

**IN THE COURT OF APPEALS OF IOWA**

No. 0-457 / 09-1376  
Filed July 28, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**SCOTT MICHAEL STUHR,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, William A. Price,  
District Associate Judge.

Defendant claims there was insufficient evidence to support his conviction  
of indecent exposure. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney  
General, John Sarcone, County Attorney, and Linda Zanders, Assistant County  
Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J.,  
takes no part.

**DANILSON, J.**

Scott Stuhr appeals following his conviction and sentence for indecent exposure in violation of Iowa Code section 709.9 (2009). Stuhr contends his conviction should be vacated because the evidence was insufficient as a matter of law to convict him of indecent exposure. For the following reasons, we affirm.

**I. Background Facts and Proceedings.**

Around 2:00 p.m. on May 5, 2009, Victoria Erickson took her dog for a walk in the park by Lake Petoka in Bondurant, Iowa. Erickson regularly exercised at the park by walking four times around the lake. On her first lap around the lake, Erickson noticed some fishermen. One of the men was Stuhr, who was sitting in a lawn chair looking straight ahead at the lake with his fishing poles propped in the grass. Erickson noticed Stuhr was wearing a hooded sweatshirt and jeans, which she thought was odd for such a warm spring day.

On Erickson's third lap around the lake, Stuhr turned around and said "hello" to her. Erickson responded with "hello" and continued walking. On her fourth lap, Erickson saw Stuhr "cuffing" his naked, erect penis with both hands and staring straight ahead. Stuhr did not look at or speak to Erickson, but his penis was exposed and "pointed up in the air." Erickson testified that it did not appear as though Stuhr was masturbating or urinating, but also that she could not tell for certain what he was doing.

After Erickson witnessed this, she walked to her car to call 911. She was bothered and offended by the incident because Stuhr "was exposed and fully erected, [and she did not know] what was going to happen next with kids in the park and [herself] and others."

A police officer arrived at the park in approximately ten minutes to take Erickson's statement and question Stuhr. Stuhr denied exposing himself and said he was fishing the whole time. He did not claim he was urinating, changing clothes, or applying any kind of medication. The police officer then arrested Stuhr for indecent exposure, a serious misdemeanor, in violation of Iowa Code section 709.9.

On July 5, 2009, the State filed a trial information charging Stuhr with indecent exposure, to which Stuhr pleaded not guilty. Trial to the jury commenced on July 13, 2009. Stuhr moved for a directed verdict of acquittal, contending a reasonable jury could not infer from the evidence that Stuhr had any intent to arouse or satisfy a sexual desire of himself or Erickson, and, thus, an element of indecent exposure was missing. The district court denied Stuhr's motion, and the jury found Stuhr guilty of indecent exposure.

On September 4, 2009, the district court sentenced Stuhr to one year incarceration to be served concurrently with another sentence, with credit given for any time served. Stuhr was also sentenced to a special sentence of ten years pursuant to Iowa Code section 903B. The district court further ordered Stuhr to participate in sex offender treatment, stay away from the Lake Petoka area, provide a DNA sample, and register as a sex offender. Stuhr appeals, contending the evidence was insufficient as a matter of law to support a conviction of indecent exposure.

## **II. Scope and Standard of Review.**

We review a challenge to the sufficiency of evidence for correction of errors at law. *State v. Isaac*, 756 N.W.2d 817, 819 (Iowa 2008). If supported by

substantial evidence, the district court's findings of the elements of the offense are binding on appeal. *Id.* Substantial evidence is evidence that "would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id.* The evidence is viewed in the light most favorable to the State, and all the evidence is considered, not just the evidence supporting the verdict. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). We make all legitimate inferences and presumptions that may be fairly and reasonably deduced from the evidence. *State v. Blair*, 347 N.W.2d 416, 418 (Iowa 1984). The evidence must raise a fair inference of guilt rather than create mere speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

### **III. Discussion.**

We conclude substantial evidence supports Stuhr's conviction for indecent exposure. Iowa Code section 709.9 provides:

A person who exposes the person's genitals or pubes to another not the person's spouse . . . 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.

The third element requires evidence that both the viewer was offended and the actor knew or should have known the viewer would be offended. *State v. Bauer*, 337 N.W.2d 209, 212 (Iowa 1983). Stuhr does not raise as an issue on this appeal that the evidence was insufficient to prove he exposed his genitals to Erickson who was not his spouse, Erickson was offended by Stuhr's conduct, and Stuhr knew or reasonably should have known the act would be offensive to

Erickson. The issue is whether Stuhr exposed himself to arouse or satisfy his or Erickson's sexual desires.

To constitute the offense of indecent exposure, the exposure must be sexually motivated. *Id.* at 211. For example, exposure from streaking, nude protesting, or public urination cannot uphold a conviction for indecent exposure unless done with a sexual motive. *Id.* at 211-12. Intent to arouse or satisfy the sexual desires of either the defendant or the viewer "can be inferred from [the defendant's] conduct, remarks, and all surrounding circumstances." *State v. Jorgensen*, 758 N.W.2d 830, 837 (Iowa 2008).

Viewing the evidence in the light most favorable to the State, we conclude the State presented substantial evidence from which a rational jury could find Stuhr exposed himself to arouse or satisfy his sexual desires. Stuhr said "hello" to Erickson on her third lap around the lake. When Erickson approached Stuhr for the fourth time, his penis was erect with his hands cupped around it. Although Erickson testified that Stuhr did not look at her and did not appear to be masturbating, the fact that both his hands were touching his erect penis supports the jury's determination that his behavior was sexually motivated.

Stuhr contended at trial that he was urinating and not sexually motivated. However, Erickson testified that it did not look like Stuhr was urinating and that she would have been able to see a stream of urine coming out of his body if, in fact, he was urinating. It is within the province of the jury to assess the credibility of witnesses and determine the weight of evidence. *State v. Robinson*, 288 N.W.2d 337, 341 (Iowa 1980). We conclude a rational jury could reasonably find

that Stuhr was not urinating, but instead, was sexually motivated when he exposed his erect penis to Erickson.

Finally, Stuhr contends he cannot be guilty of indecent exposure because he did not know Erickson would see him, as evidenced by the fact that she was behind him and he did not look at her. “Nothing, however, in the plain language of the statute limits the contours of the crime of indecent exposure to those acts involving the specific victim/viewer targeted by the actor.” *Jorgensen*, 758 N.W.2d at 836.

It is reasonable to assume that a person who exposes himself in a public place runs the risk that he will be observed by more than his targeted audience . . . . It is also reasonable to assume this unwanted public exposure was the evil the legislature sought to remedy with this law.

*Id.* Consequently, in *Jorgensen*, the defendant was convicted for indecent exposure after store employees, through a closed-circuit video system, observed him follow an unidentified woman through a department store while repeatedly exposing his penis and masturbating. *Id.* at 832. *Jorgensen*’s conviction was upheld even though the employees were not the object of the defendant’s sexual desires and the defendant did not know the employees were watching him. *Id.* at 836. We reject this challenge to Stuhr’s conviction of indecent exposure.

For the above reasons, we affirm Stuhr’s conviction and sentence for indecent exposure.

**AFFIRMED.**