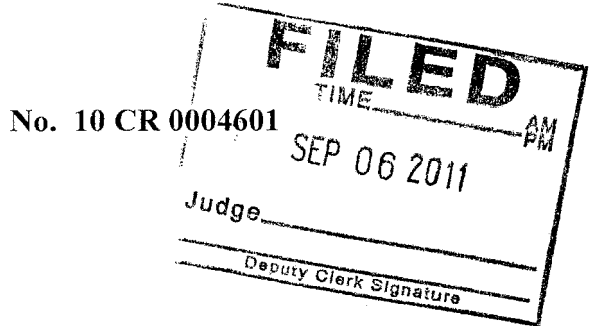


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
CHRISTOPHER DREW,)
)
Defendant.)



No. 10 CR 0004601

AMENDED NOTICE OF INTENT TO PLEAD EXEMPTION

NOW COMES Defendant, Christopher Drew, by and through his attorneys, and hereby places the State on notice of his intent to plead exemption (i) of the Illinois Eavesdropping Act.

- 1) 720 ILCS 5/14-3(i) states there is an exemption to the crime of eavesdropping where:
“Recording of a conversation make by or at the request of a person, not a law enforcement officer or agent of a law enforcement officer, who is a party to the conversation under reasonable suspicion that another party to the conversation is committing, is about to commit, or has committed a criminal offense against the person or a member of his or her immediate household, and there is reason to believe the evidence of the criminal offense may be obtained by the recording;”.
- 2) The arresting officers in this case were committing the federal crime of Conspiracy Against Rights in violation of 18 U.S.C. §241 when they arrested Christopher Drew for Peddling without a Permit, allegedly in violation of Chicago City Ordinance.

CHRISTOPHER DREW, Defendant

By: _____
One of Defendant's Attorneys

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18 USC section 241 states:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

U.S.C. § 241 may be committed against him. The statute provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States... They shall be fined under this title or imprisoned not more than ten years, or both.

4. At oral arguments on this issue, Counsel's arguments failed to articulate the issue actually being presented to the Court. The Court indicated that it believed that Counsel was attempting to re-litigate the question of whether the eavesdropping statute is constitutional. This is not the case.
5. The question at issue is whether Chris Drew had a reasonable suspicion that a crime would be committed against him is a question of fact for a jury to decide.
6. At the hearing on Defendant's Motion to Quash Arrest and Suppress Evidence, Counsel conceded that he, likewise, was not challenging the constitutionality of the peddling ordinance. Instead, Defendant is simply asserting that he had a *reasonable suspicion* that the police officers would commit a violation of 18 U.S.C. § 241 or some other crime against him, and that exemption (i) is applicable.
7. There is a distinct difference between asking a court to find a statute unconstitutional and asking a jury to find that a person had a reasonable suspicion that a crime would be committed against him. The former is a question of law that must be decided by a court, while the latter is a question of fact that must be left to a jury's determination.
8. During the arguments, the Court presented a hypothetical fact pattern:

"Hypothetically, guy walks down the street, sees the guy, pulls out gun and shoots him. It happens. He wants to put up a defense with no evidence to support it at all, I thought the guy was going to shoot me, so I shot him first. Subjective viewpoint. I thought he was going to shoot me, so, therefore, I shot him first." P. 30, ln. 15.
9. Where there is no evidence to support the self-defense theory, it should not be permitted to be presented to a jury. However, to take the court's hypothetical one step further,

where there is evidence that the hypothetical defendant was previously threatened by the victim, the victim had displayed a weapon, and promised to harm the defendant, that self-defense must be permitted.

10. That extension of the court's fact pattern is the appropriate hypothetical situation because Chris Drew was, in fact, confronted by police officers previously about peddling on State Street. Thus, Chris did have a reasonable suspicion that the crime of 18 U.S.C. § 241 would be committed against him. This is not the same as a judicial finding of unconstitutionality, and the question of whether Drew's belief was *reasonable* is a question of fact. This is exactly what a jury is asked to do in the innumerable other instances where they are called upon to decide reasonableness: the law of torts, legal justifications for intentional acts, disorderly conduct, and so on. Like so many other areas of law, the touchstone issue for the jury to decide is one of reasonableness.
11. In *Carroll v. Lynch*, the court found exemption (i) to apply to eavesdropping where the recorder (the Plaintiff) had reason to record a call related to criminal activity, even if not a specific crime. *See Carroll v. Lynch*, 2011 WL 1838563 (N.D. Ill. 2011). The court noted that the exemption does not require actual knowledge that a specific crime is being committed. Rather, the court provides that the exemption permits recording where there is reasonable suspicion, which requires, "by definition, that the individual have a suspicion—a subjective requirement—and that the individual's suspicion be objectively reasonable." In other words, pleading the exemption only requires the reasonable suspicion that a crime will be committed. The court in *Carroll* stated, "This exemption would be virtually meaningless if it required certainty [that the crime would be committed]." Though *Carroll* is a district court opinion, Judge Pallmeyer articulated the most recent state of the law on exemption (i)

and noted that few federal or state cases have addressed the exemption.

12. Further, it is not an issue whether the police officers arresting Chris Drew actually committed the crime of 18 U.S.C. § 241 or any other crime. Whether the police officers actually violated the law is “immaterial.” *See Carroll*.
13. The relevant evidence in this case is the undisputed circumstances of Drew’s arrest and the Defendant’s own proposed testimony as to his state of mind during the incident. Hearing this evidence, a jury could find that Chris Drew had a reasonable suspicion that some crime was going to be committed against him.
14. Lastly, it is a fundamental to our system of justice that Chris Drew be permitted to present this defense. The right to present a defense is constitutionally guaranteed under both the 6th and 14th amendments. *People v. Edgeston*, 157 Ill.2d 201, 224 (1993) (“...An accused has the right to present a defense, which entails the right to present his version of the facts, as well as the prosecution's, to the jury so it may decide where the truth lies.”) *See also Washington v. Texas*, 388 U.S. 14, 19 (1967); *People v. Manion*, 67 Ill.2d 564, 576 (1977). Reliability in the Judge’s or jurors’ verdict on guilt or innocence, the degree of guilt, and on the extent of punishment requires that Chris Drew is permitted to present exemption (i) and the elements of this defense, permitting him to fully be heard, to fully present his defense, and to rebut prosecution evidence.
15. The ongoing discovery dispute regarding video of Drew’s arrest as well as his prior contact with police on a previous date demonstrates Drew’s right to plead the exemption to the jury. If the state were permitted to present evidence of Drew’s prior contact with the police, and Drew was denied the right to use it, the result would be a violation of Drew’s right to a fair trial. For instance, if the state is permitted to show

the video of Drew's first interaction with police (where he was not arrested) in order to show absence of mistake or *modus operandi*, and then Drew is not permitted to plead the exemption based on that same evidence, a great injustice would result.

16. The video of the previous incident proves Drew's entitlement to plead the exemption to the jury. If the court finds that the video would aid the jury in its determination of guilt or innocence yet bars Drew's use of the video to prove the exemption, Drew's right to a fair trial would be violated.

17. Interfering with a defendant's right to present witnesses and evidence interferes with the defendant's right to due process and a fundamentally fair trial. *People v. Miller*, 291 Ill.App.3d 320, 225 Ill.Dec. 464, 683 N.E.2d 967 (1997). Here, the legislature has specifically included the exemptions within the statute. This is not the case where a defendant attempts to put forth junk science or expert testimony to prove or disprove some state evidence or where he attempts to introduce some random, baseless, irrelevant defense. This is a case where the Defendant seeks to put forth evidence that the statutory exemption applies to him.

WHEREFORE, the Defendant respectfully moves this Honorable Court to permit the Defendant to Plead Exemption (i) of the Eavesdropping statute to the jury at trial.

Respectfully submitted,

One of Defendant's Attorneys

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