

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2015 KW 0919

VERSUS

COREY DELAHOUSSAYE

JUL 30 2015

In Re: State of Louisiana, applying for supervisory writs,
21st Judicial District Court, Parish of Livingston,
No. 30048.

BEFORE: THERIOT, HOLDRIDGE AND CHUTZ, JJ.

WRIT GRANTED for the sole purpose of remanding the writ to the trial court for a reopened hearing on the defendant's motion to suppress the evidence. The trial court's ruling granting the Motion to Suppress is vacated. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was "unconstitutionally obtained." La. Code Crim. P. art. 703(A). On the trial of a motion to suppress filed under the provisions of Article 703, the burden of proof is on the defendant to prove the ground of his motion, except that the State shall have the burden of proving the admissibility of a statement by the defendant or of any evidence seized without a warrant. La. Code Crim. P. art. 703(D).

In the memorandum in support of the motion to suppress, defendant argued that any and all evidence obtained via the search warrant was obtained "illegally" and should be held inadmissible at trial. The trial court's ruling apparently suppressed all of the evidence for use at trial. However, there was no documentary evidence or testimony presented at the suppression hearing concerning the constitutionality of the search warrant, only the authority of the Inspector General to investigate the defendant and/or his business. Accordingly, at the reopened hearing, both parties are encouraged to submit whatever documentary and/or testimonial evidence they deem appropriate. The trial court is instructed to organize the evidence into three categories: (1) evidence obtained by the search warrant; (2) evidence obtained by the subpoenas duces tecum; and (3) the defendant's recorded statement. The trial court must first determine, as to each category of evidence, which party has the initial burden of proof under Article 703. Thereafter, the parties should address the constitutionality of the search warrant, and the applicability of **United States v. Leon**, 468 U.S. 897, 918-25, 104 S.Ct. 3405, 3418-20, 82 L.Ed.2d 677 (1984) to the instant case. Next, the parties should address the constitutionality of the subpoenas duces tecum, whether or not they were the "functional equivalent" of a search warrant (see **State v. Lee**, 2005-2098 (La. 1/16/08), 976 So.2d 109, 124-27, cert. denied, 555 U.S. 824, 129 S.Ct. 143, 172 L.Ed.2d 39 (2008)), and/or the applicability of **United States v. Leon** to the subpoenas. Finally, regarding the defendant's statement, the parties should address whether or not the

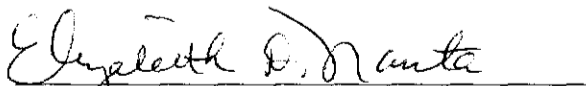
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statement was voluntary and/or consensual, and the legal effect, if any, of the alleged surreptitious recording of the statement taken by the investigator. At the conclusion of the reopened hearing, the trial court's ruling should specifically address the evidence pursuant to each category. In the event of an adverse ruling, either party may file a supervisory writ with this Court seeking review of that ruling.

WRC
MRT
GH

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DEPUTY CLERK OF COURT
FOR THE COURT