

12.00
EAVESDROPPING

12.01

Definition Of Eavesdropping--Use Of Eavesdropping Device (Until December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all parties to the conversation and is not a party to the conversation or known by the parties to be present during the conversation and the parties intend their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.01X.

Give Instruction 12.02.

Give Instructions 12.05, defining the term “eavesdropping device,” and 12.05A, defining the phrase “known by the parties to be present.”

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). In *Beardsley*, the court held that the primary factors in determining whether a violation of the statute occurred were whether the parties intended their conversation to be private and whether there were circumstances justifying that expectation. Under this test, the court found no statutory prohibition against the surreptitious recording of a conversation by a party to that conversation or one known by the parties to be present during the conversation. The court reasoned that since a person could repeat from memory what he heard during the conversation there could be no invasion of an “expectation of privacy” by that person merely preserving an accurate account of the conversation by use of a recording device. See *Bender v. Board of Fire and Police Comm'rs of Village of Dolton*, 183 Ill.App.3d 562, 539 N.E.2d 234, 131 Ill.Dec. 881 (1st Dist.1989); *Smith v. Associated Bureaus, Inc.*, 177 Ill.App.3d 286, 532 N.E.2d 301, 126 Ill.Dec. 616 (1st Dist.1988).

Thus, in addition to the two elements of the offense appearing on the face of the eavesdropping statute, namely, (1) the use of an eavesdropping device to hear or record a conversation, and (2) the absence of consent of all parties to the conversation, the court found implicit in the statute three additional elements. These additional elements are: (3) an intention that the conversation be private, (4) circumstances justifying the privacy expectation, and (5) the absence of the defendant from the conversation as a party or otherwise. All five elements have been incorporated into this instruction.

Beardsley does not address the situation where a defendant is equipped with a transmitter instead of a recorder thereby allowing the conversation to be overheard or intercepted by a third person. See *Beardsley*, 115 Ill.2d at 59, 503 N.E.2d at 352, 104 Ill.Dec. at 795. The Committee takes no position regarding instructions to be given in such cases.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Chapter 720, Section 14-3(g), and (2) when the officers are acting under the authority of Chapter 720, Article 108A. Officers are also exempt when acting pursuant to Chapter 720, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a “privileged communication” as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with “interception of a privileged communication,” the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.01X

Definition Of Eavesdropping--Use Of Eavesdropping Device (As Of December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all the parties to the conversation.

Committee Note

720 ILCS 5/14-2(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.02X.

Give Instruction 12.05, defining the term “eavesdropping device,” and Instruction 12.05B, defining the word “conversation.”

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in *People v. Beardsley*, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986). The definition of the word “conversation” added to the statute by P.A. 88-677 includes “any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***.” This definition conflicts with *Beardsley’s* holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.02

Issues In Eavesdropping--Use Of Eavesdropping Device (Until December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all the parties to the conversation; and

Third Proposition: That the defendant was not a party to the conversation; and

Fourth Proposition: That the defendant was not known by the parties to be present during the conversation; and

Fifth Proposition: That the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)).

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.02X.</us>

Give Instruction 12.01.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the term “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.02X

Issues In Eavesdropping--Use Of Eavesdropping Device (As Of December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to hear or record all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to the conversation.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.01X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.03

Definition Of Eavesdropping--Use Or Divulgence Of Information (Until December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through use of an eavesdropping device without consent of all parties to the conversation by a person not a party to the conversation or known by the parties to be present during the conversation and the parties intended their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.03X. See Committee Note to Instruction 12.01X.</us>

Give Instruction 12.04.

Give Instruction 12.05, defining the term “eavesdropping device,” and 12.05A, defining the term “known by the parties to be present.”

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). For a discussion of the issues raised in *Beardsley*, see the Committee Note to Instruction 12.01.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Section 14-3(g), and (2) when the officers are acting under the authority of Article 108A. Officers are also exempt when acting pursuant to Chapter 38, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a “privileged communication” as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with “interception of a privileged communication,” the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.03X

Definition Of Eavesdropping--Use Or Divulgence Of Information (As Of December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through the use of an eavesdropping device without the consent of all parties to the conversation.

Committee Note

720 ILCS 5/14-2(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.04X.

Give Instruction 12.05, defining the term “eavesdropping device,” and Instruction 12.05B, defining the word “conversation.”

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in *People v. Beardsley*, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986). The definition of the word “conversation” added to the statute by P.A. 88-677 includes “any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***.” This definition conflicts with *Beardsley’s* holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.04

Issues In Eavesdropping--Use Or Divulgence Of Information (Until December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged information which was obtained through use of an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That, when he did so, the defendant knew or reasonably should have known that the information was obtained through the use of an eavesdropping device without the consent of all parties to the conversation; and

Third Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not a party to the conversation; and

Fourth Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not known by the parties to be present during the conversation; and

Fifth Proposition: That when he did so, the defendant knew or reasonably should have known that the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That when he did so, the defendant knew or reasonably should have known that the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)).

<us>Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.04X. See Committee Note to Instruction 12.01X.</us>

Give Instruction 12.03.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill.2d 47, 503 N.E.2d 346, 104 Ill.Dec. 789 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the phrase “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.04X

Issues In Eavesdropping--Use Or Divulgence Of Information (As Of December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged any information obtained from a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to that conversation; and

Third Proposition: That the defendant knew or reasonably should have known that this information was obtained through the use of an eavesdropping device.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, §14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.03X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.05

Definition Of Eavesdropping Device

The term “eavesdropping device” means any device capable of being used to hear or record a conversation, whether such conversation is conducted in person, by telephone, or by any other means.

Committee Note

720 ILCS 5/14-1(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §14-1(a) (1991)).

This statutory definition is slightly different from the definition of eavesdropping device found in Chapter 725, Section 108B-1(h), P.A. 85-1203, effective January 1, 1989. It may be necessary to use the definition found in Section 108B-1(h) when the jury is to be instructed on the offense of “interception of a privileged communication” pursuant to Chapter 720, Sections 14-2(a) and (c) and Chapter 725, Section 108B-1(q). See Committee Note to Instruction 12.01.

For a discussion of extension telephones as eavesdropping devices, see *People v. Shinkle*, 128 Ill.2d 480, 539 N.E.2d 1238, 132 Ill.Dec. 432 (1989).

12.05A

Definition Of Known By The Parties To Be Present

The phrase “known by the parties to be present” means that the parties to the conversation are aware that the defendant is in such proximity to one or more of them that he reasonably could be expected to hear the words spoken during the conversation.

Committee Note

This instruction should be given when the evidence presents an issue as to whether or not the defendant was known to be present during the conversation.

This definition is consistent with the underlying purpose of the eavesdropping statute to protect the parties' privacy when they act under circumstances that entitle them to believe that the conversation is private and cannot be heard by others acting in a lawful manner. See *People v. Beardsley*, 115 Ill.2d 47, 53, 503 N.E.2d 346, 349-50, 104 Ill.Dec. 789, 792-93 (1986).

12.05B
Definition Of Conversation

The word “conversation” means any oral communication between two or more persons [regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation].

Committee Note

720 ILCS 5/14-1(d) (West, 1994), added by P.A. 88-677, effective December 15, 1994.

The bracketed language appears in new subsection (d) of Section 14-2. However, because the Committee believes that cases might arise in which the bracketed language might be confusing and redundant to the jury, the Committee decided to put this language in brackets and leave the question of whether to use it to the sound discretion of the trial court.