

Mailed
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Decision 96-10-031 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kayli Davidson,
Complainant,

vs.

Pacific Bell (U 1001 C),
Defendant.

ORIGINAL
Case 96-05-031
(Filed May 16, 1996;
amended May 24, 1996)

Brian McCarthy, Attorney at Law, for Kayli Davidson, complainant.
Scott Paisley, Attorney at Law, for Pacific Bell, defendant.
Paul Libassi, Police Officer, for San Diego Police Department, interested party.

OPINION

Procedure

Complainant seeks restoration of telephone service disconnected by reason of a magistrate's finding that the service was being used as an instrument to violate and assist in the violation of the penal laws of the State of California and the character of the acts are such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result.

The complaint was accepted for filing without review on May 16, 1996. It was found deficient because of improper verification and was corrected and refiled on May 24, 1996.

A duly noticed public hearing was held before Administrative Law Judge Orville I. Wright in San Diego on June 12, 1996, and the matter was submitted for decision on that date.

Evidence

The San Diego Police Department (SDPD) presented evidence, including: the Investigator's Report leading to the arrest of complainant on April 14, 1996, on the charge of Soliciting Prostitution (Section 647(b), Penal Code); the Affidavit for Phone Disconnect presented to the San Diego Municipal Court; and the Court's Order that Pacific Bell locate and disconnect the business telephone used by complainant doing business as A-1 For Players Only, Tranquility and For Players Only.

The arresting police officer's affidavit and report, admitted into evidence, set forth the circumstances of complainant's being charged with soliciting prostitution in specific detail. Complainant did not testify, and no evidence was offered on her behalf. Thus, the uncontroverted facts are those facts presented by SDPD.

SDPD organized an "escort detail" to inspect local escort services. A hotel room was rented and an undercover police officer telephoned several agencies, including that of complainant, posing as a customer

Reaching complainant by telephone, negotiations ensued culminating in complainant's agreeing to come to the hotel room hired by SDPD. In the hotel room with the undercover police officer, complainant accepted payment to perform lewd acts with the officer to stimulate his sexual gratification. However, none of the lewd acts or mutual touching discussed by the participants involved the type of bodily contact which is associated with the transmission of sexual diseases.

Discussion

For purposes of this proceeding, complainant admits to the solicitation of prostitution through use of her business telephone. She contends, however, that since the acts for which she received payment could not have resulted in the transmission of

any sexual disease, those acts could not pose a significant danger to public health and could be permissibly arranged by telephone.

This argument is without merit as it isolates limited health aspects of the rule, ignoring equally important considerations of public safety and public welfare.

The conduct described in the affidavit before the magistrate in this case is closely comparable to the conduct before the magistrate reviewed in Goldin v. Public Utilities Commission (23 Cal 3rd 638, 666). We adopt in this case the statement by the Supreme Court that:

"The affidavits before the magistrate which formed the basis of her issuance of the 'Finding of Probable Cause' herein abundantly indicate the existence of a situation which, absent immediate and summary action, would result in the continued facilitation of criminal offenses posing significant dangers to public health, safety, and welfare."

That the magistrate had probable cause to order the complainant's phone disconnected, was proven at hearing by the uncontroverted evidence of SDPD. Acts of prostitution solicited by telephone, are clearly within the type of activity properly controlled by disconnection of the telephone. It is immaterial that the acts of prostitution are committed by participants careful of their own health.

Findings of Fact

1. Complainant seeks restoration of telephone service disconnected by reason of a magistrate's finding that the service was being used as an instrument to violate and assist in the violation of the penal laws of the State of California and the character of the acts are such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result.

2. For purposes of this proceeding, complainant admits to the solicitation of prostitution through use of her business telephone. (Section 647(b), Penal Code.)

3. Complainant asserts the specific acts of prostitution offered for pay did not involve the type of bodily contact which is associated with the transmission of sexual diseases.

4. Acts of prostitution solicited by telephone are properly controlled by disconnection of the telephone.

5. It is immaterial that the acts of prostitution are committed by participants careful of their own health.

Conclusion of Law

The magistrate had probable cause to issue the order for disconnection of complainant's telephone. The complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint is denied.
2. This docket is closed.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners