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## State of Florida v. James Otte

PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, EVERYONE. WELCOME TO THE FLORIDA SUPREME COURT. FIRST CASE ON THE COURT'S DOCKET THIS MORNING IS STATE VERSUS OTTE. WE APPRECIATE COUNSEL BEING READY TO GO. WITHOUT ANY FURTHER ADO, IF COUNSEL IS READY, YOU MAY PROCEED.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS BELLE SHUM AND. I REPRESENT THE STATE OF FLORIDA -- MY NAME IS BELL SHUMAN, THE STATE OF FLORIDA IN THIS CASE. AFTER THE CHARGES WERE FILED AGAINST JAMES OTTE, THE STATE FILED AN APPLICATION, AN AUTHORIZATION FOR AN ORDER AUTHORIZE AGO WIRETAP N THIS APPLICATION, THEY ALLEGED THAT THERE WAS PROBABLE CAUSE THAT OTTE'S BUSINESS WAS A CRIMINAL ENTERPRISE FOR DERIVEING PROCEEDS FROM A PATTERN OF RACKETEERING ACTIVITY, THROUGH HISSES COURT SERVICE AND MONEY LANDERING. THE TRIAL -- LAUNDERING. THE TRIAL COURT FOUND PROBABLE CAUSE TO BELIEVE MONEY-LAUNDERING AND ALLOWED THE WIRETAP. SUBSEQUENTLY IT WAS DETERMINED THAT THE WIRETAP WAS INVALID UNDER THE STATE STATUTE, BECAUSE IT EXCEEDED THE AUTHORITY GRANTED BY CONGRESS DEGREES.

IN THIS WIRETAP APPLICATION, THE APPLICANT ACTUALLY SAID WE ARE INVESTIGATING A RICO CHARGE, THAT CORRECT?

THAT'S CORRECT. ABSOLUTELY.

SO WHAT SHOULD OUR FOCUS BE, THEN, ON WHICH CRIME, ALTHOUGH IT DOES SAY THAT THESE RICO'S ARE BASED ON PROSTITUTION, CORRECT?

CORRECT.

WHICH ARE WE TO FOCUS IN ON IN DETERMINING WHETHER THIS WIRETAP MEETS THE FEDERAL STANDARD.

THE RICO OFFENSE AND MONEY-LAUNDERING, SPECIFICALLY ALLEGING VIOLATIONS OF CHAPTER 895 AND 896, THE RACKETEERING AND MONEY-LAUNDERING. THE FIRST-DEGREE FELONIES OF THE RICO WERE THE BASIS FOR THE WIRETAP.

IF I UNDERSTAND THE STATE'S POSITION, IT IS INDEED THAT, UNDER OUR PRIOR CASE LAW, THAT IF WE WERE TALKING ABOUT SIMPLE ACTS OF PROSTITUTION, THAT THE WIRETAP WOULD NOT BE AUTHORIZED, BUT IF WE ARE TALKING ABOUT EXTENSIVE VIOLATIONS OF THE RICO STATUTE, THAT IT WOULD BE. IS THAT --

ABSOLUTELY. YES.

IS THAT HOW YOU DISTINGUISH OUR PRIOR CASE LAW ON THIS ISSUE?

YES. YES.

IS THAT CORRECT?

THAT'S CORRECT. THAT IS ABSOLUTELY CORRECT. IN THE RICO CASE --

TELL US THE, BOTH THE STATUTORY, FEDERAL AND STATE, AND CASE LAW TRAIL THAT SUPPORTS THAT POSITION.

OKAY. 28 USC 2516 SECTION 2, PERMITS STATES TO WIRETAP FOR SEVERAL LISTED OFFENSES AND OTHER CRIMES THAT ARE DANGEROUS TO LIFE, LIMB OR PROPERTY. LIFE, LIMB OR PROPERTY. PURSUANT TO THAT AUTHORITY GRANTED BY CONGRESS DEGREES, FLORIDA PASSED THE WIRETAP STATUTE IN 934.07 THAT PERMITS WIRE TAPS FOR SEVERAL ENUMERATED OFFENSES AND FOR ANY VIOLATION OF CHAPTER 895 OR ANY VIOLATION OF THE MONEY-LAUNDERING STATUTE 896, AND IN RIVERS, THIS COURT HELD THAT THE CATEGORY OF DANGEROUS TO LIFE LIMB OR PROPERTY, REFERS NOT TO PROSTITUTION FELONIES BUT DOES REFER ONLY TO THOSE CRIMES THAT ARE IN TRINSCALLY SERIOUS OR, QUOTE, -- INTRINSICALLY SERIOUS OR, QUOTE, CHARACTERISTIC OF ORGANIZED CRIME. WHEN IT WAS PASSED, IT WAS DETERMINED THAT ORGANIZED CRIME USES TECHNIQUES OF VIOLENCE AND OTHER FORMS OF VIOLENCE FOR INTIMIDATION AND GENERATING LARGE SUMS OF ILLEGALLY OBTAINED MONEY WHICH HARMS INNOCENT INVESTORS AND THEREBY CONSTITUTES A DANGER TO THE ECONOMIC AND GENERAL WELFARE OF THE STATE OF FLORIDA. SO THE LEGISLATURE MADE A FACTUAL FINDING THAT ORGANIZED CRIME IS INTRINSICALLY DANGEROUS TO AT LEAST PROPERTY. I THINK THAT IS THE LEAST CASE, LIFE, LIMB OR PROPERTY.

HOW IS IT IN THIS CASE, AND MAYBE WE ARE NOT LOOKING AT THE ADEQUACY OF THE UNDERLYING ANDTATION -- APPLICATION, BUT MY CONCERN, I GUESS WE SAID IN RIVERS, THAT PROSTITUTION WOULD NOT BE A REASON TO GRANT A WIRETAP, THAT YOU TAKE SOMEBODY WHO IS ESSENTIALLY, THAT IS WHAT, YOU KNOW, HE IS NOT REALLY, HE IS NOT IN ORGANIZED CRIME. HE IS ACTUALLY, I GUESS, RUNNING AN ESCORT SERVICE, AND THEN YOU MAKE IT INTO OR AT LEAST FOR THE ALLEGATIONS FOR THE WIRETAP, MAYBE NOT FOR WHAT YOU END UP PROVING, INTO A CLAIM THAT IT IS RICO. HOW DOES, IN TERMS OF THE JUDGE LOOKING AT THAT, HOW DO YOU FERRET OUT, SHOULD THAT BE SOMETHING THAT WE ARE CONCERNED WITH HERE?

WELL, THE, THERE WAS ALLEGATIONS OF RICO IN THE WIRETAP STATUTE AND PROBABLE CAUSE FOUND IN THE ORDER.

WHAT IS THAT -- I MEAN, YOU SAY THAT YOU ALLEGED A VIOLATION.

RIGHT.

BUT WHAT IS THE UNDERLYING PREDICATE THAT SHOWS THAT THERE WAS A RICO VIOLATION OCCURRING?

WELL, IN ORDER TO ALLEGE A RICO VIOLATION, YOU HAVE TO ESTABLISH OR ALLEGED, AT THIS POINT IN THE PLEADINGS, THAT THERE IS AN IDENTIFIABLE CONTINUOUS STRUCTURE THAT THE ORGANIZED CRIME IS FOR THE PURPOSE OF RACKETEERING ACTIVITY, THAT IT IS A BUSINESS THAT IS ORGANIZED TO GENERATE ILLEGAL FUNDS.

SO HE, JUST BY RUNNING AN ESCORT SERVICE, I MEAN I AM NOT SAYING JUST. I AM NOT TRYING TO MINIMIZE WHAT IT IS BUT WE ARE REALLY JUST TALKING HERE ABOUT WHETHER YOU GET THE WIRETAP, THAT THAT IS EVEN ENOUGH IN A COURT OF LAW TO ESTABLISH A RICO VIOLATION?

THAT'S CORRECT. AND THIS IS NO SMALL THING. THEY DID, THE SPECIFIC ALLEGATION INS THIS CASE WERE THAT OVER A 4-MONTH PERIOD, THERE WAS OVER 1,000 CALLS PER MONTH COMING INTO THIS BUSINESS. THAT IT GENERATED ESTIMATES OF HALF A MILLION DOLLARS A YEAR.

BUT CAN IT, UNDER YOUR THEORY, BE A SMALL, CAN IT BE A SINGLE ACT OF PROSTITUTION, IF YOU ALLEGE THAT THIS IS A CONTINUING ESCORT SERVICE AND THERE IS AN UNDERLYING

SINGLE ACT OF PROSTITUTION? IS THAT SUFFICIENT TO GET A WIRETAP?

WELL, IF THEY SPECIFICALLY ALLEGE A RICO VIOLATION, THE WIRETAP STATUTE PERMITS WIRETAP FOR ANY VIOLATION OF A RICO OFFENSE. ALSO MONEY-LAUNDERING. THE ISSUE BEFORE THE COURT TODAY IS PURELY AN ISSUE OF LAW NOT FACT, AND THAT IS WHETHER THE RICO STATUTE IS DANGEROUS TO LIFE, LIMB OR PROPERTY.

DOES THIS END UP MAKING OUR PRIOR CASE LAW, THOUGH, REALLY WORTHLESS? THAT IS THAT, CAN YOU END UP IN THIS SITUATION, YOU KNOW, FIRST I HAD THE SORT OF EXAMPLE IN MY MIND THAT, WELL, IF YOU ARE JUST TALKING ABOUT MARY DOUGH, AND TRY -- MARY D.O.E. AND TRYING TO GET A WIRETAP TO ESTABLISH THAT MARY DOE IS ENGAGING IN PROSTITUTION, THAT MAYBE THAT WILL BE THE SIMPLE ACT OF PROSTITUTION ALONE THAT YOU WERE FOCUSING ON, AND THAT THE STATE WOULD CONCEDE THAT THAT WOULD NOT BE COVERED.

CORRECT.

UNDER OUR CASE LAW, BUT IF YOU HAD AJAX PROSTITUTION SERVICES THAT HAD FRANCHISES IN ALL 50 STATES AND SOME TERRITORIES.

YES.

THAT, AND YOU ALLEGE THAT, THAT THAT WOULD COME UNDER THE RICO, BUT FOLLOWING UP ON JUSTICE WELLS'S QUESTION HERE, LET'S GO TO MARY DOE, IF YOU HAVE GOT MARY DOE, AND, QUOTE, A PIMP, JOHN DOE, AND YOU ALLEGE THAT THEY ARE REGULARLY ENGAGING IN A PROSTITUTION SERVICE, WOULD THAT BE SUFFICIENT, SINCE THE MINIMUM REQUIREMENTS ARE RICO SEEM TO REQUIRE ONLY TWO OR MORE EPISODES, WOULD THAT BE SUFFICIENT TO TAKE THE PROSTITUTION ACTIVITY INTO THE RICO STATUTE AND THEREFORE AUTHORIZE WIRETAP?

WELL, IN ORDER TO ALLEGE A RICO, IT HAS TO BE A BUSINESS, AN ONGOING STRUCTURE FOR THE PURPOSE OF A CRIMINAL ENTERPRISE, A PATTERN OF RACKETEERING ACTIVITY.

MARY DOE SHOWS UP ON THE CORNER OF DUVAL AND WHATEVER STREET, YOU KNOW, ON A REGULAR BASIS, THAT SOUNDS A LOT LIKE YOU KNOW, A CONTINUOUS, A CONTINUOUS ACTIVITY. WHAT I AM CONCERNED ABOUT IS WHETHER WE END UP WITH A MEANINGLESS DISTINCTION. THAT IS THAT THIS COURT, IN DEALING WITH THE ALLEGATIONS OF PROSTITUTION BEFORE, HAVE SAID, NO, THAT, YOU KNOW, THAT CAN'T BE COVERED, BUT IS THIS AN INEVITABLE RESULT OF THIS? IS IT JUST A NATURAL RESULT, AND THAT IS THAT, IF INDEED, THERE IS A CONTINUING ORGANIZED STRUCTURE ABOUT PROSTITUTION, THEN INDEED IT WILL BE COVERED BY RICO, AND IN TURN BE SUBJECT TO THE WIRETAP STATUTE.

WELL, THAT --

HELP US WITH THAT, BECAUSE WE NEED TO KNOW WHERE WE ARE GOING, BEFORE WE MAKE A DECISION HERE.

RIGHT. WELL, I THINK THE ALLEGATIONS IN THIS PARTICULAR CASE, DEMONSTRATE THE PARAMETERS THAT WE ARE TALKING ABOUT HERE. IT IS NOT SIMPLY TWO PROSTITUTES WITH BEEPERS. IT IS OVER 1,000 CALLS PER MONTH THAT GENERATES A HALF A MILLION DOLLARS A YEAR. HUNDREDS OF CUSTOMERS AND THE QUESTION IS WHETHER THIS ORGANIZED ONGOING ACTIVITY IS DANGEROUS TO PROPERTY, NOT ONLY THE RICO BUT ALSO THE MONEY-LAUNDERING, BY TAKING A SUBSTANTIAL AMOUNT OF MONEY OUT OF LEGITIMATE COMMERCE, THAT DANGER TO PROPERTY --

AND THERE WERE ALLEGATIONS AND STATEMENTS OF MONEY-LAUNDERING CONTAINED IN THE ORIGINAL AFFIDAVIT, THAT CORRECT?

TRUE. THAT'S CORRECT. THE SPECIFICALLY ALLEGED RICO AND MONEY-LAUNDERING, THOSE TWO STATUTES ARE SPECIFICALLY MENTIONED IN THE WIRETAP STATUTE. ANY VIOLATION OF THOSE TWO OFFENSES, IN RIVERS THIS COURT SAID THAT THIS CATEGORY OF DANGEROUS TO LIFE, LIMB OR PROPERTY, REFERS TO INTRINSICALLY SERIOUS CRIMES OR CHARACTERISTIC OF OPERATIONS OF ORGANIZED CRIME. THAT IS WHAT WE HAVE HERE. ORGANIZED CRIME IS ESSENTIALLY A FINANCIAL CRIME THAT DAMAGES COMMERCE, AND THAT IS DANGEROUS TO PROPERTY. I WILL RESERVE THE BALANCE OF MY TIME. IF THERE IS NO FURTHER QUESTIONS FOR REBUTTAL.

FINE.

THANK YOU.

GOOD MORNING.

GOOD MORNING. I AM JERRY KEATING, AND I REPRESENT JAMES OTTE.

WOULD YOU PICK UP ON HER LAST POINT, AND DOESN'T THE MONEY-LAUNDERING SEPARATE THIS CASE FROM THE ANALYSIS OF RIVERS, AT LEAST THE? -- -- AT LEAST?

YOUR HONOR, I DON'T THINK SO. I THINK YOU PREVIOUSLY ADDRESSED THIS IN RIVERS IN YOUR CASE, AND I THINK THAT, TO MAKE THIS WIRETAP VALID, THE APPLICATION HAD TO ALLEGE DANGER TO LIFE, LIMB OR PROPERTY OR VIOLENCE.

WASN'T THE FOCUS OF RIVERS THAT PROSTITUTION, THE ALLEGATION AS TO PROSTITUTION WAS NOT SUFFICIENT, BECAUSE OF THE FACT THAT THERE WAS NO NEXUS THAT, BETWEEN THE LIFE, LIBERTY OR PROPERTY, AND THE OPINION GOT INTO A DISCUSSION OF AIDS. ISN'T THAT WHERE RIVERS WENT? AND THAT WAS REALLY A DIFFERENT SITUATION THAN IS ALLEGED HERE.

YOUR HONOR, I THINK THE ONLY DIFFERENCE BETWEEN RIVERS AND HERE IS THAT, IN THIS CASE, RICO WAS FILED AT THE OUTSET. IN RIVERS, WHICH YOU DECIDED, RICO WAS FILED AFTERWARDS. BUT NOTWITHSTANDING THAT, THE APPLICATION IN THIS CASE NEVER ALLEGES ANY VIOLENCE, NEVER ALLEGES ANY DANGER TO LIFE, LIMB OR PROPERTY, AND UNDER THE FACTS OF THIS CASE, THERE IS NO PROBABLE CAUSE TO SHOW THAT OTTE WAS ENGAGED IN ANY CRIMINAL ACTIVITY.

BUT IT DOES ALLEGE A VERY SUBSTANTIAL, IF THESE STATEMENTS ARE CORRECT, A VERY SUBSTANTIAL, VIRTUALLY ORGANIZED CRIME RICO ACTIVITY, IN TERMS OF MONEY-LAUNDERING, USING PROSTITUTION AS THE MEANS, DOES IT NOT?

YOUR HONOR, IT DOES REGARDING CODEFENDANT DIANNE FRATELLO. DIE AND FRATELLO IS A GIRL -- DYE AND FRATE. -- DIANE FRAFELLO IS A GIRLFRIEND OF OTTE, AND HE IS ENSNARED IN THAT WITH HER.

NO ALLEGATIONS OF INVOLVEMENT IN THE SYSTEMATIC PRACTICE OF PROSTITUTION, MONEY LAUNDER SOMETHING.

NONE AT ALL. IF YOU LOOK AT MY BRIEF, I HAVE CITED 200 PAGES IN THE TOTAL APPLICATION THAT TALK ABOUT OTTE. REALLY WHAT IT SAYS IS HE LIVES WITH THE CODEFENDANT DIANNE FRATELO, WHO IS THE MADAM, AND HE IS SEEN ON THE LAWN TALKING TO TWO ALLEGED PROSTITUTES, BUT EVERYTHING TALKS ABOUT DIANNE, HIS GIRLFRIEND, AND TALKS ABOUT PROSTITUTION IN THAT GROUP.

TO ME THERE IS A DIFFERENCE BETWEEN WHETHER THE ACTUAL ALLEGATIONS IN THIS CASE WOULD, MAYBE, DISTINGUISH ON THE OTTE FROM SOMEBODY WHO -- MAYBE DISTINGUISH OTTE

FROM SOMEBODY WHO, AS MS. SHUMAN SAID, THERE WAS A SOPHISTICATED ESCORT SERVICE AND THAT MR. OTTE WAS PART OF THAT SERVICE AND IT WAS HIS BUSINESS. RIGHT NOW THAT IS A FACTUAL ISSUE, BUT RIVERS SPECIFICALLY SAYS THAT THE, AS FAR AS THE RICO VIOLATION, NOT ONLY MATERIALIZED AFTER THE ORIGINAL APPLICATION FOR THE WIRETAP, SO WOULD YOU AGREE AT LEAST, THAT AS TO THE QUESTION AS TO WHETHER RICO VIOLATIONS ALONE CAN BE SUFFICIENT FOR AN APPLICATION FOR A WIRETAP, WE DIDN'T CROSS THAT BRIDGE IN RIVERS.

I THINK RICO, WITH THE ALLEGATION OF DANGEROUS TO LIFE, LIMB OR PROPERTY OR OTHER VIOLENCE, WOULD BE SUFFICIENT TO GET A PROPER WIRETAP ORDER. IF, IN THIS CASE, LAW ENFORCEMENT INCLUDED IN THAT PROBABLE CAUSE AFFIDAVIT, ALLEGATIONS THAT OTTE WAS ENGAGED IN VIOLENCE OR THREATS OF VIOLENCE, THEN THE TRIAL JUDGE WOULD HAVE PROPERLY ASSIGNED DU -- ASSIGNED THE WIRETAP ORDER.

DIDN'T WE DEFINE AND SAID IT WAS INTRINSICALLY SERIOUS OR CHARACTERISTICS OF THE OPERATIONS OF ORGANIZED CRIME, SO BY ALLEGING THE WIRETAP, RICO AND MONEY-LAUNDERING, DON'T WE SATISFY THAT SECOND CRITERIA THAT IS TALKED ABOUT IN RIVERS, AS BEING DANGEROUS TO LIFE?

NO, YOUR HONOR. I RESPECTFULLY DISAGREE. THAT WOULD ASSUME THAT RICO IS SOMEHOW INHERENTLY DANGEROUS, AND IT IS NOT. THE --

BUT RICO IS AN ORGANIZED CRIME OFFENSE, WOULDN'T YOU AGREE TO THAT?

YES. YES.

AND IF RIVERS IS CORRECT THAT A CRIME THAT IS CHARACTERISTIC OF OPERATIONS OF ORGANIZED CRIME, IS A DANGEROUS, IS DANGEROUS TO LIFE, THEN HOW DO YOU GET AROUND THAT LANGUAGE?

YOUR HONOR, I AM NOT SURE THAT THAT IS WHAT RIVERS SAID THAT, RICO'S ARE AUTOMATICALLY DANGEROUS.

IT DIDN'T USE THE WORD RICO. IT SIMPLY SAID THAT DANGEROUS TO LIFE IS A CRIME THAT IS CHARACTERISTIC OF OPERATIONS OF ORGANIZED CRIME.

YES.

SO IT DOESN'T REALLY USE THE TERM RICO, BUT RICO IS THAT KIND OF CRIME, ISN'T IT?

YES, IT IS, BUT RICO IS NOT AUTOMATICALLY DANGEROUS, AND UNLESS THE TRIAL JUDGE HAS ALLEGATIONS THAT THERE IS DANGER OR THREAT OF VIOLENCE, THEN THE JUDGE SHOULD NOT BE CITING A WIRE -- SHOULD NOT BE SIGNING A WIRETAP ORDER.

MY QUESTION IS, WHY IS IT NECESSARY FOR A RICO VIOLATION THAT YOU HAVE VIOLENCE OR THREAT OF VIOLENCE?

THAT IS WHAT CONGRESS SAID, NUMBER ONE, AND NUMBER TWO, THAT --

CONGRESS SAID THREATENS LIFE OR PROPERTY, CORRECT?

LIFE, LIMB OR PROPERTY, RIGHT.

LIFE, LIMB OR PROPERTY, SO IN SAYING PROPERTY, DIDN'T CONGRESS INTEND THAT IT DID NOT NEED TO BE A THREAT OF VIOLENCE OR VIOLENCE? THAT IT COULD BE COMMERCIAL ORGANIZED CRIME?

UNDER A PROPER FACTUAL SITUATION, YES.

SO THEN WHY, IN THE FLORIDA STATUTE, WOULD WE NEED ALLEGATIONS OF VIOLENCE OR THREAT OF VIOLENCE, IN ORDER FOR IT TO BE A RICO VIOLATION?

BECAUSE THE FLORIDA STATUTE IS DELEGATED AUTHORITY FROM CONGRESS, AND THE FLORIDA STATUTE, TO A LIMITED EXTENT THAT IT ALLOWS WIRE TAPS WITHOUT THE ALLEGATION OF VIOLENCE, CONTRAVENES THE FEDERAL STATUTE.

YOU KEEP REFERRING TO VIOLENCE. WOULDN'T, DOESN'T IT SEEM LIKE WE END UP WITH A NONLOUS SITUATION, AND THAT -- A NO, MA'AMLOUS SITUATION, AND THAT -- ANOMOLOUS SITUATION, AND THAT IS THAT WE INTEND FOR CONGRESS TO EXCLUDE, BY USE OF THAT LANGUAGE, ALL ORGANIZED CRIME ACTIVITIES THAT DIDN'T SPECIFICALLY CONTEMPLATE VIOLENCE? THAT IS THAT CONGRESS ACTUALLY, WITH THIS WIRETAP, WHICH IN THE WHOLE DEVELOPMENT AND USE OF WIRETAP, PERHAPS THE NUMBER ONE USE HAS ALWAYS BEEN TO FOCUS ON ORGANIZED CRIME, AND SO I AM HAVING DIFFICULTY WITH THE CONSTRUCTION OF THAT LANGUAGE THAT WOULD EXCLUDE ORGANIZED CRIME, WHEN IT INVOLVES MONEY-LAUNDERING, PROSTITUTION, AND THAT. I AM JUST HAVING DIFFICULTY ENDING UP WITH A CONCLUSION THAT WOULD SAY THAT CONGRESS INTENDED TO EXCLUDE ORGANIZED CRIME, EXCEPT WHEN YOU COULD VERY SPECIFICALLY ALLEGE THAT IT INVOLVED VIOLENCE. HELP ME WITH THAT.

YOUR HONOR, CONGRESS LISTED SEVEN SPECIFIC ENUMERATED CRIMES, WHERE WIRETAP IS PROPER. THEN IT ADDED THIS GENERAL CATCH ALL, AND ANY CRIME DANGEROUS TO LIFE, LIMB OR PROPERTY. CONGRESS SET THE PARAMETERS. THE STATE OF FLORIDA HAS EXPANDED THE PARAMETERS IN ITS LEGISLATION, BY INCLUDING PROSTITUTION. ONCE FLORIDA DID THAT, PROSTITUTION ALONE, WOULD NOT BE SUFFICIENT FOR THE WIRETAP, SO THE APPLICATION WOULD HAVE TO ALLEGE VIOLENCE TO FALL WITHIN RICO.

WHY IS MONEY-LAUNDERING AN INFERENCE. WE ALL KNOW, I SAY WE ALL KNOW, THAT OBVIOUSLY EVEN LEGAL OR FACIALLY LEGAL AND REAL ESTATE TRANSACTIONS OR RENTAL PROPERTIES OR WHATEVER, CAN BE USED AS A COVER FOR MONEY-LAUNDERING. BUT IF ONE OF THE MAIN FOCUSES OF CRIMINAL ACTIVITY IS, INDEED, MONEY-LAUNDERING, AND IT IS DONE ON A SYSTEMATIC BASIS, WHY WOULDN'T THAT BE SUFFICIENT TO AUTHORIZE A WIRETAP?

YOUR HONOR, UNDER CERTAIN CIRCUMSTANCES, IT MIGHT BE SUFFICIENT. UNDER THE APPLICATION IN THIS CASE, OTTE HAS VERY LITTLE CONNECTION TO THE MONEY.

WELL, NOW WE ARE SORT OF COMING BACK TO A CASE-SPECIFIC AS TO OTTE, AS OPPOSED TO TALKING ABOUT THE BROAD PURPOSE FOR REVIEW IN THIS COURT, AND THAT IS HERE, WE ARE TALKING ABOUT OUR PRIOR CASE, AND THEN SOME OTHER STATE'S CASE AND FEDERAL DECISIONS AND WHATEVER, AND JUST WHETHER OR NOT, NOW, AS JUSTICE PARIENTE INDICATED, THAT IN OUR PRIOR CASE, THE RICO SEEMED TO COME AFTER, AS OPPOSED TO BEFORE, SO, WELL, LET'S TURN TO YOUR, BECAUSE THAT CLEARLY IS ONE OF YOUR POSITIONS, IS THAT THIS AFFIDAVIT WAS NOT SUFFICIENT WITH REFERENCE TO YOUR CLIENT, THAT CORRECT?

YES, SIR.

WOULD YOU AN ADDRESS THAT NOW AND BE AS SPECIFIC AS YOU CAN, WITH REFERENCE TO THAT CLAIM.

THAT'S FINE. YOUR HONOR, IN MY BRIEF I SET FORTH EXACTLY WHAT THE APPLICATION SAYS ABOUT MY CLIENT. IT IS SO LIMITED AS TO WHAT MY CLIENT DID, IT SURELY SHOWS NO CONNECTION TO THE MONEY-LAUNDERING THAT THE STATE IS TALKING ABOUT.

BUT JUST TO UNDERSTAND SOMETHING, IN TERMS OF THE PROCEDURAL POSTURE, BECAUSE I, YOU KNOW, YOU SAY THERE IS ONLY ONE PARAGRAPH ON OTTE, AND APPARENTLY THE MAIN FOCUS WAS HIS WIFE.

ACTUALLY GIRLFRIEND, BUT THEY ALLEGE WIFE IN THE APPLICATION.

THAT IS WHAT WE HAVE TO GO ON.

RIGHT.

YOUR ONLY ISSUE THAT YOU RAISE TO THIS COURT IS THE VALIDITY OF THE OVERALL, THE MONEY-LAUNDERING OR RICO IS SUFFICIENT, SO IS IT, I AM JUST, YOU CAN TELL US WHY THERE IS NOT ENOUGH TO CONNECT MR. OTTE, BUT I WAS WONDERING WAS THAT SOMETHING YOU RAISED IN THE FIFTH DISTRICT IN HAS THAT REALLY BEEN PRESERVED FOR US TO CONSIDER IN THIS STAGE, OR DOES THAT NEED TO GO BACK AND BE LITIGATED?

I DON'T THINK SO, YOUR HONOR. I THINK THE TRIAL COURT ORDER ADDRESSED THAT. THE FIFTH DISTRICT COURT OF APPEAL ADDRESSED THAT, AND THAT ISSUE HAS COME UP THROUGH THE STATEMENT OF FACTS ALL THE WAY THROUGH THIS CASE. IT HAS BEEN A PART OF MY BRIEF, ALL OF THE WAY THROUGH THIS CASE.

THE ONLY ISSUE THAT YOU RAISE IN THIS CASE, I GUESS IT IS THE STATE'S ISSUE BUT YOU DON'T CROSS APPEAL OR ADD ANYTHING ELSE, IS WHETHER THE WIRETAPING STATUTE, WHETHER IT AUTHORIZES WIRE TAPS TO INVESTIGATE NONVIOLENT PROSTITUTION-RELATED OFFENSE, WITHOUT CONTRAVENING.

RIGHT.

NOTHING SPECIFIC AS TO YOUR CLIENT.

RIGHT.

IT IS YOUR POSITION THAT, EVEN IF THE STATE IS CORRECT, THAT STILL THIS AFFIDAVIT IS INSUFFICIENT WITH RESPECT TO YOUR PARTICULAR CLIENT, AND YOU HAVE PREVAILED IN THE DISTRICT COURT OF APPEAL, SO YOU ARE REALLY DEFENDING HAVING PREVAILED THERE RIGHT NOW, AND THIS IS AN ADDITIONAL BASIS OF DEFENSE FOR YOUR PARTICULAR CLIENT, IS THAT CORRECT?

YES, SIR. YES, SIR.

ALL RIGHT. WELL, WE HAVE TO HEAR THE STATE'S RESPONSE TO THAT.

THANK YOU.

WOULD YOU GO RIGHT TO, THAT IS THAT HE IS SAYING THAT, EVEN IF YOUR CONSTRUCTION AND THROUGH OUR QUESTIONS, THAT THIS CASE IS DIFFERENT FROM OUR PRIOR CASE, THAT AS TO HIS CLIENT, THAT THIS AFFIDAVIT WAS INSUFFICIENT. WHAT IS THE STATE'S POSITION ABOUT THAT?

WELL, REGARDING MR. OTTE'S PARTICIPATION, I WOULD EMPHASIZE THAT THIS CASE IS IN A PRETRIAL POSTURE. IT IS A INTERLOCUTORY APPEAL. IT SHOULDN'T BE SURPRISING THAT THE EVIDENCE REGARDING MR. OTTE AT THIS STAGE OF THE PROCEEDINGS, IS LESS THAN OVERWHELMING, BECAUSE THE, ONE OF THE PREDICATES FOR GETTING A WIRETAP IS THAT TRADITIONAL INVESTIGATIVE TECHNIQUES HAVE BEEN ATTEMPTED AND WERE UNSUCCESSFUL. SO THE FACT THAT THE EVIDENCE AT THIS VERY PRELIMINARY STAGE, IS NOT AS FULLY DEVELOPED AS IT COULD BE, IS MORE, GOES TO THE FACT THAT IT IS AN INTERLOCUTORY

APPEAL, BUT THE STATE WOULD EMPHASIZE THAT HIS LEVEL OF PARTICIPATION DOESN'T HAVE TO EXTEND TO THE PREDCAL OFFENSES. THE ONLY THING THAT WE HAVE TO ALLEGE, FOR HIM TO BE PART OF THE CRIMINAL ENTERPRISE, THAT HE KNEW OF THE OVERALL OBJECTIVES OF THE CRIMINAL ENTERPRISE AND AGREED TO FURTHER ITS PURPOSE OF MONEY-LAUNDERING.

DOES HE STILL HAVE A REMEDY? THAT IS IF WE SHOULD DECIDE ON THE BROADER ISSUE THAT THE STATE PREVAILS, WOULD HE STILL HAVE A REMEDY IN THE TRIAL COURT, TO SUPPRESS THE EVIDENCE OF THE WIRETAP, IN TERMS OF USAGE AGAINST HIM ON THE BASIS OF WHAT HE IS ARGUING NOW?

WELL, HE COULD CERTAINLY RAISE THAT ISSUE, AND IT GOES BACK TO THE TRIAL COURT. IT ISN'T REALLY PROPERLY BEFORE THIS COURT. THIS COURT LOOSE AT THE LEGAL ISSUES INVOLVED, NOT SO MUCH THE FACTUAL ISSUES OF THIS PARTICULAR CASE.

BUT IN TERMS OF HOW WE WRITE THIS, THE FIFTH DISTRICT OPINION HAS NO FACTS. ALL RIGHT. YOU HAVE SAID, IN ANSWER TO QUESTIONS PREVIOUSLY, THAT IT MAY BE A WORLD OF DIFFERENCE BETWEEN SOMEBODY WHO IS, HAS JUST A GIRLFRIEND WHO IS INVOLVED IN PROSTITUTION, AND A SOPHISTICATED ENTERPRISE. MY CONCERN IS, IF THE FACTS THAT WE HAVE GOT THAT LINK JAMES OTTE UP ARE, ARE THEY FOUND ONLY IN WHAT THE, WHAT HAS BEEN QUOTED AS 150, PARAGRAPH 150 OF THE AFFIDAVIT? I DON'T EN, WHERE IS HIS CONNECTION? WHAT IS THE ALLEGATION THAT CONNECTION HIM WITH THE CRIMINAL ENTERPRISE?

WELL, THAT HE IS PART OF THE ORGANIZED CRIMINAL STRUCTURE.

IS THAT ALL? SEE, THERE IS A PROBLEM AGAIN, WHERE, YOU KNOW, POTENTIAL FOR ABUSE CAN COME IN. IF YOU HAVE GOT, YOU HAVE ALLEGED 150 PAGES OF YOU KNOW, THERE IS A SPACE INDICATED -- A SOPHISTICATED CRIMINAL BEHAVIOR, IN SOMEBODY WHO MAYBE TAKES MUST NOT TIGHT BANK, YOU ARE SAYING -- MAYBE TAKES MONEY TO THE BANK, YOU ARE SAYING THAT EVERYBODY INVOLVED IS GOING TO COME WITHIN THIS, I THINK THERE IS A FURTHER CONCERN THAT WE MIGHT HAVE, BECAUSE I GUESS I HAD THOUGHT THAT HE WAS THE ONE THAT WAS ACTUALLY RUNNING THIS ESCORT SERVICE. HE WAS NOT. HE WORKED FOR THE DEPARTMENT OF CORRECTIONS AND WAS, HIS SPOUSE/GIRLFRIEND THAT WAS THE ESCORT SERVICE, RIGHT?

THE STATE ALLEGED THAT HE DID PARTICIPATE IN THE CRIMINAL AND ESCORT SERVICE AND LAUNDERING THE MONEY FROM THAT ESCORT SERVICE, SO THESE FACT YOOILULE ISSUES -- SO THESE FACTUAL ISSUES AREN'T FULLY DEVELOPED IN THIS PRETRIAL POSTURE.

DEFENDANT A PARTICIPATED IN IT, IS THAT SUFFICIENT TO GET A WIRETAP AGAINST THAT PERSON?

WELL, HE LIVED IN THE HOUSE. I MEAN WHAT WAS WIRE TAPPED WAS HIS HOME PHONE, AND THAT IS WHERE HIS WIFE, GIRLFRIEND IT, WHATEVER, I BELIEVE IT WAS ALLEGED TO BE HIS WIFE, THEY LIVED IN THE HOME TOGETHER, THAT IS THE PHONE THAT WAS TAPPED. HE WAS ALLEGED TO BE PART OF THE CRIMINAL ENTERPRISE.

WELL, THEN, IT MAIN MATTER, IF IT IS -- THEN IT MAY NOT MATTER, IF IT IS LEGAL AGAINST HER, THEN YOU MAY NOT HAVE A PROBLEM. MY CONCERN IS HOW WE WRITE THIS CASE WITHOUT TALKING ABOUT FACTS, IF WE ARE CONCERNED ABOUT THE BREDTH, AS OPPOSED TO SAYING ANY RICO VIOLATION ALLEGED IS GOING TO BE SUFFICIENT.

THAT IS WHAT THE STATUTE SAYS, THAT ANY VIOLATION OF 895 OR 896 IS THE VALID SUBJECT OF A WIRETAP ORDER. CONGRESS INCLUDED GAMBLING AND BRIBERY, WHICH AREN'T CRIMES THAT ARE INHERENTLY VIOLENT BUT THEY ARE CERTAINLY DANGEROUS TO PROPERTY. THE STATE'S

POSITION CAN BE SUMMED UP IN ONE SENTENCE, THAT RICO AND MONEY-LAUNDERING ARE CRIMES THAT ARE INHERENTLY DANGEROUS TO PROPERTY. THERE IS A LEGISLATIVE FINDING TO THAT EFFECT, AS WELL AS A JUDICIAL FINDING IN RIVERS.

IS IT THE STATE'S POSITION THAT, WHENEVER THE STATE ALLEGES RICO VIOLATION UNDER THE STATUTE, THE WIRETAP IS VALID, AND WE DON'T GO BEYOND THAT, OR DO WE HAVE TO LOOK AT IT ON A CASE-BY-CASE BASIS, TO DETERMINE WHETHER THE RICO VIOLATIONS ALLEGED ARE THOSE THAT ARE DANGEROUS TO LIFE, LIMB OR PROPERTY?

IT IS THE STATE'S POSITION THAT ANY VIOLATION, ANY ALLEGED VIOLATION OF RICO IS SUFFICIENT FOR A WIRETAP. THAT IS WHAT THE STATUTE SAYS. ANY VIOLATION OF 895. WE ARE ASKING THIS COURT TO INTERPRET THAT LANGUAGE.

SO WHAT HAPPENS IF, AT A LATER TRIAL, IT IS DETERMINED THAT THE UNDERLYING, LET'S SAY IN THIS CASE, THE UNDERLYING PROSTITUTION IS PROVED BUT THE RICO VIOLATION IS NOT PROVED?

WELL, --

IS THE WIRE TAP THEN INVALID?

NO. BECAUSE IT IS AT A PRETRIAL STAGE OF PROCEEDING. IT IS NOT BEYOND A REASONABLE DOUBT. IT IS PROBABLE CAUSE TO BELIEVE THAT THOSE OFFENSES ARE OCCURRING. IT IS A COMPLETELY DIFFERENT STANDARD OF REVIEW, SO, YES, THE STATE ALLEGES THAT RICO AND MONEY-LAUNDERING BY DEFINITION, ANY VIOLATION, REGARDLESS OF THE PREDICATE OFFENSES, IS DANGEROUS TO PROPERTY AT THE LEAST. ALSO LIFE AND LIMB. SO --

SO WHAT PREVENTS THE STATE, THEN, FROM I THINK JUSTICE PARIENTE ALLUDED TO THIS EARLIER, FROM SIMPLY ALLEGING A RICO VIOLATION WHENEVER IT SEEKS A WIRETAP AND THEREFORE INSULATES ITSELF FROM -- AND THEREFORE INSULATES ITSELF FROM ALLEGATION IN THAT REGARD.

THERE HAS TO BE A FINDING THAT THERE IS PROBABLE CAUSE. THIS IS ESSENTIALLY A SPECIALIZED SEARCH WARRANT.

DO WE HAVE AN AFFIDAVIT IN THE RECORD?

YES.

THE FULL 150-PAGE APPLICATION?

I BELIEVE SO, YES, I KNOW IT WAS IN THE RECORD IN THE FIFTH DCA. IF NOT, I WILL MOVE TO SUPPLEMENT. IT SHOULD BE IN THE RECORD.

THAT IS WHAT HAPPENS BEFORE THE TAP IS CARRIED OUT, IS THEY HAVE TO GO BEFORE AN IMAGEIES AT ANY RATE.

YES.

AND GET -- AN IMAGE STRAIGHT.

YES. AND -- A MAGISTRATE.

YES.

AND GET A FINDING OF PROBABLE CAUSE.

RIGHT.

IT IS THAT THE OTHER TYPICAL INVESTIGATIVE MEANS HAS NOT BEEN SUCCESSFUL.

YES.

SO I ASSUME IN THE AFFIDAVIT, THEY TRIED TO USE INFORMANTS IN TRYING TO GET IN AND HAVE BEEN UNSUCCESSFUL IN MAKING THOSE SNESTS.

PRECISELY. -- MAKING THOSE EFFORTS?

PRECISELY.

ALL RIGHT. THANK YOU VERY MUCH.