell 370 Jackson Street Lowell, MA 01852	
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) Trooper Carolyn Mansi Trooper Emily Nugent Captain Pi Downsborough			
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) Clayton, John			
This action came on before the Court, Hon. Brent A Tingle, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b), It is ORDERED AND ADJUDGED : Case dismissed.			
DATE JUDGMENT ENTERED 03/26/2026	CLERK OF COURTS/ ASST. CLERK X 		

Add. 4 — G. L. c. 272, § 99 (relevant provisions)

A. Preamble (first paragraph, in part).

Organized crime . . . consists of a continuing conspiracy among highly organized and disciplined groups to engage in supplying illegal goods and services.

A. Preamble (final paragraph).

The general court further finds that the uncontrolled development and unrestricted use of modern electronic surveillance devices pose grave dangers to the privacy of all citizens of the commonwealth. Therefore, the secret use of such devices by private individuals must be prohibited. The use of such devices by law enforcement officials must be conducted under strict judicial supervision and should be limited to the investigation of organized crime.

B. Definitions (in part).

4. The term “interception” means to secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication; provided that it shall not constitute an interception for an investigative or law enforcement officer, as defined in this section, to record or transmit a wire or oral communication if the officer is a party to such communication or has been given prior authorization to record or transmit the communication by such a party and if recorded or transmitted in the course of an investigation of a designated offense as defined herein.

7. The term “designated offense” shall include the following offenses in connection with organized crime as defined in the preamble: arson, assault and battery with a dangerous weapon, extortion, bribery, burglary, embezzlement, forgery, gaming in violation of section seventeen of chapter two hundred and seventy-one of the general laws, intimidation of a witness or juror, kidnapping, larceny, lending of money or things of value in violation of the general laws, mayhem, murder, any offense involving the possession or sale of a narcotic or harmful drug, perjury, prostitution, robbery, subornation of perjury, any violation of this section, being an

accessory to any of the foregoing offenses and conspiracy or attempt or solicitation to commit any of the foregoing offenses.

13. The term “person” means any individual, partnership, association, joint stock company, trust, or corporation, whether or not any of the foregoing is an officer, agent or employee of the United States, a state, or a political subdivision of a state.

C. Offenses (in part).

1. . . . [A]ny person who—willfully commits an interception, attempts to commit an interception, or procures any other person to commit an interception or to attempt to commit an interception of any wire or oral communication shall be fined not more than ten thousand dollars, or imprisoned in the state prison for not more than five years . . . or both

3. Disclosure or use of wire or oral communications prohibited. Except as otherwise specifically provided in this section any person who—

a. willfully discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or

b. willfully uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception, shall be guilty of a misdemeanor punishable by imprisonment in a jail or a house of correction for not more than two years or by a fine of not more than five thousand dollars or both.

5. Possession of interception devices prohibited.

A person who possesses any intercepting device under circumstances evincing an intent to commit an interception not permitted or authorized by this section, or a person who permits an intercepting device to be used or employed for an interception not permitted or authorized by this section, or a person who possesses an intercepting device knowing that the same is intended to be used to commit an interception not permitted or authorized by this section, shall be guilty of a misdemeanor punishable by imprisonment in a jail or house of correction for not more than two years or by a fine of not more than five thousand dollars or both.

The installation of any such intercepting device by such person or with his permission or at his direction shall be prima facie evidence of possession as required by this subparagraph.

D. Exemptions (in part).

1. Permitted interception of wire or oral communications. It shall not be a violation of this section— . . .

c. for investigative and law enforcement officers of the United States of America to violate the provisions of this section if acting pursuant to authority of the laws of the United States and within the scope of their authority.

d. for any person duly authorized to make specified interceptions by a warrant issued pursuant to this section.

e. for investigative or law enforcement officers to violate the provisions of this section for the purposes of ensuring the safety of any law enforcement officer or agent thereof who is acting in an undercover capacity, or as a witness for the commonwealth; provided, however, that any such interception which is not otherwise permitted by this section shall be deemed unlawful for purposes of paragraph P.

P. Suppression of evidence (in part).

Any person who is a defendant in a criminal trial in a court of the commonwealth may move to suppress the contents of any intercepted wire or oral communication or evidence derived therefrom, for the following reasons: 1. That the communication was unlawfully intercepted. 2. That the communication was not intercepted in accordance with the terms of this section. . . .

Q. Civil remedy.

Any aggrieved person whose oral or wire communications were intercepted, disclosed or used except as permitted or authorized by this section or whose personal or property interests or privacy were violated by means of an interception except as permitted or authorized by this section shall have a civil cause of action against any person who so intercepts,

discloses or uses such communications or who so violates his personal, property or privacy interest, and shall be entitled to recover from any such person—

1. actual damages but not less than liquidated damages computed at the rate of \$100 per day for each day of violation or \$1000, whichever is higher;

2. punitive damages; and

3. a reasonable attorney's fee and other litigation disbursements reasonably incurred. Good faith reliance on a warrant issued under this section shall constitute a complete defense to an action brought under this paragraph.

Add. 5 — Pertinent Excerpts From Certified Transcript of March 23, 2026

Rule 12 Hearing

Middlesex Superior Court
Civil Action No. 2581CV00786
John Clayton v. Trooper Carolyn Mansi, et al.

Before the Honorable Brent A. Tingle

The certified transcript of the March 23, 2026 hearing is separately docketed in the Appeals Court as Paper No. 6. The following pages are reproduced as pertinent to the issues presented in this Application for Direct Appellate Review:

Tr. 5 — The motion judge states that he searched for authority addressing an alleged violation of the Wiretap Act in this context and “couldn’t find a case on point”; counsel for Captain Downs brough states that his independent Westlaw search disclosed no “apples-to-apples comparison.”

Tr. 8-9 — The motion judge questions whether the complaint may reasonably be read as alleging a conscious decision by law-enforcement officers to proceed with warrantless interception despite knowledge of the Wiretap Act, and whether malice or bad faith may be inferred from those allegations.

Tr. 20-21 — After counsel invokes the officer-safety exemption, the court asks whether anyone was listening to the undercover meeting in real time. Counsel responds, “I expect so. It’s not in the complaint, so I’ve got to be careful there.” The court then asks whether applicability of the exemptions presents “more summary judgment issues” requiring “a more fully developed record.”

Tr. 29 — The motion judge states that, at the motion-to-dismiss stage and reading the complaint in the light most favorable to the plaintiff, he is “not sure” he could determine “whether the exemptions truly apply or not on the record that’s in front of me.”

The following pages are reproduced directly from the certified transcript: Tr. 5, 8-9, 20-21, and 29.

1 the case.

2 Under Rule 12(b)(6) essentially all relying on arguments
3 under the Massachusetts Tort Claims Act.

4 So I think in order of motions, I think it was Defendant
5 Downsborough's motion which is first in order on the docket. So
6 we'll begin with Captain Downsborough's motion which, I think, is
7 Attorney Burke.

8 You're first up, so I'll ask you the question that I had for
9 all the defendants which is one of you in your motion papers
10 cited a case that stood for the proposition that the Tort Claims
11 Act provides qualified immunity under claims for violations of
12 the Massachusetts Privacy Act, and I know that the Tort Claims
13 Act there's caselaw saying that it's broadly construed.

14 What I'm curious about is whether or not there's a case out
15 there that speaks to this scenario where there's an alleged
16 violation of the Wiretap Act in this context. I did a Lexis
17 search for it, which doesn't mean that someone else could do a
18 better job than me on that, but I couldn't find a case on point.

19 Attorney Burke, did you find anything?

20 MR. BURKE: I didn't use Lexis, but I used Westlaw --

21 THE COURT: Yeah.

22 MR. BURKE: -- to conduct a similar search, and I didn't see
23 anything that was an apples-to-apples comparison, your Honor.

24 THE COURT: Okay. The argument, I gather, though, from your
25 client's perspective and likely the defendants, globally,

1 MR. BURKE: Understood. At this --

2 THE COURT: Yeah.

3 MR. BURKE: -- you know, stage of litigation, I would agree
4 with that analysis that you accept his allegations as true.
5 Even with that being said, Mr. Clayton has not alleged that any
6 of these acts were taken with malice or bad faith or that
7 there's any sort of corrupt actions by this. Even conduct that
8 can be categorized as poor choice, a bad decision, unlawful
9 even, all that still falls under the discretionary umbrella that
10 protects these officers.

11 And so, yes, your Honor, there is this allegation on
12 Mr. Clayton, it's the legal conduct. But at no time in the
13 complaint does he say that this was bad faith or malice, they
14 are doing this for personal gain or retaliatory motive, that
15 they had any sort of vendetta against Mr. Clayton. His
16 allegation is that they made bad decisions in their
17 investigation.

18 THE COURT: Let me just interrupt with a question on that
19 point. Couldn't his complaint be broadly read as alleging that
20 they decided to say, "Warrants be damned, go record these
21 conversations. If they get suppressed, they get suppressed."
22 And from there that that -- in other words, can't malice or bad
23 faith be inferred into the allegations with the allegation is
24 that they -- that a conscious decision was made to violate the
25 Wiretap Law.

1 MR. BURKE: Even construing this in the most broad fashion
2 and inferring everything in Mr. Clayton's favor, it's just not
3 there. I mean, there's nothing there that you could even infer
4 that there was malice of bad faith just that they did a bad job.

5 So, yes, I would agree that if there was some information in
6 there that they said, you know, warrants be damned or whatever
7 your verbiage was --

8 THE COURT: Yeah, it's hyperbole, but that --

9 MR. BURKE: Of course.

10 THE COURT: Yeah.

11 MR. BURKE: You know, if there was that kind of allegation
12 contained in there, then, sure, I think we can infer and at
13 least make a large step to try to get to that conclusion, but
14 that doesn't exist in this complaint. And I understand he's
15 cognizant that he's a pro se plaintiff here, but there's still
16 some pleading requirements that need to be met.

17 THE COURT: But I understand that, and I probably didn't
18 articulate it well, but isn't the allegation that law
19 enforcement professionals cognizant of the requirements of the
20 Wiretap Act made a conscious decision to violate it? Reading
21 the complaint in the light most favorable to the plaintiff,
22 couldn't they be construed as alleging malice?

23 MR. BURKE: No, I don't think he can, your Honor. I think
24 the case that was utilized by Mr. Clayton was an SJC case as the
25 *Common Law versus Du*, and I'm not sure where he got this

1 MS. WELLS: Right.

2 THE COURT: So you can envision perhaps someone listening in
3 in that scenario where they haven't reached the point of
4 developing probable cause to obtain a warrant, but there's a
5 risk that someone might --

6 MS. WELLS: Right.

7 THE COURT: -- that members of the bike club might not
8 appreciate --

9 MS. WELLS: Right.

10 THE COURT: -- that a law enforcement member is in their
11 presence.

12 MS. WELLS: Right. Right. And I think that the fact that
13 the statute allows for suppression of that evidence in the
14 criminal case, but does not have the same kind of you can't do
15 this language, as it relates to the civil matter, opens the door
16 and allows for a recording even when, you know, an officer is
17 listening and the danger is contemporaneous with when they're
18 listening.

19 THE COURT: Yeah. This doesn't seem to be that case,
20 though, does it?

21 MS. WELLS: Well, I mean, you've got -- you've got female
22 officers meeting in a location separated from their backup in a
23 location with someone they're investigating for sex trafficking
24 who is targeting women.

25 THE COURT: Was someone listening in real time?

1 MS. WELLS: I expect so. It's not in the complaint, so I've
2 got to be careful there.

3 THE COURT: Yeah, I don't want to get -- I understand. I
4 just don't want to get a feel from what the allegations actually
5 are in the complaint.

6 MS. WELLS: It's a matter of court. This, you know, it's
7 not as if they're looking into someone who is, for example, you
8 know, working in a law office and stealing some of the funds and
9 funneling the funds.

10 THE COURT: Right.

11 MS. WELLS: This is different. This is a very serious
12 felony that they're investigating.

13 THE COURT: Aren't the applicability of the exemptions,
14 though, more summary judgment issues, though, where there's a
15 more fully developed record?

16 MS. WELLS: Well, that would go, I would suggest,
17 potentially to are we proving that an exemption exists? That
18 may be the case in there. I understand your thinking there. I
19 would suggest to the Court why those exemptions are relevant
20 here at this motion to dismiss stage or in this case, a motion
21 for a judgment as we filed under 12(c).

22 The reason those are particularly relevant here is because
23 they negate the malice, the ill intent, what the mindset is of
24 the actual defendant here. And so, because those exemptions
25 exist and because there is a reasonable basis to believe in

1 Here you have two undercover agents asking me for help, to
2 help with their addiction problem.

3 THE COURT: Interrupting, this was in a public place, in a
4 restaurant or something?

5 MR. CLAYTON: It was in a restaurant in a little alcove that
6 was isolated. There was no adjacent table. The video
7 recordings will show that. It was on a very sensitive topic.
8 There was no expectation, there was an expectation of privacy.
9 They approached me asking to set up a meeting so I could help
10 with their addiction. That's a very low threat bar. And then
11 even for the exemption, it has to be the primary purpose because
12 the statute is very clear. It states the purpose is for officer
13 safety. If there was nobody else listening to be able to come
14 running in when I attacked them, there is no safety issue there.

15 THE COURT: Yeah. And I'm interrupting only to agree in the
16 sense that I agree that at this motion to dismiss stage where
17 the complaint is read in the light most favorable to the
18 plaintiff that I'm not sure I would even be able to determine
19 whether the exemptions truly apply or not on the record that's
20 in front of me.

21 MR. CLAYTON: Okay. Just one more thing on that. They did
22 submit, on the basis of the recordings, a report, which is in
23 the exhibit, and it's an investigative report, so it was clearly
24 for investigation not for officer safety. There was no safety
25 law, no threat assessment, nothing inferring that.

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. A. P. 16(k), I, John B. Clayton, certify that the foregoing application complies with the rules of court that pertain to applications for direct appellate review, including Mass. R. A. P. 11(b), 16(k), 20(a), and 21. It is produced in Times New Roman, 14-point proportional font, with one-inch margins.

I further certify that the argument required by Mass. R. A. P. 11(b)(5) complies with the applicable length limitation because it contains 1334 non-excluded words and therefore does not exceed 2,000 words. Compliance was ascertained using the word count feature of Google Docs (web application, current version as of September 21, 2026)

Dated: September 21, 2026

/s/ John B. Clayton

John B. Clayton, Plaintiff-Appellant, Pro Se

117 Maynard Street

Northborough, MA 01532

508-878-3300, flightofone@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a true copy of the foregoing Application of the Plaintiff-Appellant for Direct Appellate Review, together with the accompanying Motion of the Plaintiff-Appellant for Leave to File an Application for Direct Appellate Review Out of Time, on behalf of Plaintiff-Appellant John B. Clayton, was served through the eFileMA electronic filing system upon the registered participants identified below and by electronic mail upon the persons marked with an asterisk (*), who are not registered participants in eFileMA:

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For other interested parties: Office of the Attorney General and
Worcester County District Attorney's Office

Dated: September 21, 2026

/s/ John B. Clayton

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