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Battle on lewdness stumbles with mall verdict

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Attempts by Bergen County prosecutors to control a rash of public lewdness with harsher penalties encountered a setback Thursday when jurors in Hackensack sided with a man caught masturbating in a mall restroom.

Instead of convicting William Bartels of Rutherford of a felony, as the prosecutor requested, the jury found him guilty of a disorderly persons offense.

County authorities said they nonetheless plan to continue an aggressive strategy in these cases, most of which involve accusations of men having sex in public restrooms.

"We're taking a harder stance on these cases," said Assistant Bergen County Prosecutor Demetra Maurice. "Our position is: There's a potential for a kid to be there."

During Bartels' one-day trial, a veteran undercover cop said he was stunned by what he saw in the men's room of a Paramus department store. It was a weekday afternoon last spring when, he said, a man masturbated in a third-floor restroom stall in the Bergen Mall Macy's while a group of others peered in.

Moments later, two of them had sex on the men's room floor, Detective Sgt. Kevin Smith testified.

Smith said he had gone undercover before to arrest men having sex in public places, but this was particularly distasteful.

"I was shocked," he told the jury. "I just wanted to get out of there at that point."

Smith said he summoned a backup officer, and they quickly arrested the three men.

Over the past six months, police in Paramus have made 25 lewdness arrests. In a concerted effort to stem the tide, the Bergen County Prosecutor's Office is dispensing with the usual disorderly persons summonses and charging offenders with felonies.

The primary concern is that young children will be exposed to the sexual activity, Maurice said.

In New Jersey, having sex in a place where a child under 13 might see it is a fourth-degree felony. But the law is somewhat murky.

At issue is whether the defendant must intend to be seen by a child or whether he must simply be in a place where he likely could be seen by a child.

Bartels did not deny masturbating in the restroom. But his lawyer argued that the behavior amounted only to a disorderly persons offense.

"There's not any evidence that Mr. Bartels' intent was to be viewed by a child," said the attorney, Jon Iannaccone.

Maurice countered that a child could easily have entered the restroom and seen Bartels, particularly because at one point he opened the stall door a few inches.

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