

39 S.D. 290
Supreme Court of South Dakota.

CITY OF WATERTOWN

v.

CHRISTNACHT et al.

No. 4177.

|

Aug. 23, 1917.

Synopsis

Appeal from Municipal Court of Watertown; Irvin H. Meyers, Judge.

Maurice Christnacht and Patsy McAleer were convicted of violating an ordinance of the City of Watertown, and they appeal. Judgment reversed, and trial court directed to discharge defendants.

West Headnotes (2)

[1] **Constitutional Law** 🔑 Personal liberty
Human Trafficking and Slavery 🔑 Power to Enact; Validity

92 Constitutional Law

92VII Constitutional Rights in General

92VII(B) Particular Constitutional Rights

92k1079 Personal liberty

(Formerly 92k83(1))

204T Human Trafficking and Slavery

204TI In General

204Tk2 Constitutional, Statutory, and Regulatory Provisions

204Tk5 Power to Enact; Validity

204Tk5(1) In general

(Formerly 315Hk14, 92k83(1))

A city ordinance, declaring that any person found associating with prostitutes, or found in company with any such persons, should be deemed a pimp, and fined and imprisoned, was violative of Const. art. 6, § 1.

[1 Cases that cite this headnote](#)

[2] **Human Trafficking and Slavery** 🔑 Power to Enact; Validity

204T Human Trafficking and Slavery

204TI In General

204Tk2 Constitutional, Statutory, and Regulatory Provisions

204Tk5 Power to Enact; Validity

204Tk5(1) In general

(Formerly 315Hk14, 316k1)

A city ordinance, declaring that any person found associating with prostitutes or found in company with any such persons should be deemed a pimp held invalid.

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

*62 Clay Carpenter, of Watertown, for appellants.

Opinion

GATES, P. J.

An ordinance of the city of Watertown declares, among other things, the following:

“Sec. 17. (*Pimp*). Any male person *** who shall be found associating with females known or reputed as common courtesans or prostitutes, or who shall be found in any company with any female known or reputed as a common prostitute or courtesan, *** within the limits of the city of Watertown, shall be deemed a pimp, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than ten dollars, and imprisonment for any determinate period not exceeding ten days, nor less than five days.”

The defendants were arrested, tried, convicted, and adjudged to pay a fine of \$25 and costs, under a complaint which charged that at the city of Watertown they, “on and before the 16th day of November, A. D. 1916, were then and there unlawfully found associating with females known and reputed as common courtesans and prostitutes,” and which complaint further stated the names of such females. From the judgment, defendants appeal.

It is urged, and we think correctly, that this ordinance is unconstitutional. In *Pinkerton v. Verberg*, 78 Mich. 573, 44

N. W. 579, 7 L. R. A. 507, 18 Am. St. Rep. 473, the court well said:

“Personal liberty, which is guaranteed to every citizen under our Constitution and laws, consists of the right of locomotion—to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.”

Quoting the above, the Supreme Court of Missouri said in [City of St. Louis v. Roche](#), 128 Mo. 541, 31 S. W. 915:

“Our Constitution and laws guarantee to every citizen the right to go where and when he pleases, and to associate with whom he pleases, exacting from him only that he conduct himself in a decent and orderly manner, that he disturb no one, and that he interfere with the rights of no other citizen.”

In that case it was held that an ordinance prohibiting association with thieves, pick-pockets, etc., was—

“absolutely invalid, on the broad ground that its direct effect is to invade and necessarily destroy one, at least, of those ‘certain inalienable rights’ of the citizen bestowed by the Creator and guaranteed by the organic law, personal liberty.”

In a similar case that court said, in [City of St. Louis v. Fitz](#), 53 Mo. 582:

“Such person might well be said to have the reputation of being a thief, as he had actually been convicted and punished as such by a competent judicial tribunal; but, even in such case, is he therefore marked as a leper in society, to be avoided by his former associates? This would close the door to repentance or reformation, and ‘once a thief, always a thief,’ would be the maxim upon which police officers would act. Perhaps the maxim may answer very well, practically, for them, especially in justifying precautionary measures;

but it will not, and ought not to, be enforced by courts, whose business it is to administer justice. However humble may be the citizen arrested under an ordinance prohibiting intercourse with such former criminal, his right to select his own company, so long as no actual breach of law occurs, and no intended breach of law can be established, is as sacred, and as much under the protection of the state, as though he moved in the more elevated spheres of society. The tendency of power to pass from the many to the few is sufficiently rapid, without further encouragement, and the power to arrest for keeping bad company is a dangerous one, liable to great abuses and partial and unjust discriminations.”

See, also, [McQuillin, Mun. Corp. § 749](#); [Abbott, Mun. Corp. § 129](#).

To sustain the validity of the quoted portion of the Watertown ordinance would prevent personal effort on the part of male citizens to uplift and ameliorate the condition of fallen women. Ministers of the gospel, physicians, nurses, welfare workers—all would be subject to the infamous appellation contained in the ordinance and to the pains and penalties of the ordinance. The constitutionality of a law is determined, not alone by what has been done, but by what may be done, under its provisions. [Minneapolis Brew. Co. v. McGillivray \(C. C.\) 104 Fed. 258](#). Surely it does not need further elaboration to make it clear that the ordinance in question violates the personal liberty guaranteed by article 6, § 1, of our Constitution.

The judgment appealed from is reversed, and the trial court is directed to discharge the defendants.

All Citations

39 S.D. 290, 164 N.W. 62, L.R.A. 1917F,903

Citing References (14)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	1. City of Watertown v. Barker 164 N.W. 972, 973 , S.D. Appeal from Municipal Court of Watertown; Irvin H. Myers, Judge. Marguerite Barker and another were convicted, and appeal. Reversed.	Nov. 12, 1917	Case		—
Cited by	2. People v. Licavoli 250 N.W. 520, 522+ , Mich. Appeal from Recorder's Court for City of Detroit; John V. Brennan, Judge. James Licavoli and another were convicted of the crime of being disorderly persons, within Public Acts...	Oct. 19, 1933	Case		—
Cited by	3. People v. Owens 164 N.W.2d 712, 720 , Mich.App. Defendant was convicted of contributing to delinquency of a runaway minor girl. The Recorder's Court of Detroit, Wayne County, Frank G. Schemanske, J., entered judgment of...	Sep. 26, 1968	Case		—
Mentioned by	4. Orloff v. Los Angeles Turf Club 208 P.2d 987, 994 , Cal.App. 2 Dist. Appeal from Superior Court, Los Angeles County; Charles S. Burnell, Judge. Action by Morris Orloff against the Los Angeles Turf Club, Inc., and Raymond H. Williams, to enjoin...	Aug. 12, 1949	Case		—
Mentioned by	5. Renker v. Village of Brooklyn 40 N.E.2d 925, 930 , Ohio Action by one Renker against the Village of Brooklyn, Cuyahoga County, Ohio, to enjoin the enforcement of an ordinance of the defendant regulating trailers and licensing and...	Apr. 01, 1942	Case		—
—	6. Validity of vagrancy statutes and ordinances 25 A.L.R.3d 792 This annotation examines the cases in which the courts have discussed the validity of vagrancy statutes and ordinances. It is limited to a consideration of cases involving...	1969	ALR	—	—
—	7. McQuillin The Law of Municipal Corporations s 24:123, § 24:123. Prohibiting the patronizing of prostitutes It is impermissible for an ordinance to make it an offense to associate with a known or reputed prostitute. However, ordinances prohibiting under penalty the patronizing of a...	2020	Other Secondary Source	—	—
—	8. Am. Jur. 2d Criminal Law s 29, § 29. Acts based on reputation or association with others Am. Jur. 2d Criminal Law Generally, a state may not punish a person on the basis of such person's reputation. Statutes making criminal the accused's reputation in connection with certain kinds of...	2021	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	9. PROTECTION OF ASSOCIATIONS FROM COMPULSORY DISCLOSURE OF MEMBERSHIP 58 Colum. L. Rev. 614 , 649 C1-3CONTENTS L1-2I. Freedom of Association 619. A. The First Amendment.. 619 B. The Fifth Amendment.. 621 C. "Preferred Position". 622 D. Permissible Limitations. 623 L1-2II....	1958	Law Review	—	—
—	10. VAGRANCY AND OTHER CRIMES OF PERSONAL CONDITION 66 Harv. L. Rev. 1203 , 1226 CRIMES are traditionally defined in terms of acts or failure to act, and it is usually stated that an act or failure to act is an essential element of a crime. However, a recent...	1953	Law Review	—	—
—	11. CONSTITUTIONAL LAW - DUE PROCESS OF LAW: CRIMINAL PROSECUTION - VALIDITY OF PUBLIC ENEMY ACT 49 Harv. L. Rev. 1372 , 1372 The defendant was indicted under a statute which provided that "Any person who with intent to provoke a breach of the peace . commits any of the following acts shall be deemed to...	1936	Law Review	—	—
—	12. THE VAGRANCY LAW CHALLENGE AND THE VAGARIES OF LEGAL CHANGE 43 Law & Soc. Inquiry 1669 , 1685+ Goluboff, Risa. Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s. New York: Oxford University Press, 2016. This essay reflects on the relationship...	2018	Law Review	—	—
—	13. EVANGELICAL REFORM AND THE PARADOXICAL ORIGINS OF THE RIGHT TO PRIVACY 75 Md. L. Rev. 362 , 376+ The story of how American constitutional law came to recognize a right to privacy in matters pertaining to sex and reproduction has been told many times. The most familiar version...	2015	Law Review	—	—
—	14. On the Origins of Consorting Laws 37 Melb. U. L. Rev. 103 , 142 Consorting laws have piqued the attention of Australian legislatures. In the last year alone, two states have re-enacted these offences, which criminalise repeated association with...	2013	Law Review	—	—

Negative Treatment

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History

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