

NY CLS CPLR § 4506

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Civil Practice Law And Rules (Arts. 1 — 100) >

Article 45 Evidence (§§ 4501 — 4551)

§ 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases

1. The contents of any overheard or recorded communication, conversation or discussion, or evidence derived therefrom, which has been obtained by conduct constituting the crime of eavesdropping, as defined by section 250.05 of the penal law, may not be received in evidence in any trial, hearing or proceeding before any court or grand jury, or before any legislative committee, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof; provided, however, that such communication, conversation, discussion or evidence, shall be admissible in any civil or criminal trial, hearing or proceeding against a person who has, or is alleged to have, committed such crime of eavesdropping.

2. As used in this section, the term “aggrieved person” means:

(a) A person who was a sender or receiver of a telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver, by means of any instrument, device or equipment; or

(b) A party to a conversation or discussion which was intentionally overheard or recorded, without the consent of a least one party thereto, by a person not present thereat, by means of any instrument, device or equipment; or

(c) A person against whom the overhearing or recording described in paragraphs (a) and (b) was directed.

3. An aggrieved person who is a party in any civil trial, hearing or proceeding before any court, or before any department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any overheard or recorded communication, conversation or discussion or evidence derived therefrom, on the ground that:

(a) The communication, conversation or discussion was unlawfully overheard or recorded; or

(b) The eavesdropping warrant under which it was overheard or recorded is insufficient on its face; or

(c) The eavesdropping was not done in conformity with the eavesdropping warrant.

4. The motion prescribed in subdivision three of this section must be made before the judge or justice who issued the eavesdropping warrant. If no eavesdropping warrant was issued, such motion must be made before a justice of the supreme court of the judicial district in which the trial, hearing or proceeding is pending. The aggrieved person must allege in his motion papers that an overheard or recorded communication, conversation or discussion, or evidence derived therefrom, is subject to suppression under subdivision three of this section, and that such communication, conversation or discussion, or evidence, may be used against him in the civil trial, hearing or proceeding in which he is a party. The motion must be made prior to the commencement of such trial, hearing or proceeding, unless there was no opportunity to make such motion or the aggrieved person was not aware of the grounds of the motion. If the motion is granted, the contents of the overheard or recorded communication, conversation or discussion or evidence derived therefrom, may not be received in evidence in any trial, hearing or proceeding.

History

§ 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases

Add, L 1969, ch 1147, § 8, eff June 25, 1969.

Annotations

Notes

Repeal Notes:

[1969] CPLR § 4506, repealed by section eight of this act related to the inadmissibility of unlawfully obtained eavesdropping evidence in any action, proceeding or hearing.

Prior Law:

Former § 4506, add, L 1962, ch 308; amd, L 1962, ch 318, § 20, L 1967, ch 680, § 14, L 1968, ch 546, § 5; repealed, L 1969, ch 1147, § 8, eff June 25, 1969.

Earlier statutes: CPA § 345–a.

Advisory Committee Notes:

This section derives from former § 345-a. The word “action” as it is used in this section includes the words “action, proceeding or hearing” so that the last three words in the phrase have been omitted. The section allows admission of such evidence in any action brought against the person who wrongfully obtains such evidence.

Notes to Decisions

I.Under CPLR

1.Generally

1.5.Miscellaneous

II.Under Former Civil Practice Laws

2.Generally

3.Under former CPLR § 4506

4.—Wiretapping

I. Under CPLR

1. Generally

The deterrent impact of the exclusionary rule is presumably most effective where evidence obtained by unlawful police conduct is suppressed in a criminal prosecution of a charge substantively related to the acquired evidence, and beyond this, any further increment of deterrent effect must decrease; the probable deterrent effect resulting from suppression of illegally obtained evidence in a collateral criminal proceeding such as a prosecution for perjury or contempt by evasive answer, is all the more insubstantial when the evidence is suppressed in a civil proceeding, the gravamen of which is, as in the case of perjury, collateral to the original purpose for obtaining the challenged evidence. In a civil disciplinary proceeding in which a policeman is charged with committing perjury before the Grand Jury, the Fourth Amendment of the United States Constitution does not require suppression of the testimony of witnesses at the hearing, as fruit of an illegal wiretap, since although it is possible that the witnesses testified as a result of inducement by the authorities and the likelihood is remote that they would have been discovered by the authorities through legal means apart from the illegal wiretap, substantial time periods elapsed between the time of the illegal wiretap, the time of the indictment for perjury, and the time that the witnesses testified against the policeman, and the deterrent purpose of the exclusionary rule would be little advanced by holding the testimony inadmissible. While both evasively contumacious and perjured testimony before the Grand Jury dissipate any taint flowing from an illegal wiretap for the purpose of permitting the introduction of such testimony in subsequent criminal or civil proceedings, it is necessary in the case of perjury to introduce testimony by other witnesses proving the perjured nature of a witness' Grand Jury testimony. Although CPLR 4506 (subd 1) provides that the contents of any overheard or recorded

conversation or evidence derived therefrom obtained by conduct constituting the crime of eavesdropping, may not be received in evidence in various judicial, legislative and administrative proceedings, since CPLR 4506 (subd 2) does not include a person called before the Grand Jury within the definition of an aggrieved person entitled to make a motion to suppress evidence obtained through illegal electronic surveillance, since the New York eavesdropping statute was intended to conform State standards for court authorized eavesdropping warrants with Federal standards, and since Federal courts have held that in a Grand Jury proceeding a witness is entitled to a suppression hearing only where there is no court order permitting the eavesdropping or the Government concedes the illegality of the surveillance or where there has been a prior adjudication of illegality, information obtained through an illegal wiretap, as well as the fruits of that surveillance, i.e., respondents' testimony, is admissible before the Grand Jury, where respondents were granted transactional immunity, following which respondents testified before the Grand Jury and on the basis of their testimony were charged, respectively, with criminal contempt and perjury. Information obtained through an illegal wiretap, as well as the fruits of that surveillance, i.e., respondents' testimony, is admissible before the Grand Jury, and its admission in subsequent civil disciplinary proceedings and criminal contempt proceedings, respectively, against respondents, rests upon the application of attenuation principles; inasmuch as the Federal eavesdropping statute (US Code, tit 18, § 2510 et seq.), upon which CPLR 4506 is modeled, was neither intended to expand the existing role of suppression in search and seizure law, nor to modify the principle of attenuation, respondents' argument that CPLR 4506 absolutely precludes the use of this evidence irrespective of attenuation must fail. *People v McGrath*, 46 N.Y.2d 12, 412 N.Y.S.2d 801, 385 N.E.2d 541, 1978 N.Y. LEXIS 2375 (N.Y. 1978), reh'g denied, 46 N.Y.2d 837, 1978 N.Y. LEXIS 5255 (N.Y. 1978), cert. denied, 440 U.S. 972, 99 S. Ct. 1535, 59 L. Ed. 2d 788, 1979 U.S. LEXIS 1326 (U.S. 1979).

Under realistic reading of CLS CPLR § 4506(2)(c), all defendants who became identifiable targets of police investigation by virtue of pen register order were deemed subjects of investigation and therefore qualified initially for at least statutory standing to challenge order,

even though they were not initially named and identified therein. *People v Kramer*, 92 N.Y.2d 529, 683 N.Y.S.2d 743, 706 N.E.2d 731, 1998 N.Y. LEXIS 4032 (N.Y. 1998).

Definition of consent, in the context of “mechanical overhearing of a conversation” pursuant to N.Y. Penal Law § 250.00(2), includes vicarious consent on behalf of a minor child. Thus, a recording was admissible under N.Y. C.P.L.R. 4506 because under the vicarious consent doctrine, a father had a good faith, objectively reasonable basis to believe that it was necessary for the welfare of his five-year-old son to record a violent conversation involving defendant. *People v Badalamenti*, 27 N.Y.3d 423, 54 N.E.3d 32, 34 N.Y.S.3d 360, 2016 N.Y. LEXIS 755 (N.Y. 2016).

Evidence which was obtained by means of illegal eavesdropping and which was suppressed on a motion made in the Supreme Court, Bronx County, as well as fruits derived therefrom was inadmissible in administrative proceeding before police commissioner to dismiss petitioner from his position in police department. *Mancini v Codd*, 57 A.D.2d 803, 395 N.Y.S.2d 3, 1977 N.Y. App. Div. LEXIS 11981 (N.Y. App. Div. 1st Dep't 1977), rev'd, 46 N.Y.2d 12, 412 N.Y.S.2d 801, 385 N.E.2d 541, 1978 N.Y. LEXIS 2375 (N.Y. 1978).

Although defendant's telephone conversations were intercepted by eavesdropping warrant, he had no derivative right to contest propriety of prior pen register order from which information was obtained which constituted probable cause basis for warrant where he was not target of any pen registers or party to any conversations recorded by pen registers; thus, he had no standing as “aggrieved party” under CLS CPLR § 4506 to controvert their issuance. *People v Geraghty*, 212 A.D.2d 358, 622 N.Y.S.2d 254, 1995 N.Y. App. Div. LEXIS 891 (N.Y. App. Div. 1st Dep't), app. denied, 85 N.Y.2d 938, 627 N.Y.S.2d 1000, 651 N.E.2d 925, 1995 N.Y. LEXIS 1884 (N.Y. 1995).

Trial court properly admitted a recording made by an infant victim's father of a conversation between defendant and the child, to which neither defendant nor the child consented; where, acting on a good faith, objectively reasonable belief that it is in the best interests of their minor child, parents record that child's conversations, they may consent to the recording on the child's

behalf and be exempt from liability under the eavesdropping statute. *People v Badalamenti*, 124 A.D.3d 672, 1 N.Y.S.3d 242, 2015 N.Y. App. Div. LEXIS 362 (N.Y. App. Div. 2d Dep't 2015), *aff'd*, 27 N.Y.3d 423, 54 N.E.3d 32, 34 N.Y.S.3d 360, 2016 N.Y. LEXIS 755 (N.Y. 2016).

Recording of a mother's conversation with her child was inadmissible because the mother did not testify as to whether or not the recording was the complete and unaltered conversation between her and the child, and there was no attempt to offer proof about who recorded the conversation, how it was recorded, or the chain of custody, and, as such, the mother's testimony was insufficient to authenticate the recording. *Matter of Williams v Rolf*, 144 A.D.3d 1409, 42 N.Y.S.3d 381, 2016 N.Y. App. Div. LEXIS 7734 (N.Y. App. Div. 3d Dep't 2016).

Defendant was not entitled to vacate convictions of, *inter alia*, murder and conspiracy because the county court did not err in denying his motion to suppress evidence acquired by an eavesdropping warrant where defendant failed to show standing based on sworn allegations of fact that he was a sender, receiver or participant in the phone conversations. *People v Palmer*, 161 A.D.3d 1291, 77 N.Y.S.3d 557, 2018 N.Y. App. Div. LEXIS 3359 (N.Y. App. Div. 3d Dep't), *app. denied*, 31 N.Y.3d 1154, 108 N.E.3d 509, 83 N.Y.S.3d 435, 2018 N.Y. LEXIS 2196 (N.Y. 2018), *app. denied*, 31 N.Y.3d 1148, 108 N.E.3d 504, 83 N.Y.S.3d 430, 2018 N.Y. LEXIS 2228 (N.Y. 2018), *app. denied*, 31 N.Y.3d 1151, 108 N.E.3d 507, 83 N.Y.S.3d 433, 2018 N.Y. LEXIS 2216 (N.Y. 2018).

In a Family Ct Act article 6 proceeding, the mother's related contention, that the court improperly excluded certain recordings from evidence was without merit, as she failed to demonstrate that the recordings were of a conversation to which the child was a party or that her belief that the recording served the best interests of the child had an objectively reasonable basis. *Matter of Argila v Edelman*, 174 A.D.3d 521, 106 N.Y.S.3d 71, 2019 N.Y. App. Div. LEXIS 5372 (N.Y. App. Div. 2d Dep't 2019).

Indictment for criminal contempt of grand jury would be not dismissed, and the defendant's motion to suppress grand jury testimony would be denied, where, although such testimony was in response to questions based on illegal electronic surveillance, defendant never refused to

testify before grand jury on Fourth Amendment or any other grounds, automatically received transactional immunity by answering questions posed, and merely testified “under protest” or fact that he was not afforded immediate suppression hearing, remedy he was not entitled to receive. *People v McGrath*, 86 Misc. 2d 249, 380 N.Y.S.2d 976, 1976 N.Y. Misc. LEXIS 2430 (N.Y. Sup. Ct. 1976).

Upon a motion to suppress evidence obtained as the result of court-ordered electronic surveillance on the ground that the officers who executed the warrant failed to adequately minimize the interception of communications not otherwise subject to eavesdropping (CPL 700.30, subd 7), the defendants have standing to assert claims regarding invasions of their own privacy rights (CPL 710.10, subd 5; CPLR 4506, subd 2), but they may not challenge allegedly improper police conduct which allegedly invaded the privacy of others, and the motion is denied since the executing officers made a conscientious effort to minimize all non-pertinent conversations. *People v Edelstein*, 98 Misc. 2d 1018, 415 N.Y.S.2d 366, 1979 N.Y. Misc. LEXIS 2185 (N.Y. Sup. Ct. 1979), *aff'd*, 78 A.D.2d 797, 435 N.Y.S.2d 424, 1980 N.Y. App. Div. LEXIS 13458 (N.Y. App. Div. 1st Dep't 1980).

Tape recordings made by father of telephone conversations between him and his children did not fall within statutory definition of illegal eavesdropping, even though children who were parties to conversations, and their mother, lacked knowledge of them and might not have consented to them. *Harry R. v Esther R.*, 134 Misc. 2d 404, 510 N.Y.S.2d 792, 1986 N.Y. Misc. LEXIS 3115 (N.Y. Fam. Ct. 1986).

Tape recordings made by parties' son of cordless telephone conversations between wife and third persons, accidentally transmitted through son's shortwave radio receiver, were inadmissible in matrimonial action as having been obtained by illegal eavesdropping pursuant to CLS CPLR § 4506 and CLS Penal § 250.05, since CLS Penal § 250.00(3) defines telephonic communication for purposes of eavesdropping to include any “aural transfer” made in whole or part through use of wire connection, and communication via cordless telephone depends in part on use of

telephone wire between base of one phone and other phone or base thereof. *Sharon v Sharon*, 147 Misc. 2d 665, 558 N.Y.S.2d 468, 1990 N.Y. Misc. LEXIS 336 (N.Y. Sup. Ct. 1990).

Information obtained by defendant's mother, when she overheard defendant's telephone conversation with other individuals via extension phone, would be suppressed under CLS CPLR § 4506 as having been derived from illegal eavesdropping where defendant explicitly instructed his mother to stay off extension phone during conversation in question, and no proof was offered that she had consent of other conversation participants to listen in; fact that mother was telephone service subscriber and lessee of apartment where telephone was located did not immunize her activity from being described as eavesdropping. *People v Dunham*, 157 Misc. 2d 289, 596 N.Y.S.2d 289, 1992 N.Y. Misc. LEXIS 657 (N.Y. Sup. Ct. 1992).

In context of police disciplinary proceeding, New York law, rather than Louisiana law, applied in determining admissibility of telephone conversations which originated in New York, were made to third party in Louisiana, and were intercepted and taped in Louisiana by paid informant. *Ruskin v Safir*, 177 Misc. 2d 190, 676 N.Y.S.2d 451, 1998 N.Y. Misc. LEXIS 279 (N.Y. Sup. Ct. 1998), app. dismissed, 257 A.D.2d 268, 692 N.Y.S.2d 356, 1999 N.Y. App. Div. LEXIS 7434 (N.Y. App. Div. 1st Dep't 1999).

In disciplinary proceeding, respondent police officer was entitled to preliminary injunction suppressing his telephone conversations with third party concerning purchase of illegal discounted airline tickets, where such conversations were illegally intercepted and taped in Louisiana by FBI-paid informant. *Ruskin v Safir*, 177 Misc. 2d 190, 676 N.Y.S.2d 451, 1998 N.Y. Misc. LEXIS 279 (N.Y. Sup. Ct. 1998), app. dismissed, 257 A.D.2d 268, 692 N.Y.S.2d 356, 1999 N.Y. App. Div. LEXIS 7434 (N.Y. App. Div. 1st Dep't 1999).

Where criminal defendant sought to introduce taped telephone conversation between victim and another person, People had standing to seek suppression of tape on victim's behalf on ground that it constituted unlawful eavesdropping evidence, based on state's strong public policy of protecting citizens against "insidiousness of electronic surveillance." Where criminal defendant sought to introduce allegedly illegal eavesdropping evidence of victim's telephone conversation

with another person, he had burden of going forward to show legality of his conduct in first instance, while burden was on People to establish by fair preponderance of credible evidence that his actions constituted eavesdropping. Mere invocation of criminal defendant's right to offer evidence does not outweigh private citizen's right to be free from illegal eavesdropping, and thus no violation of defendant's due process right occurred when court suppressed illegal eavesdropping evidence as sanction for defendant's violation of CLS CPLR § 4506. *People v Huang Qike*, 182 Misc. 2d 737, 700 N.Y.S.2d 640, 1999 N.Y. Misc. LEXIS 490 (N.Y. Sup. Ct. 1999), *aff'd*, 284 A.D.2d 417, 726 N.Y.S.2d 294, 2001 N.Y. App. Div. LEXIS 6084 (N.Y. App. Div. 2d Dep't 2001).

By surreptitiously recording telephone conversation between minor victim and defendant, victim's parents violated CLS Penal § 250.05, requiring suppression of defendant's recorded statements based on proscription of CLS CPLR § 4506, which is applicable to both criminal and civil trials. *People v Heffner*, 187 Misc. 2d 617, 726 N.Y.S.2d 211, 2001 N.Y. Misc. LEXIS 88 (N.Y. County Ct. 2001).

Under a realistic reading of N.Y. C.P.L.R. 4506(2)(c), all later-tagged individuals, who become identifiable targets by virtue of a pen register order, should be deemed subjects of the investigation, in the words of the statute, to qualify initially for at least statutory standing to challenge that order. *People v Medure*, 190 Misc. 2d 167, 736 N.Y.S.2d 841, 2001 N.Y. Misc. LEXIS 924 (N.Y. Sup. Ct. 2001).

Evidence was improperly suppressed under N.Y. C.P.L.R. § 4506 in defendant's prosecution for endangering the welfare of a child under N.Y. Penal Law § 260.10(1), (2) because the mother of the autistic victim could consent to a recording of a conversation with defendant, the personal bus matron for the victim, as the victim had come home from school with bruises and the mother had a good faith, objectively reasonable belief that the audio recording device in the victim's backpack was necessary to protect his welfare; thus, an exemption from illegal eavesdropping under N.Y. Penal Law § 250.05 applied as there had to be a balance between important competing public policy considerations of protecting those with disabilities, such as autism under

N.Y. Mental Hyg. Law § 1.03(22)(a)(1), from abuse and protecting citizens against eavesdropping. *People v Clark (Connie)*, 855 N.Y.S.2d 809, 19 Misc. 3d 6, 239 N.Y.L.J. 18, 2008 N.Y. Misc. LEXIS 110 (N.Y. App. Term), app. denied, 10 N.Y.3d 861, 860 N.Y.S.2d 487, 890 N.E.2d 250, 2008 N.Y. LEXIS 2105 (N.Y. 2008).

Tape recordings of phone conversations between a wife and children, which were made by the husband without the wife's consent, constituted illegal eavesdropping and could not be admitted in a child custody dispute between the parties pursuant to N.Y. C. P.L.R. § 4506(3), nor could professionals or experts who could be called as witnesses review the contents of the recordings; however, the son's treating therapist, who was not going to be a witness, had the discretion to review the contents thereof for treatment purposes. *Dolan v Linnen*, 195 Misc. 2d 298, 753 N.Y.S.2d 682, 2003 N.Y. Misc. LEXIS 76 (N.Y. Civ. Ct. 2003).

Recorded telephone conversation between defendant and his wife was properly admitted into evidence in his sodomy trial because it did constitute illegal eavesdropping; a recorded conversation did not constitute the crime of eavesdropping where it had been obtained with the consent of either the caller or receiver of the communication. *People v Powers*, 42 A.D.3d 816, 839 N.Y.S.2d 865, 2007 N.Y. App. Div. LEXIS 8722 (N.Y. App. Div. 3d Dep't), app. denied, 9 N.Y.3d 1008, 850 N.Y.S.2d 396, 880 N.E.2d 882, 2007 N.Y. LEXIS 4000 (N.Y. 2007).

1.5. Miscellaneous

Trial court properly determined that the recordings of the husband's conversations with the children were admissible and did not constitute the crime of eavesdropping because the husband requested that the children place the call on speaker so that the wife could hear what he had to say. *Perlman v Perlman*, 163 A.D.3d 730, 81 N.Y.S.3d 407, 2018 N.Y. App. Div. LEXIS 5086 (N.Y. App. Div. 2d Dep't 2018), writ denied, dismissed, 168 A.D.3d 1063, 90 N.Y.S.3d 913, 2019 N.Y. App. Div. LEXIS 624 (N.Y. App. Div. 2d Dep't 2019).

Where defendant moved pursuant to CPLR § 4506 to preclude use at trial of a taped recording of a statement alleged to have been made by him, the recording in question did not occur at the

behest of the police or at the direction of anyone other than the complainant. *People v K.B.*, 984 N.Y.S.2d 547, 43 Misc. 3d 478, 2014 N.Y. Misc. LEXIS 399 (N.Y. Sup. Ct. 2014).

Where defendant moved to preclude use at trial of a taped recording of a statement alleged to have been made by him, he unsuccessfully argued that CLPR 4506 precluded the use of the tape recording since, as a minor, the complainant could not be deemed to have consented to participate in the recording. The minor complainant initiated the taping on her own, and there was no reason to conclude that the victim did anything other than purposefully record, indeed consent to taping her own conversation with defendant. *People v K.B.*, 984 N.Y.S.2d 547, 43 Misc. 3d 478, 2014 N.Y. Misc. LEXIS 399 (N.Y. Sup. Ct. 2014).

Mother engaged in actions that would constitute a violation of the anti-eavesdropping statutes, and it would be unfair for the father to have his private conversations unlawfully recorded and turned over to authorities for investigation and then penalize him for using these transcripts to defend against potential charges, which ultimately were not brought; the motion to suppress was granted, the mother was prohibited from introducing these conversations, and no witness was permitted to give testimony based on such evidence. *D.K. v A.K.*, 60 Misc. 3d 1219(A), 98 N.Y.S.3d 500, 2016 N.Y. Misc. LEXIS 5327 (N.Y. Fam. Ct. 2016).

Father moved for an order requiring the mother to turn over to him all copies of the recordings, but the motion was denied, as the statute was an evidence statute and did not provide for a cause of action or a remedy other than exclusion. *D.K. v A.K.*, 60 Misc. 3d 1219(A), 98 N.Y.S.3d 500, 2016 N.Y. Misc. LEXIS 5327 (N.Y. Fam. Ct. 2016).

II. Under Former Civil Practice Laws

2. Generally

A legislative committee could not be prohibited from making public a secretly recorded conversation between an attorney and his client. *In re Lanza*, 4 A.D.2d 252, 164 N.Y.S.2d 534,

1957 N.Y. App. Div. LEXIS 4889 (N.Y. App. Div. 1st Dep't), app. denied, 4 A.D.2d 831, 166 N.Y.S.2d 302 (N.Y. App. Div. 1st Dep't 1957), app. denied, 3 N.Y.2d 710, 1957 N.Y. LEXIS 1476 (N.Y. 1957).

3. Under former CPLR § 4506

If defendant's premises are the subject of an eavesdrop order, he is protected by the requirements of § 813-a of the Code of Criminal Procedure, and as a defendant in a criminal case he is protected by CPLR 4506 and the state constitution. *Siegel v People*, 16 N.Y.2d 330, 266 N.Y.S.2d 386, 213 N.E.2d 682, 1965 N.Y. LEXIS 916 (N.Y. 1965), cert. denied, 384 U.S. 970, 86 S. Ct. 1861, 16 L. Ed. 2d 682, 1966 U.S. LEXIS 1428 (U.S. 1966).

Evidence obtained through impermissible eavesdropping is inadmissible for grand jury purposes and all the indictment of which such evidence is the predicate must be dismissed. *People v Cline*, 54 Misc. 2d 172, 282 N.Y.S.2d 318, 1967 N.Y. Misc. LEXIS 1364 (N.Y. County Ct. 1967).

Section 605 of the Federal Communications Act (47 USC § 605), which provides that no person not authorized by the sender shall intercept any communication and divulge the existence or contents of such intercepted communication to any person, prohibits the admission in evidence in state criminal prosecutions of the defendants' communications that had been intercepted by state police in violation of § 605; such exclusionary rule is based on the language of § 605 expressly prohibiting divulgence, is buttressed by the imperative of judicial integrity, under which no court, state or federal, may serve as an accomplice in the wilful transgression of the laws of the United States, is counseled by experience showing that enforcement of § 605 against state officers cannot be achieved under the penal provisions of the Act, and is required since nothing short of mandatory exclusion of the illegal evidence will compel respect for the federal law in the only effectively available way—by removing the incentive to disregard it. *Lee v Florida*, 392 U.S. 378, 88 S. Ct. 2096, 20 L. Ed. 2d 1166, 1968 U.S. LEXIS 3098 (U.S. 1968).

4. —Wiretapping

§ 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases

CPLR 4506 does not apply to authorize wire taps by court order issued under § 813-a of the Code of Criminal Procedure. *People v Granello*, 48 Misc. 2d 868, 265 N.Y.S.2d 1018, 1965 N.Y. Misc. LEXIS 1274 (N.Y. County Ct. 1965), *aff'd*, *People v Kaiser*, 21 N.Y.2d 86, 286 N.Y.S.2d 801, 233 N.E.2d 818, 1967 N.Y. LEXIS 1047 (N.Y. 1967).

Research References & Practice Aids

Cross References:

This section referred to in CLS CPL § 710.10.

Eavesdropping and video surveillance warrants, CLS CPL §§ 700.05 et seq.

Motion to suppress evidence; in general; grounds for, CLS CPL § 710.10.

Eavesdropping, CLS Penal § 250.05.

Jurisprudences:

32A NY Jur 2d Criminal Law § 1464. .

35B NY Jur 2d Criminal Law § 4783. .

43 NY Jur 2d Declaratory Judgments and Agreed Case § 65. .

57 NY Jur 2d Evidence and Witnesses §§ 3., 189. .

58 NY Jur 2d Evidence and Witnesses § 456. .

9A Am Jur Pl & Pr Forms (Rev ed), Evidence, Forms 124 et seq.

13 Am Jur Proof of Facts 1., Surveillance Motion Pictures.

5 Am Jur Trials 331., Excluding Illegally Obtained Evidence.

Law Reviews:

Electronic eavesdropping—the inadequate protection of private communication. 40 St. John's L Rev 59.

Admissibility in civil actions of constitutionally protected evidence: some brief observations. 34 Alb. L. Rev. 512.

Panel on wiretapping. 33 Brook. L. Rev. 253.

Eavesdropping and wiretapping—the aftermath of Katz and Kaiser: a comment. 34 Brook. L. Rev. 223.

Electronic surveillance: the new standards. 35 Brook. L. Rev. 49.

Eavesdropping orders and the Fourth Amendment. 66 Colum. L. Rev. 355.

Eavesdropping, informers, and the right of privacy: a judicial tightrope. 52 Cornell L.Q. 975.

Wiretapping, electronic eavesdropping, and the police: a note on the present state of the law. 42 NYU L Rev 83.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4506, Eavesdropping Evidence; Admissibility; Motion to Suppress in Certain Cases.

1 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 18.03; 2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 35.04; 3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 44.02.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 20.02. Scope of disclosure.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 2.05.

Matthew Bender's New York Evidence:

7 Bender's New York Evidence § 28.03. Unreasonable Searches and Seizures: Exclusionary Rule.

7 Bender's New York Evidence § 28.29. Illegal Searches and Seizures by Private Persons.

7 Bender's New York Evidence § 28.30. Eavesdropping and Video Surveillance.

Annotations:

Admissibility of evidence of fact of making or receiving telephone calls. 13 ALR2d 1409.

Admissibility, in criminal prosecution, of evidence obtained by electronic surveillance of prisoner. 57 ALR3d 172.

Omission or inaudibility of portions of sound recording as affecting its admissibility in evidence. 57 ALR3d 746.

Admissibility in evidence of sound recording as affected by hearsay and best evidence rule. 58 ALR3d 598.

Propriety in state prosecution of severance of partially valid search warrant and limitation of suppression to items seized under invalid portions of warrant. 32 ALR4th 378.

Admissibility of visual recording of event or matter other than that giving rise to litigation or prosecution. 41 ALR4th 877.

Propriety of governmental eavesdropping on communications between accused and his attorney. 44 ALR4th 841.

What constitutes adequate response by government, pursuant to 18 USCS § 3504, affirming or denying use of unlawful electronic surveillance. 53 ALR Fed 378.

Who may apply, or authorize application for order to intercept wire or oral communications under Title III of Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq.). 64 ALR Fed 115.

Admissibility of evidence obtained by wiretapping as affected by § 605 of the Federal Communications Act (47 USC § 605)—federal cases. 20 L Ed 2d 1718.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4505:1.

LexisNexis Forms FORM 75-CPLR 4506:1.—Notice of Motion to Suppress Illegally Obtained Eavesdropping Evidence.

LexisNexis Forms FORM 75-CPLR 4506:2.—General Form of Affidavit in Support of Motion to Suppress Illegally Obtained Eavesdropping Evidence.

LexisNexis Forms FORM 75-CPLR 4506:3.—Affidavit in Support of Motion to Suppress Illegally Obtained Eavesdropping Evidence in Marital Dissolution Proceeding.

LexisNexis Forms FORM 75-CPLR 4506:4.—Petition to Review Denial of Renewal of Restaurant Liquor License Where Denial Based on Illegal Eavesdropping Evidence.

LexisNexis Forms FORM 75-CPLR 4506:5.—Order Directing Suppression of Illegally Obtained Eavesdropping Evidence and Enjoining Its Use.

Texts:

New York Criminal Practice Ch 34.

1 New York Trial Guide (Matthew Bender) §§ 7.23, 7.51; 3 New York Trial Guide (Matthew Bender) § 51.01, 51.13, 51.14.

Hierarchy Notes:

NY CLS CPLR, Art. 45

§ 4506. Eavesdropping evidence; admissibility; motion to suppress in certain cases

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