Diaz v. Gates, 420 F.3d 897 (9th Cir. 08/16/2005)

[1] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[2] No. 02-56818

[3] 420 F.3d 897, 2005 Daily Journal D.A.R. 9940, 05 Cal. Daily Op. Serv. 7270, 2005.C09.0003244< http://www.versuslaw.com>

[4] August 16, 2005

[5] DAVID DIAZ, PLAINTIFF-APPELLANT v. DARYL GATES; et al., DEFENDANT-APPELLEE.

[6] Appeal from the United States District Court for the Central District of California Gary A. Feess, District Judge, Presiding D.C. No. CV-01-06400-GAF

[11] FOR PUBLICATION

[15] Per Curiam Opinion; Concurrence by Judge Reinhardt; Concurrence by Judge Kleinfeld; Concurrence by Judge Berzon; Dissent by Judge Gould [Seven judges voted with the majority and four dissented.]

[16] OPINION

[17] We examine whether a false imprisonment that caused the victim to lose employment and employment opportunities is an injury to "business or property" within the meaning of RICO.

[18] Facts

[19] Diaz claims to be a victim of the Los Angeles Police Department's infamous Rampart scandal. He sued over two hundred people connected with the Los Angeles Police Department (LAPD) or Los Angeles city government under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, alleging that LAPD officers had "fabricated evidence" that he had committed assault with a deadly weapon, and that they had "tampered with witnesses and conspired to obtain [a] false conviction" against him, Compl. ¶ 16. As a consequence, Diaz claims, "[a]mong other forms of injury, [he] lost employment, employment opportunities, and the wages and other compensation associated with said business, employment and opportunities, in that [he] was rendered unable to pursue gainful employment while defending himself against unjust charges and while unjustly incarcerated." Compl. ¶ 31.

[20] Defendant Parks moved to dismiss, arguing, among other things, that Diaz lacked standing because he did not allege an injury to "business or property" as required by RICO. See 18 U.S.C. § 1964(c). The district judge agreed and dismissed without prejudice and with leave to amend. Diaz did not amend, and the district judge then dismissed with prejudice. A divided panel of our court affirmed. ... We took the case en banc. ...

[21] Analysis

[23] … [We] decided [in] *Mendoza v. Zirkle Fruit Co*., 301 F.3d 1163 (9th Cir. 2002), where a class of agricultural laborers alleged that their employers had depressed their wages by illegally hiring undocumented workers at below-market wages. … they did allege an injury to a property interest, the "legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes." We held this property interest sufficient to provide standing under RICO. Diaz has alleged just such an interference with his business relations.

[31] … Without a harm to a specific business or property interest – a categorical inquiry typically determined by reference to state law – there is no injury to business or property within the meaning of RICO.

[32] … [Diaz] has alleged both the property interest and the financial loss. The harms he alleges amount to intentional interference with contract and interference with prospective business relations, both of which are established torts under California law. And his claimed financial loss? He could not fulfill his employment contract or pursue valuable employment opportunities because he was in jail.

[33] … *Mendoza* speaks generally of a "legal entitlement to business relations." … California law protects the legal entitlement to both current and prospective contractual relations. … There may be a practical difference between current and future employment for purposes of RICO – for instance, it may be easier to prove causation or determine damages for a plaintiff who has lost current employment – but this difference is not relevant to whether there was an injury to "business or property."

[34] … The only requirement for RICO standing is that one be a "person injured in his business or property by reason of a violation of section 1962." 18 U.S.C. § 1964(c). And the Supreme Court has already told us that "by reason of" incorporates a proximate cause standard, see *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 265-68 (1992), which is generous enough to include the unintended, though foreseeable, consequences of RICO predicate acts. …

[35] … In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the Supreme Court … [determined] "Racketeering activity" is a broad concept, which "consists of no more and no less than commission of a predicate act." *Id.* at 495:

[36] "If the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c). There is no room in the statutory language for an additional, amorphous "racketeering injury" requirement." *Id.* at 495.

[38] … The statute is broad, but that is the statute we have. Were the standard as the dissent claims, we would have the anomalous result that one could be liable under RICO for destroying a business if one aimed a bomb at it, but not if one aimed at the business owner, missed and hit the business by accident, or if one aimed at the

RICO Applied To "Racketerring" Type Activity Resulting In A Wrongful Conviction

Over 100 convictions based on evidence gathered by the Los Angeles Police Department's Ramparts anti-gang unit were vacated in the several years after it was publicly disclosed in the summer of 1999, that the unit engaged in the wholesale framing of innocent defendants by tactics that included planting weapons on injured but unarmed suspects, and filing false reports based on either fabricated or embellished events. Many of those wrongly convicted people filed a civil suit naming the LAPD, the City of Los Angeles, and responsible parties as a defendant. Over $70 million in damages has been paid to plaintiffs in those suits. (See, Wrongly Convicted Man Crippled By Police Awarded $6.5 Million, *Justice:Denied*, Summer 2005, Issue 29, p. 11)

David Diaz took a different tack. He filed a suit under the federal RICO statute "alleging that LAPD officers had "fabricated evidence" that he had committed assault with a deadly weapon, and that they had "tampered with witnesses and conspired to obtain [a] false conviction" against him." He alleged that the LAPD's activity constituted a pattern of "racketeering activity" actionable under the RICO statute, and for which the LAPD would be liable for treble damages.

The U.S. District Court judge dismissed Diaz's suit after ruling he lacked standing under the RICO statutes. Diaz appealed to the federal Ninth Circuit Court of Appeals. On August 16, 2005 the Ninth Circuit ruled en banc that Diaz had standing to file suit against the LAPD under the RICO statute. This decision potentially has far reaching implications for wrongly convicted persons in the Ninth Circuit, and people in other federal circuits may find it worth considering to pursue a similar course of action in their circuit. Because of its implications, *Justice:Denied* is publishing a 2,000 word condensed version of the 11,000 word decision from which the reader can understand the gist of the Court's reasoning. Excerpts from Judge Kleinfeld's concurring opinion are also included. The full decision is available for free downloading or printing at, http://justicedenied.org/cases/diaz.htm

RICO cont. on p. 25