

Anchorage

Supreme Court: Trooper shouldn't have been fired for sex with domestic violence victim

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A state trooper who had sex with a domestic violence victim hours after helping to arrest her husband should not have been fired for the offense, the Alaska Supreme Court said in a decision last week.

The court's opinion upheld the results of a 2010 arbitration between the Alaska State Troopers union and the Department of Public Safety, as well as the state's subsequent appeal to the Superior Court.

In a 3-2 majority opinion released on May 2, justices Dana Fabe, Joel Bolger and Daniel Winfree said that if they were deciding the case instead of the arbitrator they would have likely concluded that the state had just cause to fire the officer.

"Engaging in sexual conduct with a victim shortly after responding to her call for help, even if consensual, is inappropriate behavior for a state trooper," the justices wrote.

But because there's no "zero-tolerance" public policy in Alaska that makes off-duty sex with a crime victim a firing offense, the court had to defer to the arbitrator's conclusion that the trooper should have been disciplined but not fired.

The Department of Public Safety, the court found, regularly punishes other instances of sexual misconduct with consequences that fall short of firing.

In a dissent, justices Craig Stowers and Peter Maassen said the state had reason to fire the trooper because his conduct was clearly "serious and reprehensible" even if it didn't violate a specific sexual misconduct policy.

The trooper (who was not named in the court documents in order to protect the victim's privacy and the state-mandated confidentiality of personnel records) lost his police certification in a separate process in 2011. He is no longer employed by the Alaska State Troopers.

The union's position has been that the state treated the trooper differently than others accused of similar misconduct.

"We've never said the conduct was correct. What we want to make sure is applied is overall fairness. We didn't believe (the trooper) was treated fairly," said Jake Metcalfe, executive director of the Public Safety Employees Union.

The case mixes employment law with issues of power and sexual misconduct in law enforcement.

On April 19, 2009, a trooper who had been on the job for two months responded to a domestic violence call involving a husband and wife. Another trooper on the scene had called for backup after the husband, who was drunk, became physical and aggressive toward him.

When the trooper arrived on scene he helped to restrain the husband. He also watched as another trooper interviewed the wife, who said she was in fear of her husband because he had verbally threatened her.

When the trooper's shift was over, he went home to sleep. When he woke up, he got the woman's cell phone number from his work notebook and sent her a text message.

Out of uniform, the trooper, who was 24 at the time, drove to the woman's house at 6 a.m., the court documents said.

She was "still upset" about the night's events, court documents said. She and the trooper had consensual sex.

The trooper's bosses at the Alaska State Troopers found out about the sexual encounter after the woman told her estranged husband, who forwarded information to his attorney.

His direct supervisor recommended that he be suspended. But the then-director of the Alaska State Troopers, Col. Audie Holloway, overruled the recommendation, deciding the trooper should be fired.

"Despite your knowledge of this woman's vulnerable condition after her recent domestic violence victimization, you put yourself, this agency, the District Attorney's Office and the criminal prosecution of this case in jeopardy by surrendering to the temptations of a sexual encounter," the termination letter said, according to court documents.

After the trooper was fired, the Public Safety Employees Association filed a grievance under its collective bargaining agreement.

An arbitrator found the trooper should have been given an opportunity for "progressive discipline" and ordered he be reinstated with back pay after a three-day suspension.

A Superior Court judge agreed, but by that time the trooper's police certificate had been revoked by the Alaska Police Standards Council, a decision the union did not challenge.

The State of Alaska eventually appealed to the Supreme Court, saying the arbitrator decision was a "gross error."

But the Supreme Court, in its decision, said there is no public policy that says a trooper having consensual sex with a crime victim is a zero-tolerance firing offense. It also found that other cases of sexual misconduct among the trooper

ranks had been dealt with using "less severe discipline" than firing, including short suspension.

Instances cited by the justices included a time when a trooper signed a woman's breast at a bar in front of other recruits, a trooper's sexual relationship with a 19-year-old while the trooper was supposed to be investigating her criminal complaint of sexual abuse by her stepfather, and a sexual relationship one trooper had with the daughter of a murder victim during an ongoing investigation of that crime.

The troopers' union has lobbied to better define vague rules governing "moral conduct" for officers, Metcalfe said.

Would the union support a zero-tolerance policy for a trooper having off-duty, consensual sex with a crime victim?

If there were clear and communicated standards, a fair due process system and consideration of mitigating circumstances, "there is no reason not to support something like that," he said.

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