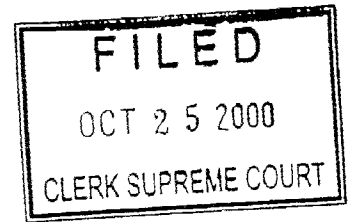


IN THE COURT OF APPEALS OF IOWA

No. 0-665 / 00-0384
Filed October 25, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRI LYNN HAMBLY,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (South) County, D.B.
Hendrickson, Judge.

Jerri L. Hambly appeals from her conviction, following a jury trial, of public
indecent exposure in certain establishments in violation of Iowa Code section
728.5 (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, and Michael Short, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Jerri L. Hambly appeals from her conviction, following a jury trial, of public indecent exposure in certain establishments in violation of Iowa Code section 728.5 (1999). She contends the district court erred in denying her motion for judgment of acquittal based upon the alleged insufficiency of the evidence supporting her conviction. We affirm.

Background Facts and Proceedings. Hambly owned a teen club called K-Town Underground in Keokuk. The club opened in early May 1999. It provided teens a place to go, with pool tables, coin-operated video arcade games, and a dance floor with a disc jockey. The club charged teenagers an admission fee, ranging from \$1 to \$3, to enter the dances. Shortly after it opened, the club offered an all-girls sleepover:

The K-Town Underground Girls['] Sleepover
 May 15, 1999
 YWCA Building
 \$6.00 per person
 Ages 13 and up
 All guys gone by 11:00 p.m.

You must have permission slips signed by your parents with a phone number so permission can be verified. We are going to have music all night, T.V. with videos, Sony Playstation and lots of food to eat. Any parents who would like to help please notify Jerri Hambly. . . . This will be a safe and fun sleep over. Bring a sleeping bag, pillows, videos, playstation games or any games you want. Open for suggestions. If you have any ideas let me or Joyce know and we will work on it. Let's have a girls' night of fun. Just one big party.

A parental permission slip form accompanied the flier. Rebecca Varnold, a nineteen-year-old volunteer at the club, along with Hambly, acted as chaperones on the night of the sleepover.¹

Varnold testified after the girls ate pizza and played video games and pool, a game of "Truth or Dare" began. In that game, one can either answer a personal question or engage in an activity selected by someone in the group. In response to a dare, one of the girls removed her shirt and ran around the basement with her arms over her chest. Eventually, several of the girls began "stripping to the music," according to Varnold. She stripped until she was wearing only boxer shorts and socks. Two other girls, both seventh graders, stripped to the tune of "Don't Want No Short-Dicked Man," until they were wearing only their socks. One girl removed her shirt and bra, and two other girls removed their shirts. According to Varnold, Hambly was present the entire time, and took pictures of the evening's events. None of the girls participating in the "strip tease" were asked to leave the premises. Varnold testified she and Hambly drank tequila and Mountain Dew during the evening. Hambly fired Varnold approximately five days after the sleepover.

Other girls in attendance testified similarly. According to the other girls, Hambly encouraged the strip contest, but did not require anyone to participate. She offered a \$10 prize to the winner. The girls testified Hambly was present and awake for the entire "strip tease" contest and took pictures throughout the

¹ A dispute existed over whether Varnold was a paid employee or a volunteer at the club. Varnold testified she was a paid employee, while Hambly testified Varnold was a volunteer worker.

evening. Hambly warned the girls after the sleepover not to say anything about the evening's activities because it could get her into trouble.

Hambly testified she laid down at about 12:30 a.m. with a migraine headache on the evening in question, leaving Varnold in charge. According to Hambly, she was not present during the "strip tease" contest, she did not take pictures of it happening, and the girls did not have her permission to hold such a contest. She testified the camera belonged to one of the girls, and she confiscated it and took it to her home after the sleepover. According to Hambly and other witnesses for the defense, Varnold and several other girls testifying against Hambly at trial were upset with her for barring them from K-Town Underground for various reasons, and had accused Hambly in order to "get back" at her.

The State charged Hambly with public indecent exposure in certain places in violation of Iowa Code section 728.5 (1999). At trial, the district court denied Hambly's motion for judgment of acquittal. The jury found her guilty as charged, and the court entered judgment and sentenced her to a thirty-day jail term and a \$750 fine. The court suspended both the jail term and fine, and placed Hambly on probation for two years. Hambly appeals.

Sufficiency of the Evidence. We review Hambly's challenge to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4. The standards governing a challenge to the sufficiency of the evidence are well established:

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. Direct and

circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational factfinder [sic] that the defendant is guilty beyond a reasonable doubt.

State v. Mills, 458 N.W.2d 395, 397 (Iowa App. 1990) (quoting *State v. Wheeler*, 403 N.W.2d 58, 60 (Iowa App. 1987)). The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The very function of the jury is to sort out the evidence and "place credibility where it belongs." *Id.*

Iowa Code section 728.5(4) provides an owner, manager, or person who exercises control over a place of business required to obtain a sales tax permit is guilty of a serious misdemeanor:

If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.

Iowa Code § 728.5(4). Jury instruction No. 13 required the state to prove beyond a reasonable doubt the following elements of indecent exposure in certain establishments: (1) on or about May 15, 1999, Hambly was an owner, manager or person who exercised direct control over a business known as K-Town Underground; (2) K-Town Underground was required to obtain a sales tax permit; (3) Hambly knowingly allowed one or more persons to remain in the business known as K-Town Underground who were exposing their genitals, pubic hair, or

anus to public view; (4) the persons who exposed their genitals, pubic hair or anus were minors under eighteen years of age.

Hambly claims the court erred in denying her motion for judgment of acquittal because she did not know the minors were exposing their genitals and because the club was not open to the public at the time the stripping took place. We disagree.

The testimony of numerous girls present the night of the sleepover supports a finding by the jury that Hambly knew the "strip tease" contest was going on. According to the girls, Hambly was present throughout the contest and took pictures of the event. The jury was free to believe or disbelieve the girls' testimony, and apparently chose to give it more weight than the testimony of Hambly or other witnesses for the defense.

Although the club was closed to boys during the sleepover, it remained open to any teenage girl with parental permission who paid the \$6 admission fee. Therefore, the club remained open to the "public." *See Iowa Farmers Purchasing Ass'n, Inc. v. Huff*, 260 N.W.2d 824, 827 (Iowa 1977) (the "public" can mean any group or segment, however characterized, of the aggregate of the citizens of a political entity). When teenage girls participated in the stripping contest at a place of business in front of other teenage girls who had paid money to attend, their pubic hair and genitals were exposed to "public view." Substantial evidence supports the jury's verdict.

AFFIRMED.