IN THE COURT OF APPEALS OF IOWA

No. 1-380 / 10-1581
Filed August 10, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN DOUGLAS CLAWSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Monty W. Franklin, District Associate Judge.

Defendant appeals his conviction for violating an exclusionary zone for a sex offender, an aggravated misdemeanor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, Steve Foritano, Assistant County Attorney, and Kevin J. Bell, student legal intern, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.

I. Background Facts & Proceedings.

The following facts were presented during the trial in this case: On March 5, 2010, at about 12:11 p.m., Des Moines police officer Martin Siebert responded to a call concerning a man sleeping in a car near a daycare center on Hubbell Avenue. Officer Siebert found Steven Clawson in a vehicle parked on the frontage road in front of Grandview Child Development Center. Clawson has been convicted of sexual exploitation of a minor. On March 5, 2010, Clawson was on the sex offender registry.

Clawson had his seat reclined and his eyes closed when Officer Siebert approached. A man who had been panhandling at the intersection of Hubbell and Euclid Avenues, identified as Jeff Beisch, came up shortly after Officer Siebert arrived and got into the passenger seat of Clawson's car.[1] Clawson stated he had been sleeping while his friend was panhandling. He admitted he was a sex offender. Clawson stated he came to Des Moines from Davenport to pick up a friend from a doctor's office, but could not name the friend or the doctor's office.

There were children in the childcare facility at the time Clawson was found there. The childcare facility is clearly marked with a sign in the front. Also, a bus, painted with the daycare's name, was parked in the daycare parking lot. The frontage road has "No Parking" signs on both sides. Several businesses had parking lots closer to the entrances to the frontage road from Hubbell

[1] Beisch was advised that panhandling was illegal, but no citation was issued.

Avenue than where Clawson was parked. Clawson was parked where he could easily see parents and their children entering and leaving the childcare facility.

Clawson was charged with violating an exclusionary zone for a sex offender, in violation of Iowa Code section 692A.113(1)(e) (Supp. 2009), an aggravated misdemeanor. The statute prohibits a person who has been convicted of a sex offense against a minor from "[l]oiter[ing] within three hundred feet of the real property boundary of a child care facility." Iowa Code § 692A.113(1)(e). Clawson waived his right to a jury trial and requested a bench trial. The court found Clawson guilty beyond a reasonable doubt. Clawson was given a suspended two-year sentence and placed on probation for twenty-four months. He appeals, claiming there is insufficient evidence to support his conviction.

II. Standard of Review.

We review challenges to the sufficiency of the evidence in a criminal case for the correction of errors at law. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003). The fact finder's verdict will be upheld if it is supported by substantial evidence. *Id.* at 165-66. Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). We consider all the evidence and view the evidence in the light most favorable to the State. *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2000).

III. Merits.

Section 692A.113(1)(e) provides, "A sex offender who has been convicted of a sex offense against a minor shall not . . . [l]oiter within three hundred feet of

the real property boundary of a child care facility." Clawson does not dispute he has been convicted of a sex offense against a minor or that he was found within 300 feet of a childcare facility. He challenges the court's finding, however, that he was loitering. Clawson asserts the court made speculative findings about his reasons for being parked in that location.

The term "loiter" is defined in section 692A.101(17) as follows:

> *"Loiter"* means remaining in a place or circulating around a place under circumstances that would warrant a reasonable person to believe that the purpose or effect of the behavior is to enable a sex offender to become familiar with a location where a potential victim may be found, or to satisfy an unlawful sexual desire, or to locate, lure, or harass a potential victim.

The court found it was not chance or circumstance that led Clawson to be parked where he was found. There were several places outside the exclusionary zone where he could have parked and napped while waiting for Beisch to return from panhandling that were not clearly marked as "No Parking" zones and were just as close, if not closer, to the intersection where Beisch was panhandling, if it was actually his intent to just wait for his friend. The court also noted Clawson gave inconsistent statements about why he was even in Des Moines.

The court found:

> The vehicle in which the defendant was sitting was parked almost directly in front of a clearly indicated child care facility in a location giving the defendant a clear and unobstructed view of any children, parents, or other persons entering the facility's parking lot and building. The defendant could also readily observe anyone dropping off or picking up a child from the facility as well as the vehicle being driven by the person escorting the child or children.

We determine there is substantial evidence in the record that would warrant a reasonable person to believe Clawson was parked in front of the childcare facility

in order to become familiar with a location where a potential victim could be found, or to locate a potential victim. This is sufficient to satisfy the element that Clawson was engaged in "loitering" within 300 feet of the childcare facility.

We affirm Clawson's conviction for violating an exclusionary zone for a sex offender.

AFFIRMED.