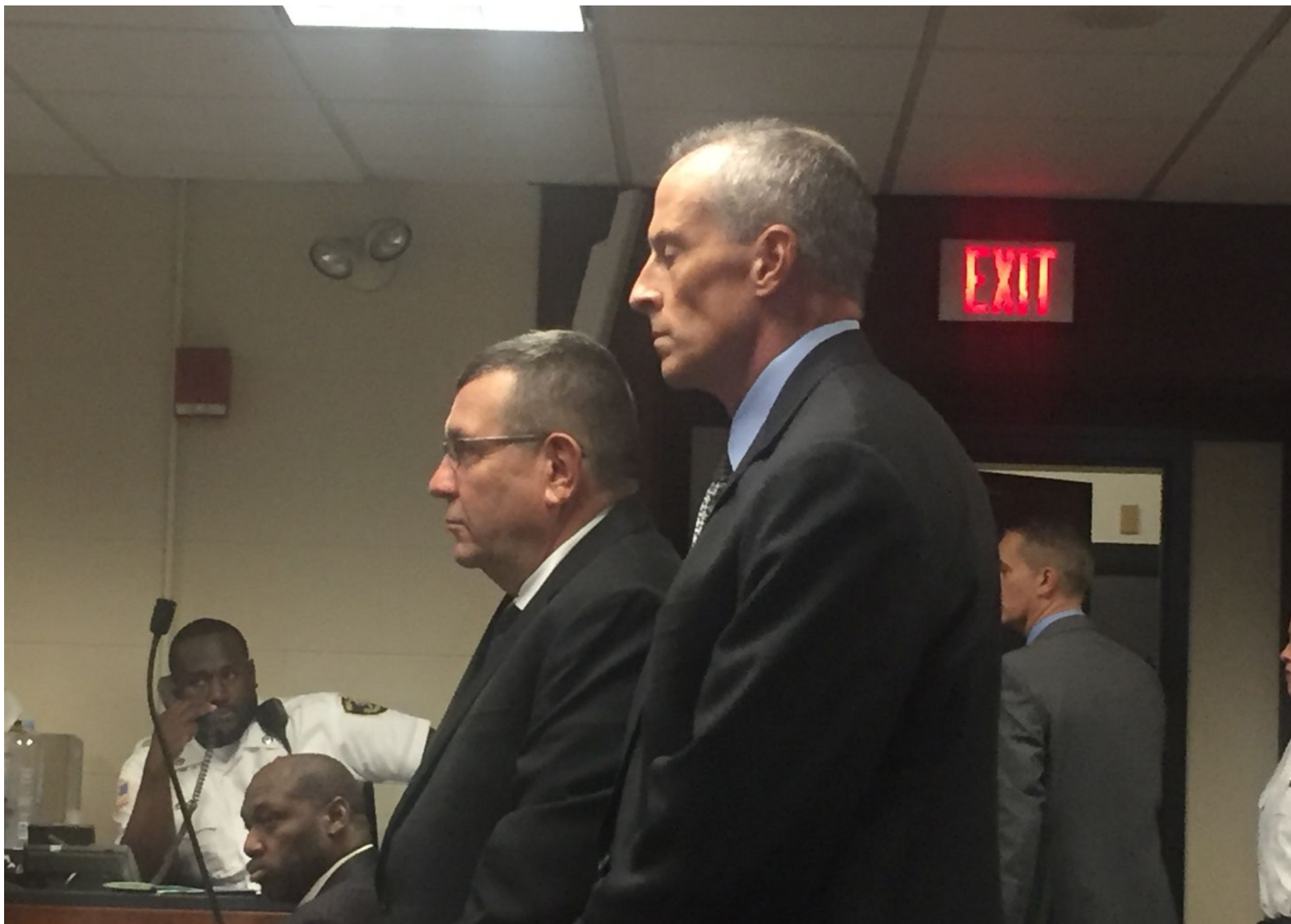


State Police lost thousands of e-mails related to trooper overtime fraud case

The lack of evidence could put the prosecution of the high-profile criminal case in jeopardy.

By [Matt Rocheleau](#) Globe Staff, Updated August 14, 2020, 12:41 p.m.





Former State Police lieutenants David Keefe and John T. Giulino were arraigned in Suffolk Superior Court Friday on Oct. 12, 2018, on state charges of procurement fraud and larceny. JOHN R. ELLEMENT

An attorney for a former Massachusetts State Police lieutenant charged with overtime pay fraud says the law enforcement agency has lost tens of thousands of e-mails related to the high-profile criminal case, pointing to records that suggest the department can't locate most e-mails prior to 2018.

Attorney Timothy M. Burke argued Wednesday in a state court hearing that the charges against retired Lieutenant David Keefe should be thrown out because the state can't locate the e-mails that Keefe had sought as possible exculpatory evidence, showing he was on duty during the times prosecutors say he skipped work but still collected pay.

Keefe, charged with fraud and larceny, retired in March 2018, one day before more than 20 state troopers were publicly accused of payroll fraud.

For nearly a year, Burke, along with prosecutors from Attorney General Maura Healey's office, have sought these e-mails from State Police to no avail. According to new Suffolk Superior Court filings, state software technicians told investigators recently that the State Police — like many other state agencies — had switched e-mail programs in the spring of 2018, and that many e-mails are no longer available.

ADVERTISING





Keefe was among 46 troopers implicated in 2018 — and under investigation for months before the e-mail switch — in a sprawling overtime [pay fraud](#) scandal that has resulted in nine convictions. The latest revelation, legal experts said, could put his prosecution in jeopardy.

“Preserving and disclosing exculpatory evidence is a bedrock principle of the criminal justice system,” said Brockton-based attorney John A. Amabile, president-elect of the Massachusetts Association of Criminal Defense Lawyers. “It’s one of the most important pieces of administering criminal justice fairly.”

The circumstances are particularly troubling, Amabile added, because it was carried out by a police department, and after the defendant already had been under investigation.

The State Police previously acknowledged it [destroyed](#) key documents, namely years-old traffic citation records, that could have shown more trooper misconduct. The records were destroyed a year into the department’s internal audit of overtime abuse. The agency claimed the destruction was part of a routine annual process. The agency also came under fire for [trying to destroy](#) other records, while still [more documents](#) went [missing](#) amid investigations.

It’s unclear how many other agencies have lost access to troves of public employee e-mails, which would appear to violate state rules requiring that correspondence be kept for at least three years, or in some cases longer.

A State Police spokesman declined to comment, referring questions to Healey's office, which also declined to comment but plans to respond later in court. Officials from Governor Charlie Baker's executive information technology office refused to answer specific questions about e-mails.

The State Police fraud [scheme](#) was allegedly [hatched](#) more than two decades ago by top commanders who pushed troopers to write citations under an unlawful ticket quota system. As long as troopers handed in enough tickets to meet the quota, supervisors allegedly turned a blind eye and didn't require them to actually work their shifts. A federal judge in January 2020 said the troopers' conduct appeared to amount to a [criminal conspiracy](#) and he has pushed federal prosecutors to examine the case more deeply.

Keefe estimated he sent and received roughly 34,000 e-mails between 2012 and 2018, when he worked in the troop that patrolled the Massachusetts Turnpike, the epicenter of the payroll scandal, according to the court motion filed by Burke, his attorney.

Burke said State Police recently turned over about 4,500 of these e-mails, only a small portion of the correspondence that he and prosecutors had sought. Keefe, and many others, came under scrutiny by State Police in the fall of 2017 and the department brought the allegations to Healey's office in January 2018.

But months later, the state changed the e-mail software used by State Police, and lost countless e-mails, according to Burke's motion.

In May, investigators from Healey's office interviewed employees of the state's Executive Office of Technology Services and Security, to try to get to the bottom of the issue, according to the investigators' notes, which were filed in court.

Many state agencies had deemed it “too burdensome” to gather everyone’s e-mail at the time of the software shift, and only captured the archived e-mail of people at certain managerial levels, as well as legal staff, the notes said. State Police switched software in the spring of 2018, according to the summary notes.

Now, the only way to search State Police e-mail is through the current program and includes only those e-mails transferred or sent through it, the document said, noting that the previous software had “only so much storage capacity.”

Attorney Peter J. Caruso Sr., a board member of the New England First Amendment Coalition and counsel for the Massachusetts Newspapers Publishers Association, said that what the IT officials described appears to violate state rules that require most e-mail correspondence be kept for at least three years, if not longer.

“They have to adhere to that schedule,” Caruso said. But he’s not aware of any actual penalties for violations of those rules. “It may just be a slap on the wrist.”

A spokesman for the state IT office on Wednesday said only that efforts to migrate e-mail systems are ongoing and that the Baker administration is committed to following state records retention laws and policies. “The administration does not comment on pending litigation,” spokesman Scott Ahern said, refusing to answer numerous questions about the whereabouts of state e-mails.

During Wednesday’s court hearing, which was held via video conference, Burke stressed that the only criminal allegation against Keefe is that he was not always present at shifts. He’s not accused of creating phony records, unlike other troopers implicated in the fraud scandal, who did so to cover up absences.

The Needham attorney also questioned why State Police are just now turning over evidence such as e-mails, a full 22 months after Keefe was indicted on criminal charges, and a month after the case had been initially scheduled to go to trial. He called it an inexcusable delay and potentially “a product of purposeful bad faith.”

“There is no requirement that every defendant must get a perfect trial, but every defendant is entitled to a fair trial,” Burke wrote in a court motion.

Assistant Attorney General John Reynolds said during the hearing that he disagreed with Burke “as to whether all of those e-mails are relevant,” though he noted that Keefe is legally entitled to the records. Judge Robert Ullman set a Sept. 18 deadline for Reynolds to respond to Burke’s allegations.

Matt Rocheleau can be reached at matthew.rocheleau@globe.com. Follow him on Twitter [@mrochele](https://twitter.com/mrochele).

 [Show 294 comments](#)