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SUPREME COURT, STATE OF COLORADO

Case No. 83 SA 124

APPEAL FROM THE DISTRICT COURT, JEFFERSON COUNTY

ANSWER TO REPLY BRIEF

HAROLD W. LOWRIE,

Petitioner-Appellant,

vs.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent-Appellee.

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

OCT 17 1983

David W. Brozina, Clerk

Dennis W. Hartley, Reg. No. 0788
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ISSUES

Whether the civil investigative demand violates Appellant's rights under the the Fourth and Fourteenth Amendments to the United States Constitution and Article II, Section 7 of the Colorado Constitution.

STATEMENT OF THE CASE

Appellant relies on the Statement of the Case in her opening brief.

ARGUMENT

Appellees relies, for its argument that it has not violated Appellant's right to be safe from unreasonable searches and seizures, on the case of Petition of Gold Bond Stamp Company, 221 F. Supp. 391 (1963). However, this reliance is misplaced.

Petition of Gold Bond Stamp Company, supra, is a civil investigation and a civil case. The civil investigative demand involved in the case before this court, is clearly concerned with a criminal investigation and it is so stated in that demand. Even if the investigation was civil, Article II, Section 7 of the Colorado Constitution would thwart the District Attorney's effort in this case.

Not only personal be corporate records are protected under the Fourth Amendment to the United States Constitution and Article II, Section 7 of the Colorado Constitution. A. vs. The District Court, 191 Colo. 10, 550 P2d 315 (1976). Further, individuals have a reasonable expectation of privacy in personal and corporate banking records. Charnes v. DiGiacomo, 200 Colo. 94, 612 P2d 1117 (1980).

In the recent case of People v. Sporleder, ____ Colo. ____, 666 P2d 135 (1983) this Court extended "expectation of privacy" first announced in Katz vs. the United States, 389 U.S. 347, 88 S.Ct., 507, 19 L.Ed., P2d 576 (1967), to telephone pen registers. Under the doctrines announced in Sporleder, supra, and cases cited thereunder, it is clear that the civil investigative demand is nothing more than a warrantless intrusion into protected areas and should be quashed.

The Appellee has failed to show probable cause, exigent circumstances or file affidavits to show its right to the records requested. In fact, the Appellee has consistently refused to present evidence that might entitle it to the records requested. It is difficult to believe that the Office of the District Attorney can seize records without showing probable cause and/or relationship between the records requested and the target defendant.

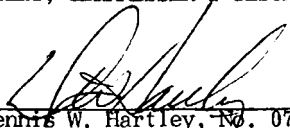
CONCLUSION

For this, and for the reasons stated in Appellant's Opening Brief, the Order of the District Court should be reversed and the case remanded with directions.

Respectfully submitted,

HARTLEY, OBERNESSER & OLSON

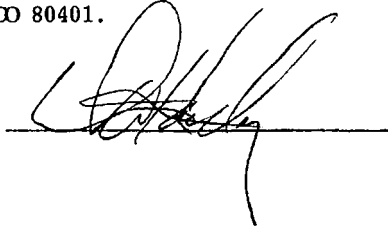
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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was placed in the U. S. Mail, postage prepaid, this 17~~K~~ day of October, 1983, addressed to:

Michael B. Tully, Esq.
Chief Deputy District Attorney
1620 Jackson Street
Golden, CO 80401.

A handwritten signature in dark ink, appearing to read "M. B. Tully", is written over a horizontal line.