

SUPREME COURT OF COLORADO

Harris v. Denver Post Corp.

123 P.3d 1166 (Colo. 2005) · No. No. 04SC133 · Decided November 15, 2005

SUMMARY

The Supreme Court of Colorado held that recordings seized pursuant to a valid search warrant and used in a criminal investigation are criminal justice records under the Colorado Criminal Justice Records Act, rather than public records governed by the Colorado Open Records Act. The court concluded that disclosure was subject to the sheriff's sound discretion and a balancing of relevant public and private interests, absent a statute or court order prohibiting inspection. The court remanded for the sheriff to determine whether to permit the Denver Post's inspection request.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Hobbs, Justice
JURISDICTION	Colorado
DECIDED	November 15, 2005
DOCKET	No. 04SC133
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Colorado Supreme Court granted certiorari to review the court of appeals' judgment concerning whether recordings seized pursuant to a search warrant were subject to the Colorado Open Records Act or the Colorado Criminal Justice Records Act.
STANDARD OF REVIEW	De novo review applies to questions of law involving the construction and application of CORA and the CCJRA. A custodian's disclosure decision under the CCJRA is subject to judicial review for abuse of discretion.
PRECEDENTIAL VALUE	Published Colorado Supreme Court opinion; precedential.
PARTIES	Wayne Harris, Katherine Harris, Thomas Klebold, Susan Klebold, Theodore B. Mink, III, in his capacity as Sheriff of Jefferson County, Colorado, Jefferson County Sheriff's Department v. The Denver Post Corporation, d/b/a the Denver Post

TOPICS

statutory interpretation

search and seizure

fourth amendment

appellate procedure

criminal procedure

PRACTICE AREAS

public records

criminal justice records

administrative law

constitutional criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether privately owned personal property seized from a private home pursuant to a search warrant is a public record subject to the Colorado Open Records Act.
2. Whether recordings seized from private homes pursuant to search warrants for purposes of a criminal investigation are criminal justice records subject to the Colorado Criminal Justice Records Act.
3. What disclosure standard and procedure govern a criminal justice agency's decision whether to permit inspection of such records.

HOLDINGS

1. The recordings are not public records subject to CORA because CORA expressly excludes criminal justice records from its definition of public records.
2. Recordings lawfully seized pursuant to a search warrant and used by a criminal justice agency to investigate related crimes are criminal justice records under the CCJRA, even though they were originally private property.
3. Classifying the recordings as criminal justice records does not require their disclosure; absent a statute or court order prohibiting inspection, the Sheriff has discretion under the CCJRA to allow or deny inspection.
4. Before deciding whether to permit inspection of seized private records, the custodian must notify the owner and balance the pertinent public and private interests; the decision is reviewable for abuse of discretion.

KEY QUOTATIONS

“Because the Sheriff obtained the recordings pursuant to a search warrant that has not been invalidated, and used them to investigate crimes connected with the Columbine killings, they are criminal justice records under the CCJRA and are subject to the Sheriff’s exercise of sound discretion to allow the requested inspection or not, utilizing a balancing test taking into account the relevant public and private interests.” (1168)

“As a consequence, evidence of crime necessarily loses its entirely private character when a criminal justice agency lawfully obtains it for use in a criminal investigation and/or prosecution on behalf of the public.” (1170)

“In making this statutory determination, the custodian takes into account and balances the pertinent factors, which include the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency’s interest in keeping confidential information confidential; the agency’s interest in pursuing ongoing

investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request.” (1175)

FACTUAL BACKGROUND

The Jefferson County Sheriff's Department seized videotapes and audiotapes made by Eric Harris and Dylan Klebold during execution of a valid search warrant issued in the investigation of the Columbine High School killings. The recordings documented the perpetrators' planning and preparation of the murders and were used in the Sheriff's investigation, report, and related prosecution. The Denver Post sought public inspection of the recordings, while the Harris and Klebold families and the Sheriff opposed disclosure.

PROCEDURAL HISTORY

The Jefferson County District Court ruled that the recordings were private property, were not criminal justice records, and could not be disclosed under the CCJRA. The court of appeals initially held that the recordings were subject to the CCJRA, but on rehearing held that they were public records subject to CORA. The Colorado Supreme Court reversed the court of appeals and remanded for a CCJRA disclosure determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals was directed to direct the Jefferson County District Court to order the Sheriff to determine under the CCJRA whether to allow The Denver Post's inspection request, after notifying the owners and balancing the pertinent public and private interests.

CASES CITED

- Denver Post Corp. v. Cook, 104 P.3d 293, 298 (Colo. App. 2004)
- Denver Publ'g Co. v. Bd. of County Comm'rs, 121 P.3d 190, 195, 196-205 (Colo. 2005)
- Wick Communications Co. v. Montrose County Board of County Commissioners, 81 P.3d 360, 364 (Colo. 2003)
- People v. Altman, 960 P.2d 1164, 1167 (Colo. 1998)
- People v. D.F., 933 P.2d 9, 16 (Colo. 1997)
- People v. Bryant, 94 P.3d 624, 630-31 (Colo. 2004)
- People v. Mason, 989 P.2d 757, 759 (Colo. 1999)
- People v. Bushu, 876 P.2d 106, 107-08 (Colo. App. 1994)
- Search Warrant for 2045 Franklin v. Early, 709 P.2d 597, 599 (Colo. App. 1985)