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# CHICAGOLAND

## Eavesdropping law struck down

Statute had been used to limit audio of public officials — and send people to jail

BY STEVE SCHMADEKE  
Tribune reporter

Hours after the Illinois Supreme Court struck down the state's eavesdropping statute on Thursday, Annabel Melongo reflected on the 20 months she spent locked up in the Cook County Jail under the now-unconstitutional law.

Melongo said she had been ordered held on a six-figure bond typically given repeat or violent offenders for recording three telephone conversations she had with a court reporter supervisor at the Leighton Criminal Court Building about the policy for correcting a hearing transcript.

"It's not easy," Melongo, 41, a Cameroon native who came to the U.S. after studying in Germany, said of her time in jail. "I went through all the emotional states you can imagine. Sometimes I was crying, sometimes I could not sleep."

"And I don't even..." she said, breaking off before describing being accosted by another inmate. "They say what doesn't kill you makes you strong and believe me, when I got out of jail, there's nothing in the world that can actually kill me now."

The Supreme Court ruling means the state legislature might need to draft a law that will allow people to make certain public recordings while also protecting legitimately private conversations, according to attorneys on the case and legislators.

The decision comes two years after a federal appeals court in Chicago found unconstitutional the law's ban on recording police officers in public. The 7th Circuit Court of Appeals ruling prohibited enforcement of that part of the law shortly before Chicago hosted the NATO summit in 2012.

Melongo posted the recordings to a website she had set up to publicize a 2008 criminal computer-tampering case Cook County prosecutors had brought against her. In 2010, prosecutors then charged her with six counts of eavesdropping.



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*"It's not easy. I went through all the emotional states you can imagine."*

— Annabel Melongo, who spent 20 months in jail for recording three phone conversations

Her computer-tampering charges are pending.

She was charged under a law — one of the strictest in the country — that made audio recording comments made by any person, even in public, illegal unless their consent was obtained first. It was a law her attorney Gabriel Plotkin said prosecutors across the state had used only as a "sword to prevent people from recording government officials" — typically police officers.

"I think it's outrageous that she spent any time in jail," Plotkin said. Keeping Melongo locked up until she had served what was "effectively a maximum for a conviction to me is a miscarriage of justice," he said. "I think it's made more egregious by the fact that the Supreme Court has now said the law was unconstitutional."

The jury deadlocked at her 2011 trial and prosecutors opted to try her again. Melongo

video, Melongo's attorneys argued that the Illinois statute was sweeping enough to imprison almost anyone capturing a public conversation or posting it online.

The Supreme Court, in its unanimous opinion by Chief Justice Rita Garman, agreed, finding that the law "criminalizes a wide range of innocent conduct."

"The statute criminalizes the recording of conversations that cannot be deemed private: a loud argument on the street, a political debate on a college quad, yelling fans at an athletic event or any conversation loud enough that the speakers should expect to be heard by others," the opinion said. "None of these examples implicate privacy interests, yet the statute makes it a felony to audio record each one."

In a related opinion, also unanimous and penned by Garman, the court upheld a Kane County judge's decision to dismiss charges against DeForest Clark, who had recorded conversations at the county courthouse among himself, an attorney and a judge during a child support case.

In that ruling, Garman noted a "person may write down what we say and publish it, and this is not a violation of the eavesdropping statute. Yet if that same person records our words with an audio recording device, even if it is not published in any way, a criminal act has been committed."

The court also indicated that the concept of privacy itself might be changing with the "ubiquity of devices like smartphones" that can record conversations and post them online almost instantly.

The task of crafting a new eavesdropping statute will fall to state legislators.

Rep. Elaine Nekritz, D-Northbrook, who previously brought legislation to change the statute to allow citizens to audio-record police who are on duty and in public, welcomed the Supreme Court ruling but said lawmakers need to act to prohibit eavesdropping on private conversations.

"I still very strongly support requiring the consent of all parties in a conversation where there is an expectation of privacy," she said.

herself wrote a motion to dismiss her case, arguing that the Illinois Eavesdropping Act was unconstitutional.

Remarkably for a filing by a non-lawyer, the motion convinced Judge Steven Goebel to dismiss the charges in 2012. Prosecutors filed an appeal, but on Thursday the state's highest court backed Goebel's ruling.

In a statement, a spokeswoman for the state's attorney's office said there "has been misplaced criticism" of county prosecutors throughout Illinois for enforcing the law, though it had not been enforced in Cook County since the federal appeals court ruling in 2012.

"Today's ruling invalidating (the law) brings much-needed resolution on this issue," Sally Daly, a spokeswoman for State's Attorney Anita Alvarez, said in a statement.

In an era when many people carry a smartphone capable of recording audio and

sschmadeke@tribune  
Twitter @SteveSchmadeke