

Case: Sorensen v. The City of New York

Court/Tribunal: US District Court - Southern District of New York

Date: Oct. 13, 2000

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SUMMARY

A Danish national sued the City of New York on a number of charges stemming from her arrest and imprisonment for her alleged violations of the New York Child Endangerment Act under New York Penal Law Section 260.10. Specifically, she charged the City with transgressing the Vienna Convention on Consular Relations, false arrest, false imprisonment, and subjecting her to an unconstitutional strip search. Following a jury verdict for the plaintiff in the amount of \$60,000 in punitive damages and \$6,400 in compensatory damages, the District Court set aside the award of punitive damages, dismissed her allegations under the Vienna Convention, dismissed her allegations of false arrest, but upheld the charges of false imprisonment and unconstitutional strip search.

FACTS

Annette Sorensen, a Danish national, was arrested for allegedly violating New York's Child Endangerment Act under N.Y. Penal Law Section 260.10 and charged with a class A misdemeanor. Her arrest and subsequent jailing followed a 911 call placed to the City charging that a baby had been left unattended in a carriage for about an hour outside of a restaurant on a busy corner of an intersection. Two police officers dispatched to the scene promptly verified the caller's information and found Ms. Sorensen to be the mother, who had been dining inside the nearby restaurant. Ms. Sorensen was taken to the local jail, subjected to a strip search by female guards, and held for 42 hours without being arraigned.

Later appearing before the United States District Court for the Southern District of New York in a suit against the City, Annette Sorensen sought compensatory and punitive damages for the City's violation of the Vienna Convention, false arrest, false imprisonment, and an unconstitutional strip search. The District Court jury gave a verdict favorable to Ms. Sorensen, with \$6,400 in compensatory damages and \$60,000 in punitive damages. The City, as defendant, successfully set aside the \$60,000 punitive damage jury award as a matter of law under Fed. R. Civ. P. 50. The District Court ruled in favor of the City regarding Ms. Sorensen's Vienna Convention claims and charge of false arrest. However, pursuant to Ms. Sorensen's motion for judgment as a matter of law under Fed. R. Civ. P. 50(b), the District Court ruled in favor of Ms. Sorensen on the charges of false imprisonment and unconstitutional strip search.

DISCUSSION

(A) Can a Violation of Article 36 of the Vienna Convention on Consular Relations Subject a Municipality to Civil Liability Under Section 1983?

The District Court granted the City's motion for judgment as a matter of law regarding Ms. Sorensen's Vienna Convention claims. The Vienna Convention came into being on April 24, 1964 among 28

countries and has since been signed by 63 countries, including the United States. The issue before the District Court was whether the City's denial of Ms. Sorensen's right to consular notification as a foreign national could subject the City to civil liability under Section 1983. Article 36 of the Vienna Convention treaty requires signatory countries to notify a foreign national that he or she has the right to promptly contact a foreign national's nearest consular office when he or she may be subject to arrest or imprisonment.

The City, for its part, never denied that its police officers violated the treaty by not alerting Ms. Sorensen of her right to contact the Danish consulate. However, the City asserted that Ms. Sorensen had no standing to assert a private right of action under the Vienna Convention, and that, even assuming she had standing, there was no evidence that Ms. Sorensen was prejudiced by the City's violation of the treaty. The Court, in granting the City judgment as a matter of law, reasoned that treaties signed by the United States generally do not grant rights to private individuals to sue. Language in the text of the treaty's Preamble supported the Court's reasoning and went further to state that the treaty's hope is to ensure the efficient operation of the signatory nations' consular offices. In sum, the District Court found no support in the Vienna Convention for the imposition of civil liability on a municipality such as the City of New York for the violation of Article 36's consular notification provisions.

(B) Did the police officers have probable cause to make the arrest?

Ms. Sorensen claimed that the New York police officers who arrested her had no probable cause to arrest her to determine that she had violated the New York Child Endangerment Act. The District Court determined otherwise, citing case law and a common sense standard to support the police officers' actions based on probable cause. According to the testimony of officers who had arrived on the scene prior to the arrest, Ms. Sorensen's baby was susceptible to being taken or injured in the slightly dangerous neighborhood on the corner of a busy thoroughfare. The Court deemed Ms. Sorensen's actions to put her child in danger of abuse or neglect.

(C) Was Ms. Sorensen unreasonably detained?

The District Court ruled that the City had unnecessarily delayed Ms. Sorensen's arraignment. She had been held for 42 hours without being arraigned. The Court considered this unreasonable, subjecting the City to liability on the false imprisonment claim of Ms. Sorensen.

(D) Was the Strip Search Legitimate?

The District Court ruled that mandatory strip searches for contraband of those arrested on misdemeanor charges was unconstitutional. The Court cited prior case law that pointed to a similar conclusion. In the Court's view, strip-searching all persons arrested was not objectively reasonable behavior, and, as such, warranted a new trial on this issue to determine Ms. Sorensen's compensatory damages against the female prison guards who conducted her strip search.

The citation of this unpublished case is: No. 98 Civ. 3356, 2000 US Dist. LEXIS 15090 or 2000 WL 1528282 (S.D.N.Y. Oct 13, 2000)