

Denied

STATE OF ILLINIOS
IN THE CIRCUIT COURT OF COOK COUNTY, CRIMINAL DIVISION

PEOPLE OF THE)
STATE OF ILLINOIS)
)
Plaintiff,)
)
v.)
)
ANNABEL MELONGO)
Defendant.)

No. 10 CR 0809201

FILED
DEC 13 2010
Clerk of the Court

MOTION TO DISMISS

ANNABEL MELONGO, by and through her attorneys, ALBUKERK AND ASSOCIATES moves this Court to Dismiss the charge of Eavesdropping under 720 ILCS 5/14-1 et. seq. pending against her because the Statute is Unconstitutional under both the United States and Illinois Constitutions in that the Statute violates due process and is against public policy. In support Defendant states:

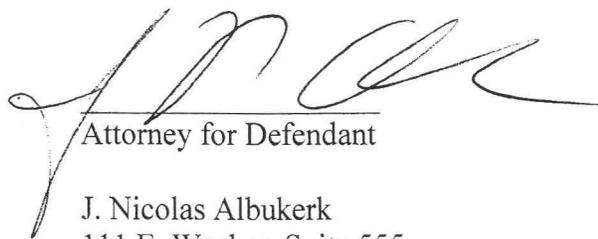
1. ANNABEL MELONGO was arrested and charged with the offense of Eavesdropping in May of 2010 .
2. The Statute, 720 ILCS 5/14-1 et. seq, was changed by the legislature in 1994 to require all parties to a conversation to give consent before that conversation may be lawfully recorded. Before this, in cases such as **People v. Beardsley, 115 Ill. 2d 47 (1986)**, the Illinois Supreme Court had interpreted the Statute to require only one party was necessary to consent to the recording of a conversation.
3. Requiring two party consent to conversations essentially outlaws preserving the truth and provides a chilling effect to those who would try to expose fraud, lies and criminal activity. The Eavesdropping Statute, as of its amendment in 1994 to require two-party consent to all recordings, became a criminal statute which violated the public policy of exposing the truth; and therefore violated the Illinois and U.S.

Constitutions guarantee of due process of law. There is no rational relationship between requiring two party consent and a legitimate state interest.

WHEREFORE, This Court should therefore dismiss the instant charge as a violation of the U.S. and Illinois Constitutions and find that the Supreme Court's interpretation before the 1994 amendment of the Eavesdropping Act is the only lawful interpretation permitted by either Constitution.

\

Respectfully submitted,



Attorney for Defendant

J. Nicolas Albuquerk
111 E. Wacker, Suite 555
Chicago IL 60601
773 847 2600
Fax: 773 847 0330
Attorney # 37955