

Employing Sexy Women to Entice Bar Customers is Wicked — But Not That Wicked, Says Appeals Court

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Howard Srebnick. J. Albert Diaz

A federal appeals court had good news Monday for three Miami Beach nightclub operators: It's not illegal to hire alluring women to coax men into ringing up tens of thousands of dollars in bar bills.

Its 41-page ruling focused on jury instructions, with colorful references to "Star Trek" and the bible. The reversal Monday from the U.S. Court of Appeals for the Eleventh Circuit came from U.S. District Judge Amul R. Thapar, sitting by designation from Kentucky, with Circuit Judges Ed Carnes and Beverly Martin.

It involved the case of Miami Beach nightclub operators Albert Takhalov, Isaac Feldman and Stanislav Pavlenko, accused of using beautiful European women to lure male patrons into private clubs reportedly linked to the Russian mob.

The question before the federal appellate court was whether the defendants committed wire fraud, or if inducing patrons into spending thousands of dollars failed to rise to that level.

"The wire fraud statute ... does not enact as federal law the Ninth Commandment given to Moses on Sinai," Thapar wrote, referencing a story from the Old Testament. "(It) forbids only

schemes to defraud, not schemes to do other wicked things," including "schemes to lie, trick, or otherwise deceive."

It was a key distinction and one that should have been made clear to the jury, the court ruled.

Prosecutors claimed the defendants used women, so-called bar or b-girls, to pose as tourists and trick men into visiting mob-run bars and coax them into spending thousands per night. They claimed the women added vodka to the men's beers for faster intoxication, misrepresented drink prices, hid menus or concealed costs and forged victims' signatures on credit card receipts.

The defense told a different story.

"Yes, they admitted they knew the b-girls were posing as tourists to get the men to come to the clubs with them," Thapar wrote before referring to a scene from a classic Warner Brothers' movie. "From there, though, they proceeded to mount what one might call the 'Casablanca' defense, arguing that they were 'shocked, shocked' to learn that fraud was taking place within their South Beach versions of Rick's Café Américain."

The club operators feared jurors would unfairly use claims of fraudulent inducement to convict them of wire fraud. They asked the district court to give the jury special instructions to acquit if they found the clubs tricked victims into spending, "but nevertheless gave the victims exactly what they asked for and charged them exactly what they agreed to pay," according to the order.

The district court refused, and the jury convicted the men of wire fraud and other crimes largely predicated on the wire fraud convictions.

The club operators appealed, arguing the district court abused its discretion when it refused to give the instruction.

"The average juror is not Mr. Spock," Thapar wrote in a nod to the logical, emotionally detached character in the "Star Trek" franchise. "If he were, then a trial court judge's job would be much easier The vast majority of American juries are composed exclusively of humans. And humans, unlike Vulcans, sometimes need a bit more guidance as to exactly what the court's instructions logically entail."

Prominent criminal defense attorney Howard Srebnick teamed with Miami-Dade lawyers Richard Klugh, Marcia Silvers and John Bergendahl for the appeal.

"The court's decision today should come as a relief to nightclub owners by reassuring them that it is not a crime to pay alluring female promoters to entice men to spend lavishly on champagne — and a disappointment to any male patron who thought that for the price of a bottle of bubbly he was entitled to something more," Srebnick said.