

REPORTER'S TRANSCRIPT

IN RE THE MATTER OF

SHERLOCK, et. al. v. AUSTIN, et. al.

TRIAL COURT CASE NO: 37-2021-00050889-CU-AT-CTL

COURT OF APPEAL CASE NO: D081109

VIDEO-RECORDED PROCEEDING OF

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

IN-PERSON ARGUMENTS

SEPTEMBER 11, 2023

TRANSCRIBED ON: SEPTEMBER 2, 2025

TRANSCRIBED BY: JENNIFER G. TORRES, CSR NO. 13022

1 (Begin transcription of video-recorded
2 proceeding.)

3 JUSTICE McCONNELL: We'll next hear the matter of
4 Sherlock versus Austin.

5 You may proceed. State your appearance --

6 MR. FLORES: (Inaudible) --

7 JUSTICE McCONNELL: -- and let us know if you
8 wish to reserve time to respond.

9 MR. FLORES: Yes, your Honor. I wish to reserve
10 five minutes for rebuttal.

11 JUSTICE McCONNELL: All right.

12 MR. FLORES: Andrew Flores on behalf of
13 Mrs. Sherlock, who is present.

14 JUSTICE McCONNELL: Okay.

15 MR. FLORES: Your Honors, we're here before this
16 court on a basic fundamental question: Can individuals,
17 who have been previously sanctioned for owning marijuana
18 dispensaries without a permit --

19 JUSTICE HUFFMAN: Could you speak up a little
20 bit, please?

21 MR. FLORES: Sure. My apologies.

22 JUSTICE McCONNELL: Yes, we need you to speak
23 into the microphone as loudly as possible, please. You
24 have a sort of a soft voice.

25 MR. FLORES: I'll try to enunciate and project.

1 JUSTICE McCONNELL: All right. Thank you.

2 MR. FLORES: The question is Can these
3 individuals, who have been previously sanctioned for
4 marijuana dispensaries, illegally operating these
5 dispensaries, apply for a cannabis permit secretly with a
6 straw man practice?

7 That's, in essence, what the trial court has
8 rubber stamped. They said that that is petitioning
9 activity and it is protected. Clearly, it is not.

10 As has been discussed in our papers, the first
11 prong is whether or not the activity being challenged is
12 protected petitioning activity. That implies that there
13 are some petitioning activities that are not protected.
14 This is one those.

15 Clearly, the facts of this case are not in
16 question. The facts are as follows --

17 JUSTICE McCONNELL: So I'm just trying to grasp
18 the argument that you're making. This is a SLAPP
19 motion --

20 MR. FLORES: That's correct.

21 JUSTICE McCONNELL: -- right?

22 MR. FLORES: That's correct.

23 JUSTICE McCONNELL: Okay. So you don't dispute
24 that the activity that respondent undertook was
25 petitioning activity?

1 MR. FLORES: I guess the issue is, Your Honor,
2 that, in essence, before you even get to that, you have to
3 establish whether that petition activity is legal or not.
4 It's --

5 JUSTICE McCONNELL: No, first you start by
6 determining whether there was petitioning activity within
7 the Code. And then if the respondent admitted illegal
8 conduct, or indisputably illegal, then we can take a look
9 at that.

10 MR. FLORES: Right. And I guess that's what I'm,
11 in essence, trying to say, Your Honor. This is
12 indisputedly [sic] illegal.

13 JUSTICE McCONNELL: That she never conceded any
14 illegal conduct.

15 MR. FLORES: She conceded the facts that are
16 illegal. Does that make sense?

17 So, in essence, the facts are as follows:

18 She had a client who had been previously
19 sanctioned for illegal cannibal -- cannabis activity. She
20 was hired to represent this client. They then filed a
21 petition, under the straw man practice, without disclosing
22 that this individual, the person that was prohibited from
23 owning this permit, was the true and in fact owner.

24 It happened on two separate occasions. One was
25 in the name of their principal secretary. And the other

1 one was in the Razuki Milan case, which the court may or
2 may not be aware of, but, in essence --

3 JUSTICE McCONNELL: We're aware of it, yes.

4 MR. FLORES: -- those individuals, obviously, had
5 their own agreement to hide the true principal or
6 controlling principal in this case.

7 So they didn't disclose the agency. They didn't
8 disclose the true owners. And they did this purposely.
9 And the reason was, again, the reason is because of the
10 prior sanctions, which would have ultimately led them to
11 having their petition denied.

12 This is a clear violation of Penal Code 115.
13 It's a false document liability. Not only did they not
14 disclose the owner's interest, but they failed to disclose
15 this relationship that I just mentioned.

16 This goes against the spirit of the law with
17 respect to marijuana legalization. Transparency is key.
18 The reason the preamble of these -- of these acts state
19 that. They specifically state out that transparency is
20 important to keep criminals from then legitimizing their
21 criminal activity through this process, which is, in
22 essence, what the defendants have done.

23 Now, the one thing I want to point out, there's
24 been some discussion, at least in the papers, about
25 whether or not this application, whether it's mandatory or

1 permissive. There's a recent case that just came out. It
2 came out of the 4th District, Division 3, and it was --
3 it's called HNHPC, Inc. versus the Department of Cannabis
4 Control. Case number is G061298, came out in August,
5 early August, August 3rd, I believe.

6 In that case, the appellant sought to demand the
7 Department of Cannabis Control establish a database for
8 irregularities in the movement of marijuana products.

9 JUSTICE McCONNELL: Did you provide that citation
10 to opposing counsel?

11 MR. FLORES: I have not, Your Honor. I just --

12 JUSTICE McCONNELL: Did you provide it to the
13 court?

14 MR. FLORES: It just came out in August, Your
15 Honor. I have not.

16 JUSTICE McCONNELL: Well, this is September.

17 MR. FLORES: Fair enough, Your Honor. I have not
18 provided it, no.

19 JUSTICE McCONNELL: All right. Can you address
20 something else?

21 MR. FLORES: Sure.

22 It's important to note that the interpretation of
23 the respondents of the BMP -- the Business and Professions
24 Code section that applies in this case, they're conflating
25 two issues.

1 There's Section A that talks about the
2 applicants. Okay. And section B -- sorry -- the
3 application. Section A is about the application.
4 Section B is about the applicants.

5 So, in essence, what the legislature has
6 anticipated is a situation where you may have multiple
7 people applying for one permit, and one person who may not
8 qualify. In that case, it's permissive.

9 They can -- the department can decide whether
10 this person's minor ownership, or what have you, would bar
11 them from having the application granted.

12 However, Section B specifically to applicants,
13 and it said, They shall not be granted this CUP. So those
14 individuals, had they been disclosed, would have been
15 specifically denied this CUP. That's -- that's clear.

16 And what they've done is conflated these two
17 issues in order to make it seem as though they were all
18 permissive when in fact they're not.

19 So the discussion of shall, I mean we all know
20 it's second-day law school, shall means must for the most
21 part. So in this case, that's exactly what it means.

22 Now, it doesn't necessarily create a mandatory
23 obligation on the cannabis -- Department of Cannabis
24 Control, however, it does make it illegal. You cannot --
25 it's not -- it can't be given.

1 Now, in summation I think the --

2 JUSTICE McCONNELL: Well, I thought the statute
3 said that in Subdivision B that the existence of one of
4 the listed conditions may support denial of an
5 application.

6 MR. FLORES: Your Honor, I must have -- I must
7 have gotten confused then. Because the one that does say
8 shall applies to specifically the applicants.

9 JUSTICE McCONNELL: Well, actually, A says it
10 mandates the denial of a license if one of the conditions
11 set forth in B exists.

12 But B says the existence of one of the listed
13 conditions may support denial of an application.

14 MR. FLORES: And that's a key distinction there,
15 Your Honor, at the end. The application, not the
16 applicant. So one applies to the applicant. The other
17 applies to the application like I mentioned.

18 If you have multiple applicants on one
19 application, then one of those incidents doesn't
20 necessarily gives them discretion there.

21 But if it's only one applicant, there's no
22 discretion. It's shall.

23 JUSTICE McCONNELL: Okay. So I'm trying to
24 figure out why Austin's conduct in assisting somebody --
25 somebody's application for a CUP it was never granted.

1 Why is that illegal as a matter of law?

2 That's what you have to establish.

3 MR. FLORES: Uh-huh.

4 Your Honor, they have been granted. They -- in
5 this particular instance, the one (video interruption) and
6 then we have another dispensary on Federal Boulevard, that
7 one was not granted, but it was given to another client of
8 Ms. Austin's, which that's where we're talking about
9 collusion and fraud and all those other things.

10 But I have -- I've thought about this so many
11 times about how to explain this to Your Honors. And I
12 think the most analogous scenario that could illustrate
13 this is if I have a client that comes to me, Your Honor,
14 and says, Mr. Flores, I'd like to get a alcohol license
15 but I'm only 18 and I can't -- I don't qualify, 'cause I'm
16 not 21, and I say, Okay. We'll figure that out.

17 We submit an application -- I'm an expert in this
18 scenario. We submit an application using the straw man
19 practice to get this license for this minor. How is that
20 not engaging in illegal activity?

21 I'm assisting my client in obtaining something
22 they should not have. I'm helping them commit a fraud,
23 not only on the jurisdiction that's issuing these, but
24 also on the court, because then I go into court and battle
25 this out, right?

1 So, to me, the way I see it, they're engaging in
2 the old Hey, Mister, can you buy me beer? That's, in
3 essence, what this is. It's, Hey, Mister, can you get me
4 a cannabis dispensary, even though I shouldn't have one?

5 And they have plotted, and they have engaged in
6 this activity purposely to do so. So, obviously, this
7 runs much deeper, and there are much more issues. But
8 with respect to these alone, it can't be protected
9 activity.

10 JUSTICE McCONNELL: So you're relying on a
11 statement that Austin made in some declaration in Razuki.

12 MR. FLORES: Well, that's part of it, Your Honor,
13 yes.

14 But, again, they have not disputed those facts.

15 JUSTICE McCONNELL: If that -- it wasn't before
16 the trial court in this case.

17 MR. FLORES: Well, again, I think that with the
18 first prong, we're looking at what's pled, not what's
19 proven.

20 Before we have to prove those things, they have
21 to establish that we haven't pled them appropriately. And
22 I think in the pleadings, in the complaint all this
23 scenario is laid out clearly.

24 JUSTICE McCONNELL: Okay.

25 MR. FLORES: That is all. Thank you.

1 JUSTICE McCONNELL: All right.

2 MS. FRASER: Good afternoon, Your Honors. May
3 it, please, the court, Annie Fraser on behalf of Gina
4 Austin and Austin Law Group.

5 Just like in his briefing, counsel relies on
6 wild, unsubstantiated, conclusory allegations to support
7 conspiracy that doesn't exist.

8 They don't contest the -- that this is protected
9 activity. What they argue is that the activity is illegal
10 as a matter of law. But that narrow exception is a very
11 narrow, and it only comes into play for the purposes of
12 the anti-SLAPP statute when there's uncontroverted and
13 uncontested evidence that conclusively establishes the
14 crime as a matter of law. There simply isn't such
15 evidence here.

16 The counsel relies in argument on Penal Code
17 Section 115, which provides that every person who
18 knowingly procures or offers any false or forged
19 instrument to be filed, registered, or recorded in any
20 public offices within this state, which instrument, if
21 genuine, might be filed, registered, or recorded under any
22 law of the state is guilty of a felony.

23 There's been no evidence that Gina Austin or
24 Austin Law Group committed any elements of that offense.

25 Again, there's allegations to straw man practices

1 and the fact that, you know, they -- underlying facts
2 that, you know, what he -- defining the issue is whether
3 these other individuals, who have had previously been
4 sanctioned, can apply for the license. But that doesn't
5 establish willful, knowing, and that it is a false or
6 forged instrument.

7 There just simply isn't any evidence, and there's
8 nothing in counsel's papers or argument that established
9 that there is any illegal activity that's been committed.

10 The plaintiff relies on -- in part, on a
11 declaration that's submitted in a different case that was
12 not before this court, and I filed a motion in opposition
13 to their Request for Judicial Notice.

14 But I want to point out a couple of things along
15 those lines, and I raised the simple and unremarkable
16 proposition of appellate law that the -- you can't
17 consider documents that were not before the trial court.

18 And the response in their reply brief, response
19 to that simple appellate proposition by asking What are
20 the bounds of ALG's counsel legal representation?

21 Does zealous advocacy allow ALG's counsel to
22 dismiss the law and arguments in its client's own
23 declaration?

24 Is such not a misrepresentation to this court
25 that makes ALG's counsel jointly liable with ALG as an

1 after-the-fact accessory to ALG's criminal conspiracy?

2 In other words, citing a proposition of appellate
3 law, counsel then turns that into a after-the-fact
4 conspiracy that I've engaged in by raising that issue.

5 And they go even further. They then -- ALG, its
6 clients, and co-conspirators have, until now, been
7 successful in deceive -- having deceived over a dozen
8 federal and state judges at the trial and appellate level
9 into enforcing and/or ratifying their criminal conduct.
10 To appellant's knowledge, ALG and its co-conspirators have
11 perpetrated the largest fraud upon the court in the
12 history of the United States.

13 Those are the outlandish statements made by
14 counsel, which he makes clear includes this court as
15 having been conceived as part of this grand conspiracy.

16 On Page 14 of the reply --

17 JUSTICE CASTILLO: Ms. Fraser --

18 MS. FRASER: Yes.

19 JUSTICE CASTILLO: -- let me stop you there for a
20 second.

21 Putting aside the reference in the declaration
22 that was not before the trial court, what is your
23 understanding of why opposing counsel is raising this
24 argument about the straw man? What is your understanding
25 of that particular argument?

1 MS. FRASER: I believe my understanding is that
2 he alleges that this is a grand conspiracy. There were 19
3 people charged, and he alleges that they engaged in a
4 conspiracy to have this practice to minimize or keep the
5 number of marijuana applications in their own little
6 group.

7 But there's no evidence of that. There's no
8 evidence that anything that the Austin Legal Group and
9 Gina Austin represent certain parties. And there's no
10 evidence that their mere representation was illegal.

11 They -- there are four conditional use permits
12 that are in this grand conspiracy that's alleged. And
13 Gina Austin or Austin Legal Group, she wasn't involved in
14 three of the CUP's.

15 And in one of them she represented someone for a
16 short period of time, then withdrew it. So there was
17 nothing even filed that could be, in anyway, considered a
18 forged document.

19 So the answer to your question is that's the
20 allegations, but there's no evidence that my clients
21 engaged in any illegal conduct.

22 Did that answer your question?

23 JUSTICE CASTILLO: Yes, thank you.

24 MS. FRASER: Another thing I wanted to point out
25 was that on page 14 of the reply brief, appellant cite an

1 unpublished San Francisco Superior Court opinion.

2 They referred an attorney who filed false
3 documents to the court, to the district attorney's office,
4 and the state bar. And then conclude -- uses that
5 unpublished authority from a superior court case to --

6 JUSTICE McCONNELL: Okay. We don't need to hear
7 about that.

8 MS. FRASER: Okay. Well, and I guess my point,
9 Your Honor, is this case is full of allegations and
10 requests to refer the defendants to the state bar, to the
11 Attorney General's Office, to the -- you know, for
12 criminal investigations based on outlandish allegations
13 and conspiracies with no evidence, whatsoever.

14 And I did intend to argue that as only to show
15 how outlandish these allegations are down below in the
16 trial court and in this appellate court.

17 There just simply isn't any evidence that
18 supports their position that there was any illegal conduct
19 by Austin Legal Group and Gina Austin.

20 If the court has any questions, I'd be happy to
21 otherwise answer them. Otherwise, I'll submit and ask the
22 court to affirm the trial court's order.

23 JUSTICE McCONNELL: Apparently, there are no
24 further questions. Thank you.

25 MS. FRASER: Thank you, Your Honors.

1 JUSTICE McCONNELL: We'll hear from Appellant.

2 MR. FLORES: Just briefly, Your Honors.

3 Now, this may be a problem of my own doing with
4 respect to the facts and circumstances around this case.
5 But the simple fact is that before this court, the only
6 issue that I brought up, that I've hung my hat on is the
7 straw man practice.

8 Now, when opposing counsel gives her description
9 of how -- what they believe the straw man practice is,
10 they go into this diatribe about a big conspiracy. That's
11 not necessarily what needs to be addressed, because the
12 straw man practice is simple.

13 I have an individual who cannot own a CUP because
14 of their prior sanctions. I then find someone or use
15 their agent to file, apply for, get --

16 JUSTICE CASTILLO: Mr. Flores, but the issue is
17 that -- at least as I understand, is that there's no
18 evidence of those straw man practices.

19 And so if you could address what you believe is
20 the evidence that substantiate your case.

21 MR. FLORES: Yes, Your Honor. The applications
22 themselves. The application --

23 JUSTICE McCONNELL: Did you submit evidence in
24 opposition?

25 You argued the pleadings, but I'm trying to see

1 if -- even the declaration wasn't before the trial court
2 here.

3 MR. FLORES: Right, Your Honors. And again
4 it's --

5 JUSTICE McCONNELL: What was the evidence that
6 you submitted?

7 MR. FLORES: Well, there was no evidence
8 submitted, Your Honor, because --

9 JUSTICE McCONNELL: Right. That's part of the
10 problem; isn't it?

11 Aren't you supposed to submit evidence on a SLAPP
12 motion?

13 MR. FLORES: Right. I understand. But that's
14 only --

15 JUSTICE HUFFMAN: (Inaudible) I interrupt.

16 It seems to me we're here in the appellant court.
17 You've got no record of any evidence to support this these
18 claims of all sorts of misbehavior, not in the record, not
19 supported by evidence. Whatever arm waiving value that
20 exists, it does not help the courts of appeal trying to
21 work through and reach a rational decision, based upon the
22 record.

23 So if it's not in the record, for crying out
24 loud, you shouldn't be arguing it, and you shouldn't be
25 discussing it.

1 MR. FLORES: I understand the court's position
2 and it is not --

3 JUSTICE McCONNELL: It's not our position. It's
4 the law. I mean we can't consider things that aren't in
5 the record before us.

6 MR. FLORES: I think the issue, Your Honors, is
7 that the error in the trial court was exactly that, not
8 looking at what has been pled, as opposed to what's been
9 proven.

10 JUSTICE McCONNELL: No, it's not that. They --
11 on a SLAPP motion, it's not just looking at the pleadings.
12 The pleadings you have to submit evidence to support your
13 allegations and you didn't do that here.

14 MR. FLORES: And I understand that, Your Honor.

15 My argument is that we don't get to that position
16 because everything else is uncontroverted.

17 JUSTICE McCONNELL: That's not the impression I
18 have. They didn't -- she -- Austin didn't admit any
19 illegality.

20 MR. FLORES: Well, Your Honor, because -- they're
21 not saying that they didn't do the action. They're just
22 saying the action is not illegal.

23 I'm saying that they did the action and that the
24 action is illegal --

25 JUSTICE McCONNELL: Okay.

1 MR. FLORES: -- if that's makes sense. We'll
2 submit on that, Your Honor.

3 JUSTICE McCONNELL: All right. Thank you very
4 much. Matter is submitted. We're in recess for another
5 panel.

6 (End transcription of video-recorded proceeding.)

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

I, Jennifer Torres, Certified Shorthand Reporter in
and for the State of California, Certificate No. 13022, do
hereby certify:

That said video-recorded material was reported by me
in shorthand and transcribed, through computer-aided
transcription, under my direction to the best of my
ability, and that said material is a full, true, and
correct transcript of the video-recorded material.

I further certify that I am a disinterested person and
am in no way interested in the outcome of this action or
connection with or related to any of the parties in this
action or to their respective counsel.

IN WITNESS WHEREOF, I hereunto subscribe my name this
9th day of September, 2025.


JENNIFER G. TORRES, CSR No. 13022

<p>A</p> <p>ability 20:11</p> <p>accessory 13:1</p> <p>action 18:21,22,23 18:24 20:14,16</p> <p>activities 3:13</p> <p>activity 3:9,11,12 3:24,25 4:3,6,19 5:21 9:20 10:6,9 11:9,9 12:9</p> <p>acts 5:18</p> <p>address 6:19 16:19</p> <p>addressed 16:11</p> <p>admit 18:18</p> <p>admitted 4:7</p> <p>advocacy 12:21</p> <p>affirm 15:22</p> <p>after-the-fact 13:1 13:3</p> <p>afternoon 11:2</p> <p>agency 5:7</p> <p>agent 16:15</p> <p>agreement 5:5</p> <p>al 1:10,10</p> <p>alcohol 9:14</p> <p>ALG 12:25 13:5,10</p> <p>ALG's 12:20,21,25 13:1</p> <p>allegations 11:6,25 14:20 15:9,12,15 18:13</p> <p>alleged 14:12</p> <p>alleges 14:2,3</p> <p>allow 12:21</p> <p>analogous 9:12</p> <p>and/or 13:9</p> <p>Andrew 2:12</p> <p>Annie 11:3</p> <p>answer 14:19,22 15:21</p> <p>anti-SLAPP 11:12</p> <p>anticipated 7:6</p> <p>anyway 14:17</p> <p>apologies 2:21</p> <p>Apparently 15:23</p> <p>appeal 1:12,14 17:20</p> <p>appearance 2:5</p> <p>appellant 6:6 14:25 16:1 17:16</p> <p>appellant's 13:10</p> <p>appellate 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