

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1000

September Term, 2024

BRANDON JOEL BURROUGHS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: June 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Brandon Burroughs (“Appellant”) appeals his conviction for second-degree rape, arguing that an audio recording of the assault for which he was convicted should have been excluded as a violation of the Maryland Wiretap Act. Appellant was tried before a jury in the Circuit Court for Prince George’s County in February of 2024. In May of 2024, the court sentenced Appellant to twenty years, suspending all but twelve years of incarceration, followed by five years of probation. Appellant noted a timely appeal of his conviction.

The sole issue presented for this Court’s review is:¹

Whether the circuit court erred in denying a motion to exclude a recording under the Wiretap Act.

For the reasons that follow, we shall affirm Appellant’s conviction.

FACTUAL AND PROCEDURAL BACKGROUND

A. Precipitating Events²

Appellant, at the time of the incidents for which he was indicted, was an officer for the Prince George’s County Sheriff’s Department. He met S.P.,³ a Correctional Officer, in the course of their employment. The two began a romantic relationship, which led to the

¹ Rephrased from:

Did the trial court err in admitting a recording of Appellant in violation of the Maryland Wiretap Act, §§ 10-401, *et seq.* of the Maryland Courts and Judicial Proceedings Article?

² We give a cursory overview of the evidence adduced at trial for purposes of contextualizing this appeal. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008) (noting that a complete recitation of the trial evidence is not necessary where sufficiency of the evidence is not challenged).

³ We refer to S.P. by her initials in accordance with Maryland Rule 8-125(a)(2) and (b)(1).

conception of a child. S.P. ended the relationship in December of 2020 after learning Appellant was married; the two continued to have limited regular contact through shared custody of their child in common.

Appellant was indicted for charges arising from two separate incidents, the first alleged to have occurred on September 10, 2022 (“the September 10 incident”) and the second on October 22 through 23, 2022 (“the October 23 incident”). Appellant was found not guilty of the charges arising out of the September 10 incident; we nevertheless briefly describe the facts as presented at trial for background and contextual purposes.

S.P. asserted that during the September 10 incident, Appellant came to her home to visit with their child. S.P. testified that she and Appellant argued, during which time Appellant briefly brandished his duty firearm and later slammed her against her kitchen counter. S.P. filed a petition for a protective order following this incident; however, she later withdrew the petition.

Regarding the October 23 incident, S.P. testified that Appellant came to her home on the evening of October 22 to visit their child. She testified that she did not want him to stay, and that the two argued. During the argument, S.P. walked away from Appellant, entered her bedroom and Appellant followed. Appellant attempted to initiate sexual intercourse and, when S.P. refused, pinned her arms back and tore at her clothing. Appellant briefly left the room to take their child downstairs. While Appellant was out of the room, S.P. retrieved her cell phone and initiated a video recording, hoping that if she had proof of herself asking Appellant to leave, “somebody would know that I was telling

the truth.” She placed the cell phone on her nightstand with the camera facing the ceiling.⁴ Appellant subsequently returned and again attempted to initiate intercourse. S.P. refused, and Appellant raped her. S.P.’s cell phone recorded audio of the rape.

S.P. again sought a protective order. Following a hearing on December 12, 2022, S.P.’s petition was denied. An officer of the Prince George’s County Sheriff’s Department who was present at the hearing then brought S.P.’s allegations to the attention of the Office of the State’s Attorney. Appellant was indicted in January of 2023.

B. The “Motion to Exclude”

Following Appellant’s indictment, the Office of the State’s Attorney transmitted eDiscovery via email to Appellant’s counsel on May 9, 2023.⁵ Included among the attachments to the email was a file titled “Video Oct 23 2022, 10 49 11 AM.zip” (“the October 23 recording”). The circuit court conducted a status hearing on May 12, 2023 (“the May 12 hearing”). At the hearing, the court inquired whether all discovery had been provided and received in the case. The State confirmed that all discovery had been provided, and Appellant’s counsel confirmed that he received discovery “on Tuesday”⁶ along with a later supplement. A motions hearing was scheduled for June 9, 2023. The

⁴ During oral argument, Appellant characterized this as “deliberate concealment.” We found nothing in the record to suggest that S.P.’s nightstand was concealed from plain view, nor anything to indicate that S.P. took further steps to conceal the cell phone.

⁵ The State moved to correct the record to include the transcript of the May 12 hearing and an affidavit regarding the furnishing of eDiscovery, accompanied by a copy of the email. This Court granted the motion.

⁶ May 12, 2023 was a Friday. The prior Tuesday was May 9, 2023.

parties agreed on a deadline of May 23, 2023 for Appellant to either file any specific motions or, if there were none, to file a line “to withdraw or vacate the hearing.”

By May 23, 2023, Appellant had not filed any specific motions. Appellant filed a line on that date “withdrawing motions” and requesting that the court cancel the June 9, 2023 motions hearing. The record reflects that there were no motions set to be heard prior to trial.

On November 16, 2023, Appellant filed a “Motion to Exclude or, Alternatively, Motion in Limine,” in which he asserted that he received a DVD containing the October 23 recording “[o]n or about Thursday, November 9, 2023[.]” In the motion Appellant contended that the October 23 recording was captured in violation of the Maryland Wiretap Act⁷ and was thus inadmissible as evidence.

The circuit court entered an order on November 20, 2023. The court noted that “in [M]ay 2023 defense withdrew motions.” The court ordered that it would not allow witness testimony nor a “[D]aubert type” evidentiary hearing; however, Appellant would be permitted to orally argue a motion *in limine* on the date of trial.⁸

The State subsequently filed an opposition to Appellant’s motion. Along with its motion, the State attached photographs of a Ring doorbell camera outside S.P.’s home and a sign which is placed on an entryway table in S.P.’s home. The sign states:

⁷ Md. Code (1974, 2020 Repl. Vol.), Cts. & Jud. Proc. §§ 10-401 *et seq.* (“CJP”).

⁸ At the time of the court’s order, trial was set for December 4 and 5, 2023. Trial was later continued and set for February 12 through 14, 2024.

Welcome
SMILE U R BEING RECORDED
WIFI
[Password]
REMOVE UR SHOES

The State also attached the transcript of the December 12, 2022 protective order hearing, during which Appellant testified that he was aware of a camera in their child’s bedroom.⁹ The State argued that the entryway sign put Appellant on notice of being recorded, and that Appellant had actual knowledge of a recording device in the home. Thus, the State argued, Appellant lacked a reasonable expectation of privacy, and the October 23 recording did not violate the Wiretap Act.

Trial took place in February of 2024. The circuit court heard argument on the motion to exclude following jury selection on the first day of trial. Appellant’s counsel identified the recording he sought to exclude as “a video labeled video, October 23, 2022.” A portion of the recording was played for the court.¹⁰ Appellant’s counsel proffered that Appellant was unaware he was being recorded at the time. The State indicated no objection to the applicability of the Wiretap Act to the relevant recording. The issue before the court was thus whether Appellant had a reasonable expectation of privacy. Appellant’s counsel

⁹ It is unclear from the record whether the camera had recording capabilities. The circuit court referred to the camera as a “recording device,” thus, we will adopt the circuit court’s language.

¹⁰ The first portion of the recording, which was played for the court, captures audio of the rape for which Appellant was convicted. The remainder captures a conversation between S.P. and Appellant characterized by the parties as an argument.

argued that he did, because Appellant was an invitee to the home and to the bedroom, and because the entryway sign did not apply to the bedroom.

The State countered that Appellant did not have a reasonable expectation of privacy. The State argued that S.P. could be heard in the recording asking Appellant to leave and that he was therefore not an invitee. The State further contended that the entryway sign contained information—such as the Wi Fi password and a request to remove shoes—which applied to the entire home. The State also noted that Appellant was aware of the recording device in the child’s bedroom. The State argued that the sign put Appellant on notice and that because of the sign, along with the possibility that the recording device in the child’s bedroom could have captured the incident, Appellant did not have a reasonable expectation of privacy.

The court reserved ruling on the motion until the following day.

C. Findings of the Circuit Court

On the second day of trial, the court ruled on the motion. The court noted that the law was clear, and the parties agreed, that the Wiretap Act presumptively applied to the recording. The court stated that section 10-402¹¹ of the Wiretap Act was applicable, and that the question for the court to determine was whether Appellant had a reasonable expectation of privacy.

The court found that Appellant was an invitee, and that ordinarily an invitee would have an expectation of privacy in a home and a heightened expectation of privacy in a

¹¹ CJP § 10-402.

bedroom. The court found that S.P.’s home had a Ring doorbell camera. The court opined that the message on the entryway sign, “smile, you’re being recorded,” was unusual for a home, and was more typically found in stores or police stations. The court further found that, because it was highly unusual to see a sign of that type in a private home, the sign would draw the attention of a reasonable person. The court additionally found that the sign was prominently displayed inside the home and was not next to the Ring doorbell camera.

Turning to the recording device in the child’s bedroom, the court noted that Appellant testified at the protective order hearing that he deliberately avoided it because he knew S.P.’s mother had access to it. Thus, Appellant was aware of the recording device. The court determined that the testimony was unclear as to whether the recording device had audio as well as video recording capabilities, but that based on personal experience and the purpose of such devices used for monitoring children, the court was “very confident” that the device would likely capture audio. The court noted there was no way to determine whether the device in the child’s bedroom would be able to capture audio from S.P.’s adjacent bedroom. Further, the court indicated that, while S.P. could be heard on the recording asking Appellant to go downstairs to their child, Appellant was not asked to leave the home and thus remained an invitee.¹²

The court concluded that Appellant did not have a reasonable expectation of privacy in the home. The court stated that it reached this holding based on the notice created by the

¹² The court made note that S.P.’s directive for Appellant to “go downstairs” was likely relevant to the sex offense charges, not to Appellant’s invitee status.

entryway sign, as well as the recording device in the child's bedroom. The court further clarified the significance of the sign to the conclusion. The court stated,

[The sign] is prominently displayed. And I as a person would be thinking, I wonder what is being recorded in the house.

So I just don't believe a person would have a reasonable expectation of privacy. To me, I think [Appellant] knew when he was walking into the house. He knew there were [] prior recording devices. He knew the sign was there. And I think the man was put on notice. I think society will be fine since the man was put on notice.

The court thus denied Appellant's motion to exclude the October 23 recording. At trial, the recording was admitted into evidence over Appellant's continuing objection and played for the jury during S.P.'s testimony.

Appellant was charged with first-degree assault, use of a firearm during a felony, and second-degree assault in relation to the September 10 incident; and second-degree rape, fourth-degree sex offense, and second-degree assault in relation to the October 23 incident. Appellant was found guilty of second-degree rape and not guilty of all other charges. In May of 2024, Appellant was sentenced to twenty years of incarceration, all but twelve suspended, to be followed by five years of probation. Appellant was ordered to have no contact with S.P. and to register as a Tier III sex offender. Appellant noted the instant timely appeal.

DISCUSSION

Appellant contends that the circuit court erred in admitting the October 23 recording. He analogizes this case to *Holmes v. State*, 236 Md. App. 636 (2018), wherein

this Court held that a mother’s cell phone recording of a face-to-face conversation with her daughter was a presumptive violation of the Wiretap Act. Appellant asserts that “the circumstances of the recording” and his proffer that he was unaware of being recorded support the conclusion that the recording was a prohibited interception of an oral communication. Appellant contends that the circuit court’s findings of fact—particularly that he was an invitee, that a bedroom is an area with a heightened expectation of privacy, and that it was unclear whether the recording device in the child’s bedroom could record audio—support the conclusion that he had a reasonable expectation of privacy.

With respect to the entryway sign, Appellant contends that its message was insufficient to negate his expectation of privacy. Appellant contends that he was not specifically put on notice of being recorded with a cell phone or of being audially recorded. Appellant contends that it would not be reasonable to conclude that the entryway sign could “eviscerate” an invitee’s expectation of privacy throughout the home. S.P. should not, Appellant argues, have the authority to remove Appellant’s right to privacy as an invitee in S.P.’s home “simply by proclaiming the intent to do so.”

The State contends that, because Appellant’s motion was untimely under Maryland Rule 4-252, the issue of the admissibility of the October 23 recording is waived for our review.¹³ The State notes that the recording was first disclosed to Appellant on May 9,

¹³ At oral argument, Appellant asserted that even if this issue were waived, this Court could review the issue for plain error. Appellant did not request plain error review in his briefing before this court. As we will explain below, plain error review is not available in instances of affirmative waiver. *Carroll v. State*, 202 Md. App. 487, 513 (2011). Thus, we will not conduct a plain error analysis.

2023, and his motion was not filed until November 16, 2023, rendering the motion untimely. The State contends that Appellant’s line withdrawing all pending motions constitutes an affirmative waiver of the issue. The State asserts that Appellant did not make a showing of good cause for untimeliness as required by the Rule.

The State further contends that even if the issue were not waived, the circuit court did not err because Appellant lacked a reasonable expectation of privacy. The State argues that the means of capturing the October 23 recording is not relevant to our analysis because the entryway sign constituted a general notice that S.P. would be making recordings in her home. The State contends that the recording, thus, is not an interception of an “oral communication” prohibited under the Act or, alternatively, that Appellant gave implied consent to being recorded by remaining in the home. The State contends that there was adequate factual support for the court’s holding that Appellant was on notice of being recorded.

THE ISSUE OF WHETHER THE OCTOBER 23 RECORDING VIOLATED THE WIRETAP ACT IS WAIVED.

A. Standard of Review

On review of the denial of a motion to suppress evidence, this Court accords deference to the factual findings of the circuit court unless clearly erroneous. *Seal v. State*, 447 Md. 64, 70 (2016). We rely solely on the evidence before the circuit court, viewing such evidence, and reasonable inferences therefrom, in the light most favorable to the prevailing party. *Whittington v. State*, 474 Md. 1, 19–20 (2021). “Because ‘[a] communication that is intercepted unlawfully under the Wiretap Act may not be received

in evidence at trial[.]’ we conduct a *de novo* review to determine whether the [circuit] court was legally correct in its interpretation of that law.” *Holmes v. State*, 236 Md. App. 636, 651 (2018) (quoting *Boston v. State*, 235 Md. App. 134, 145 (2017)).

B. Legal Background

1. The Wiretap Act

The Maryland Wiretap Act makes it unlawful for any person to “[w]illfully intercept . . . any wire, oral, or electronic communication[.]” Md. Code (1974, 2020 Repl. Vol.), Cts. & Jud. Proc. § 10-402(a)(1) (“CJP”). An unlawfully intercepted communication is not admissible as evidence. CJP § 10-405(a). The October 13 recording captured an “oral communication,” which is defined in the Act as “any conversation or words spoken to or by any person in private conversation.” CJP § 10-401(13)(i). Courts have construed this to mean that the Act protects “those who do not consent to the interception of their private conversations, thereby maintaining a reasonable expectation of privacy[.]” *Agnew v. State*, 461 Md. 672, 683 (2018) (citing *State v. Maddox*, 69 Md. App. 296, 301 (1986)). Thus, assessing whether a recording violates the Wiretap Act “hinges on a [factfinder’s] determination that at least one of the parties had a reasonable expectation of privacy.” *Fearnow v. Chesapeake & Potomac Tel. Co.*, 342 Md. 363, 376 (1996).

The burden of demonstrating a reasonable expectation of privacy is on the party moving to suppress a recording. *Raynor v. State*, 201 Md. App. 209, 217–18 (2011). The court must undertake a “factual examination into the person’s reasonable expectation of privacy.” *Malpas v. State*, 116 Md. App. 69, 83 (1997) (citing *Benford v. Am. Broad. Co., Inc.*, 649 F. Supp. 9, 11 (D. Md. 1986)). Maryland has adopted a two-pronged inquiry

patterned after *Katz v. United States*, 389 U.S. 347 (1967), to determine whether a person had a reasonable expectation of privacy. The moving party must first demonstrate a subjective expectation of privacy through “a showing that the person sought to preserve something as private.” *Raynor*, 201 Md. App. at 218 (internal citations and quotation marks omitted). Second, the expectation must be “objectively reasonable,” or one which “society is prepared to accept[.]” *Id.* (internal citations and quotation marks omitted). Because the State did not challenge Appellant’s proffer that he was unaware he was being recorded, only the second prong—objective reasonableness—was an issue raised before the circuit court.

Whether an expectation of privacy is objectively reasonable is a fact-dependent inquiry. For instance, in *Holmes v. State*, this Court contrasted a parent’s deliberately concealed recording of an intimate conversation with her child against similar recordings made at a child’s birthday party or holiday celebration. 236 Md. App. at 654. We noted that in the latter scenarios, “children are likely to be aware of the recording,” while the same could not be said of an intimate conversation. *Id.* A participant’s own actions in concealing, or failing to conceal, conversations are a consideration. In *Malpas v. State*, where a movant had shouted his statements “so loudly as to be overheard by persons in the adjacent apartment,” there was no reasonable expectation of privacy because statements which are “‘knowingly expose[d] to the public,’” even within a home, are not considered private. 116 Md. App. at 84 (quoting *Katz*, 389 U.S. at 351). The surrounding context and inferences drawn therefrom are also significant considerations as to whether an expectation of privacy is objectively reasonable. *See, e.g., Walker v. State*, 432 Md. 587, 612 (2013)

(where the movant had no reasonable expectation of privacy in an unlocked desk drawer with labels which indicated that its contents were intended for communal use); *Faulkner v. State*, 317 Md. 441, 448 (1989) (where a workplace drug policy created a reasonable inference that the movant’s locker could be subject to search by his employer).

2. *Mandatory Motions Under Rule 4-252*

A motion concerning the “interception of [a] wire or oral communication” is a mandatory motion governed by Maryland Rule 4-252. *See also Boston v. State*, 235 Md. App. 134, 144 n.4 (2017). Under the Rule, a mandatory motion

shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court . . . except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

Md. Rule 4-252(b). Issues encompassed by the Rule which are not raised in conformity with the Rule “are waived unless the court, for good cause shown, orders otherwise[.]” Md. Rule 4-252(a). The exception for “good cause” allows a circuit court to “exercise its discretion to consider an untimely motion.” *Mungo v. State*, 258 Md. App. 332, 359 (2023). “The defendant bears the burden of showing good cause.” *Id.* (citing *Davis v. State*, 100 Md. App. 369, 385 (1994)). The circuit court has discretion to determine whether the defendant has shown good cause for untimeliness. *See Pugh v. State*, 103 Md. App. 624, 656 (1995).

The failure to raise a suppression issue before a circuit court constitutes a waiver on appeal in “several contexts,” including “if the defendant fails to comply with the time requirements for filing a motion under the rule[.]” *Carroll v. State*, 202 Md. App. 487, 510

(2011). The Rule is “designed to facilitate the fair consideration of a suppression motion in advance of trial.” *Sinclair v. State*, 444 Md. 16, 29 (2015). Thus, a motion must both be timely and state the grounds upon which it is made “to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it.” *Denicolis v. State*, 378 Md. 646, 660 (2003). An issue which is waived by failure to comply with Rule 4-252 cannot be reached by plain error review under Rule 8-131. *See Carroll*, 202 Md. App. at 513; *Savoy v. State*, 218 Md. App. 130, 143–44 (2014).

C. Analysis

The State asserts that Appellant’s motion was untimely under Rule 4-252 and, thus, is waived from review by this Court. The State cites *Sinclair v. State* to support its contention that despite the circuit court’s exercise of discretion in permitting Appellant to present argument on the issue, compliance with the timing requirements of the Rule was nevertheless mandatory for preservation. We agree.

In *Sinclair v. State*, the Supreme Court of Maryland made clear that strict compliance with the timing requirements of Rule 4-252 is required to preserve an issue for appeal. There, Sinclair’s counsel initially filed an “omnibus motion”¹⁴ which was timely under Rule 4-252; however, it did not provide specific grounds for the suppression of evidence. 444 Md. at 31. Counsel notified the court that motions *in limine* may be

¹⁴ The Supreme Court of Maryland has acknowledged that an omnibus motion is a common practice often permitted at the discretion of the trial courts and generally not disturbed on appeal “where the State is not unduly prejudiced by being called upon to respond immediately to allegations of which it had no prior notice.” *Denicolis*, 378 Md. at 660.

forthcoming, and a motions hearing was accordingly scheduled. No motions were filed, and the hearing was cancelled. *Id.* at 32. Subsequently, on the morning of trial, counsel raised an oral motion *in limine* seeking to “supplement” the omnibus motion and arguing that evidence obtained from Sinclair’s cell phone should be suppressed. *Id.* The circuit court permitted the parties to orally argue the motion, which Sinclair argued on appeal was an implicit finding of good cause. *Id.* at 33. The Supreme Court determined otherwise and held that the timeliness requirement of Rule 4-252 was not excused because Sinclair had not made a showing of good cause; nor had the circuit court made an explicit finding of good cause. *Id.* at 33, 36. The Court noted that prejudice resulted from Sinclair’s belated motion, principally in that the State did not have an opportunity to develop the factual record; without time for a full evidentiary hearing, the parties and circuit court were left with “a truncated motions hearing with the jury panel at the door.” *Id.* at 34.

Here, the record demonstrates that Appellant did not comply with the timeliness requirements of Rule 4-252, nor did he show good cause for failing to do so. The basis for Appellant’s motion—the October 23 recording—was disclosed in discovery on May 9, 2023. Appellant thus had five days from the disclosure to file a timely motion. *See* Md. Rule 4-252(b). Appellant’s counsel and the State stipulated to a deadline of May 23, 2023 for the defense to file motions, which the State acknowledges can be interpreted as a discretionary extension of the deadline mandated by the Rule. However, Appellant did not meet that deadline. Instead, he filed a line “withdrawing motions” with the express purpose of indicating to the court that he had no motions to pursue and that the court should thus cancel the scheduled motions hearing. Appellant’s motion was not filed until November

16, 2023, nearly six months past the deadline. An untimely motion constitutes waiver under the Rule.¹⁵ See *Sinclair*, 444 Md. at 29 n.15; *Carroll*, 202 Md. App. at 510.

The circuit court did not make a finding of good cause excusing Appellant’s untimeliness. *Sinclair* establishes that the circuit court’s discretionary decision to hear argument on the motion does not, standing alone, constitute an implicit finding of good cause. 444 Md. at 33. Nor did the circuit court explicitly excuse untimeliness; to the contrary, the court noted that Appellant had already withdrawn motions in May of 2023 and denied his request to schedule a hearing prior to trial.

Absent an explicit finding of good cause, Appellant must demonstrate that he made a showing of good cause from which we could infer that the circuit court made an implicit finding. See *Sinclair*, 444 Md. at 33. Appellant has not done so. In his motion before the circuit court, Appellant did not acknowledge prior receipt of the October 23 recording, asserting only that he received a DVD containing the recording on November 9, 2023. In his brief before this Court, Appellant likewise did not acknowledge the untimeliness of his motion, stating only that “[o]n January 19, 2023, Appellant was indicted and subsequently, through counsel, moved to exclude the recording as intercepted in violation of the Maryland Wiretap Act.” Appellant addressed the issue of good cause—and the untimeliness of his motion—for the first time during oral argument before this Court.

¹⁵ Further, “[t]his Court specifically has stated that withdrawing a motion, an affirmative act of commission as opposed to an act of omission, constitutes a waiver rather than a forfeiture.” *Carroll*, 202 Md. App. at 514. Appellant did not merely fail to raise the issue to the circuit court in a timely manner; he affirmatively represented to the court that he would not be making any motions which would require a hearing prior to trial.

Appellant did not dispute that the attachment provided in the State’s May 9, 2023 discovery email contained the same recording as that contained on the DVD. Appellant suggested that the link may not have been working, or that he might not have been able to watch the attachment to the email containing the recording for another reason. However, Appellant also conceded that there is nothing in the record to demonstrate he had such problems watching the video, nor did he raise this assertion before the circuit court. Thus, the circuit court did not and could not have made an implicit finding that the May 9, 2023 discovery included an unviewable link, and this is not a basis upon which we are able to assume an implicit finding of good cause. In the absence of any showing of good cause for untimeliness, we cannot presume that any such good cause existed, or that the circuit court implicitly found such. *See Mungo*, 258 Md. App. at 359–60 (noting that, while ordinarily this Court could presume a finding of good cause where the circuit court was silent, *Sinclair* precludes such a presumption).

It is also apparent from the record that prejudice resulted from the motion’s untimeliness. The motion came well after the date of the cancelled motions hearing, resulting in a “truncated motions hearing” on the first day of trial with limited presentation of evidence. *See Sinclair*, 444 Md. at 34. After counsel argued the motion, the court noted that the issue was significant to the case and there had not been time to schedule an earlier hearing, indicating “it would be easier on [the court] if somebody [had] ruled on it.” Appellant’s counsel acknowledged that the State had attempted to have the motion heard prior to trial and was unsuccessful. This also resulted in delayed opening statements, which were to occur on the first day of trial, because the court recognized that counsel would

likely have to adjust their prepared opening statements in accordance with the ruling. Further, following the court’s ruling on the motion on the second day of trial, the transcript reflects that the State had to leave the courtroom to give notice to witnesses that they were permitted to reference the October 23 recording. The unanticipated timing issues and last-minute uncertainty was disruptive to the State’s trial preparation and the sort of prejudice Rule 4-252 is designed to avoid. *See Denicolis*, 378 Md. at 660. Accordingly, because Appellant’s motion was untimely, this issue is waived for our review.¹⁶

¹⁶ In *Boston v. State*, this Court considered the merits of an untimely motion to suppress based on the Wiretap Act. 235 Md. App. at 142–44. However, in doing so we noted that the State “[did] not argue that Boston’s issue is not preserved for review, was waived, or should not be considered by this Court.” *Id.* at 144 n.4. Here, the State has made an argument that Appellant waived the issue by failing to file a timely motion. Additionally, this Court and the Supreme Court have applied the requirements of Rule 4-252 uniformly across all issues which must be raised in accordance with the Rule. *See, e.g., Ray v. State*, 435 Md. 1, 13–14 (2013) (holding that a claim of unlawful arrest was waived for review for noncompliance with Rule 4-252); *Savoy*, 218 Md. App. at 141–42 (holding that a *Miranda* suppression claim was waived for review for noncompliance with Rule 4-252); *Mungo*, 258 Md. App. at 357–58 (rejecting the argument that a motion for improper venue was excepted from the timing requirements of Rule 4-252); *Lewis v. State*, 229 Md. App. 86, 107–08 (2016) (holding that a claim that a court lacked personal jurisdiction was waived by lack of timeliness under Rule 4-252). Thus, we do not consider admissibility under the Wiretap Act to be an issue exempt from timeliness requirements.

Because the issue on appeal is waived, we affirm Appellant's conviction.¹⁷

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

¹⁷ We note that Appellant's challenges to the circuit court's ruling are primarily aimed at that court's factual findings. Appellant argues that the court's factfinding should have weighed in Appellant's favor and that the findings regarding the entryway sign are clearly erroneous. Whether Appellant had a reasonable expectation of privacy is a fact-based inquiry, *see Malpas*, 116 Md. App. at 83, and this Court defers to the circuit court's findings of fact absent clear error. *See Seal*, 447 Md. at 70.

The trial court found that: the entryway sign applied to the interior of the home and not to the Ring camera; the sign was prominently displayed and particularly noticeable because such a sign is unusual to a residence; the sign would prompt an invitee to consider what in the home was being recorded; Appellant was aware of at least one camera in a bedroom of the home; and it was likely that the camera also had audio capabilities. The court concluded that Appellant entered the home with knowledge of the sign and the recording device, lacked a reasonable expectation of privacy, and thus was not protected under CJP section 10-402.

We note that, although waived, the record does support the court's factual findings in that it does contain ample support for the conclusion that a prominently displayed sign indicating that an invitee may be recorded would put an invitee on notice that he does not have a reasonable expectation of privacy in that home. Thus, even if not waived, we agree that there is ample information in the record to conclude that Appellant lacked a reasonable expectation of privacy, and that the circuit court was correct in holding that the October 23 recording was not inadmissible under the Wiretap Act.