

FOURTEENTH COURT OF APPEALS OF TEXAS

Jeff Wingwai Ma v. State

Ma v. State · No. Nos. 14-16-00028-CR, 14-16-00029-CR · Decided December 1, 2016

SUMMARY

The Fourteenth Court of Appeals of Texas affirmed, as modified, the convictions of Jeff Wingwai Ma for owning or operating an unlicensed massage establishment and a massage establishment constituting a sexually oriented business. The court held that the evidence was sufficient to establish both the sexually oriented nature of the business and Ma's ownership or operation of it. The court modified the judgments to reflect that Ma pleaded not guilty and was not sentenced pursuant to a plea bargain.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Sharon McCally; Chief Justice Frost; Justice McCally; Justice Brown
JURISDICTION	Texas
DECIDED	December 1, 2016
DOCKET	Nos. 14-16-00028-CR, 14-16-00029-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions in two related criminal cases for offenses involving operation of an unlicensed massage establishment and operation of a massage establishment that constituted a sexually oriented business.
STANDARD OF REVIEW	The court viewed all evidence in the light most favorable to the verdict and determined whether a rational fact finder could have found the essential elements of the offenses beyond a reasonable doubt. The court presumed that the fact finder resolved conflicts in the evidence in favor of the prevailing party and deferred to those resolutions.
PRECEDENTIAL VALUE	Nonprecedential unpublished memorandum opinion
PARTIES	Jeff Wingwai Ma v. The State of Texas

TOPICS

criminal procedure

evidence

standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Traveler Spot Spa was a sexually oriented business under the Texas Local Government Code.
2. Whether the evidence was sufficient to prove that Ma owned or operated Traveler Spot Spa.
3. Whether the appellate court could modify clerical errors in the judgments to reflect that Ma pleaded not guilty and was not sentenced pursuant to a plea bargain.

HOLDINGS

1. The evidence was sufficient to support the finding that Traveler Spot Spa was an 'other commercial enterprise' whose primary business was offering services intended to provide sexual stimulation or sexual gratification, and therefore was a sexually oriented business under Texas Local Government Code section 243.002.
2. The evidence was sufficient to support the trial court's finding that Ma owned or operated Traveler Spot Spa.
3. The appellate court had authority to modify the judgments to accurately reflect that Ma pleaded not guilty and was not sentenced pursuant to a plea bargain, and affirmed the judgments as modified.

KEY QUOTATIONS

“In determining whether the evidence is sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” (6)

“Accordingly, we modify the trial court’s judgments to reflect appellant pleaded not guilty and was not sentenced pursuant to a plea bargain agreement. We affirm the trial court’s judgments as modified.” (10)

FACTUAL BACKGROUND

Jeff Wingwai Ma was connected to Traveler Spot Spa through assumed-name registrations, bank records, utility bills, merchant-service documents, and other business records. The spa was not licensed as a massage establishment, advertised under adult-entertainment and erotic-massage headings, and maintained practices and rules suggesting that its primary business involved sexual services rather than legitimate massage therapy. During an undercover visit, an employee searched the officer for recording devices, performed a massage, and agreed to perform oral sex. The trial court convicted Ma of both charged offenses.

PROCEDURAL HISTORY

The County Criminal Court at Law No. 15 of Harris County found Ma guilty in both cases and assessed twenty days' confinement in the Harris County Jail and a \$500 fine in each case. On appeal, Ma challenged the

sufficiency of the evidence supporting the convictions. The Fourteenth Court of Appeals modified both judgments to correct clerical errors concerning his plea and plea-bargain status and affirmed the judgments as modified.

DISPOSITION

affirmed

CASES CITED

- Whatley v. State, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014)
- Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)
- 8100 N. Freeway Ltd. v. City of Houston, 329 S.W.3d 858, 862 (Tex. App.—Houston [14th Dist.] 2010, no pet.)
- Henley v. State, 493 S.W.3d 77, 89 (Tex. Crim. App. 2016)
- Pedraza v. State, 34 S.W.3d 697, 699-700 (Tex. App.—Houston [14th Dist.] 2000, no pet.)
- French v. State, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992)