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12-year-old girl now a felon for locker-room photo

By Brian Rogers

Twelve-year-old girls can be mean, but should that be a felony?

In the case of a Channelview girl who took a photograph of a classmate in a middle school locker room, a Harris County jury this week said yes.

The girl was convicted of the felony of improper photography under a state law aimed at blocking surreptitious photography for sexual gratification.

According to lawyers on both sides, the photo taken in December showed no nudity, never was posted online and was deleted minutes after it was taken.

Nonetheless, prosecutors accused the girl of bullying; defense lawyers called the photo inadvertent, saying the girl was trying to take a picture of herself with a friend.

While the jury had no trouble deciding the girl had taken the picture, at least one juror lamented the result.

“It’s a shame to have 12-year-olds with felony convictions because they’re playing with a piece of technology that’s more powerful than they know,” juror Trey Otis said.

The photo was taken in the girls locker room at Alice Johnson Middle School in Channelview last Dec. 6. A day later, the school punished the girl with a three-day suspension and 45 days in an alternative school, which should have been enough, said Jack Carroll, an attorney for the 12-year-old.

“This got blown out of proportion,” Carroll said. “They arrested that little girl. They handcuffed her and walked her out in front of the whole school, fingerprinted her and put her in a jail cell. For taking a picture.”

2 other photos

The girl could have been sentenced to serve time in a juvenile detention facility, but state District Judge Glenn Devlin instead put her on probation for a year.

Prosecutor Martina Longoria said similar cases, which typically involve boys taking pictures of girls, are prosecuted as felonies “because of the potential for harm.”

Although a felony conviction can result in time behind bars, Longoria said, it also means there is a wider spectrum of ways the court can try to rehabilitate youth. The record, she added, can be sealed later.

During the daylong trial Tuesday, both sides called witnesses to testify about whether the picture-taking was intentional.

Prosecutors called the incident bullying, saying the girl took the photo surreptitiously and would have posted it online if she had not been caught by the telltale sound of the shutter's click.

Witnesses said she taunted the girl with the photo, then deleted it in front of her.

Defense lawyers said it was an innocent mistake in the operation of an iPod touch; the girl said she was trying to use the camera on the front to take her own picture but accidentally took a picture of the victim with the camera on the back.

Prosecutors told jurors the girl had taken two other inappropriate photos, including one taken in the locker room and sent to a male classmate over the Internet.

"We're not just talking about one photo, we're talking about a pattern of conduct," Longoria said. "When you're taking multiple photos of multiple people in a private room and distributing at least one of those photos, that's what this law was intended to address."

'Better options'

The mother of the victim said the verdict was just.

"What happened stemmed from bullying," the woman said. "You should get somebody's permission if you're going to take a photograph, especially underage."

University of Houston law professor Ellen Marrus sympathized with the victim but said prosecutors should not have charged the girl with a felony.

"If we're trying to make children into criminals and make them have a record and to have them be punished, then a felony is appropriate," Marrus said. "If the idea is that our juvenile courts are different and we're trying to change children's behavior, then there are better options."

The improper photography law was created to address advancing technology that has seen hidden cameras put in dressing rooms and bathrooms by unscrupulous adults.

"Improper photography" is listed in the Texas penal code under "sexual offenses" and comprises so-called "upskirt" photos and other photos used to "arouse or gratify the sexual desire of any person."

‘A good kid’

As in this case, the intentional invasion of privacy also can lead to a conviction.

The mother of the convicted girl said her daughter had been punished enough and should not have been charged so harshly.

“She’s never been in trouble before this. She’s a good kid,” the girl’s mother said. “Yes, it’s wrong, but it shouldn’t be a felony. My daughter is not a pervert.”