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City off the hook for cop's sex assault of girl

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If a police officer rapes a suspect, the city that employs the officer can be held responsible for damages. The reason, the California Supreme Court explained in 1991, is that the officer abused the authority the city gave him.

But it's another story when an officer sexually assaults a minor who was taking part in a police department program, like the Police Explorers. The latest example comes from Turlock, where a 17-year-old identified as Kassey S. was the victim of sexual abuse by a police officer named Jorge Cruz in 2007.

Kassey said Cruz had coerced her to have sex with him. Cruz said the sex had been voluntary, though still prohibited by state law. The officer pleaded no contest to three counts of unlawful sexual conduct with a minor and was sentenced to 16 months in prison in 2008.

Kassey then sued the city for \$500,000, saying it was responsible for its employee's actions. Local media quoted her as saying had become so fearful she had started taking a gun to bed with her. But a Stanislaus County judge dismissed her suit, and last week she fared no better with a state appeals court in Fresno.

The issue was whether Cruz's criminal actions, though not part of the job, were within what the courts call the "scope of employment." The state Supreme Court refused in 1989 to hold a school district responsible for sexual abuse by a teacher in an after-school program, saying the district couldn't have foreseen the misconduct and had no reasonable means of preventing it without shutting down all such programs. However, the court reached the opposite conclusion in a police rape case two years later, saying it was a foreseeable consequence of the authority wielded by armed law enforcement officers.

But the courts have concluded that officers have a different relationship with participants in voluntary programs like the Explorers from the one they have with criminal suspects. The key ruling came in a 2002 case from Riverside, in which an appeals court said an officer's sexual misconduct with a minor in such a program "did not arise out of the exercise of (his) job-created authority," but out of consensual contact.

Citing the Riverside ruling, the Fifth District Court of Appeal said that although Cruz had been on duty when he sexually assaulted Kassey S., his conduct did not "come within the course and scope of the police officer's employment" for which Turlock was responsible.

Kassey's lawyer offered an alternative argument: Even if the city wasn't responsible for Cruz's first sexual assault, it should be liable for his later actions because they would have been prevented if the officer had complied with his legal duty to report any suspected act of child abuse to a state agency.

As an officer, Cruz was obligated to report child abuse. The appeals court, however, said his duty didn't extend to reporting his own acts, because that would violate the constitutional right against self-incrimination.

The short, unanimous ruling can be viewed here:

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