



# LEGAL UPDATE

## Racial Bias Inferred From Use of “Nonwhite” Snapchat Username

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Commonwealth v. Rodriguez, 496 Mass. 627 (2025).

### RELEVANT FACTS

In 2019 a detective assigned to the Lowell police gang unit created a fictitious Snapchat account using a “nonwhite” name and a bitmoji of a “nonwhite” person. He sent “friend requests” to “friends” of other undercover accounts. The detective would monitor “stories” posted and would follow up on any that indicated criminal behavior.

The detective’s account became “friends” with “boss man Nate.” At the time, the detective did not know who “boss man Nate” was nor was he aware of the race or ethnicity of the user. On March 7, 2020, “boss man Nate” posted a video of a shooting outside a car window in Lowell. After an investigation, the defendant was charged with several firearm offenses.

The defendant filed a motion for discovery and the judge ordered the Commonwealth to provide:

1. all policies, procedures, written protocols, and training manuals used by the Lowell police department as of March 2020 relating to social media investigations; and
2. all police reports and investigatory notes generated by the Lowell police department from March 1, 2018, to June 1, 2021, for Snapchat investigations that resulted in criminal charges (excluding information related to murder, human trafficking or sexual assault investigations.)

In response to the discovery order, the Commonwealth indicated that there were no policies, procedures, or training manuals related to social media monitoring. The Commonwealth provided the defense with seven police reports, including the defendant’s report. Five of the reports identified the race or ethnicity of the user, all of whom were nonwhite.

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

The defendant filed a motion to suppress alleging that the police engaged in selective monitoring of Snapchat based on race in violation of his equal protection rights. The judge denied the motion.

## DISCUSSION

A defendant who believes that the investigation was improperly motivated by race can file a motion to suppress the evidence. The burden is initially on the defendant to establish a reasonable inference that the officer's decisions were motivated by the defendant's membership in a protected class, such as race. To meet this burden, the defendant must produce specific facts that establish a reasonable inference that law enforcement decisions were "motivated at least in part by race." Commonwealth v. Long, 485 Mass. 711, 726 (2020).

If the defendant establishes that inference, the court will conduct a hearing at which the Commonwealth has the burden of rebutting the inference. In this case, the motion judge found the defendant failed to establish a reasonable inference, so the burden never shifted to the Commonwealth.

On appeal, the SJC found that the defendant had met his burden. In reaching this decision, the court relied on three facts.

First, the detective used a "nonwhite" username and bitmoji for the undercover Snapchat account.

Although the record does not reveal the racial composition of [the detective's] Snapchat "friends," [the detective's] decision to represent himself as "nonwhite" in the context of an undercover Snapchat account – while certainly not dispositive -- is probative of [the detective's] intention to "friend" and thereby monitor nonwhite persons. To that extent, [the detective's] selection of a "nonwhite" username and "nonwhite" bitmoji suggests that his monitoring activities may have unlawfully targeted a protected class. p. 635.

Second, at a motion hearing, the officer was asked about the affluence of the neighborhoods with high rates of gang activity. The detective testified to housing projects and a "variety of cultures" being in the area. The court found that the detective's "oblique" reference to race when asked about "affluence" supports a reasonable inference that the detective "brought a 'racial lens' to his monitoring practices." p. 636.

Third, the racial composition of the defendants that had been charged after Snapchat monitoring and the lack of any department policies that would ensure that discriminatory motivations do not impact decisions related to social media monitoring also supported an inference of racial motivation. While the court recognized that total number of Snapchat cases was small and likely not enough to draw statistically significant conclusions, it was significant that all the cases involved minorities.

The court found that the defendant met his burden of establishing a reasonable inference of selective enforcement. The matter was remanded to the District Court for further hearing. At that hearing, the burden will be on the Commonwealth to rebut that inference.

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