

Skirting the Issue

By Reg P. Wydeven
April 6, 2014

Years ago we went on a trip to Chicago. Our weekend just happened to be during St. Patrick's Day. We were lucky enough to be able to go downtown to observe the city's legendary festivities.

We got to see the Chicago River get dyed green. We also watched a huge parade that featured marching bands, pompon girls and, of course, bagpipers. It was impressive to watch the pipers march while tooting away. But admiration soon turned to unbridled horror.

Unfortunately, the Windy City and old men in kilts are not a good combination. The tradition of kilt-wearers donning nothing under their kilts held true that day. And while it may have been sexy for Marilyn Monroe in 'The Seven Year Itch,' kilts flapping in the breeze was anything but.

While I can look back and laugh at the parade's overexposure, some such sights are no laughing matter.

In December of 2010, Michael Robertson was a Green Line rider on the Massachusetts Bay Transportation Authority subway. While riding the rails, he used his cell phone to take photographs and record video up the skirts of two female passengers. The women reported the incidents to the transit police.

In response, the police set up a sting operation. After pointing his cell phone up the dress of a female police officer, Robertson was charged with two counts of attempting to secretly photograph a person in a state of partial nudity, and faced up to two and a half years in prison.

Robertson's attorney filed a motion to have the charges dismissed, claiming he did not violate the law. They argued that a clothed female passenger on a subway is not "nude or partially nude" and is not in a place where she has a reasonable expectation of privacy. The Suffolk County circuit court judge disagreed, denied the motion and Robertson was found guilty.

Robertson appealed the conviction and hoped the Massachusetts Supreme Judicial Court agreed with him. To everyone's surprise, they did.

The Court ruled that Robertson did not violate the law because the women who were photographed were not nude or partially nude. In the decision, Justice Margot Botsford wrote, "a female passenger on a MBTA trolley who is wearing a skirt, dress, or the like covering these parts of her body is not a person who is 'partially nude,' no matter what is or is not underneath the skirt by way of underwear or other clothing."

While the court didn't necessarily like their decision, they agreed that Robertson technically did not violate the law.

Upon hearing the Court's ruling, Suffolk County District Attorney Daniel Conley stated, "every person, male or female, has a right to privacy beneath his or her own clothing." He then pleaded, "if the statute as written doesn't protect that privacy, then I'm urging the Legislature to act rapidly and adjust it so it does."

I hope Massachusetts, and all other states, have or will soon have laws on the books outlawing these 'upskirt' pictures. And 'upkilt' pictures, too.

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