

STATE OF LOUISIANA * 24TH JUDICIAL DISTRICT COURT
 *
 VERSUS * PARISH OF JEFFERSON
 *
 JERL T. KERSHENSTINE * STATE OF LOUISIANA
 *
 * NO. 12-21
 *
 * DIV. H

APPLICATION FOR SUPERVISORY REVIEW
 OF COMMISSIONERS' RULING ON DEFENDANT'S
 MOTION TO QUASH SUBPOENA AS TO ALL BANKING RECORDS
INCORPORATED MEMORANDUM, & ORDER TO SHOW CAUSE

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 PARISH OF JEFFERSON

Counsel for Jerl G. Kershenstine moves the Court to accept his written application for supervisory review as the Commissioner erred by ORDERING COASTAL SHORING TO PRODUCE THE IDENTIFY OF ALL THEIR BANKING INFORMATION. Counsel asks the District Court to set a hearing on a rule to show cause, as to why the Commissioner's Order for the TO PRODUCE ALL BANKING INFORMATION of COASTAL SHORING should not be quashed. The matter was heard by the Commissioners Court and the Motion to Quash was denied. Counsel noticed the Court to his intent to seek supervisory review.

Errors and Issues Regarding Which Supervisory Review Is Sought

The Commissioner's Court erred in several aspects of Its decision: (1) Unable to find a probable cause affidavit in Its record, took judicial notice that such an affidavit would be in the record; (2) not having the affidavit itself, the Commissioner's Court failed to examine the affidavit to determine if it contained all requisite facts required to issue an Order for Arrest under the express language of La. R.S. 14:202.1 - Home Improvement Fraud; and (3) Commissioner's Court failed to exercise Its discretion and thereby refused to allow counsel for Kershenstine to examine the probable cause affidavit pursuant to Louisiana and to Kershenstine's Sixth Amendment Confrontation and Compulsory Process Clauses. Without probable cause the prosecution still has attempted to obtain all the financial information from the banks used by Coastal Shoring.

Counsel for Coastal Shoring, LLC moves the Court to quash the subpoena duces tecum issued to Coastal Shoring, LLC through its agent for service of process Margaret Smith, as the request violates the rights of Coastal Shoring and the Constitutional Rights of Mr. Kershenstine and appears to be part of an attempt to undermine Coastal Shoring's business activities to the benefit and advantage of other contractors.

- ORIGINAL -

Additionally, it appears that Ms. Montgomery who allegedly filed the complaint against Mr. Kershenstine, did so in an attempt to leverage her demand that she allowed to change elevation contractors—a procedure not allowed under the current policies of HMGP, unless all parties agree.

Ms. Margie Smith, the registered agent for Coastal Shoring, LLC received the subpoena duces tecum and turned it over to undersigned counsel at the beginning of the week. Counsel has been responsible for responding to this subpoena, and upon examination, filing this motion to quash.

Also pending is a motion to quash the arrest warrant as unconstitutional, failing to meet the requirements established by the Louisiana Supreme Court in *State of Louisiana v. Larry Rochon* [25 October 2011. No. 2011-KA-0009, Kimball, C.J.] and comply with the protections guaranteed by Article I, Section 5 of the Louisiana Constitution and C.Cr.P. art. 202 read in *pari materia* with C.Cr. P. art. 496.

Coastal Shoring, LLC's objection to the subpoena and motion to quash is based on the facts and personal investigation I have conducted upon receipt from the agent for Coastal.

La. C.C.P. art 863 Certificate

Under the requirements and provisions of La. C.C.P. art. 863 I certify the following facts and information to the best of my belief and information:

1.

I Daniel G. Abel [La. Bar No. 8348] am counsel for Coastal Shoring, LLC.

2.

I have personal knowledge of the activities of Coastal Shoring, LLC.

3.

I am also have personal knowledge of and have conducted investigations concerning the matters underlying these actions, including but not only Ms. Montgomery's desire to change contractors under the HMGP and CDBG programs. [Exhibit A - Montgomery "Contractor Release Form" / Louisiana Office of Community Development / Procedure No. 18 - Dated 13 October 2011 - Signed by C. Montgomery].

4.

I have conducted a personal investigation and affirm that no one at Coastal Shoring knew or had any personal or business relationship with Mr. Rickey Davis; and that no one at Coastal Shoring knew of Mr. Rickey Davis prior to seeing his name in the news after his

indictment.

5.

I have conducted a personal investigation and affirm that Coastal Shoring was never “given” or “sold” or “otherwise obtained” any “sales leads” or “elevation contracts” from Mr. Rickey Davis.

6.

As no payments were made to Mr. Rickey Davis, I certify also that there are no such documents detailing payments, which did not take place.

7.

I have advised Coastal Shoring and again assert that the request to produce all information of all of their bank information, for any accounts, at any bank or financial institution is over broad, vague, and constitutes a fishing expedition for which no affidavit or other requisite cause have been presented to this Court or undersigned counsel, as now required by Louisiana Supreme Court in *State of Louisiana v. Larry Rochon* [25 October 2011. No. 2011-KA-0009, Kimball, C.J.] and comply with the protections guaranteed by Article I, Section 5 of the Louisiana Constitution and C.Cr.P. art. 202 read in *pari materia* with C.Cr. P. art. 496.

8.

Coastal Shoring also objects to the request for all records, electronic or written detailing the deposit as overbroad and in violation of Louisiana Supreme Court in *State of Louisiana v. Larry Rochon* [25 October 2011. No. 2011-KA-0009, Kimball, C.J.] and comply with the protections guaranteed by Article I, Section 5 of the Louisiana Constitution and C.Cr.P. art. 202 read in *pari materia* with C.Cr. P. art. 496—as the arrest warrant itself is constitutional, no bill of information has been filed, and the matter is before the Court on this issues.

9.

As well, Coastal Shoring does not have the information requested in Paragraph 8, as most of those documents are not presently in its possession.

For these reasons and because of the pending constitutional challenge as to the unconstitutional initiation of these proceedings under Louisiana Supreme Court in *State of Louisiana v. Larry Rochon* [25 October 2011. No. 2011-KA-0009, Kimball, C.J.] and the

protections guaranteed by Article I, Section 5 of the Louisiana Constitution and C.Cr.P. art. 202 read in *pari materia* with C.Cr. P. art. 496, Coastal Shoring moves that this subpoena be quashed.

Respectfully submitted,

DANIEL ABEL

s/ Daniel G. Abel
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Certificate of Service

DANIEL ABEL

s/ Daniel G. Abel
I have served the District
Attorney on 16 February 2012
by U.S. Mail or electronic
transmission or hand-delivery.

STATE OF LOUISIANA	*	24 TH JUDICIAL DISTRICT COURT
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VERSUS	*	PARISH OF JEFFERSON
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JERL T. KERSHENSTINE	*	STATE OF LOUISIANA
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	*	
*****		DIV. II

ORDER

For the reasons set forth in the writ application,

IT IS ORDERED that:

A Hearing on a Rule to Show Cause is ordered and set for ____ day of _____, 2012,
to commence at _____ AM / PM until completed or concluded by the Court.

Counsel for the District Attorney and defendant can issue subpoenas at their discretion.

Gretna, Louisiana. _____ day of _____, 2012.

District Judge