

**JOHN C. WINGRAVE, II** \* **NO. 2006-CA-1240**  
**VERSUS** \* **COURT OF APPEAL**  
**KEVIN M. HEBERT, DONNA** \* **FOURTH CIRCUIT**  
**BOEHMER AND DUANE** \* **STATE OF LOUISIANA**  
**ABADIE** \* **STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 99-17291, DIVISION "B"  
Honorable Rosemary Ledet, Judge

\* \* \* \* \*

**Per Curiam**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, Judge Terri F. Love)

(ON APPLICATION FOR REHEARING)

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**REHEARING GRANTED**

Considering the foregoing rehearing application filed by appellees, Donna Boehmer, Duane Abadie, Paul Bergeron, and Whitney National Bank, the application is granted for clarification. However, this per curiam is issued for the sole purpose of clarification of factual statements contained in the original opinion.

First, this Court stated that Mr. Wingrave “attempted to drive to Gerard Archer’s (“Attorney Archer”) home,” but that he was unable to remember Attorney Archer’s exact address. Mr. Wingrave alleges that this is why he arrived at Mr. Abadie’s house instead of Attorney Archer’s. However, Mr. Wingrave’s motive and allegation about his arrival at Mr. Abadie’s house are factual determinations to be made by the fact finder and are not specifically revealed in the record.

Second, this Court referenced the letter sent by Attorney Archer to Whitney National Bank. The Court’s opinion stated that the letter warned that the telephone conversation was obtained in violation of the Louisiana Electronic Surveillance Act. However, the letter stated that the allegedly recorded telephone conversation, if taped without the consent of Ms. Haag or Mr. Wingrave, was in violation of federal and state law.

Third, the opinion stated that Ms. Boehmer received a telephone call from Mr. Hebert regarding an audiotaped conversation between two Whitney National

Bank employees in which she was allegedly threatened. Pursuant to this, the opinion stated that Ms. Boehmer knew that Mr. Hebert was not a party to the conversation because he was not a Whitney employee. Out of an abundance of caution, this Court now states that this is a factual determination for the fact finder. Further, in the same paragraph, we concluded that Ms. Boehmer was aware that Mr. Hebert was not a law enforcement official and could not have authorized a wiretap for the allegedly recorded conversation. Whether Ms. Boehmer knew or thought that Mr. Hebert was not a law enforcement officer is a factual determination for the fact finder as the record reveals that Mr. Hebert may not have explicitly mentioned his profession. Ms. Boehmer's knowledge regarding whether Mr. Hebert recorded the telephone conversation himself or possessed a tape is also a question for the fact finder.

In all other respects, this Court's previous opinion remains unchanged.

**REHEARING GRANTED**