

Law Office of Mark A. Bederow, P.C.

Carnegie Hall Tower
152 West 57th Street, 8th Floor
New York, NY 10019
Tel: 212.803.1293 • Fax: 917.591.8827
mark@bederowlaw.com
www.bederowlaw.com

March 10, 2025

VIA EMAIL

Helena Rafferty
Chief of Police
Canton Police Department
1492 Washington Street
Canton, Massachusetts 02021

RE: Referral for Criminal Investigation of Illegal Interception of Oral Communications Under M.G.L. 272 § 99

Dear Chief Rafferty:

Along with co-counsel Timothy Bradl, I represent Aidan Kearney, who is scheduled to appear in the Stoughton District Court on March 18, 2025, in connection with his alleged witness intimidation of Canton Town Selectman Christopher Albert on March 4, 2025, outside of D & E Pizzeria (“D & E”), which is owned by Mr. Albert. That matter is being investigated by Detective Brian Tully of the Massachusetts State Police (“MSP”).

I write to formally request that the Canton Police Department (“CPD”) commence a criminal investigation into Mr. Albert for apparent violations of M.G.L. 272 § 99, Interceptions of Wire and Oral Communications, both generally and regarding the interception of Mr. Kearney’s oral communications outside of D & E on March 4, 2025. As detailed below, there is conclusive proof that Mr. Albert (a) repeatedly intercepts oral communications of people outside D & E without their

Law Office of Mark A. Bederow, P.C.

Chief Helena Rafferty

March 10, 2025

Page 2

actual knowledge and (b) unlawfully possess an intercepting device with the intent to commit unlawful interceptions. See M.G.L. 272 § 99(C)(1) and (5).

To the extent that the CPD is incapable of conducting a fair and unbiased investigation due to (a) Mr. Albert's position as a Town Selectman (which grants him oversight over the CPD and your term of employment and compensation), (b) the "aggrieved party" bringing this issue to your attention is Mr. Kearney,¹ (c) Mr. Albert's brother Kevin Albert serves as a CPD detective, and/or (d) CPD's vigorous yet unsuccessful attempt to prosecute *at least 10* individuals for allegedly "intimidating" Mr. Albert by exercising their First Amendment right to criticize the prosecution of Karen Read,² I request that you promptly notify me whether you intend to refer this matter to another law enforcement agency.

The Relevant Facts

D & E is located on Washington Street in the heart of downtown Canton. As the town's main downtown thoroughfare, Washington Street

¹ Mr. Kearney is a vocal critic of the Karen Read prosecution and has criticized the CPD, MSP, and Mr. Albert, among others.

² As you are aware, acting upon Mr. Albert's claims of "emotional" and "economic" harm, the CPD dedicated staggering resources to prosecute the so-called "Canton 9" for expressing their dissatisfaction with the Read prosecution by protesting across the street from D & E, and Richard Schiffer, who left several rubber ducks around various locations in Canton which criticized the Read prosecution. Charges were declined or dismissed against all these individuals after courts concluded those targeted for prosecution by the CPD were exercising their First Amendment rights. Additionally, as he did in the instant matter involving Mr. Kearney, on at least one other occasion Mr. Albert contacted the MSP, claiming that he was "intimidated" by a mother and daughter placing rubber ducks near D & E. Not surprisingly, those matters also were dismissed on First Amendment grounds.

Law Office of Mark A. Bederow, P.C.

Chief Helena Rafferty

March 10, 2025

Page 3

contains the heaviest pedestrian and vehicular traffic in Canton. D & E utilizes two Wyze cameras, one of which is perched outside, aimed directly at Washington Street and the sidewalk. There are no signs or notices posted at D & E warning customers or passersby that their private oral communications are subject to being intercepted and recorded.

As reflected in Detective Tully's March 5, 2025 report³ outlining Mr. Kearney's alleged witness intimidation on March 4, 2025, Mr. Albert acknowledges that D & E's exterior camera intercepts and records audio from anyone within its range. *See* exhibit A at p. 2 (the camera located on the exterior of the building is "audio recorded"); *id.* at p. 5 ("audio is captured by an exterior camera"). In other words, Mr. Albert admits that he can—and does—intercept and record private oral communications made by *anyone* in D & E's proximity, irrespective of their ignorance to the fact they are being eavesdropped or recorded.

Mr. Albert alleges that on March 4, 2025, at approximately 10:20 p.m., he listened—from the safety of his home—to surreptitiously recorded video of Mr. Kearney "addressing [Mr. Albert] and his son Colin" about their Read testimony. *See* exhibit A, p. 2. Mr. Albert alleges that he was "very upset about [Mr.] Kearney's statements." Although not relevant to the issue of whether Mr. Albert is in violation of M.G.L. 272 § 99, the video depicts Mr. Kearney facing an interior camera rather than the audio-enabled exterior camera, which is located at the far end of the property.

³ On March 5, 2025, Mr. Albert spoke to Detective Tully at 8:15 a.m. Detective Tully completed a 6-page report and sought Mr. Kearney's custodial arrest for witness intimidation within 49 minutes of learning about the incident. *See* exhibit A, pp. 3, 5-6. The Stoughton District Court denied the request for an arrest warrant.

Law Office of Mark A. Bederow, P.C.

Chief Helena Rafferty

March 10, 2025

Page 4

The Applicable Law

M.G.L. 272 § 99 requires the consent of **all parties** for the recording of oral communications. The statute's Preamble details the legislature's concern with the "uncontrolled development and unrestricted use of modern electronic surveillance devices" which "pose grave dangers to the privacy of all citizens of the commonwealth. Accordingly, a stated legislative intent of the statute is to ensure that "the secret use of such devices by private individuals **must be prohibited**" (emphasis added).

Unlike the Fourth Amendment, M.G.L. 272 § 99 provides protection to an "aggrieved person" (a non-consenting recorded party) even where that individual does not have a reasonable expectation of privacy. *Commonwealth v. Du*, 103 Mass.App.Ct. 469, 477 (Suffolk App. Ct. 2023). Consequently, a recording made on a public sidewalk or thoroughfare may violate the statute. *See id.* at 471 (secret recordings made on cell phone in "public places" including sidewalks, held illegal). Under the Massachusetts statute, a recording is made "secretly" (and thus illegally) where it is made without the "actual knowledge" of the person being recorded. *Id.* at 478. This means that Mr. Albert has no absolute right to record oral communications made by someone positioned on a public sidewalk or street within range of D & E's audio camera. Yet this is precisely what D & E's exterior camera is set up to do.

Mr. Albert's blanket audio recording of individuals outside of D & E without their actual knowledge constitutes a felony under M.G.L. 272 § 99(C)(1), which states that any person who willfully and secretly audio records another without "prior authority" by all parties to the communication is guilty of a felony. Significantly, the statute contains an evidentiary presumption that

Law Office of Mark A. Bederow, P.C.

Chief Helena Rafferty

March 10, 2025

Page 5

proof of the installation of any intercepting device by any person under circumstances evincing an intent to commit an interception, which is not authorized or permitted by this section, shall be prima facie evidence of a violation of this subparagraph

Id. Put simply, Mr. Albert's installation of a recording camera while aware that it would record audio without the actual knowledge of the intercepted parties conclusively establishes that he is in violation of the statute. Additionally, separate and apart from the March 4, 2025 incident, Mr. Albert's mere possession of the camera with the intent to audio record another without his or her agreement constitutes a misdemeanor under M.G.L. 272 § 99(C)(5).

Other Factors Warranting An Investigation

It is essential that the CPD be evenhanded in determining whether to investigate potential criminal violations, without regard to any relevant party's views on a controversial matter of public concern, such as the merits of the Read prosecution. Here, there is overwhelming evidence that a Town Selectman and longtime business owner is violating the law and flagrantly invading the privacy interests of *anyone* who makes oral communications within range of D & E's exterior camera. Failure to investigate here will lessen the public's confidence in the CPD's ability to apply the law in an unbiased manner and to protect the public without regard to a possible offender's prominent political status in the community, his family's close relationship with the CPD, and his involvement in, and enthusiastic support of, the prosecution of Karen Read.

