IN THE COURT OF APPEALS OF IOWA

No. 6-649 / 96-0116

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MATTHEW J. KONO,

Defendant-Appellant.

FILED
NOV 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Benton County, William R. Eads, Judge.

Kono appeals from the judgment and sentence entered after his conviction, following a bench trial, of indecent exposure. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Ray Lough, County Attorney, and Karen Duncan, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a defendant challenging his conviction for indecent exposure, in violation of Iowa Code section 709.9. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On March 18, 1995, two girls, Jama and Michelle, were playing at a playground. They noticed a man who had his pants down. The man was wearing pink silky shorts and had a bicycle. The man pulled up his shorts and moved within about five feet of the girls. He then moved further away and pulled down his shorts again. Jama saw the man's penis. Both girls picked defendant Matthew Kono out of a photographic array.

At the bench trial, Kono presented alibi testimony from his fiancée and his fiancée's mother. In rebuttal, Michelle's mother, Kathy, testified she had seen Kono with his bicycle wearing pink shorts at a girl's softball game. She stated Kono was nervous and "like an animal that's caged and uptight." She also stated Kono appeared to be waiting for a child to enter the restroom. The district court found defendant guilty of indecent exposure. Kono now appeals his conviction.

Kono contends he received ineffective assistance because his trial counsel did not object to Kathy's testimony. He believes Kathy's testimony was irrelevant to the issues in the case, and was prejudicial to him. He states it was improper to compare him to an animal. He also states it was pure speculation for Kathy to testify he was waiting for a child to enter the restroom at the softball game.

To establish a claim of ineffective assistance of counsel, a defendant must show that the attorney failed to perform an essential duty, and prejudice resulted to the extent it denied defendant a fair trial. *Caldwell v. State*, 494 N.W.2d 213, 214 (Iowa 1992).

We find defendant has failed to show he was prejudiced by counsel's failure to object to Kathy's testimony. We first determine Kono has not shown the result of the trial would be different if counsel had objected to the testimony Kono acted like a caged animal. The statement merely described how Kono paced at the softball game. We also determine the district court did not rely on Kathy's statement Kono appeared to be waiting for a child to enter the restroom. Instead, the court focused on Kathy's statements that Kono had a bicycle at the softball game and was wearing pink shorts.

We affirm Kono's conviction for indecent exposure. Costs of this appeal are assessed to Kono.

AFFIRMED.