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## Sex With Informant Voids Prostitution Case

**Pa. Superior Court rules suspect's due process rights were violated**

Amaris Elliott-Engel All Articles

The Legal Intelligencer | November 09, 2009

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In a case of first impression, the Pennsylvania Superior Court ruled last week that state troopers committed "outrageous government conduct" when investigating alleged prostitution at a massage parlor in the Lehigh Valley by giving

money to an undercover informant to have sex four times with two different women at the parlor.

On Thursday, the unanimous panel of Judges John T. Bender and Jack A. Panella and Senior Judge John T.J. Kelly Jr. upheld Lehigh County Common Pleas Judge Robert L. Steinberg's 2008 order dismissing charges of prostitution and promoting prostitution against defendant Sun Cha Chon. Steinberg found the state police investigating alleged prostitution at Shiatsu Spa committed outrageous government conduct and violated Chon's constitutional rights to due process.

According to Bender's opinion, which included facts set out by Steinberg's opinion explaining his decision to the appellate court, the police investigation started when a patron of the massage parlor complained to state police that he had been offered "manual sexual stimulation" after being given a massage. The patron did not accept the offer because he could not afford it, the opinion said.

The patron then agreed to become an informant for the police, the opinion said. He wore a wire and was provided money with which he purchased sexual acts with two different women at the massage parlor on four occasions, the opinion said.

The investigator admitted at a trial court hearing that he and the other officers laughed about each episode with each other and the informant; and that, despite his belief probable cause was established just with a defendant's verbal acquiescence to have sex after the proffer of money, he "instructed the confidential informant to 'go ahead and have sex' if he felt 'comfortable' as 'that was part of the crime,'" according to Bender.

"Judge Steinberg was, understandably, shocked and outraged at the lack of professionalism in the course of this particular investigation (such as the laughter and banter between the troopers and confidential informant), the unnecessarily escalating levels of sexual contact that occurred on four multiple planned visits, the questionable motives of the confidential informant, and the lack of instruction, supervision, and professionalism demonstrated overall in the investigation," Bender said.

### PSYCHOLOGICAL DAMAGE

Bender referred to the trial testimony of Mary Anne Layden, the director of sexual trauma and psychopathology program at the University of Pennsylvania. Layden criticized the police conduct in this case because she said women who work as prostitutes often have post-traumatic stress

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disorder and depression, and each instance of prostitution deepens the women's psychological damage, according to Bender.

"When police officers act as johns, and they traumatize an individual unnecessarily, it's outrageous," Layden testified, according to Bender.

Debbie Garlicki, a spokeswoman for Lehigh County District Attorney James B. Martin, said her office plans to appeal the decision, but declined further comment.

In the office's appellate brief, the office argued Steinberg misapplied the law relating to outrageous government conduct. The brief said no court has dismissed criminal charges by finding outrageous government conduct when a confidential informant engaged in sexual acts with targets of criminal investigations.

Both the trial court and the Superior Court panel sharply disagreed with the district attorney's office.

#### 'WE EXPECT MORE FROM THE POLICE'

Steinberg, who was Lehigh County District Attorney from 1991 to 1998, found that the defendant's verbal agreement to perform sexual acts for money would have satisfied the elements that must be proven for a prostitution conviction under Pennsylvania law, according to Bender.

"The decision to send the citizen into Shiatsu Spa on four occasions for a smorgasbord of sexual activity violates principles of fundamental fairness," Steinberg wrote. "... We expect more from the police, and demand that they conduct their investigations and utilize their resources without resorting to such embarrassing investigative techniques ... No standards existed for this type of investigation, and some of the behavior by the participants was sophomoric."

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