

International Suit Filed Against Cops for Ignoring Mom's Pleas

by Michelle Chen

Since even the US Supreme Court has declined to hold police accountable for enforcing restraining orders, one extreme case of officers "shirking" the duty is headed to the Inter-American Commission on Human Rights.

Jan 5 - No one denied that the murder of the three little girls by their father was a tragedy, but a dispute over whether the government shared responsibility for the killings has rippled all the way from a small Colorado town to an international tribunal.

After the Supreme Court's rejection of the aggrieved mother's claim that the Constitution entitled her family to certain protections from her estranged husband, the American Civil Liberties Union is bringing the case to an international human-rights court.

Shortly after her daughters' deaths in 1999, Jessica Gonzales filed a lawsuit against the town of Castle Rock, Colorado, contending that police had not responded adequately when her husband, Simon Gonzales, abducted the children as they played outside their home. In kidnapping the children, the father violated a court order permitting him only limited visiting time with the children. According to Jessica Gonzales's legal petition before a US district court, local police repeatedly ignored her requests that they enforce the court order and return her children.

"While Simon may have pulled the trigger, the Castle Rock Police Department created the opportunity for this to happen by not enforcing that law," said Randy Saucedo, advocacy director of the Colorado Coalition Against Domestic Violence.

The case eventually reached the Supreme Court, which ruled in June that a family has no explicit constitutional right to police enforcement of protection orders under the due-process clause. The court dismissed arguments from women's rights groups that law enforcement agents violate due process of law when ignoring or downplaying domestic violence threats. The majority opinion, written by Justice Antonin Scalia, said that a "well-established tradition of police discretion has long coexisted with apparently mandatory arrest statutes."

Frustrated with the court's ruling, the ACLU filed a petition on Gonzales's behalf on December 27 before the Inter-American Commission on Human Rights, a

tribunal that handles human rights issues in the Americas. The petition cites the American Declaration on the Rights and Duties of Man, adopted by the United States in 1948, which provides "rights to dignity and humane treatment" as well as "the protection of privacy, the family, and the home."

The complaint alleges that the Castle Rock police "shirked their responsibility under international human-rights law to provide special protections to women and children, especially those who are victims of domestic violence."

According to court documents and police accounts, after her daughters – aged 10, 9 and 7 – disappeared, Jessica Gonzales urged the police to search for the girls and enforce the court restrictions on the father's contact with the family. Though police initiated a local search, they did not undertake a criminal investigation. Instead, they actually discontinued their search when Jessica Gonzales informed them she had received a cell-phone call from the father indicating that the girls were with him at an amusement park. Over a period of several hours, police responded to the mother's repeated and increasingly insistent requests for assistance by advising her to continue waiting for the girls.

The wait ended around 3:20am, when Simon Gonzales arrived at the police station with a freshly purchased gun and opened fire. After police shot and killed him, they found the girls – Rebecca, Kathryn and Leslie Gonzales – murdered by their father in the back of his truck.

In an interview with ACLU attorneys, Jessica Gonzales later said of the police, "I don't think they ever took this restraining order seriously. And I don't think that they take domestic violence seriously."

The Gonzales case represents an underlying scourge in American communities. According to federal statistics, two in three murder victims under thirteen years old died at the hands of a family member in 2002. Last year, 20 percent of perpetrators of violent crime against women were reportedly spouses or domestic partners.

Court protection orders, which place specific restraints on contact between abusers and family members, serve as a last line of defense for many victims. But studies suggest that subjects routinely violate the orders. A 2000 Department of Justice survey found that physically abusive partners violated restraining orders at a rate of 50 percent. The Florida Governor's Task Force on Domestic and Sexual Violence reported in 1997 that over 17 percent of domestic homicide victims had a protection order at the time of death.

Unlike the Supreme Court, which ruled strictly on the applicability of the due-process clause, the Inter-American Commission would adjudicate the Gonzales case based on a concept of universal protection from harm.

Rhonda Copelon, director of the International Women's Human Rights Law Clinic at the City University of New York Law School, said that under international law, the police committed "a violation of the obligation of the government to protect women and children from domestic violence, which involves, among others, the right to life." Copelon co-authored a brief supporting Gonzales in the Supreme Court case.

In addition to condemning the police response, the ACLU petition charges that US courts violated Jessica Gonzales's fundamental right to "a remedy for the wrongs she has suffered." While the Supreme Court has blocked Gonzales from federal recourse, state law bars her from regular civil action against the police, since Colorado generally shields police from liability in the enforcement of protection orders, except in cases of deliberate and wanton misconduct.

Amid public criticism, the Castle Rock police department has defended its actions. "Simon Gonzales alone is responsible for the deaths of his daughters, and there was nothing anyone, including the police, could have done to stop him," Police Chief Tony Lane told *The NewStandard*.

"We have all played the 'what if' scenario too many times," he said. "However, we do not have a crystal ball, and as they say, 'hindsight is always 20/20'.... Simon was determined to kill those girls no matter what and would have done so, if not that night, the next day, or the next."

But according to Lenora Lapidus, director of the ACLU's Women's Rights Project, the police's counter-arguments reveal "their bias" and underscore a widespread dismissive attitude that abets family violence.

As the ACLU presses the Gonzales case in an international arena, activists are pushing policymakers to tackle domestic violence issues on which the courts have remained silent.

Last month, women's rights groups claimed a legislative victory in the reauthorization of Violence Against Women Act, which contains a provision for funding survivor-advocacy services offered through local police stations.

Lynn Rosenthal, president of the National Network to End Domestic Violence, said that had such resources been available to Jessica Gonzales, rather than "calling and calling that night, she would have been able to talk to a victim advocate, who could help sort out the facts of the case and who could raise the alarm bells with the police department."

Beyond legislative issues, anti-domestic-violence groups attribute problems with law enforcement to discriminatory attitudes toward abuse survivors.

"Sometimes, police officers believe that the women are being hysterical," Rosenthal said, "and sometimes they believe that... men have a right to be with their children. And sometimes, they're just dismissive."

The ACLU has requested that the Inter-American Commission issue an advisory opinion based on international law and call on the US to adopt measures to prevent similar crimes. Human rights advocates say that while criticism from the tribunal might not directly compel the US to change its policies, the ACLU's international action will still encourage communities to reflect more globally on how to address domestic violence.

"This petition is carrying forward a demand on the behalf of women all over this country and the world," said Copelon, "because every one of these precedents builds on another for effective protection."

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