

Taking photos up girl's skirt at Beaverton Target: Appalling, but not a crime, judge rules

Washington County Courthouse.jpg

Washington County Circuit Court is located in downtown Hillsboro. *(File photo)*

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No crime occurred when a man crouched down in a Target aisle and snapped photos up a 13-year-old girl's skirt, a **Washington County** judge ruled Thursday.

The behavior was "lewd" and "appalling," the judge said, but it did not violate any statute on the books in Oregon.

"From a legal point of view, which unfortunately today is my job to enforce, he didn't do anything wrong," Judge Eric Butterfield said.

He acquitted Patrick Buono, 61, of Portland on two counts of **invasion of privacy** and two counts of attempted **second-degree encouraging child sex abuse** -- a charge that relates to child pornography.

The case involved a voyeuristic phenomenon known as "upskirting," which state law does not expressly prohibit.

Buono **approached the girl** Jan. 3, 2014, in a Beaverton Target. She didn't notice him stick his cellphone under her skirt, but someone else did.

The eyewitness reported the incident, and store surveillance video confirmed it. Buono's ex-girlfriend testified that he broke down and told her what he had done, fearful that he would be caught.

Buono's defense: Yes, he did it. But what he did defied no law.

Defense attorney Mark Lawrence argued that Buono had taken the images in public, a place where no one can reasonably expect privacy.

The law bans clandestine photography in bathrooms, locker rooms, dressing rooms and tanning booths -- all places where people should expect privacy. But the aisle in Target was plainly public, Lawrence said.

Plus, up-skirt sightings can occur by happenstance, he said, citing the famous photos of a wind-swept **Marilyn Monroe**. It could happen to anyone riding an upward-bound escalator, taking a spill, exiting a car.

"These things are not only seen but video-recorded," Lawrence said. "It's incumbent on us as citizens to cover up whatever we don't want filmed in public places."

On top of that, Lawrence noted, the girl was wearing underwear, and therefore was not nude, which the invasion of privacy statute requires.

Deputy District Attorney Paul Maloney argued the point: "Sure, she's in a public place. But she had an expectation of privacy that a deviant isn't going to stick a camera up her skirt and capture private images of her body."

He conceded that the lack of nudity was a "live issue in this case."

As to the counts of attempted second-degree encouraging child sex abuse, the defense argued that the girl was not engaging in sexual conduct, which that statute requires.

The prosecutor countered that Buono took the photos hoping they would be explicit -- and that constituted an attempt toward the crime.

But the judge determined that the teenager's private parts were covered, and her conduct was not sexual.

"What he's taken a photograph of is a 13-year-old girl walking through a Target store, which is about as unlewd as you can get," he said.

It was Buono's behavior that was lewd, the judge said; it was not, however, outlawed.

"I'm extremely frustrated with this decision," he said. "It's upsetting to say the least."

After the ruling, Buono shook his lawyer's hand and hurried out of the room.

The prosecutor, outside of court, said it was disappointing to see a strong case fail on the limitations of the law.

"We knew what this man had done, and we knew why he had done it," Maloney said. "And it's incredibly frustrating that, under the current interpretation of Oregon law, this is not a crime."

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