

Male And Female Bathed In Same Room: Nursing Home Aide Cleared Of Abuse Charges.

An aide working with dementia patients in a nursing home brought a seventy-six year-old male and an eighty-two year-old female resident into the same bathroom at the same time, one for a tub bath, the other for a shower, and they saw each other naked.

The aide was convicted of the criminal offenses of mistreatment of a confined person and disorderly conduct by a caregiver. The Court of Appeals of Minnesota, however, threw out the convictions, finding that the aide had no intention to abuse her patients.

Time Pressure To Complete Personal Care Assignments

According to the court, the aide had only forty five minutes to bathe and dress the two residents before dinner. They were both elderly and suffered from dementia. The woman usually resisted being bathed and took extra time.

The aide brought the woman into the bathroom, undressed her and put her in the tub. Then she went and got the male resident, undressed him where the woman in the tub could not see him, put him in the shower and pulled the privacy curtain around him.

It was when both were being dried, at this point with the help of a second aide, that they briefly saw each other.

No Intent To Abuse

The court said the aide had no illicit purpose in mind when she brought the two residents together as she did. Her motivation was only to get both of them ready for dinner in a compressed time frame.

The female resident was upset after the incident, but the court pointed out she was usually a difficult patient to bathe and would often become upset under normal circumstances over having to bathe.

Intent to commit abuse is necessary to convict a caregiver of criminal charges and that intent did not exist in this case, the court ruled. **State v. Gondrez, 2005 WL 2429812 (Minn. App., October 4, 2005).**

The nursing director of the facility testified that bathing a male and female patient together is a violation of accepted standards for personal care in a nursing home. It is a violation of the right to personal privacy which is guaranteed to nursing-home residents by state law.

However, a violation of personal privacy is not a criminal offense unless there is intent to inflict some element of embarrassment, humiliation or mental cruelty upon the vulnerable person.

Abuse of a vulnerable person can include offensive, obscene or abusive language or conduct, knowing or having reasonable grounds to know that it will or will tend to anger, alarm or disturb the vulnerable person.

Abuse is a criminal offense only when it is intentional. Intentional means that the perpetrator either has a purpose to do the thing or to cause the result or believes that the act performed will cause the result.

COURT OF APPEALS OF MINNESOTA
October 4, 2005