



*John Sofis Scheft, Esq.*  
**Law Enforcement Dimensions, LLC**

# LED BULLETIN

*An important legal update for the Massachusetts law enforcement community  
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**When done for a new investigation, review of a body worn camera recording from inside a home requires a warrant.** *Comm. v. Yusuf*, \_\_\_ Mass. \_\_\_ (2021): The sister of the defendant, Abdirahaman Yusuf, called Boston Police about a domestic disturbance in her home, seeking the removal of the defendant's girlfriend. The first officers responded and were allowed in the apartment. An officer equipped with a body worn camera (BWC) entered.

This officer walked past Yusuf's sister, who was yelling up the stairs at Yusuf and his girlfriend. The officer went to speak to Yusuf. Through an open bedroom door the bodycam captured video of a woman zipping on her coat. In the background hung floral print curtains. When the sister shouted from downstairs, Yusuf told her to "shut up." He told the officer that his girlfriend could not be rushed, but they would leave shortly.

Once the couple was ready to go, the officer halted them at the top of the stairway while officers downstairs cleared the way, moving the sister into the living room. The officer with the camera escorted the defendant and the girlfriend out and then shut off his camera. He later downloaded a copy of the video on a DVD and placed it in his desk. He notified a detective assigned to the department's youth violence strike force, because that unit had been investigating Yusuf for firearms offenses.

Two weeks after the domestic, Yusuf posted on his social media a "live" video<sup>1</sup> of him holding a firearm in a bedroom. In the background were floral print curtains. The detective investigating Yusuf saw this post and then viewed the DVD from the domestic, confirming the floral print curtains in Yusuf's bedroom.

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<sup>1</sup> This social media app allows a user to post either "live" content or content from the user's archive.

The detective obtained a search warrant. The affidavit included the link between the curtains in the social media post and the bodycam video. A firearm, ammunition, and narcotics were seized. Yusuf and his brother were arrested.

- **Purpose of BWC recordings.** According to the SJC, there are three reasons to record police encounters with citizens:
  - Protect police officers from false allegations of misconduct;
  - Ensure police accountability; and
  - Preserve a record of a police-civilian interaction.
- **The BWC recording during the domestic response was not a search.** At the express invitation of Yusuf's sister, a resident, the officer with the bodycam was in the home to render assistance at a domestic disturbance. With the camera mounted on his chest, the recording showed only what the officer could see in plain view. The camera provided no enhancements. Once inside, the officer only moved where he needed to go to resolve this call for service. That is why his BWC recording, in areas where he was lawfully present, was not a search.

This decision is consistent with earlier cases approving police photographs to document a search scene or the location of evidence following a legal entry.

- **A warrant was required to review the bodycam video for an unrelated investigation.** A person might not expect that a video created during a lawful police visit would be preserved indefinitely, accessed without restriction, and reviewed for reasons unrelated to that visit. The Boston Police policy for bodycams at the time of the recording essentially allowed BWC review without any restrictions. The ability of officers to look at video for unrelated purposes at any time following the initial call for assistance was overbroad and unconstitutional.

Review of BWC video from inside a house for an unrelated investigation does not qualify as plain view. It is a search requiring a warrant. This is necessary because bodycam video is not limited in the same way as the memory of an officer who is asked later to recall their observations inside a home.

Here the detective needed a warrant in order to review BWC video for his separate investigation.

***When may police review bodycam video from inside a home?*** The court listed proper purposes for reviewing bodycam recordings.

- An officer writing a report of an incident may review his BWC video in order to write accurately;
- A supervisor may access the video to review a citizen complaint or officer performance.

Whatever the initial justification, if review of video from inside a home leads to suspicion of an additional, unrelated crime, the review should stop and a warrant should be sought.<sup>2</sup> Police department policy should take care to restrict access to video, protect the privacy of the recorded view inside a home,<sup>3</sup> and explain when a search warrant is required.

***The police reform law created a BWC task force to make recommendations for law enforcement agencies regarding BWCs by July 31, 2022.*** See Chapter 253 of the Acts of 2020, Section 104. Other states like California, New Jersey, and Washington have enacted statutes based on best practices to regulate BWCs. The goal is to get the benefits of BWCs while avoiding the erosion of privacy in a manner inconsistent with society's reasonable expectations.

Hope this helps you on the street,

*John Sofis Scheft*

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<sup>2</sup> The court explained its ruling with an analogy to vehicle impounds. While towing justifies a warrantless inventory, police will typically need a search warrant to search the vehicle at the tow lot hours later for evidence.

<sup>3</sup> The SJC noted, "The home is not a place to which the public has access." This statement might justify withholding bodycam video of the inside of a home from release following a public record request.