

Judge drops charges against man arrested last year for alleged attack in Minto-Brown Island Park

by [By Salem Reporter](#) on December 20, 2019

David Belluno (Booking photo).

A man accused of attempting to kidnap and rape a woman at knifepoint in Salem's Minto-Brown Island Park has had all charges dropped by a Marion County Circuit Court judge who found he wasn't fit for trial.



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On Dec. 18, Judge Courtland Geyer dismissed charges, sexual abuse, attempted first-degree counts of kidnapping and attempted rape, use of a weapon and assault brought against David Belluno, 24, in [connection with the attack last year](#).

A psychologist diagnosed Belluno with a mild intellectual disability and determined that he was unable help in his own

defense. Geyer determined that because Belluno's mental health was unlikely to improve to the point where he could stand trial, Oregon law required the charges to be dismissed.

Aaron Jeffers, his public defense attorney, confirmed Thursday that Belluno was not in the Marion County Jail.

Katie Suver, Marion County deputy district attorney said that it's not clear if Belluno remained a patient at the Oregon State Hospital where he had been committed earlier and that she doubted he's in custody. The Oregon Health Authority, which oversees the state hospital, could not be reached for comment.

"It is a huge public safety concern," said Suver. She said that Belluno's release magnifies what she called a "hole in the process."

Suver said that an expert hired by her office determined that with the right treatment Belluno might improve enough to face the charges

Geyer ruled that he couldn't mandate that treatment.

While there's a process to commit mentally ill people deemed "extremely dangerous," Suver said that Belluno's case didn't meet the law's exacting criteria.

"I've been a prosecutor for 22 years and this has never

happened in a case of mine," she said.

Jeffers declined further comment but followed up with a statement.

"There is no loophole," he wrote. "We don't prosecute people who aren't competent. And we don't commit people who aren't dangerous."

'Liberty without due process'

In September 2018, a woman was walking at night near Salem's pedestrian bridge when a man knocked her down, dragged her into the brush and assaulted her at knifepoint. The woman was able to fight off her attacker, run away and call the police.

Police responded and found Belluno who matched the victim's description and arrested him. According to his booking records, Belluno listed a Salem address.

Under Oregon law, people accused of crimes who are unable to understand or participate in legal proceedings because of mental illness may be ordered by courts to undergo treatment in order to become well enough to "aid and assist" in their defense.

When a judge determines that a defendant is unlikely to regain the capacity to stand trial, the law requires their

charges to be dismissed. The law further requires the judge to free the defendant or begin a process to civilly commit them to the state hospital.

Court records show that in November 2018, the court determined that Belluno was unfit for trial following a psychological evaluation by Dr. Nicole Ball requested by the defense. The evaluation at that time determined that with treatment, Belluno could improve his mental health and he was committed to the state hospital.

Last January, Dr. Andrew Orf, an expert hired by the state, concluded that Belluno could improve with the right services and if he actively participated in treatment and education to prepare him for trial. However, the report questioned his progress and noted comments from a psychiatrist that Belluno "expressed ambivalence about studying legal skills."

"Mr. Belluno also expressed that he is 'comfortable' at the Oregon State Hospital and he 'did not feel the urgency to pass an evaluation,'" Orf reported.

In a report in April, Orf described how a doctoral student working at the state hospital noted that Belluno's efforts to improve fluctuated. The report noted that Belluno "commented that after three years an individual would 'time out' if they were not found able to aid and assist."

The report further noted that Belluno understood legal concepts but had remarked that he would prefer to stay in the hospital instead of jail. Orf concluded that Belluno was unlikely to improve enough to stand trial, citing little to no improvement in his legal decision making. The report also mentioned factors such as Belluno possibly suffering a traumatic brain injury, a history of severe trauma and diabetes.

In September Belluno's attorney moved to end the criminal case, citing Orf's report that argued that it was unlikely he would regain his capacity to stand trial.

"Continued prosecution of this case deprives Mr. Belluno of his liberty without due process," the motion said.

Suver responded that the prosecution had hired Dr. Andrew Stover to review the case to determine if Belluno would ever improve enough to stand trial. Stover subsequently testified that Belluno could potentially recover with additional treatment.

Stover testified he was uncertain if the state hospital would provide the treatment he considered necessary to improve Belluno.

Suver argued that instead of dismissing the charges, the trial should be postponed to see whether more treatment could

restore Belluno's competency.

But Geyer's judgment noted that he lacked "the authority to direct the Oregon State Hospital on how to specifically provide treatment to an individual defendant." Geyer dismissed the charges on grounds that Belluno was unable to aid and assist in his defense and was unlikely to regain competency.

Crimes don't qualify

Suver said that it's not "crystal clear" if a judge has the authority to mandate the type of treatment a patient receives at the hospital.

Once the charges were dismissed, she said she couldn't pursue a civil commitment of Belluno to confine him to the state hospital.

She pointed out that the state's civil commitment law is specific in what acts a defendant can be committed for. They include causing death or serious injury, lighting a fire or explosion that damages property and certain acts of sexual assault.

"It's extremely narrow," she said. "None of the crimes he is alleged to have committed qualifies."

She also said that Belluno's diagnosis of a mild intellectual

disability would not meet the law's threshold for commitment.

Belluno's charges were dismissed "without prejudice" meaning they could be refiled. However, Suver said that she's looking at other options.

She said that the victim can file for a protective order against Belluno and will be notifying the Salem Police of his release.

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Correction: Katie Suver said that David Belluno's diagnosis of a mild intellectual disability would not meet the law's threshold for commitment.