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Appeals court rules in favor of Robert Kraft in Florida prostitution case, tosses video footage - The Boston Globe

Yvonne Abraham

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The ruling sided with Kraft, other men arrested by police, and the women targeted in what began as an investigation into prostitution.

Kraft has pleaded not guilty to two misdemeanor prostitution charges stemming from a police investigation at Orchids of Asia Day Spa in Jupiter, Fla. He was charged in February 2019 based largely on secret video recordings a judge had authorized under a “sneak-and-peek” warrant.

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Wednesday’s unanimous ruling left the criminal charges intact but left prosecutors without their most powerful evidence, videotapes

that allegedly captured Kraft and some two dozen other men paying for sex inside the spa.

Prosecutors must now decide whether to appeal, proceed with the case without the tapes, or drop the charges.

“We are in the process of reviewing the opinion and will comment publicly at the appropriate time” Mike Edmondson, a spokesman for Palm Beach County State Attorney Dave Aronberg, said in a statement.

A spokesperson for Kraft released a statement that read “we are pleased that the Florida’s Fourth District Court of Appeal has ruled in our favor by affirming suppression of recordings that should never have been taken.”

“In doing so, the appellate panel unanimously agreed with every judge who has examined these issues and ruled that law enforcement acted unconstitutionally when conducting their investigation,” the statement read.

Legal specialists said the decision likely scuttles the prosecution’s case.

“With no video evidence, there is no case, and absent an appeal to the Florida Supreme Court, I expect the prosecution to dismiss the charges soon,” said Neama Rahmani, a former federal prosecutor who also served as enforcement director of the Los Angeles City Ethics Commission.

Rahmani said the government's error was obtaining a "very overbroad" search warrant to equip the spa with hidden cameras. The warrant improperly allowed the recording of "all customers, including those who were not targets of the investigation and others who were wholly innocent altogether," Rahmani said.

"The state also failed to consider the very high expectation of privacy when one is nude, and that courts are likely to protect those privacy interests," Rahmani said.

Martin G. Weinberg, a Boston defense lawyer, said the decision was "predictable and unassailable."

"The open-ended use of video surveillance of private conduct not otherwise visible to the public violated all of the cornerstone principles of the Fourth Amendment which protect citizens privacy and its state law corollaries in Florida," he said by e-mail.

In its ruling, the appeals court described the type of police surveillance at issue as "extreme."

"While there will be situations which may warrant the use of the techniques at issue, the strict Fourth Amendment safeguards developed over the past few decades must be observed," the decision stated. "If they are not, any evidence obtained could very well be declared inadmissible as a matter of constitutional law. To permit otherwise would yield unbridled discretion to agents of law enforcement and the government, the antithesis of the

constitutional liberty of people to be secure against unreasonable searches and seizures.”

A district court judge had previously ruled that the video evidence was inadmissible, saying police had not satisfied guidelines for sneak-and-peek warrants meant to avoid surveillance of innocent customers. Prosecutors asked the appeals court to reverse that decision.

On Wednesday, the appeals court cited Florida laws that criminalize “video voyeurism” and bar stores from installing video cameras in dressing booths.

“While Florida has no statute that expressly addresses warrants for surreptitious, video-only surveillance by police, the Florida Legislature has recognized a legitimate expectation of privacy in this type of location,” the ruling stated. “These laws clearly undermine the state’s argument that the defendants lacked standing because they had, at most, a diminished expectation of privacy in a business open to the public.”

Prosecutors argued that because Kraft and the other defendants knew the spas were operating as brothels, they lost privacy protections by knowingly committing a crime.

Police had obtained a warrant to equip the spa with hidden cameras. The cameras allegedly captured Kraft and a number of other men paying women to perform sexual acts on them during

massage sessions.

In a September 2019 filing, Florida Attorney General Ashley Moody's office said the warrant passed legal muster and described Kraft's guilt as "a virtual certainty."

Moody's office said that of 39 recordings of spa customers, only four failed to capture criminal conduct.

None "of those four individuals were recorded naked," they wrote. Two were men and two were women.

Bob Hohler of the Globe staff contributed to this report.

Travis Andersen can be reached at travis.andersen@globe.com. Follow him on Twitter [@TAGlobe](https://twitter.com/TAGlobe). John R. Ellement can be reached at john.ellement@globe.com. Follow him on Twitter [@JREbosglobe](https://twitter.com/JREbosglobe).