

COURT OF APPEALS OF MARYLAND

Deibler v. State, 365 Md. 185

776 A.2d 657 (2001) · No. No. 125, Sept. Term, 2000 · Decided July 17, 2001

SUMMARY

The Maryland Court of Appeals held that the willfulness element of Maryland's wiretap statute requires intentional and purposeful interception, but does not require knowledge that the conduct is unlawful. The court upheld Deibler's conviction for intentionally recording an oral communication in a bathroom, rejecting his argument that the speakers lacked a reasonable expectation of privacy after discovering recording equipment. The opinion also addressed whether repeated threatening or harassing telephone messages violated Maryland's telephone-misuse statute.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Wilner, J.; Bell, C.J.; Eldridge, J.; Raker, J.; Cathell, J.; Harrell, J.; Battaglia, J.
JURISDICTION	Maryland
DECIDED	July 17, 2001
DOCKET	No. 125, Sept. Term, 2000
DISPOSITION	other
PROCEDURAL POSTURE	Deibler appealed convictions entered by the Circuit Court for Anne Arundel County for violating Maryland's wiretap statute and telephone-abuse statute. The Court of Appeals of Maryland granted certiorari on its own initiative before proceedings in the Court of Special Appeals.
STANDARD OF REVIEW	The interpretation of the Maryland wiretap statute is reviewed as a question of law. The sufficiency of the evidence supporting the telephone-abuse conviction was reviewed to determine whether the calls sufficiently evidenced the statutory intent to annoy, abuse, torment, harass, or embarrass.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Thomas Paul Deibler v. State of Maryland

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QUESTIONS PRESENTED

1. Whether the willfulness element of Maryland Code, Courts and Judicial Proceedings § 10-402(a)(1), requires proof that the defendant knew his conduct was unlawful.
2. Whether the Bagdasians had a reasonable expectation of privacy in the conversation recorded after they discovered the hidden equipment.
3. Whether three or four telephone calls, considered under the circumstances presented, sufficiently demonstrated the intent required for a violation of Article 27, § 555A(2).

HOLDINGS

1. For purposes of Maryland Code, Courts and Judicial Proceedings § 10-402(a), and related provisions, an interception not otherwise specifically authorized is willful if it is done intentionally or purposefully. The State need not prove that the defendant knew the interception was unlawful, had a bad motive, or acted with reckless disregard of a known legal duty.
2. Deibler intentionally intercepted an oral communication in violation of § 10-402 because he deliberately installed an audio recording attachment and the Bagdasians were not aware that their conversation was being recorded when they spoke.
3. The three calls, or four if the pager message is counted, did not sufficiently evidence any of the intents required by Article 27, § 555A(2), and the telephone-abuse conviction therefore had to be reversed.

KEY QUOTATIONS

“We hold, therefore, that, for purposes of § 10-402(a), and thus for purposes of §§ 10-405, 10-408(i), and 10-410, an interception that is not otherwise specifically authorized is done willfully if it is done intentionally-purposely.” (365 Md. at 198-199)

“On this record, it is clear that Deibler intentionally and deliberately intercepted an oral communication in violation of § 10-402, and that his conviction under that section is valid.” (365 Md. at 201)

“We do not believe that the three calls made in this case sufficiently evidenced any of the requisite intents.” (365 Md. at 203)

FACTUAL BACKGROUND

Deibler secretly placed a video camera with an audio attachment in a bathroom at his friend's home, recording the friend's aunt while she showered and later recording a conversation between her and her father as they investigated the device. The recording equipment and Deibler's conduct in placing it were identified through the videotape and witness testimony. After a criminal investigator investigated the recording, Deibler left several

voicemail messages, including one accompanied by the sound of cocking an automatic weapon and others expressing anger and threatening to obtain an attorney and "go after" the investigator.

PROCEDURAL HISTORY

After a bench trial, Deibler was convicted of intentionally intercepting an oral communication in violation of Maryland Code, Courts and Judicial Proceedings § 10-402(a)(1), and of making repeated telephone calls with intent to annoy or harass under Article 27, § 555A(2). He received an aggregate five-year sentence, with all but six months suspended and the active portion to be served in home detention. The Court of Appeals affirmed the wiretap conviction but reversed the telephone-abuse conviction.

DISPOSITION

other

CASES CITED

- Perry v. State, 357 Md. 37, 741 A.2d 1162 (1999)
- Hawes v. Carberry, 103 Md. App. 214, 653 A.2d 479 (1995)
- Fearnow v. Chesapeake & Potomac Telephone Co. of Maryland, 104 Md. App. 1, 655 A.2d 1 (1995), rev'd on other grounds, 342 Md. 363, 676 A.2d 65 (1996)
- Ratzlaf v. United States, 510 U.S. 135, 114 S. Ct. 655, 126 L. Ed. 2d 615 (1994)
- Spies v. United States, 317 U.S. 492, 63 S. Ct. 364, 87 L. Ed. 418 (1943)
- Ewell v. State, 207 Md. 288, 114 A.2d 66 (1955)
- State v. Devers and Webster, 260 Md. 360, 272 A.2d 794 (1971)
- Brown v. State, 285 Md. 469, 403 A.2d 788 (1979)
- Shell v. State, 307 Md. 46, 512 A.2d 358 (1986)
- McBurney v. State, 280 Md. 21, 371 A.2d 129 (1977)
- Attorney Grievance Comm'n v. Glenn, 341 Md. 448, 671 A.2d 463 (1996)
- Attorney Grievance Comm'n v. Boyd, 333 Md. 298, 635 A.2d 382 (1994)
- Attorney Grievance Comm'n v. Gavin, 350 Md. 176, 711 A.2d 193 (1998)
- Nuger v. Insurance Comm'r, 238 Md. 55, 207 A.2d 619 (1965)
- Tichnell v. State, 287 Md. 695, 415 A.2d 830 (1980)
- Wood v. State, 290 Md. 579, 431 A.2d 93 (1981)
- Mustafa v. State, 323 Md. 65, 591 A.2d 481 (1991)
- Kassap v. Seitz, 315 Md. 155, 553 A.2d 714 (1989)
- Ricks v. State, 312 Md. 11, 537 A.2d 612 (1988)
- United States v. Murdock, 290 U.S. 389, 54 S. Ct. 223, 78 L. Ed. 381 (1933)
- Citron v. Citron, 722 F.2d 14 (2d Cir. 1983)
- Malouche v. JH Management Co., Inc., 839 F.2d 1024 (4th Cir. 1988)

- Benford v. American Broadcasting Co., 649 F. Supp. 9 (D. Md. 1986)
- Earley v. Smoot, 846 F. Supp. 451 (D. Md. 1994)
- Caldwell v. State, 26 Md. App. 94, 337 A.2d 476 (1975)
- von Lusch v. State, 31 Md. App. 271, 356 A.2d 277 (1976), rev'd on other grounds, 279 Md. 255, 368 A.2d 468 (1977)
- von Lusch v. State, 39 Md. App. 517, 387 A.2d 306 (1978)

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