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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

299

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
KEITH C. ADAMS,	)	8-369 87-1442
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County (No. CR 129467-01), James R. Havercamp, Judge.

Defendant appeals from his conviction, following a jury trial, for indecent exposure. **AFFIRMED.**

Raymond E. Rogers, Acting Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Sheryl A. Soich, Assistant Attorney General; and Marc Gellerman, Assistant Scott County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

HABHAB, J.

On April 14, 1987, a fourteen-year-old girl, C.M., told her school counselor that as she was walking to the bus stop that morning, a man standing in a window had whistled to get her attention and then exposed himself. She could not identify the man, whose face had been hidden. The counselor called the police, who assigned Officer Wall to position himself nearby the next morning.

As the girl walked by the building on April 15, the officer saw a man standing in the window completely nude. The officer went to the apartment where the window was located, found the defendant wearing only a robe, and arrested him. The defendant denied that he had ever intentionally exposed himself, but said he might have done so inadvertently while opening the blinds. A jury found him guilty of indecent exposure, a violation of Iowa Code section 709.9 (1987).

The defendant contends on appeal that the evidence presented at trial was insufficient to convict him. We affirm the trial court.

Both the Supreme Court of Iowa and this court have clearly set forth the standards and considerations applicable to a sufficiency of the evidence challenge. When reviewing a challenge to the sufficiency of the evidence, we will review the record in the light most favorable to the State. State v. Wheeler, 403 N.W.2d 58

(Iowa App. 1987). This "favorable light" includes the making of any legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence and the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). The test for whether the evidence is sufficient to withstand appellate scrutiny and support a verdict involves an inquiry as to whether the evidence is "substantial." State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). Findings of the fact finder are to be broadly and liberally construed, rather than narrowly or technically, and in cases of ambiguity, they will be construed to uphold, rather than defeat, the verdict. State v. Price, 365 N.W.2d 632, 633 (Iowa App. 1985). Evidence meets the threshold criteria of substantiality if it is evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

In applying that standard, we consider all the evidence presented at trial, not just the evidence which supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). The evidence presented "must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981).

The defendant in the case at bar was convicted of indecent exposure in violation of Iowa Code section 709.9 (1987). This section of the Code provides:

> 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 desires of either party; and
>
> 2. The person knows or reasonably should know that the act is offensive to the viewer.

Pursuant to section 709.9, the State had three elements to prove: (1) that the defendant exposed his genitals to C.M.; (2) that the defendant did so to satisfy or arouse either his or C.M.'s sexual desires; and (3) that the defendant knew, or reasonably should have known, that his conduct would be offensive to C.M. See Iowa Code § 709.9 (1987); State v. Bauer, 337 N.W.2d 209, 210 (Iowa 1983).

At trial the jury found enough evidence to be convinced beyond a reasonable doubt that these elements were met. Finding the elements met, they convicted the defendant of the crime charged. When we turn to the record, we find substantial evidence to support the jury's findings as set forth below.

There was substantial evidence presented at trial from which the fact finder could infer that the defendant exposed his genitals in C.M.'s view. Both C.M. and Officer Wall testified that the defendant was standing in front of his window completely nude. The defendant himself admits that he went to that window that morning, that he was not wearing any underwear, and that "it's a possibility" that his robe, with nothing on underneath, was hanging open when

he opened the curtain. The jury was well justified in finding that an exposure had occurred.

The second element the State had to prove was that the defendant exposed himself to satisfy or arouse either his own or C.M.'s sexual desires. This element is satisfied if the jury could have reasonably found that the defendant's act of exposing himself was done to arouse or satisfy the sexual desires of either party.

In this case, the jury could infer from the evidence presented that this was the defendant's purpose. Testimony from Officer Wall indicated that the defendant was standing in front of the window completely nude for two or three minutes. The fact finder could rationally find, as they did in this case, that one would not need to stand in front of a window in a total state of undress for 120 to 180 seconds to open the blinds and that the professed motive of the defendant was not the true motive.

The State cites to a Connecticut case where the Connecticut Supreme Court was faced with a similar issue. There, the court had to determine if a defendant's behavior, in standing and smiling in front of his window appearing to hold his penis, constituted behavior that could have been found to be for purposes of arousal or satisfaction. State v. Vega, 444 A.2d 927 (Conn. 1982). The court noted at the outset that "intent is a mental process which ordinarily may be proven by circumstantial

evidence." State v. Vega, 444 A.2d at 929; see also State v. Olsen, 373 N.W.2d 135, 136 (Iowa 1985).

The Connecticut Supreme Court found there to be sufficient circumstantial evidence for the jury to draw the inference that the defendant's intention was to arouse or satisfy his sexual desires. State v. Vega, 444 A.2d at 929. The court stated that "[h]ere, the jury could reasonably and logically have inferred the requisite intent from the defendant's lack of attire, as well as from his knocking on the window, and his posture and facial expression." Id. at 929.

In this case, the jury could have likewise reasonably and logically inferred the requisite intent from the defendant's lack of attire, as well as his whistling out the window, and his posture. The only factor in Vega that could not be determined at trial in the case here was this defendant's facial expression, because his face was obscured from view. All of the other factors, though, combined with the testimony of the length of time involved and the whistling, could and did convince the trier of fact that the defendant intended to satisfy or arouse either his or C.M.'s sexual desires. We conclude there was sufficient evidence to support the jury's finding that this element was satisfied.

The third element, that the defendant offended, and should have known that he offended, the victim, requires a

two-part inquiry. State v. Bauer, 337 N.W.2d at 212. The state of mind of the victim and the defendant are both involved in this inquiry. Id. at 212.

The nature of the act of indecent exposure is such that, in the absence of special knowledge or circumstances, the actor should be aware that the viewer will be offended. Yeager & Carlson, Iowa Practice: Criminal Law and Procedure, § 217 (1987). The jury could, from the circumstances here, infer that the defendant should have known that a fourteen-year-old at the bus stop would be offended by his conduct of standing in the window exposing himself. The evidence presented to the jury was that of a man standing nude in his window after testimony indicated that he whistled to get C.M.'s attention. The victim was not a friend or acquaintance of the defendant's, she was not a consenting adult, nor did she in any way place herself willingly in that situation. The facts indicate that C.M. was a junior high school girl waiting for her bus to take her to school when the whistle caught her attention and she looked up only to find defendant exposing his genitals to her.

Our supreme court, in Bauer, pointed out that the offensive element was deliberately put in the statute to "place beyond the State's reach . . . situations involving willing viewers." State v. Bauer, 337 N.W.2d at 212. In this case the jury found from the circumstances that indeed

C.M. was not such a "willing viewer," and the defendant should have known that she was not and that she would be offended. There was no error in overruling the motion for judgment of acquittal on the basis of insufficiency of evidence on that component.

Turning to the second component of the offensiveness element, the jury also could have rationally found that the victim, C.M., was offended. The record shows that she reported this incident to her junior high school counselor when she went to the school that day. The jury could have reasonably, and perhaps easily, found from this fact that C.M. was upset and offended enough to discuss this with a professional. We find sufficient evidence to support the jury's determination that this component of the third element was satisfied.

In conclusion, we find there is substantial evidence to support the jury's finding that all the elements of Iowa Code section 709.9 were met. Therefore, the defendant's conviction should be affirmed.

AFFIRMED.