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Borg v. District Court of Second Judicial Dist.

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IN THE SUPREME COURT OF THE STATE OF COLORADO

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

Case No. 83 SA 510

FEB 14 1984

REPLY BRIEF

David W. Dzina
Petitioner

KAREN BORG,

vs.

THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,
for the CITY AND COUNTY OF DENVER, and
JAMES C. FLANIGAN and PAUL A. MARKSON, JR., DISTRICT JUDGES
in and for the CITY AND COUNTY OF DENVER in the
SECOND JUDICIAL DISTRICT OF THE STATE OF COLORADO, Respondents

Respondents in their Answer to Rule to Show Cause have filed as Exhibit A the reporters transcript of the ex parte proceeding held before Judge Flanigan. The Deputy District Attorney, Bryan Lynch, failed to advise the Judge how the County Court may have erred legally or factually in not finding the existance of probable cause as required by Holmes vs. District Court 688 P2d 11, at page 14:


"The district attorney did not specifically advise the respondent judge of any facts to which the informant would testify that had not already been the subject of hearsay testimony by Detective Kiburis in the county court. Nor did the district attorney specify how the county court may have erred legally or factually in not finding the existence of probable cause on the three charges it dismissed."

Clearly the District Attorney is for the first time in his brief articulating any reason (valid or invalid) for requesting a refiling. This procedure, if allowed, would burden this Court with factually reviewing the transcript of the preliminary hearing and then being asked to second guess the Trial Court, a practice criticised in People vs. Freiman 657 P2d 452.

For the reason set forth in Petitioner's Complaint,

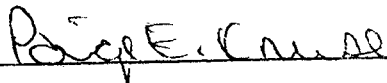
Petitioner respectfully request that this Court make its rule absolute directing that Petitioner not be prosecuted on the Direct Information filed in case numer 83 CR 2381 in the District Court of the Second Judicial District for the City and County of Denver.

Respectfully Submitted,


James F. Macrum, Jr., #2259
Attorney for Petitioner
1860 W. Littleton Blvd.
Littleton, CO 80120
795-2122

CERTIFICATE OF MAILING

I hereby certify that I sent the original of the foregoing Reply Brief to the Court and mailed a true and correct copy, postage prepaid, this 22nd day of December, 1983 to Norman Early, Denver District Attorney, 924 W. Colfax Avenue, Denver, CO 80204 and to James C. Flanigan and Paul A. Markson, Jr., Denver District Court, City and County Buildings, 1437 Bannock Street, Denver, CO 80202.


Paige E. Cause