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April 3, 2025

The Honorable Anthony G. Brown
Attorney General of Maryland
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202

Re: Request for Opinion – Admissibility of Officer’s Testimony,
Where Body Worn Camera is Suppressed

Dear Attorney General Brown:

I am writing to request a formal Opinion of the Attorney General regarding the interpretation of Courts and Judicial Proceedings Section 10-405, which governs the admissibility of wiretapped communications. Section 10-405 provides:

whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of this State, or a political subdivision if the disclosure of the information would be a violation of this subtitle

Md. Code Ann., Cts. & Jud. Proc. § 10-405.

The requirements for a lawful body worn camera recording to be lawful under that statute are found in Cts. & Jud. Proc. § 10-402, which provides the following:

(ii) It is lawful under this subtitle for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication with a body-worn digital recording device or an electronic control device capable of recording video and oral communications if:

1. The law enforcement officer is in uniform or prominently displaying the officer's badge or other insignia;

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2. The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3-511 of the Public Safety Article for the use of body-worn digital recording devices or electronic control devices capable of recording video and oral communications;
3. The law enforcement officer is a party to the oral communication;
4. Law enforcement notifies, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and
5. The oral interception is being made as part of a videotape or digital recording.

We know that if an officer or trooper does not comply with section 10-402 requirements, the video should be suppressed. The Department's question is, when the video is suppressed under these circumstances, is the officer also barred from testifying about his or her own observations independent of the body worn camera footage? The Appellate Court of Maryland addressed a similar issue, in which a trooper was recording a defendant's statements without placing the defendant on notice that he was being audibly recorded. In that case, the Court held that the trooper was free to testify from memory as to the content of those incriminating statements. The Court reasoned that while the trooper was hearing the inculpatory utterances, the fact that the trooper was contemporaneously illegally recording the conversation does not bar admission of the trooper's testimony concerning his hearing the conversation even though it does preclude the admission of the recording of that communication. *Aud v. State*, 72 Md. App. 508, 520 (1987).

We are aware of at least one case, in which a Maryland Circuit Court found that an arresting officer failed to notify the individual that he was being recorded. The judge, in addition to barring the video from coming into evidence, also refused to allow the officer to testify about his own observations independent of the Body Worn Camera footage. The Department's question is whether this is appropriate under Maryland law. Based upon the information provided herein, I am seeking a formal Opinion on the issue from the Attorney General.

Sincerely,


Colonel Roland L. Butler, Jr.
Superintendent

RLB:pmmp