IN THE COURT OF APPEALS OF IOWA

No. 3-316 / 92-1547

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000985

STATE OF IOWA,

Appellee,

vs.

JOHN WALK,

Appellant.

Appeal from the Iowa District Court for Story County, Thomas Hronek, Judge.

Defendant appeals his conviction for indecent exposure in violation of Iowa Code section 709.9 (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Chris Odell, Assistant Attorney General; Mary E. Richards, County Attorney; and Stephen Holmes, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, J. 000986

Defendant, John Francis Walk, appeals his conviction, following a jury trial, of indecent exposure in violation of Iowa Code section 709.9 (1991). He contends that 1) there was insufficient evidence to convict him, and 2) the district court abused its discretion in admitting a photograph of him into evidence.

The State charged Walk with indecent exposure, a serious misdemeanor. At trial, the State presented evidence that Rhonda Lemon and Amy Schmitt both identified Walk as the man they had seen late one evening, naked from the waist down. The man had stood in front of Ms. Lemon's car, forcing her to drive around him. Ms. Schmitt who was following Ms. Lemon in her car, saw him on the edge of the road.

Police Officer Reitano testified that Walk was pulling on a pair of bikini shorts when he stopped Walk in his car. Reitano took Walk to the police station where a photograph was taken of him dressed only in the bikini briefs. During an interview, Walk told Reitano that he was a nudist and had been for some years. Walk's objection to the photograph being introduced as evidence was overruled.

Walk was found guilty and sentenced to one year in the county jail with all but thirty days suspended. He was also placed on probation for a term not to exceed two years. Walk appeals. We affirm.

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Walk claims there was not sufficient evidence to support his conviction. Specifically Walk claims the State failed to prove an essential element of the crime, that he exposed himself in order to arouse the sexual desire of either party.

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

Iowa Code section 709.9 (1991) states:

> A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:
> 1. The person does so to arouse or satisfy the sexual desire of either party; and
> 2. The person knows or reasonably should know that the act is offensive to the viewer.

Intent, seldom capable of direct proof, may be shown by reasonable inferences from established facts. State v. Chatterson, 259 N.W.2d 766, 769-70 (Iowa 1977). The jury

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here could find defendant's sexual intent beyond a reasonable doubt from Ms. Lemon's and Ms. Schmitt's testimony that Walk deliberately exposed himself to them by stepping onto a public street in oncoming traffic at 11:30 p.m. Although claiming to be a nudist, Walk wore a hat and t-shirt when he exposed himself to the two women and hastily pulled on briefs when stopped by the police. We find there was substantial evidence in the record to support the jury's verdict.

Walk next argues that the trial court erred by admitting into evidence a photograph of him in only his briefs. He claims the photograph was not relevant and should not have been admitted. The trial court is cloaked with considerable discretion in admitting photographs, and its ruling will not be overturned without a clear abuse of discretion. State v. Davison, 245 N.W.2d 321, 324 (Iowa 1976) cert. denied, 430 U.S. 955 (1977); State v. Ostrand, 219 N.W.2d 509, 513 (Iowa 1974). We do not believe the trial court abused its discretion in admitting the photograph.

Further, admission of evidence is not reversible error when the same evidence is in the record without objection. State v. Jacoby, 260 N.W.2d 828, 834 (Iowa 1977); State v. Hood, 346 N.W.2d 481, 484 (Iowa 1984). Both victims testified without objection that they were brought to the scene of the police stop to identify the defendant who then "had on some red-like bikini briefs." Officer Reitano

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similarly testified without objection that, when arrested, defendant "was wearing the burgundy pants and a pair of black shoes with no socks." Finally in a taped interview with Detective Robinson, which was admitted into evidence and played for the jury, defendant admitted that he took off his camouflage shirt and wore only his shorts when stopped by Officer Reitano.

We conclude no reversible error occurred here.

AFFIRMED.