

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION



PEOPLE OF THE STATE OF ILLINOIS,)
)
 Plaintiff,)
)
 v.) No. 08 CR-10502
)
 ANNABEL K. MELONGO)
)
 Defendant.)

AMENDED MOTION TO DISMISS INDICTMENT

COMES NOW the defendant, ANNABEL K. MELONGO, Pro Se, and respectfully moves this court to dismiss the indictment based on violations of her due process rights; violations aimed at securing the indictment through the use of materially false, perjured and misleading statements of Detective William Martin and the failure of the state to inform the Grand Jury of exculpatory evidence to the Accused when the existence of that evidence was known to the state. While section 114-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1 (West 1996)) doesn't have a provision addressing the court's ability to dismiss a criminal charge for a due process violating, this ability is nevertheless granted as part of the trial court's inherent authority to guarantee the defendant a fair trial in " that on the basis of the reasoning of our past

decisions and that of the appellate courts and on the basis of the reasoning of the United States Supreme Court, we must conclude that a trial court does have an inherent authority to dismiss an indictment in a criminal case where there has been a clear denial of due process even though that is not a stated ground in section 114-1." *People v. Lawson*, 67 Ill.2d 449. In the next paragraphs, the Defendant will present the actual perjured statements and non-disclosure of exculpatory evidence and then show how those two conducts substantially prejudiced her.

Perjured Statements and Non-disclosure of Exculpatory Evidence

1. Detective William Martin Star 29, Schiller Park Police Department committed **SEVEN** counts of perjuries . Under oath, Detective Martin made the following statements that he knew were not true:

I. In the May, 2008 indictment, page 5 lines 18 – 24 and page 6 lines 1 – 7, there's the following exchange:

“ Q: During your conversations with her did you learn she as a president and owner of the foundation hired an individual named Annabel K. Melongo from Robert Half Temporary Agency?

A. That's correct, yes.

.....

Q: Did Save a Life eventually hire the Defendant Melongo as a full-time employee?

A. Yes, they did.

Q: Sometime in April of 2006 and prior to April 28th, was Ms. Melongo terminated by Save a Life Foundation?

A. Yes, she was.

Q: Do you know why she was terminated?

A: Not off the top of my head, no. "

a. Detective Martin **KNEW** the Defendant was **NEVER** an employee at Save a Life Foundation. In the police report, hereto attached as exhibit 'A' , the fourth line from the bottom states '**R/o contacted Robert Half International in an attempt to obtain personal information on Melongo birthdate, last known address and telephone number. Customer service informed R/o that a written request would need to be faxed over and then after 12 hours, they would provide such information**". Attached Exhibit 'B' further shows the information received from Robert Half Technology. It's therefore surprising that Detective Martin in the above exchange witness to the contrary. If the defendant was an employee at Save a Life foundation(SALF), why wasn't her employee's file requested from Carol Spizzirri, the CEO and founder? Who , in a letter to the IRS, attached exhibit 'C', clearly confirms that the defendant's wasn't her employee .

b. Furthermore in exhibit 'A', the 3rd line from the top, the police report states '**On Thursday, 27 06, Spizzirri, president and Founder of Save A Life Foundation, fired the above listed employee / suspect Annabel Melongo for performance and attitude problems.**' In the Schiller Park Police Investigative Report, attached Exhibit "I", Page 8, 14th line from the top, Detective Martin wrote "**She believes that she was fired because Christian agreed to work for less money to do the same job as she but that he did not have the same networking skills as she did.**" However during the May 2008 indictment, Detective Martin stated he didn't know the reasons of the defendant's termination.

c. In the January, 2007 indictment, page 5, lines 5 – 9, attached a exhibit 'D', while ALSO under oath, Detective Martin said:

“ Q: And do you know why she was terminated based on your investigation?

A: Because she was accused of stealing e-mail from the president's e-mail account and also intruding into their computer servers and deleting several files.”

A materially false statement that's neither supported by the Complainant or the Accused allegations. It seems every times Detective Martin is under oath, he has a different version of the defendant's termination.

II. Another perjury account is in page 8, lines 15 – 24, of the May, 2008 indictment. Here's the exchange:

“ Q. These experts that were hired by Save a Life, did your investigation reveal that they were able to trace the individual responsible for intruding on the system?

A. Yes.

Q. And this was done by tracing the actual intrusion by back stepping it?

A. Yes. They went into the server log which kept track of every single computer that accessed the server and using those logs and an IP address search we tracked it back to Ms. Melongo's computer”

There was NO EXPERTS hired. Save a Life created a bogus Gmail account, hereto attached as exhibit 'E' . The sender's email was 'tsupport@gmail.com', the email in question was just a copy and paste of lines resembling those of a server. As far as common knowledge goes, Gmail isn't a log tracer; but a free email server owned by Google and in that capacity, can't possibly be

used to determine log entries in companies' servers!!! The fact that the sender used a Gmail account, instead of a corporate/business email account, denote s/he certainly didn't want to reveal himself/herself since at the very bottom of that email is a statement '**This e-mail account is only used for testing purposes. It is not checked regularly. Please do not e-mail replies here. They will not receive a response.**' This is certainly a strange signature by some experts hired to provide service!!! Unless they really have a **BAD** customer service.

III. The other perjuries occurs in page 11, lines 12 – 23, of the May, 2008 indictment.

Here's the exchange:

“ **Q: During your investigation were you able to determine from what location Ms. Melongo accessed the computer on both April 28th of 2006 and May 1st of 2006?**

A: Yes. It was a Comcast IP address that was billed to and was assigned to the modem at Ms. Melongo's address in Palatine.

.....

Q: The data that was deleted from accessing the original servers, not the e-mail accounts now but the servers, that was permanently deleted; is that correct?

A: Yes. “

a) Detective Martin committed three accounts of perjury, in that he stated a **Comcast IP address was billed to the Defendant,** he was able to determine **where the defendant's accessed her computer on April 28th and May 1st** and the data was **PERMANENTLY** deleted. Going back to exhibit 'A' , line 6th from the bottom, the police report stated that **90%** of the data was recovered. Moreover, the Comcast's subpoena's response, attached exhibit 'G', concluded that

the Defendant had no account with Comcast and that **no data was found regarding the defendant's online experience in April 28th and May 1st, 2006.**

IV. The state failed to disclose exculpatory evidence to the Accused in the following manners:

a. In the May, 2008 indictment, page 7, lines 8 – 9, it failed to mention the fact that files **WERE NOT** deleted. The scenario was that some people in the company were able to access files, while some other people couldn't access the **EXACT** same files. This is not only confirmed by numerous Save a Life Foundation' employees, but also, the first computer expert, Brian Salerno, in his email's exchange with Carol Spizzirri, hereto attached as exhibit 'F', stated ' **The permissions are clearly the obstacle now – given the fact that some people can see the data and some can't.**' Although the state knew of this email, through Detective Martin, Carol Spizzirri and various employees to whom it was forwarded to, it nevertheless failed to mention it during the Grand Jury session.

b. The state further failed to tell the Grand Jury about Andrea Smith who accessed the network, deleted files and used SALF's credit card. The June subpoena to Comcast, hereto attached as exhibit 'G', and Comcast's response, attached as exhibit 'H', all testified to that.

c. Finally the state didn't tell the Grand Jury that when the same subpoena was issued in regard to the Defendant, attached exhibit 'H', Comcast didn't have any evidence on the defendant, exhibit 'G'.

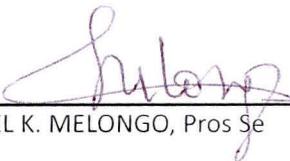
How the Perjured Statements and Non-disclosure of Exculpatory Evidence prejudiced the Defendant

- I. (a): The fact the Detective Martin perjured on the Defendant's employment status greatly prejudiced her. The lack of the perjury would have raised questions on the existence of a confidential agreement regarding SALF's computers/network and why SALF let someone with no legal employment status accessed sensitive company's information. Moreover, the fact that she wasn't an employee and consequently never signed a confidential agreement on the use of SALF computers/network wouldn't have justified the '**without authorization of the computer's owner**' claims used in all three counts of the indictment. Since there's no legal document signed by the Defendant regulating the extend/conditions of the computers/network access and the use of her knowledge thereof.
- I.(b): By perjuring on the reasons why the Defendant was fired, Detective Martin prejudiced her in that he failed to tell the Grand Jury that SALF hired an inexperienced individual to take over. The lack of experience of the new hire would have raised questions as to the accuracy of the claims and the culpability of the Defendant regarding the incident.
- II : There were three individuals who did diagnose the computer's incident: The new hire's friend, Don Peters and Brian Salerno. None of their reports contained information mentioned by Detective Martin during the Grand Jury. The only document remotely resembling his statement is a gmail account whose author is unknown. The facts that Detective Martin mentioned experts and their so-called findings substantially prejudiced the Defendant in that his statement of '**experts hired and tracing logs findings**' influenced the jurors to give credibility not only to his statements but also to the investigation he conducted. It's no certain that such a credibility would have been achieved if the Detective told the Grand Jury that of the three individuals hired, none of them produced evidence of the intrusion and deletion of files and the so-called logs tracing were obtained from a gmail account whose author is unknown!!!

- III.(a): Throughout his testimony, Detective Martin talked of the existence of an IP address belonging to Comcast that was back-traced to the Defendant. Detective Martin perjured on the fact that the Defendant was billed for that IP address, that his investigation returned information where Defendant accessed the computer/servers and that the data was permanently deleted as a result of the so-called intrusion and deletion. Were the Detective truthful, it's hard to believe that the jurors would have returned an indictment if they knew that the Defendant never had an account with Comcast and therefore couldn't possibly be billed for the so-called back-traced IP address belonging to Comcast, that Comcast's subpoena returned no information on the Defendant regarding the access of computer/network on the dates the incident occurred and that 90% of the data was recovered.
- IV.(a): Would the state have presented to the Grand Jury the facts that some people saw the data and some didn't see the exact data as confirmed by Brian Salerno and Carol Spizzirri email's exchange, the indictment's counts stipulating deletion of data would have been hard to secure.
- IV.(b) and IV.(c): Would the state have presented the facts that Andrea Smith accessed the computer/network, deleted files and used SALF's credit card almost two weeks after the Defendant was fired, it would have not only cast doubt on the charges but also raised questions why the Defendant was accused, given the fact that when the Andrea Smith's subpoena was issued on the Defendant, no information was returned.

WHEREFORE, in view of the evidence showing actual and substantial denial of due process to the Defendant, the Defendant begs this court to dismiss the indictment with prejudice since the perjured statements and non-disclosure of exculpatory evidence were not made by accident, mistake or inadvertency but carefully construed to be materially false, perjured and misleading in an attempt to secure an indictment that wouldn't otherwise have been possible if the statements and disclosure were proper.

Respectfully submitted,


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NOTICE OF FILING

TO: Robert Podlasek Assistant State's Attorney – Cook County
Julie Gunnigle Assistant State's Attorney – Cook County
Kyle G. French Assistant Attorney General – Illinois Attorney General

PLEASE TAKE NOTICE that on January 8th, 2010, Defendant Annabel Melongo, Pro Se, has filed a motion to withdraw her Motion To Dismiss filed on October 28th, 2009 and re-filed an Amended Motion To Dismiss. Copies of which are herewith served upon you.

Annabel Melongo – Pro Se

Annabel Melongo
P.O Box 1537 Addison, IL 60101

CERTIFICATE OF SERVICE

I served this Notice of Filing and documents referred to therein upon counsel as listed above via personal service on January 8th, 2010 prior to 5:00 p.m in floor 13th, **2650 S. California Ave. , Chicago, Illinois.**

