STATE OF LOUISIANA	*	**NUMBER: 13-FELN-030048 DIVISION "E"**
	*	**21ST JUDICIAL DISTRICT COURT**
VERSUS		
	*	**PARISH OF LIVINGSTON**
COREY DELAHOUSSAYE	*	**STATE OF LOUISIANA**

POST TRIAL MEMORANDUM OF COREY DELAHOUSSAYE AS TO MOTION TO SUPPRESS AND MOTION TO QUASH

Pursuant to this Court's instructions, Corey Delahoussaye, through undersigned counsel, submits the following Post-Trial Memorandum in regards to the two issues argued before this Court on April 20th, 2015.

I. MOTION TO QUASH

Mr. Delahoussaye is charged with multiple Counts of violating La. R.S. 14:133—Filing False Public Records. Mr. Delahoussaye has filed a Motion to Quash the Bill of Information against him. We hereby adopt all of the reasons previously set forth in the Memorandum which was filed on March 11th, 2015. Article 532 of the Code of Criminal Procedure provides that a Motion to Quash may be based on one of ten grounds. The second ground is when a Bill fails to conform to Chapters 1 and 2 of Title VIII, i.e. Articles 461 through 463.

The Bill of Information in this case violates several aspects of the Code of Criminal Procedure. First, the Bill does not state at what public office, or with which public official these documents were filed. This is an essential element of the crime. In order to defend himself, Mr. Delahoussaye needs to know this.

Second, the Bill of Information does not identify what documents were filed. Article 475 of the Code of Criminal Procedure states that the instrument or object should be described. The Bill of Information does not do that.

Finally, the Bill of Information does not state on what date the documents were filed. Recall that the crime is *filing* the false public record. It is essential that the prosecution show the date that the filing took place. Code of Criminal Procedure Article 468 provides that the date or time of the commission of the offense need not be alleged in

the Bill, unless the date or time is essential to the offense. In this case, it is essential. Filing false public records is not a statute that reads "filing or causing to be filed". It is not a statute that reads "filing or conspiring with others to file". There are several statutes for which a person can be found guilty by causing or conspiring with others to cause the filing of documents. This statute is not one of those. It requires actual filing by this Defendant. In order to defend himself, Mr. Delahoussaye needs to know not only what document was filed and where it was filed, but when it was filed

In response to the original Motion to Suppress, the District Attorney filed no opposition. Undersigned counsel believes that the District Attorney cannot remedy these defects and accordingly the charges should be dismissed and the Bill of Information quashed.

II. MOTION TO SUPPRESS

Undersigned counsel adopts all of the reasons set forth in the original Memorandum in Support of Motion to Suppress which was filed on March 11th, 2015. The Livingston Parish Council, through its attorney, asked the Office of the Inspector General to investigate Corey Delahoussaye and his company C-Del, Inc. No other law enforcement agency has investigated Mr. Delahoussaye.

The IG's powers are enumerated and limited by statute. See La. R.S. 49:220.1 et seq. The IG can only investigate a "covered agency". Covered agencies are limited to divisions of the Executive Branch of Government. In an effort to prove that the IG had the jurisdiction and power to investigate a private individual like Mr. Delahoussaye, the District Attorney called as a witness Mr. Ben Pliya, who is an attorney with GOHSEP—Governor's Office of Homeland Security and Emergency Preparedness. While Mr. Pliya was knowledgeable in the process of obtaining money from FEMA, he offered absolutely no evidence to show that Mr. Delahoussaye was subject to the authority of the IG. The Prosecution did not call anyone from the IG's office to testify. Mr. Pliya was not even aware if his agency—GOHSEP—was a covered agency. Mr. Pliya was asked specifically if Mr. Delahoussaye and/or C-Del, Inc. were covered agencies. He said he did not know.

He was asked if Delahoussaye and/or C-Del, Inc. were contractors to a covered agency. He did not know. In fact, he went on to say that GOHSEP does not have any contractors or subcontractors. Finally, he was asked if Delahoussaye and/or C-Del, Inc. were subcontractors, grantees, or subgrantees to a covered agency. He did not know. In sum, the District Attorney put on absolutely no evidence to show that the Inspector General had any power or authority to investigate a private individual such as Mr. Delahoussaye.

La. R.S. 49:220.24 (F)(3) states that the IG shall have access to records and other information of a covered agency, and shall be deemed as an authorized representative and agent of each covered agency for the purpose of examining and investigating the records of all contractors, subcontractors, grantees, or subgrantees of covered agencies. We know that the alleged covered agency in this case is GOHSEP. Mr. Pliya confirmed that C-Del, Inc./Delahoussaye is not a contractor, subcontractor, grantee, or subgrantee of the covered agency—GOHSEP. Therefore, the IG had absolutely no right to engage in any investigation of Mr. Delahoussaye or his company C-Del, Inc.

Again, Mr. Pliya added nothing to this case, other than explaining how FEMA funds certain projects. He was unaware that Mr. Delahoussaye had a contract with the Livingston Parish Council (not a covered agency) and he was completely unaware of the terms and conditions of this contract. This contract was previously introduced into evidence at the Court's last Hearing and shows there is no mention of GOHSEP, FEMA, or any other covered agencies. Nor is Mr. Delahoussaye's payment contingent upon money coming from any of these agencies. In fact, Mr. Pliya confirmed that some governmental agencies such as the Livingston Parish Council can pay their own contractors out of general revenues.

At the last Hearing, Jessica Webb, an employee with the IG, confirmed that Mr. Delahoussaye and his company were not contractors to a covered agency.

> "Q: Could you tell the Court today any contract that my client has with an executive department of this Government?
> A: I do not." (Page 66, Lines 17-20)

Finally, it should be noted by this Court that the Inspector General has the duty and obligation to file a report of its findings and investigation. See La. R.S. 49:220.24 (C)(5). Although this case has been "investigated" by the IG for several years now, no such report has been issued.

Search Warrant Power

For all of the reasons set forth in the original Memorandum, undersigned counsel believes that the IG does not have search warrant power. It is not called for in the statute. Subpoena power is provided in the statute, and it makes no sense that the Legislature would define and limit subpoena power, and yet remain silent on search warrant power. If the Legislature wanted to give the IG search warrant power it could have. It specifically declined to give them arrest power. See Section 220.24 (J).

While that statute does give the IG "all investigative powers and privileges", it then goes on to define those powers and privileges, and they are limited to reviewing computer systems and information obtained for the use of law enforcement personnel and information contained in the criminal history record, and identification file of the Louisiana Bureau of Criminal Identification and Information.

It appears that the IG for years has gotten away with obtaining search warrants without statutory authority. No one has ever challenged them on this. This is a criminal case and statutes are to be given a narrow interpretation, and any ambiguity in the provisions of the statute as written should be resolved in favor of the accused and against the State. This is known as the Doctrine of Lenity.

The United States Supreme Court in the case of *United States v. Santos*, 128 S.Ct. 2020 (2008) held that the Rule of Lenity requires ambiguous criminal laws to be interpreted in favor of the defendant subjected to them. (citations omitted) The Court went on to hold that the Rule of Lenity "places the weight of inertia upon the party that can best induce Congress to speak more clearly, and keeps Courts from making criminal law in Congress's stead". In other words, the burden is on the Inspector General, or any

other agency for that matter, could go to the Louisiana Legislature and ask that these laws be made more clear.

Subpoena Power

The IG does have the ability to obtain subpoenas. However, the Legislature in giving the IG subpoena power, placed upon them an additional step. The Judge issuing the subpoena **shall** issue a written decision within 72 hours after receipt of such application for a subpoena. The IG and the Prosecutor take the position that the Motion for the search warrant acts as the written decision. This cannot be correct. That Motion is the Application. The Judge must issue a written decision justifying the subpoena of personal and private records.

It appears the IG has done this for years and no one has ever questioned them on it. This is not a technicality, but a clear mandate from the Louisiana Legislature. For example, compare this Statute to Code of Criminal Procedure Article 66, which gives the Attorney General or the District Attorney subpoena power. Nothing in there requires a separate written decision from the Judge. It calls for a Motion from the Prosecutor, upon which the Court may order the Clerk to issue subpoenas. Once again, the Legislature, in empowering the Inspector General, decided to put an extra step in there for them to get subpoenas. The IG simply fails to follow the law.

As noted above, because this is a criminal case, the statute is to be given a narrow interpretation and any ambiguity in the provisions of the statute as written is to be resolved in favor of the accused and against the State. See *State v. Carr*, 761 So.2d 1271 (La. 2000) at page 763.

The remedy for the violation of this law is suppression of the evidence. La. R.S. 49:220.24 (F) (2) provides that the subpoena for the production of private records shall not only be in compliance with the requirements of the statute, but "shall be in compliance with all applicable Constitutionally established rights and processes". This latter phrase contemplates a heightened expectation of privacy that any person would have in regards to his personal records. No doubt when the Legislature added this

language regarding "Constitutionally protected rights and processes" they were referring to Article 1, Section 5 of the Louisiana Constitution entitled "Right to Privacy". This section provides that every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.

Because the issuance of the subpoena and search warrant were in violation of the law, then the searches and seizures of the Mr. Delahoussaye's records and other items was without any legal authority and in violation of his Article 1, Section 5 rights of privacy. This reaches Constitutional level, and accordingly, suppression is the proper remedy for this violation. Failure to suppress this evidence gives agencies carte blanche to engage in fishing expeditions into the private, sensitive information of citizens.

Medical Records Can Never Be Obtained Via Subpoena

Finally, as to the medical records which were obtained by the IG via subpoena, this is a blatant violation of Louisiana Law. This issue was addressed in *State v. Skinner*, 10 So.3d 1212 (La. 2009). In a long, well cited opinion, the Louisiana Supreme Court held that a **warrant** is required to obtain a person's medical records. The Supreme Court held that the right to privacy in one's medical records is an expectation of privacy that society is prepared to recognize as reasonable. In *Skinner*, the District Attorney obtained medical records via Article 66 of the Louisiana Code of Criminal Procedure and La. R.S. 13:3715.1. The Supreme Court held that the procedural requirements set forth in these two laws did not suffice to comply with the Constitutional requirements of probable cause for the issuance of a search warrant. The Court held it was irrelevant whether or not the State complied with the requirements of the law in obtaining the subpoena.[1]a

III. CONCLUSION

The Bill of Information must be quashed because it is defective in at least three respects. Those defects cannot be fixed by the Prosecutor.

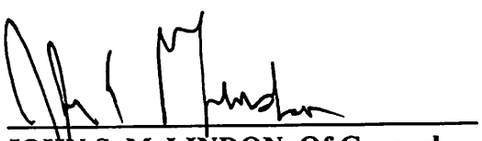
[1] In our case, the Inspector General did not even comply with the requirements of its subpoena law.

All of the evidence obtained by the IG must be quashed, because they were acting outside of their jurisdiction. They can only investigate covered agencies, or contractors or subcontractors to the covered agencies. There is no dispute Mr. Delahoussaye was not a covered agency, and there is no dispute he was not a contractor or subcontractor to a covered agency.

Finally, any documents or evidence obtained by way of subpoena or search warrant from the IG must be suppressed and held inadmissible because it was done in violation of the law.

RESPECTFULLY SUBMITTED BY ATTORNEYS:

WALTERS PAPILLION THOMAS CULLENS, LLC



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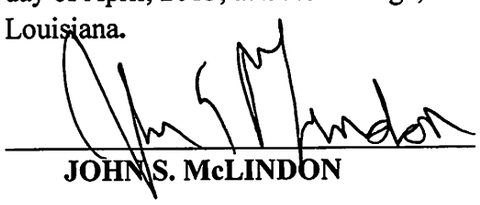
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document has been mailed, postage prepaid and properly addressed to all counsel or record by placing a copy of same in the United States mail, on this 24 day of April, 2015, at Baton Rouge, Louisiana.



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