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COURT OF APPEALS  
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent,

-against-

MICHAEL LAMB,  
Appellant.

NO. 77

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27 Madison Avenue  
New York, New York  
November 17, 2021

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO

Appearances:

MARK W. ZENO, ESQ.  
CENTER FOR APPELLATE LITIGATION  
Attorney for Appellant  
120 Wall Street  
New York, NY 10005

JOHN T. HUGHES, ESQ.  
NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE  
Attorney for Respondent  
One Hogan Place  
New York, NY 10013

Karen Schiffmiller  
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: This is appeal number 77,  
2 the People of the State of New York v. Lamb.

3 Counsel?

4 MR. ZENO: Good afternoon, Your Honors. My name  
5 is Mark Zeno, and I represent Appellant Michael Lamb.

6 May I reserve two minutes for rebuttal?

7 CHIEF JUDGE DIFIORE: Two minutes, sir?

8 MR. ZENO: Two minutes, please.

9 CHIEF JUDGE DIFIORE: Yes, you may.

10 MR. ZENO: May it please the Court, the court  
11 below erred in its interpretation of the sex trafficking  
12 statute. That error affected the resolution of two  
13 critical issues at the trial. First, the court erred in  
14 holding that New York had geographic jurisdiction to  
15 prosecute Mr. Lamb for trafficking Jasmine C. And second,  
16 the court erred when it answered a jury note and told the  
17 jury that the People were not required to prove that Mr.  
18 Lamb advanced prostitution by trafficking a specified  
19 person.

20 The actus reus - - -

21 JUDGE GARCIA: Counsel, I'm sorry. Didn't - - -

22 MR. ZENO: Sure.

23 JUDGE GARCIA: Is part of your argument, at  
24 least, is that this is a one-element crime? Is that right?

25 MR. ZENO: I don't really think it's correctly



1 characterized as a one-element crime.

2 JUDGE GARCIA: Okay.

3 MR. ZENO: I would agree that there are multiple  
4 things that the People have to prove. They have to prove  
5 that my client profited or advanced prostitution. And they  
6 have to prove that he did so in a specified way, through  
7 specified coercive conduct. But the statute links those  
8 elements by use of the word "by". And so, yes, there's  
9 more than one element, but that one element is tethered to  
10 the other element. So it doesn't - - - it's not a  
11 standalone element.

12 JUDGE GARCIA: I understand that argument. So  
13 would you - - - and I know there was no objection at trial.  
14 Would you agree that the initial charge was correct?

15 MR. ZENO: The initial charge was correct, yes.

16 JUDGE GARCIA: So your position is, it was the  
17 supplemental charge that undid the original charge?

18 MR. ZENO: That's correct. The initial charge  
19 which followed - - - which followed the CJI - - -

20 JUDGE GARCIA: Now - - -

21 MR. ZENO: - - - was correct.

22 JUDGE GARCIA: - - - what if - - - and I know  
23 this isn't the case, but let's say you flipped the conduct  
24 here, right. So you had - - - let's call them the threats  
25 for shorthand in New York, and you had the other activity



1 in New Jersey. Could you charge it to say, during the  
2 relevant period, the defendant advanced prostitution and  
3 profited from prostitution, and that he did so by  
4 threatening this person in New York? Would that be okay?

5 MR. ZENO: Threatening the person in New York  
6 with the goal of coercing her to - - -

7 JUDGE GARCIA: Yeah, whatever the language is in  
8 the part.

9 MR. ZENO: - - - be a prostitute in New Jersey?  
10 Then yes, I do think that would be sufficient because the  
11 intended result was, you know, one - - - he manifested his  
12 intent, his criminal intent, to promote prostitution in New  
13 York by - - - I mean, by - - - in New Jersey, by - - -

14 JUDGE GARCIA: Right.

15 MR. ZENO: - - - the threats in New York.

16 JUDGE GARCIA: Okay.

17 JUDGE SINGAS: So is your argument that someone  
18 could never be prosecuted or we could never find  
19 jurisdiction for threats that occur outside the state if  
20 someone is advancing an enterprise in New York State, or  
21 you're just saying in this particular case because of that  
22 bridge between the two parts of the charge haven't been  
23 met? I'm just trying to understand - - -

24 MR. ZENO: Right.

25 JUDGE SINGAS: - - - your argument.



1 MR. ZENO: So it - - - it's - - - I would never  
2 say never. There needs to be proof of a connection that  
3 the threats were for the purpose of inducing the end result  
4 in New York, which was the prostitution.

5 JUDGE SINGAS: So it's not the fact that it was  
6 out-of-state conduct per se; it's the fact that you think  
7 the People failed in establishing that connection?

8 MR. ZENO: Correct. If they had shown with  
9 proof, you know, that his intent was to force Jasmine C. to  
10 become a prostitute in New York State, then that would have  
11 been sufficient. But there was no proof whatsoever that  
12 that was the intended result.

13 JUDGE GARCIA: Well, it seems more - - - Counsel,  
14 though, your argument, that to me sounds a little too much  
15 like a sufficiency argument. I understood your argument to  
16 be the instruction itself disassoci - - - the supplemental  
17 instruction disassociated the part, so we don't - - - they  
18 didn't need to find that, right?

19 MR. ZENO: Well, there are two separate  
20 arguments. There are two separate errors here. There's  
21 the - - - there's the geographic jurisdiction issue - - -

22 JUDGE GARCIA: Um-hum.

23 MR. ZENO: - - - as a pure question of whether  
24 the People proved the sufficient connection, and then  
25 there's the second issue, when the Court responded to the



1 jury note, telling them that the two - - - the two elements  
2 didn't need to be linked, and that was a - - - that was not  
3 a meaningful and accurate response to the jury's question.  
4 So - - -

5 JUDGE GARCIA: But you're not making a legal  
6 sufficiency argument, are you?

7 MR. ZENO: Well, I think geographic jurisdiction  
8 and legal sufficiency - - - there was not sufficient  
9 evidence of jurisdiction, so - - -

10 JUDGE GARCIA: Okay.

11 MR. ZENO: to that extent, it is a legal  
12 sufficiency argument.

13 JUDGE GARCIA: All right.

14 JUDGE FAHEY: So if your argument that we have  
15 to, in essence, adopt Judge Titone's dissent in Giordano --  
16 is that what you're saying to us?

17 MR. ZENO: Well, I have trouble with - - -

18 JUDGE FAHEY: I'm not trick you or trap you. I  
19 understand it's always reluc - - - anybody would naturally  
20 be reluctant to argue. But some of the analysis in here -  
21 - -

22 MR. ZENO: Well, it's very - - - it's a very - -  
23 - I think that's a more correct analysis. I don't think  
24 that the Court has to find that Giordano was wrongly  
25 decided. Giordano was a venue issue - - -



1 JUDGE FAHEY: Um-hum.

2 MR. ZENO: - - - for one - - - for one. And this  
3 is a geographic jurisdiction one deals with, just a choice  
4 of counties. The other deals with the power of the court  
5 to prosecute. And the other is that there are significant  
6 differences between the promoting prostitution article,  
7 Article 240, and sex trafficking on the one hand, versus  
8 the promoting gambling article on the other. Promoting  
9 gambling in the first degree, which was at issue in  
10 Giordano, was an enhancement offence. It was an  
11 enhancement of the base level of promoting gambling.

12 As we argue in our brief, sex trafficking, it  
13 stands totally apart from promoting prostitution, which is  
14 the corollary to Giordano. For example, there are other  
15 promoting prostitution offenses. There are a range of  
16 them, with different levels of severity, based on the  
17 conduct, including promoting prostitution in the second  
18 degree, which the - - - which penalizes advancing  
19 prostitution by compelling a person by force or  
20 intimidation to become a prostitute. I mean, that's - - -

21 JUDGE FAHEY: I guess - - - yeah.

22 MR. ZENO: - - - that's the enhancement offense.  
23 That's the corollary toward - - - to Giordano.

24 JUDGE FAHEY: It seems though that - - - there  
25 are - - - I - - - in my mind, identify three specific



1 public policy implications of what you're arguing, or at  
2 least what we should look at, first being the validity of  
3 the precedent itself in Giordano, the second being how that  
4 would affect the limits of state jurisdiction in our  
5 analysis of the elements, and the third being the  
6 practicality of policing in an environment where it's  
7 totally different than Giordano, in an environment where  
8 communication is almost instantaneous and limitless. How  
9 does one police that environment with the kind of, in many  
10 way, impractical analysis of arbitrary lines as controlling  
11 the policing powers of the state over particular  
12 activities?

13 So those are - - - those kinds of activities - -  
14 - it all kind of fits in within that. And I have to admit,  
15 I'm a little lost in saying that we should separate the  
16 jurisdictional analysis from the jury note analysis because  
17 it seems to me that they rise or fall together. So those  
18 are my problems with it.

19 MR. ZENO: Well, that's a lot to answer.

20 JUDGE FAHEY: I know. So pick your - - -

21 MR. ZENO: Let me - - -

22 JUDGE FAHEY: - - - pick your poison. Go ahead.

23 MR. ZENO: Let me start with the policing aspect  
24 of it. I mean, the answer is that cooperation between, you  
25 know, state police offices is the answer to this. New



1 Jersey's right next door. New Jersey could have prosecuted  
2 this as sex trafficking. They have their own sex  
3 trafficking statute. These actions took place between New  
4 Jersey citizens on - - - in New Jersey, so a phone call  
5 might have been the easy answer to that.

6 And I see my red light is on, but if I could just  
7 for - - -

8 CHIEF JUDGE DIFIORE: Yes, you may, sir.

9 MR. ZENO: - - - a minute?

10 In terms of the linkage, they are certainly  
11 linked, that the "by" - - - that "by" means - - - you know,  
12 is a limiting, causal word. It creates a causal action.

13 JUDGE FAHEY: Well, that's what I was thinking.  
14 It - - - not necessarily - - - forgetting about how you  
15 come out on it, it seems to me that it's very hard to  
16 separate those two issues in any legal analysis.

17 If we give an instruction on jurisprudence, it -  
18 - - and it's a factual question, then we - - - clearly,  
19 it's going to bleed into the jury instruction.

20 MR. ZENO: Well, they bleed together, Judge.  
21 They really do, but one is - - - one is finding - - -  
22 they're - - - one is working - - - we're sort of compelled  
23 to work within the framework of Giordano to some extent on  
24 the jurisdictional issue. But one is a simple causation  
25 question, that the stat - - - and that that's the jury note



1 answer.

2 JUDGE FAHEY: But you see what you're arguing.  
3 We'd have to say "by" means one thing on the jurisdictional  
4 issue, but it means something else when we get to the jury  
5 note. That in - - - that doesn't make a lot of sense to  
6 me.

7 MR. ZENO: Well, I agree that the - - - the plain  
8 meaning of "by" in these circumstances seems very clear to  
9 me. It says you promote prostitution by a threat.

10 JUDGE FAHEY: Um-hum.

11 MR. ZENO: You have to prove that connection.  
12 You have to prove that the threat promoted prostitution.  
13 To me, it's not complicated. Giordano, I agree,  
14 complicates the analysis.

15 JUDGE SINGAS: Yeah, but for jurisdiction, I - -  
16 - why is it not simply, in a multi-element charge, if one  
17 of the elements was in the jurisdiction, then you are  
18 allowed to prosecute it? I mean, are we really saying that  
19 confronted with a trafficking operation in New York, we  
20 should pick up the phone and call New Jersey and ask them  
21 to prosecute it for us?

22 MR. ZENO: We are saying that if the language of  
23 the statute requires that you promote prostitution by a  
24 particular action. So if - - - you can't just say an  
25 element occurred in New York. Yes, there was promoting



1 prostitution in New York, and we don't contest that, but it  
2 - - - it re - - - the statute is, as drafted, requires that  
3 you promote prostitution by a particular action.

4 You know, there are a range of types of  
5 threatening conduct here, some of which are not even  
6 illegal, some of which are not even tied to prostitution,  
7 that are covered by the statute. For example, withholding  
8 a passport. So if somebody withholds a passport in New  
9 Jersey for no - - - unconnected with trying to promote  
10 prostitution, for example, and they also promote  
11 prostitution in New York, by your suggested reading, you  
12 could prosecute them for sex trafficking in New York  
13 because you're - - - you - - - because one of elements  
14 occurred in New York. And - - - and that - - - the statute  
15 just doesn't permit that. It wasn't designed for that  
16 purpose.

17 JUDGE SINGAS: But I think that goes back to  
18 Judge Garcia's point that's it's more like a sufficiency  
19 because then the answer is, maybe, that's a not guilty, or  
20 maybe that's a trial order of dismissal. But not that  
21 there's no jurisdiction because if there was the  
22 connection, would you agree that there would be  
23 jurisdiction?

24 MR. ZENO: If there - - - if there was - - -

25 JUDGE SINGAS: If there - - - if the People had



1 adequately connected the coercive action with the operation  
2 in New York, would there be jurisdiction in New York?

3 MR. ZENO: Yes, because then the "by" would  
4 operate correctly as it's - - -

5 JUDGE SINGAS: Okay.

6 MR. ZENO: - - - intended in the statute.

7 JUDGE CANNATARO: So that is - - - it is more  
8 sufficiency than jurisdiction.

9 MR. ZENO: Well, again, sufficiency of - - -  
10 proof of jurisdiction, and yes, the - - - we have to  
11 interpret what the word "by" means to determine whether  
12 there was - - -

13 JUDGE CANNATARO: Well - - -

14 MR. ZENO: - - - sufficient proof of  
15 jurisdiction.

16 JUDGE CANNATARO: - - - hypothetically, if the  
17 defendant here had said, I'm going to tell your father all  
18 about this, unless you show up at this address in Manhattan  
19 on Tuesday night, that seems to satisfy the "by"  
20 requirement.

21 MR. ZENO: It does. It would.

22 JUDGE CANNATARO: So jurisdiction would be  
23 present in that scenario.

24 MR. ZENO: If the "by" was satisfied, correct. I  
25 agree.



1 CHIEF JUDGE DIFIORE: Thank you, Counsel.

2 Counsel?

3 MR. HUGHES: Good afternoon, Your Honors, and may  
4 it please the Court, John Hughes for the People.

5 New York has jurisdiction if any element of a  
6 crime was fulfilled here, and in this case - - -

7 JUDGE GARCIA: Counsel, let me ask you on - - -  
8 on that point.

9 MR. HUGHES: Yes.

10 JUDGE GARCIA: So let's say the defendant has the  
11 same type of operation as this case in New York, and it's a  
12 multi-state kind of recruiting in Jersey, whatever. And  
13 then he goes to California to visit some friends, and they  
14 have their own operation out there. And they say, you  
15 know, we could really use your help out there; you're good  
16 at this. You know, could you go out and help us with this  
17 one person? We really want to threaten and coerce her into  
18 become - - - and he does that. And they say, thanks a lot;  
19 you really helped us out here. And he flies back to New  
20 York.

21 Do you have a sex trafficking count in New York?

22 MR. HUGHES: Under those facts, I think probably  
23 not. And there's one thing I want to clear up here. Our  
24 position is not that, you know, the elements of this crime,  
25 like, can be completely unrelated to one another, like in



1 the example you gave. You know, I would say that these,  
2 you know, statutes have to relate to one another in one  
3 sense, just that the - - - as long as the coercive acts, as  
4 was proven here, are meant to further the same multi-state  
5 prostitution enterprise that we proved that defendant was  
6 running in this case - - -

7 JUDGE GARCIA: And why didn't - - -

8 MR. HUGHES: - - - that that's sufficient for  
9 jurisdiction.

10 JUDGE GARCIA: Why didn't a supplemental  
11 instruction sever that requirement?

12 MR. HUGHES: Well, as I understand it,  
13 defendant's objection - - - well, first of all, the jury  
14 note was simply asking about whether the element one, for  
15 advancing or profiting from prostitution has to relate to  
16 the same person as the person who is the victim of the  
17 actual coercive acts, as described in element two. So that  
18 was really the only issue that the court was responding to.

19 JUDGE GARCIA: But it seems like with that  
20 supplemental instruction, a jury could convict the  
21 defendant of sex trafficking in New York under my  
22 hypothetical.

23 MR. HUGHES: Well, here, Your Honor, I'd - - -  
24 first of all, I think we absolutely proved that it - - -  
25 that defendant's prostitution enterprise was meant to be



1 furthered by the coercive acts that he actually - - - that  
2 he actually committed in this case, with which he was,  
3 like, threatening the victim.

4 So here I - - - here I think the - - -

5 JUDGE GARCIA: But that's a harmless error kind  
6 of analysis, right?

7 MR. HUGHES: Well, I don't think there was a  
8 charge - - -

9 JUDGE GARCIA: I mean, that's a bad charge, but  
10 it's okay because they would've had to find this anyway  
11 kind of argument.

12 MR. HUGHES: Well, in the first place, Your  
13 Honor, the defendant did not raise any objection to the  
14 charge - - - the initial charge - - -

15 JUDGE GARCIA: Right.

16 MR. HUGHES: - - - when it was charging these  
17 elements. And the later question was really only about,  
18 does element one and element two have to pertain to the  
19 same person? So you know, first of all, defendant has not  
20 preserved any claim about whether the elements were  
21 properly charged to the jury in the first place.

22 JUDGE CANNATARO: So to take - - - to take the -  
23 - - your adversary's argument, what does "by" mean in the  
24 context of this statute, since I take you to state that  
25 there doesn't have to be that personal connection between



1 the promotion and the harassment or threatening, whatever -  
2 - - whatever it's referred to as.

3 MR. HUGHES: Well, it - - -

4 JUDGE CANNATARO: What is "by" in the statute?

5 MR. HUGHES: Well, actually, in 2018, when this  
6 court decided *People v. Roberts*, the majority noted that  
7 the word "by", you know, it's - - - this preposition can  
8 mean very different things in different statutes, depending  
9 on the surrounding context.

10 JUDGE CANNATARO: Okay. But what does it mean  
11 here?

12 MR. HUGHES: Well, here, I think it simply  
13 suggests that the - - - again, the coercive acts need to  
14 relate to the prostitution enterprise, that's the subject  
15 of the advance or profit from prostitution that constitutes  
16 element one.

17 And also I want to turn back to *Giordano* for a  
18 minute.

19 JUDGE RIVERA: All right. So Counsel, if I can  
20 just clarify now your position because I'm - - - I think I  
21 may have misunderstood your briefing on this. It strikes  
22 me that you're now arguing that there's jurisdiction as  
23 long as there's profiting in New York, right. That gives  
24 you your jurisdiction because you're saying that's a  
25 separate element, but that actually he could not have been



1 convicted if you didn't connect the conduct in New Jersey  
2 to that -- let's just use profiting for the moment --  
3 profiting from prostitution in New York. Am I now - - - is  
4 that your argument?

5 MR. HUGHES: Yes. I - - - we're saying that as  
6 long as these two elements, you know, have that kind of  
7 relation where the coercive acts are meant to further the  
8 prostitution enterprise, then that is sufficient, and that  
9 - - - and we think that was sufficient here in this case.

10 JUDGE RIVERA: No, no, but - - - okay, so that -  
11 - - then why isn't defense appellate counsel correct that  
12 it really is, then, the "by" links these different me - - -  
13 ways in which the defendant would indeed commit the crime  
14 of sex trafficking, as defined in the statute?

15 MR. HUGHES: Well, as this court has found - - -

16 JUDGE RIVERA: It strikes me you're making - - -  
17 you're - - - it strikes me that you're now agreeing with  
18 his interpretation of the statute, but your position is,  
19 but we showed that link, and his position is, you didn't  
20 show that link.

21 MR. HUGHES: So I'm sorry; you have to give me a  
22 moment, Your Honor. The important point here is simply  
23 that the word "by" does not collapse two elements into one.  
24 And that's really what's at the heart of this jurisdiction  
25 claim, is how many elements the sex trafficking statute



1 actually has. And that's the question that this court  
2 already answered in People v. Giordano.

3 JUDGE RIVERA: But Giordano, because it is about  
4 venue, works from the assumption that all conduct, as was  
5 the case there, is occurring within the borders of New York  
6 State. The prosecutor wasn't relying on conduct outside  
7 the borders of the New York State, which is what's going on  
8 in this case. It strikes me that you have a real  
9 Constitutional problem if you - - - if you're doing what  
10 Judge Garcia described in his hypothetical.

11 MR. HUGHES: Well, I don't think so, Your Honor,  
12 because People v. Giordano is important because of its  
13 statutory interpretation principles, not because it  
14 involved venue as opposed to jurisdiction.

15 JUDGE RIVERA: Yes, but it - - - if as you  
16 mentioned, the court has already said, "by" can mean  
17 different things in different statutes, so for the venue  
18 statute, when all conduct is within the borders of New York  
19 State, "by" means whatever Giordano said it had to mean. I  
20 don't know that he's not - - - counsel is not arguing for  
21 overruling Giordano. It doesn't seem that it necessarily  
22 needs to be overruled, given the context of the question as  
23 presented there, right.

24 But here, because you, yourself, are saying you  
25 got to have this link, then "by" must mean something else.



1 MR. HUGHES: Well, Your Honor, in Roberts, when  
2 this court said that the word "by" can mean things in  
3 different contexts - - -

4 JUDGE RIVERA: Um-hum.

5 MR. HUGHES: - - - it was referring to different  
6 penal law offenses. I don't think that crimes can be  
7 interpreted to have different numbers of elements just  
8 because the defense is challenging venue, as opposed to  
9 jurisdiction. And importantly, too, Giordano, which  
10 interpreted the first degree of promoting gambling statute  
11 was decided in 1995. The legislature enacted the sex  
12 trafficking statute in 2007. And in doing so, the  
13 legislature copied the structure and the language of first-  
14 degree promoting gambling when it was writing the sex  
15 trafficking statute. So therefore, I think we have to  
16 presume that the legislature did, in fact, mean for the sex  
17 - - -

18 JUDGE RIVERA: But you - - - but the legislature,  
19 we have to presume, understood the Constitutional  
20 limitations on its - - - the state's ability to prosecute  
21 for actions that are disconnected from, at a minimum, some  
22 consequence in New York. I mean, it couldn't possibly have  
23 intended for New York State prosecutors to drag people in.  
24 We'll just take New Jersey, since it's just, you know, a  
25 train, car ride, bus ride, walk ride away, to bring them



1 within New York to prosecute them for actions that only  
2 have - - - only occur and only have consequences in New  
3 Jersey.

4 MR. HUGHES: Well - - -

5 JUDGE RIVERA: I mean, I would think the New  
6 Jersey prosecutors have something to say about that.

7 MR. HUGHES: Well, Your Honor, I disagree with  
8 the premise of that question, which is that - - - is that  
9 this case - - - in terms of the amount of contact that this  
10 case had with New York. There are many contacts with this  
11 one. Defendant was publishing hundreds of ads in New York,  
12 recruiting both patrons and sex workers. He sought to  
13 recruit young women from homeless shelters in New York to  
14 work for him as escorts. His Twitter page labeled his  
15 enterprise as "Lavish Escorts, NYC" - - -

16 JUDGE RIVERA: Yeah, I - - - but he doesn't  
17 dispute that. I think the issue is the one person that  
18 he's convicted on is conduct - - - he argues it; I know you  
19 take a different position. I'm just saying his argument is  
20 all of that conduct is - - - occurs in New Jersey, and it's  
21 not intended to further the enterprise in New York. So  
22 that's where he's saying that's what's missing from the  
23 prosecution's case.

24 MR. HUGHES: Well, now here, I think we  
25 absolutely proved that by these coercive acts, he did mean



1 to further the enterprise that was the subject of the  
2 advances or profit-from prostitution - - -

3 JUDGE WILSON: Can I - - -

4 MR. HUGHES: - - - in element one of the statute.

5 JUDGE WILSON: Can I switch you over a different  
6 subject? I wanted to have you address for a moment or two  
7 the pro se brief, and particularly the question as to the  
8 sufficiency of the indictment and the bill of particulars.  
9 So at least as I see, even after the bill of particulars is  
10 answered, what the defendant gets is time frames that are  
11 about a year long, as to when the conduct might have  
12 occurred, April 1st to April - - - of 2014 to April 30th of  
13 2015. And all the bill of particulars adds is a location,  
14 "New York County and elsewhere".

15 So if you imagine that the defendant here is  
16 running here some sort of big prostitution ring in New  
17 York, and the purpose of both the bill of particulars and  
18 the indictment is to give him, among other things, some  
19 ability to know exactly what he's being charged with, how  
20 does he know what this is about? How is this sufficient?

21 MR. HUGHES: Well, Your Honor, I think like this  
22 court's decision in D'Angelo, and CPL - - - the practice  
23 commentaries, the CPL 200.50, it's clear that for - - -  
24 just for facial sufficiency purposes, it's enough for the  
25 indictment to simply include the statutory text, you know,



1 obviously it includes the time frames, and supplement that  
2 with other details as needed in a bill of particulars, such  
3 as here, where the bill of particulars informed defendant  
4 that, you know, for example, there are multiple victims.  
5 And I'll note, too, that the trial court also - - -

6 JUDGE WILSON: It didn't even say New Jersey; it  
7 said "New York County and elsewhere". So I mean, might - -  
8 - that might even mislead him, right? He's got a bunch of  
9 prostitutes working for him in New York City. This is a  
10 year-plus time period. How does that tell him that these  
11 two that are at issue?

12 MR. HUGHES: Well, Your Honor, first of all, his  
13 enterprise was definitely a multi-state enterprise. He  
14 characterizes it the entire tristate area. But more to the  
15 point, I don't think that there is any requirements that an  
16 indictment needs to allege every single county that might -  
17 - -

18 JUDGE WILSON: But how about - - - how about - -  
19 - how about - - -

20 MR. HUGHES: - - - or every single - - -

21 JUDGE WILSON: How about the bill of particulars?

22 MR. HUGHES: Yeah, I mean - - -

23 JUDGE WILSON: Isn't that supposed to give him  
24 information that's not recited in the indictment which  
25 pertains to the offense, including the substance, for the



1 purpose of letting him know what he's charged with in being  
2 able to prepare a defense?

3 MR. HUGHES: Well, again, Your Honor, I don't  
4 think there's any requirement that if - - - you know, if a  
5 criminal offense involves multiple states that every single  
6 one of those states has to be mentioned, in either the  
7 indictment or the bill of particulars.

8 JUDGE WILSON: And so when - - - and so when  
9 you're prosecuting him for acts for conduct that  
10 essentially occurred in New Jersey, the bill of particulars  
11 is fine when it says New York County?

12 MR. HUGHES: Well, yes, because here - - - and  
13 again, he ran his prostitution enterprise in New York. It  
14 was - - - he even told people it was based here. So I  
15 think this absolutely gave him fair notice of the nature of  
16 the allegations against him, the time frame that it  
17 involved, and furthermore, there's simply no indication  
18 that he was actually deprived of any kind of fair notice.  
19 He put on a vigorous defense at this trial, and there is  
20 simply no indication that, you know, he was at all confused  
21 about what the allegations against him were.

22 CHIEF JUDGE DIFIORE: Thank you, Counsel.

23 MR. HUGHES: Thank you very much.

24 CHIEF JUDGE DIFIORE: Mr. Zeno?

25 MR. ZENO: I'd like to return to the geographic



1 jurisdiction and jury note issue. We've talked about the -  
2 - - what the word "by" means in the statute and what it  
3 meant in the jury instructions. It seems as though the  
4 prosecutor's argument is that "by" here means "and", that  
5 the - - - that a person is guilty of sex trafficking if  
6 they promote prostitution "and" commit a threatening act,  
7 not "by".

8 The statute doesn't say "and"; it says "by".  
9 While I agree "by" can mean different things in different  
10 contexts, that - - - it doesn't mean "and" here. The - - -  
11 there is a statute, promoting prostitution, which covers  
12 these crimes. My client was convicted of that crime. But  
13 by untethering the promoting prostitution and the threats  
14 and telling the jury that my client could be found guilty  
15 if he promoted prostitution and made threats, rather than  
16 promoted prostitution by making threats, the court just  
17 changed the whole nature of the offense.

18 CHIEF JUDGE DIFIORE: Thank you, Counsel.

19 MR. ZENO: Thank you.

20 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of the People of the State of New York v. Michael Lamb, No. 77 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers  
  
Address of Agency: 352 Seventh Avenue  
Suite 604  
New York, NY 10001  
  
Date: November 23, 2021

