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Judges: Ambiguity exposes lapse in indecency law

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Two local judges agree that public-indecency charges against an Orchards man must be dismissed because the law is ambiguous about what is "public" and what isn't.

Superior Court Judge James Ladley Tuesday stood by an earlier ruling in which he upheld District Court Judge Ken Eiesland's decision in the case. Eiesland had dismissed nine counts of public indecency against Patrick V. Chiles, 31, accused of exposing himself to passers-by.

The problem? The alleged exposures were made from inside Chiles' home, which is not a "public" place the way the statute is written, Eiesland ruled last September.

The Clark County Prosecutor's Office appealed to Superior Court, but Ladley agreed with Eiesland. Tuesday, Ladley denied deputy prosecutor Diane Woolard's motion for reconsideration. Woolard said she would take the case to the state Court of Appeals.

According to the court file, Chiles, 5114 N.E. 42nd St. was cited nine times in 1985 and 1986 for public indecency. State law makes a person guilty of that misdemeanor crime if he "makes any open and obscene exposure of his person ... knowing that such conduct is likely to cause reasonable affront or alarm."

Chiles agreed that several persons had observed him standing in the second-floor window of his home with his bathrobe open, but he disputed the idea that he had done anything illegal, according to the file.

Defense lawyer Steve Thayer cited a similar case heard by the Court of Appeals in 1983, in which the court said the law was ambiguous about the meaning of "public" indecency. When a law is ambiguous, courts must by law interpret them in a light most favorable to the defendant.

Prosecutor Woolard argued that a jury should decide whether Chiles' exposure, which took place in a window facing the street, is public and open. His "repeated, unconcealed acts in his window show he did not have a subjective expectation of privacy," Woolard wrote in a legal brief.

Eiesland agreed with Thayer that, according to the 1983 case, common usage defines "public" as "accessible or visible to all persons or completely free from concealment."

"A man standing in his own home is clearly not" visible to all or free from concealment, Eiesland ruled.

Ladley said Tuesday the case is one on which the appeals court should rule.

There is "a hole in the law," he said. "I think that the Legislature's got to plug the gap."

He said the 1983 Court of Appeals case "handcuffs me ... I'm stuck with the facts ... I think the law is a mistake, but we have to live with it."