

Court says Mpls. officer went too far in fondling during prostitution sting

By ROCHELLE OLSON, Star Tribune

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An undercover Minneapolis police officer engaged in outrageous conduct when he fondled a masseuse who was the target of a prostitution investigation, the state Court of Appeals ruled Tuesday in a decision that could open the door for criminal defendants in other sting investigations.

The police officer, David Pleoger, violated Betsy Burkland's right to due process when he initiated the sexual contact with her and allowed it to escalate, Judge Wilhelmina Wright wrote in a decision for a three-judge panel that also included Judges Terri Stoneburner and Larry Stauber.

Burkland was appealing her conviction in a lower court. Her attorney said he believes the decision marks the first time an appellate court in the United States has ruled that an officer's sexual conduct in a prostitution sting violated due process.

The ruling said that the officer went to Peaceful Image Tanning and Bodyworks in 2008 after receiving a tip about prostitution. He met Burkland, arranged a one-hour massage for \$70 and then took off his clothes in a massage room. When Burkland entered the room, she offered to perform the massage topless for an extra \$30 and the officer accepted.

After a while, Burkland asked the officer to turn onto his back, and he asked if he could touch her breasts, the court said. She put oil on her hands and rubbed his genitals. He asked if the "release" was included in the \$100 fee and she said yes.

Through her lawyer, Jeffrey Dean, Burkland said that she is thankful for the decision. "I hope this will deter the police from treating other similarly situated women in such a manner."

Said Dean: "The proper way to conduct a prostitution sting is for the officer to get a verbal agreement of sex for money and then make the arrest. The evidence is the words of the agreement. The police are not free to go on and sport with the suspected prostitute."

He called Pleoger's conduct "outrageous and abusive."

The court's decision said that to prove prostitution, an officer had to show that Burkland "agreed to engage" in sexual contact for money.

Wright wrote that Pleoger could have obtained the information needed for a conviction by inquiring about the "release" at any point in the conversation.

The officer's initiation of sexual contact met the threshold for outrageous governmental conduct and reversal of the convictions, the court determined. The state Supreme Court has previously ruled that an undercover officer can expose himself to a prostitute at her insistence to avoid being discovered as law enforcement.

"There is no evidence in the record, nor did the officer contend, that Burkland's conduct was necessary to dispel a suspicion that he was a police officer," Wright wrote.

Reaction to verdict

Twin Cities defense attorney Ryan Pacyga said the case signals that the court is willing to restrict police conduct, noting that the touching of the breasts was enough to get the case thrown out. He said a similar defense could be used in drug and fraud investigations. "To me it's an exciting defense. You can bet that I'm going to try it," Pacyga said.

The case was initially heard by Hennepin County Judge Charles Porter.

Minneapolis City Attorney Susan Segal said the city is disappointed. "This case went to trial, and the District Court ruled that the officer's conduct was in line with constitutional standards for a criminal investigation," she said. "This was an investigation triggered by complaints about the operation of a massage parlor."

She said the city is reviewing the decision and considering whether to appeal.

Minneapolis Police Chief Tim Dolan said only that he is asking for an internal inquiry into how the investigation was handled.

Pacyga said he expects the city to appeal.

The current state Supreme Court has recently issued decisions showing a willingness to restrict defendants' options, including a ruling that bong water is a controlled substance and that sentencing juveniles to life without the possibility of release isn't cruel or unusual.

Pleoger, who is assigned to the Third Precinct in south Minneapolis, didn't return a call.

Rochelle Olson 612-673-1747