

Illinois Eavesdropping Statute Unconstitutionally Overbroad

The Illinois Supreme Court found in two separate cases that the state's eavesdropping statute is unconstitutional.

The statute makes it illegal to use an "eavesdropping device" to hear or record any conversation without the consent of all parties to the conversation. It also makes it illegal to use or divulge the conversation obtained using the eavesdropping device.

In one case, the defendant was charged with recording the proceedings in open court in a child support case in which he was involved and where no court reporter was present. He claimed he had a first amendment right to gather information by recording public officials performing their public duties. The state argued there is no first amendment right to secretly record a court proceeding.

In the other case, the defendant was charged for recording a conversation with the court's court reporting service and then publishing the conversation online. The defendant was trying to correct a court reporter's record in another case, which the record stated that the defendant was present at a hearing, when in fact she was not present. The defendant then recorded three telephone conversations with the reporting service as she tried to correct the record, which the court reporter refused to do.

In both cases, the trial court found the eavesdropping statute unconstitutional.

The Supreme Court recognized that individuals "have a valid interest in the privacy of their communications and a legitimate expectation that their private conversations will not be recorded by those not privy to the conversation. In addition, the fear of having private conversations exposed to the public may have a chilling effect on private speech," the opinion states. "However, the statute does not stop there. It criminalizes a whole range of conduct involving the audio recording of conversations that cannot be deemed in any way private."

For example, the statute prohibits the recording of "a loud argument on the street, a political debate on a college quad, yelling fans at an athletic even, or any conversation loud enough that the speakers should expect to be heard by others," the Supreme Court wrote. "None of these examples implicate privacy interests, yet the statute makes it a felony to audio record each one. Judged in terms of the legislative purpose of protecting conversational privacy, the statute's scope is simply too broad."

"Understandably, many people do not want their voices broadcast to others or on the Internet to be heard around the world. But, to a certain extent this is beyond our control, given the ubiquity of devices like smartphones, with their video and audio recording capabilities and the ability to post such recordings instantly to the Internet," one of the opinions states. "Illinois' privacy

statute goes too far in its effort to protect individuals' interest in the privacy of their communications.”

The Supreme Court agreed that the statute was “content neutral” but found that it “burdens substantially more speech than is necessary to serve a legitimate state interest in protecting conversational privacy.”

Because the court found the recording portion of the statute unconstitutional, the court found that making it a crime to disclose the contents of the conversation also was unconstitutional.

People v. Melongo, Ill. Supreme Ct. No. 114852, issued March 20, 2014, and *People v. Clark*, Supreme Ct. No. 115776, issued March 20, 2014. Opinions available at <http://www.balough.com/illinois-eavesdropping-statute-unconstitutionally-overbroad>.