

Decision 90 01 017 JAN 9 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KIT KARJALA, DBA SASSIE'S
ESCORT SERVICE

Complainant,

vs.

GENERAL TELEPHONE COMPANY OF
CALIFORNIA, INC.

Defendant.

ORIGINAL

Case 89-11-013
(Filed November 15, 1989)INTERIM OPINION

Complaint was filed on November 15, 1989 by Kit Karjala, doing business as Sassie's Escort Service (complainant, Sassie's) against General Telephone Company of California, Inc. (defendant, GTEC). Complainant alleges, "(GTEC) (a)ccused Sassie Escort of being a front for prostitution. Went to Judge Robert Thompson without notice and had Sassie's Escort Services' telephone turned off." The complainant seeks the immediate restoration of its telephone service, (213) 208-8900.

GTEC Tariff Rule 31, "Legal Requirements for Refusal or Discontinuance of Service" governs this case. Section 1 requires GTEC to disconnect existing service to a customer upon receipt from any authorized official of a law enforcement agency of a magistrate's written finding that probable cause exists to believe that the telephone facilities have been or are to be used in the commission or facilitation of illegal acts and that the character of such acts is such that, absent immediate action, significant dangers to public health, safety, or welfare will result.

Notice of evidentiary hearing was provided to complainant, GTEC, and the City of Los Angeles Police Department

(LAPD). The LAPD, as the concerned law enforcement agency under Rule 31, has the burden of both:

1. Proving that the use of the telephone service is prohibited by law, or that the phone service is used as an instrumentality to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action, significant dangers to public health, safety, or welfare will result, and
2. Persuading the Commission that the service should not be restored.

Evidentiary hearing to determine whether service should be restored immediately on an interim basis was held before Administrative Law Judge (ALJ) Lee in Los Angeles on December 5, 1989, within the 20-day period dating from the filing of the complaint required by Rule 31. Testimony was received from Officer John Rost of the LAPD, the complainant, and Neil Mawby of GTEC. The parties summarized their arguments verbally and the matter was submitted at the conclusion of the hearing.

Testimony of Officer J. Rost

Officer Rost testified on behalf of the City of Los Angeles. The affidavit of Officer Rost was the basis of a search warrant issued on October 5, 1989 by the Superior Court for the County of Los Angeles. The affidavit and search warrant were received in evidence. A search of a single-family residence occupied by the complainant located at 952 Princeton Drive, Marina Del Rey, California was authorized based on probable cause to

believe that violations of Penal Code Sections 266h¹ and 266i² were being committed there. The police were ordered to seize telephone bills, telephones, cellular telephones, telephone answering machines, cassette tapes, and utility bills tending to show the identity of the person(s) in possession and control of premises to be searched, among other things. The search warrant also authorized the police to intercept all incoming telephone calls and record them for a period of one hour after their arrival at the premises as evidence of violations of Section 266i of the Penal Code.

Rost summarized the allegations contained in the affidavit on the record. Rost has been a police officer for 15 years. He has been assigned to the West Los Angeles Area Vice Unit for the last seven months.

Rost noted that an advertisement for Sassie's Escort Service appears in the yellow pages of the GTEC directory of March 1989-February 1990. The advertisement reads, "Sassie's Escorts for the Discreet, 208-8900, Major Credit Cards Accepted, 24-Hour Outcall". Police department calls to that number were forwarded to a non-published telephone number. Investigation revealed that 208-8900 was being forwarded to Kit Karjala, whose address was

1 Penal Code Section 266h, Pimping, states:

"Any person who, knowing another person is a prostitute, ... derives support... from the earnings or proceeds of the person's prostitution, ...or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony,..."

2 Penal Code Section 266i, Pandering, states:

"Any person who: (a) procures another person for the purpose of prostitution; ...is guilty of pandering, a felony..."

listed as a GTE remote call forwarding station. Calls to that number are forwarded to (213) 578-1432, for which Kit Karjala, 952 Princeton Drive, Marina Del Rey, is the customer of record.

Rost bases his belief that complainant is engaged in the business of prostitution on several observations. Rost described his conversations with a citizen informant, the girlfriend of Sassie's accountant. The affidavit explains in detail how the informant formed her belief that Sassie's Escort Service was a prostitution service. Rost also notes that while Sassie's Escort service accepts credit cards in payment for services, it uses another business which has a merchant account with the credit card company to obtain payment. This practice is common among prostitution services, according to Rost.

On October 3, 1989, Rost secured a hotel room and called Sassie's Escort Service at 208-8900 to arrange for a woman to be sent out to his hotel room. Rost stated that a woman arrived and solicited him for an act of prostitution. When asked how he concluded that the woman was a prostitute, Rost testified that she advised the detective what sexual services she would perform and then produced a condom for him to use. The woman was arrested for violation of Penal Code Section 647, Subdivision (b).³

Rost's affidavit included the record of his October 3, 1989 arrest as well as a complaint application by another officer of the LAPD alleging prostitution by a woman sent by Sassie's in response to his call to 208-8900 on August 16, 1989. Based on his

3 Section 647 of the Penal Code makes it a misdemeanor to engage in disorderly conduct. Disorderly conduct includes solicitation or agreement to engage in any act of prostitution. A person agrees to engage in an act of prostitution when he or she accepts an offer or solicitation to engage in any lewd act between persons for money or other consideration. Some act, beside the agreement, must be done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act.

experience and the observations stated in the affidavit, Rost concluded that complainant Karjala is "actively involved in the crime of 266i P.C. (Pandering) and 266h P.C. (Pimping) both violations of the California Penal Code." A search warrant was issued by a judge of the superior court based on Rost's conclusions.

After summarizing the contents of his affidavit on the stand, Rost added that the complainant was not a legitimate escort service because she does not have an Escort Bureau police permit. The City of Los Angeles municipal code requires every escort service and each person employed by the service to have a permit to operate.

Testimony of Complainant

Kit Karjala, owner of Sassie's Escort Service, testified that Sassie's has been in business since February 1988. About 25 women work for Sassie's. Sassie's handles about 170 to 200 transactions per month. Karjala believes that none of her employees is a prostitute. None has any prior police record. Employees are terminated if she suspects them of prostitution; five to eight employees have been terminated for this reason. Three employees have been arrested for prostitution in the course of the police investigation giving rise to this complaint. Their cases were pending in Superior Court at the time of evidentiary hearing before this Commission, and all have been terminated.

Karjala has been in the escort business for four to five years. She operated an escort service in Seattle in 1986-87 which did have a credit card merchant account. She has not applied for a credit card merchant account for her present business. She asserts that it would be futile to apply for one, since credit card companies refuse to open merchant accounts for escort services.

Testimony of General Telephone

Neil Mawby testified for defendant GTEC. He sponsored the "Findings and Order to Disconnect Existing Telephone Service

and Prevent Reissue of the Affected Same Phone Numbers for a One Year Period Ending October 31, 1990" issued by the Superior Court on October 12, 1989. The Court ordered GTEC to disconnect the existing service for telephone number (213) 208-8900 and not reissue that number for a one-year period ending October 31, 1990. GTEC was served with the order on October 19, 1989 and terminated complainant's service on the same day.

Discussion

It has been determined that phone service is an interest in property entitled to protection against taking without due process. There must be probable cause to believe that facilities are to be used to commit illegal acts, and that the character of the acts is that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin v. Pub. Util. Comm. (1979) 23 C 3d 638, 663.)

Prior to termination of service, the police must show an impartial tribunal that there is probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. (Sokol v. Pub. Util. Comm. (1966) 65 C 2d 247). The Commission's obligation is to review the showing made before the magistrate in order to determine whether probable cause for summary termination existed. "In a civil administrative proceeding of this nature, where the liberty of the subscriber is not at stake, it is sufficient for purposes of the interim protection involved that the Commission limit itself to the face of the affidavits and an assessment of their adequacy to support the magistrate's finding." (Goldin v. Pub. Util. Comm. supra, at 668.)

The LAPD introduced the affidavit on which issuance of the search warrant of October 5, 1989 was based. Portions of that affidavit were objected to as inadmissible hearsay by complainant. The ALJ correctly instructed complainant that in hearings before the Commission the technical rules of evidence need not be applied (Public Utilities Code Section 1701) so long as the substantial

rights of the parties are preserved (Rule 64 of the Commission's Rules of Practice and Procedure). If evidence is objectionable on the grounds of hearsay, it will be weighed accordingly when all the evidence in the case is reviewed. This is consistent with the court's view. "[The Commission] should admit the subject evidence if it determines, disregarding those aspects of the affidavits which clearly fail to withstand constitutional scrutiny, that a sufficient basis for admission exists." (Goldin, supra, p. 669.)

The Supreme Court has adopted the "totality-of-the-circumstances" analysis to determine the sufficiency of an affidavit in support of a search warrant. "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for...conclud(ing)' that probable cause existed." (Illinois v. Gates (1983) 462 US 213, 238 and 239). The totality of the circumstances test is used to assess whether a search warrant affidavit based on hearsay establishes probable cause in California (People v. Rothen (1988) 203 CA 3d 684).

Rost did testify as to his observations and actions described in the affidavit and was available for complainant's cross examination. The affidavit incorporated a copy of another police officer's complaint against another agent of Sassie's for prostitution plus Rost's notes of his conversations with the citizen informant, whose statements concerning Sassie's were corroborated by police observations. Although the affidavit contains hearsay, we find that the totality of the allegations lead a reasonably prudent person to believe that violations of Penal Code Sections 266h and 266i were occurring at 952 Princeton Drive,

Marina Del Rey. We find that those violations were made possible in large part by telephone number (213) 208-8900, since prospective customers used that number, advertised in the yellow pages of the phone book, to contact Sassie's.

We find that the affidavit on which the search warrant dated October 5, 1989 was based does state probable cause to believe that telephone number (213) 208-8900 has been or is to be used to facilitate pimping or pandering, or both, which are illegal acts. The violation of criminal statutes is not always of a character that absent summary action, significant danger to public health safety and welfare will result. The pandering and pimping statutes are both designed to discourage prostitution by discouraging persons other than the prostitute from augmenting and expanding a prostitute's operation or increasing the supply of available prostitutes. (People v. Hashimoto (1976) 54 C 3d 862.) The affidavit establishes probable cause to believe that unless the telephone service is disconnected and remains disconnected, it will be used to facilitate prostitution and significant dangers to public health, safety, or welfare will result.

We find the affidavit herein sufficient to establish probable cause to believe that termination without notice was directly necessary to prevent continued use of telephone facilities as an instrumentality for violating Sections 266i and 266h of the Penal Code. Prompt and immediate action without prior notice was required, otherwise the complainant might have used the notice period to arrange for substitute telephone service or otherwise preserve the usefulness of its telephone number.

Therefore, the complainant's request for immediate reinstatement of telephone service to (213) 280-8900 is denied.

Findings of Fact

1. Complainant does business as Sassie's Escort Service and advertises her services in the yellow pages of the GTEC phone directory.

2. The business number for Sassie's Escort Service is (213) 208-8900.

3. The affidavit herein establishes probable cause to believe that Sassie's Escort Service is engaged in violations of Sections 266h and 266i of the California Penal Code.

4. The affidavit herein establishes probable cause to believe that the basic exchange access line known as telephone number (213) 208-8900 is being or is to be used as an instrumentality for the violation of 266h and 266i of the California Penal Code.

5. The nature of the violation of Penal Code Section 266h (pimping) and Section 266i (pandering) is such that absent summary termination of telephone service to (213) 208-8900, significant danger to the public health, safety, and welfare will result.

6. The City of Los Angeles Police Department has sustained its burden of proving that telephone number (213) 208-8900 is being used as an instrumentality to violate or assist in the violation of the law, and that the character of those acts is such that if telephone service were not discontinued, significant dangers to public health, safety, and welfare will result.

Conclusion of Law

Rule No. 31 of GTEC's tariffs requires that telephone service to (213) 208-8900 shall be disconnected and that telephone number shall not be reissued until November 1, 1990 as ordered by the Superior Court for the County of Los Angeles or until further order of this Commission.

INTERIM ORDER

The request of complainant Kit Karjala, doing business as Sassie's Escort Service, for immediate restoration of service to telephone number (213) 208-8900 is denied.

This order is effective today.

Dated JAN 9 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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