

## Fla. Can't Use Prostitution Sting Video In Robert Kraft Case

By **Carolina Bolado**

Law360 (August 19, 2020, 6:25 PM EDT) -- A Florida appeals court ruled Wednesday that the state cannot use video evidence collected by police in the day spa prostitution sting that ensnared New England Patriots owner Robert Kraft because it violates the Fourth Amendment.

Florida's Fourth District Court of Appeal affirmed the decisions by four different trial judges to suppress video evidence obtained as part of a multicounty law enforcement investigation into prostitution and alleged human trafficking at various licensed massage parlors and spas in Florida.

The appeals court said that the police departments failed to implement any techniques to minimize surveillance of innocent customers or workers in a massage room where they had a reasonable expectation of privacy.

The state had argued that there are no minimization requirements in the text of the Fourth Amendment, but the Fourth District said this ignores many years of clear federal jurisprudence on this issue.

"Should there be any doubt, as the state respectfully urges, that minimization procedures 'are not constitutionally required by the Fourth Amendment,' we hereby find they are and caution that to hold otherwise would be directly counter to the Constitution, civil liberties and the rule of law," the appeals court said.

The police departments failed to take even basic steps to protect the privacy of innocent clients, according to the opinion.

The Fourth District pointed to the Vero Beach Police Department's investigation as the "most egregious example" of a failure to minimize surveillance of innocent actors. In that investigation, the police department had cameras recording continuously for 60 days, and 30 days' worth of unmonitored recordings remain in the police department's possession, according to the opinion.

"We ascribe no ill motives to the procedural decisions made by the law enforcement agencies involved," the Fourth District said. "But at best, each department was lulled into a zone of complacency where complacency cannot exist."

The decision cripples the prosecution of Kraft and hundreds of other men who were arrested February 2019 in the widespread sting. Kraft was caught on camera at the Orchids of Asia Day Spa in Jupiter.

Despite initial claims that the investigation targeted the spas largely because of suspected human trafficking, a prosecutor told the court in the case against Kraft that there was no evidence of human trafficking.

Michael Ufferman, who represents two defendants caught up in the multicounty sting and argued the case before the Fourth District, called the decision a "victory for the Fourth Amendment."

"The surveillance utilized by law enforcement officials in this case failed to comply with constitutional requirements, and the only proper remedy is suppression, a remedy which will hopefully deter this

type of police misconduct in the future," Ufferman said. "I am hopeful that this will bring an end to this case, as every judge who has considered the matter (county court judges, circuit court judges, and now appellate judges) has concluded that the surveillance procedures were unlawful."

A spokesperson for the attorney general of Florida said the office is reviewing the ruling but declined to comment further. An attorney for Kraft declined to comment.

Judges Robert M. Gross, Melanie G. May and Cory J. Ciklin sat for the Fourth District.

Florida is represented by Ashley Moody, Amit Agarwal and Jeffrey Paul DeSousa of the Office of the Attorney General.

Kraft is represented by Frank A. Shepherd of GrayRobinson PA and William A. Burck, Derek L. Shaffer, Sandra Moser and Alex Spiro of Quinn Emanuel Urquhart & Sullivan LLP.

Additional defendants are represented by Michael Ufferman of Michael Ufferman Law Firm PA, Andrew B. Metcalf of the Law Offices of Green Metcalf & Lazan, William N. Shepherd, Jeff Schacknow, Christopher N. Bellows and Edward Diaz of Holland & Knight LLP and Tama Beth Kudman PA.

The cases are Florida v. Kraft, case number 4D19-1499, Florida v. Freels et al., case number 4D19-1655, and Florida v. Zhang et al., case number 4D19-2024, in the Fourth District Court of Appeal of Florida.

--Editing by Bruce Goldman.