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# Judge drops sex case as 'outrageous'

## Lehigh court: Police let informant go too far in spa prostitution inquiry.

February 05, 2008 | By Debbie Garlicki Of The Morning Call

A Lehigh County judge has dismissed the case against a woman who was charged with promoting prostitution at a North Whitehall Township spa, ruling that state police engaged in "outrageous" conduct when they paid an informant to have sex four times with employees.

State police investigating the Shiatsu Spa on Route 309 paid the informant \$180 for his "time" and gave him money to pay for sexual acts in the spa in June and July 2006.

"We conclude that the decision to send the citizen into Shiatsu Spa on four occasions for a smorgasbord of sexual activity violates the principles of fundamental fairness," Judge Robert L. Steinberg said in a Jan. 24 written opinion. "Neither the prostitution activity inside the Shiatsu Spa nor the police decision-making is to be condoned."

Maureen Coggins, the lawyer for Sun Cha Chon, 53, of Cross Kill, N.J., applauded the ruling Monday. She said she hopes the decision will discourage police from engaging in similar investigative tactics.

"The facts were just so shocking that it really pushed this case into a whole different realm," Coggins said. "Does the public want their tax dollars to be used to pay some guy money to get sexual intercourse four times? It is disgusting."

District Attorney James B. Martin said he will appeal the decision to the state Superior Court.

"I think it's absurd to say that the conduct that police engaged in in this set of circumstances, with someone who was known to run brothels, is outrageous," Martin said. "With all due respect to Judge Steinberg, I think he used his own moral compass to decide this case and not the law and the facts."

The investigation started after a man told state police he went to the spa and was appalled that someone offered to perform sexual acts. After the man volunteered his services, police attached a body wire to his pants and sent him into the spa.

While the man and Chon and another woman allegedly performed sexual acts, state troopers sat outside in a vehicle and listened to recordings of what was happening. After the encounters, the informant met with troopers, who had been chuckling on the tape, and said, "Laugh it up, boys."

Troopers cautioned the informant to be careful, and he brought condoms.

A search warrant was executed, and Chon was charged with prostitution and promoting prostitution, a felony. In early 2007, she pleaded guilty when she had a different lawyer. Coggins, who was to represent Chon at the sentencing, said that after she became familiar with the facts, she said, "Whoa, this is something we have to fight."

Steinberg granted Coggins' request to withdraw Chon's plea. Coggins then asked the judge to dismiss the case, arguing that police engaged in outrageous conduct that violated Chon's due process rights.

It's rare to use the defense of outrageous government conduct, said Coggins, whose research turned up cases similar to Chon's in Philadelphia and Florida.

State troopers defended their investigation and testified at a hearing that they were trying to determine if prostitution was going on in Shiatsu Spa and who was running the operation.

Multiple contacts by an informant strengthen the case, said one trooper, who testified that, although sex is not preferred, it is not prohibited.

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Senior Deputy District Attorney Joseph Stauffer attempted to show that police did a legitimate investigation and that Chon has a lengthy history of prostitution and promoting it.

The judge devoted much of his nine-page opinion and footnotes to cases in federal appeals courts, state appellate courts and the U.S. Supreme Court and those courts' reasons for finding that law enforcement officers did or didn't act outrageously in investigations.

Although courts have been reluctant to dismiss prosecutions based on claims of outrageous conduct, they have determined that there are limits to allowing governmental involvement in crime, Steinberg noted.

In previous hearings in the Chon case, Steinberg appeared to struggle with what those limits are.

Quoting a federal appeals court, the judge said the defense of outrageous conduct hasn't been defined "with any degree of precision."

The judge said he recognized that police and their informants must sometimes participate in unsavory conduct to get evidence of certain crimes. "Wide latitude is accorded the government to determine how best to fight crime," Steinberg said, quoting another court.

Other courts have addressed alleged outrageous conduct in cases where an informant lured recovering alcoholics and drug addicts to commit illegal acts, agents gave samples of drugs to suspects and agents had sexual intercourse with targets of investigations.

Coggins contended police didn't have to allow sex acts to take place even once, let alone four times, and that they had enough evidence for an arrest when sex was offered by a Shiatsu Spa employee.

Steinberg agreed. He ruled the state police acts met the criteria for outrageous conduct established in a federal case. Police used sex as a weapon to fight crime, and they permitted the sex to continue even after having enough evidence for an arrest and search warrant, the judge found. The mere agreement of sexual acts for money was enough, he added.

"We expect more from the police," Steinberg said, "and demand that they conduct their investigations and utilize their resources without resorting to such embarrassing investigative techniques."

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