

Seventh Circuit Sides With Defendants On Eavesdropping Case

October 18, 2012 | [Social Media And Technology, Currents - Employment Law](#)



RELATED PRACTICE AREAS

Internet and Technology
Labor and Employment
Workplace Culture 2.0

RELATED TOPICS

Class Action
Eavesdropping
Telephone Calls

Earlier this week, the U.S. Court of Appeals for the Seventh Circuit affirmed summary judgment for the employer and two individual defendants in an eavesdropping claim brought by a former employee, who was fired after making a threatening telephone call to a colleague at his home.

In *Carroll v. Merrill Lynch*, the plaintiff, Mary Carroll, was fired as a result of her conduct during a phone call with her co-worker, Jim Kelliher, whom she called at his home on Thanksgiving night. Upon hearing the exchange of the telephone conversation and threatening accusations made by Ms. Carroll, Mr. Kelliher's wife, Pat Kelliher, began to record the conversation. Mrs. Kelliher testified that she recorded this conversation because she "was scared and . . . felt . . . this person was going to come to [their] house, throw a brick through [their] window, that they were going to do something that night."

Later that evening, Mr. Kelliher notified his supervisor about the phone call. The next day, at his supervisor's request, Mr. Kelliher played the recording the phone call. Also, on the following day of the call, the Kelliheres reported Ms. Carroll's call to the police.

Ultimately, Merrill Lynch fired Ms. Carroll for her conduct on the call. Ms. Carroll sued Merrill Lynch and the Kelliheres, individually, alleging her civil

rights were violated under Illinois' eavesdropping statute. The lower court granted the defendants summary judgment on all of the claims. Ms. Carroll appealed only the eavesdropping claim to the Seventh Circuit. The Seventh Circuit affirmed, finding that Ms. Carroll's claim lacked a triable issue under the "fear of crime exemption" to the Illinois eavesdropping statute.

Generally, the [Illinois eavesdropping statute](#) prohibits recording a telephone conversation without the consent of all parties and any subsequent use or dissemination of information obtained through an unauthorized recording. However, the "fear of crime exemption" allows unconsented recordings when: (1) the recording is made by or at the request of a person who is the party to the conversation; (2) under a reasonable suspicion that the caller is committing, or about to commit, a criminal offense against that party or members of his immediate household; (3) the recording may yield evidence of that criminal offense.

On appeal, Ms. Carroll argued that Mrs. Kelliher lacked a "reasonable suspicion" that Carroll was committing or about to commit a crime. The Seventh Circuit rejected this argument, noting that Ms. Carroll produced no actual evidence to challenge Mrs. Kelliher's affidavit that she recorded the call because she became fearful upon hearing Ms. Carroll yelling at her husband. Additionally, the Court of Appeals cited to Mrs. Kelliher's testimony in which she feared "any number of" crimes might be committed by Ms. Carroll against her husband and family.

The Seventh Circuit also rejected her argument that the "fear of crime exemption" did not apply to unauthorized dissemination of the recording to Merrill Lynch supervisors. Interestingly, the Court of Appeals found that the exemption applies "to all parts of the eavesdropping act, including the prohibition on using and divulging recorded information." The court went on to cite the historical purpose for the statute and Sen. Dillard's statements in support of the same, which revealed that one purpose of the statutory exemption was to allow private individuals to collect evidence to assist potential future criminal prosecutions.