

IN THE COURT OF APPEALS OF IOWA

No. 1-491 / 10-1285
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAYMOND ALLEN GUTHRIE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola (trial) and Gregory D. Brandt (ruling and sentencing), District Associate Judges.

Raymond Guthrie appeals from his conviction for indecent exposure.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

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

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Raymond Guthrie appeals following his conviction and sentence for indecent exposure in violation of Iowa Code section 709.9 (2009), for an incident occurring on October 6, 2009. Guthrie argues the State failed to prove the exposure was done with the purpose of arousing the sexual desires of either himself or another. Upon our review, we conclude the circumstances surrounding Guthrie's indecent exposure provide substantial evidence that it was done for the purpose of arousing his sexual desires. We affirm Guthrie's conviction and sentence.

I. Background Facts and Proceedings.

On her way to a class at Drake University on October 6, 2009, Brooke Nielsen observed a man sitting in a parked white car on University Avenue. This seemed odd to her because cars parked near campus during the day were typically empty. As Nielsen approached the car, she noticed the man in the car was in a reclined position. As she passed the car, she saw the man's erect penis and that he was masturbating. When the man realized that Nielsen could see him, he attempted to cover himself and looked "shocked" or "maybe embarrassed." Nielsen was offended and frightened by what she saw. She continued to walk to class and did not report the incident to the police at that time. Later that evening, Nielsen disclosed the incident to her roommates, Amanda Sykora and Danika Portz. Nielsen described the man, his white car, and what she observed.

On October 27, 2009, Sykora and Portz walked to class in the same area Nielsen walked when she observed the man in the white car on October 6, 2009.

On their way, they noticed a white car with someone inside. They found this unusual based on what Nielsen had observed and because cars parked near campus were usually empty. They noticed the seat was reclined and the man was making up and down hand motions in his genital area. They believed the man was masturbating, but did not attempt to observe him more closely. The two alerted Drake security to the man in the white car and called Nielsen to inform her of what they saw.

Drake security officer Mark Risvold responded and pulled up behind the white car, activating his amber lights. As he exited his vehicle and approached the white car, it squealed its tires and quickly drove away. Officer Risvold followed the car and got its license plate number. He contacted Des Moines police.

The car was registered to an address near the location of Des Moines Police Sergeant Mark Schleuger. Sergeant Schleuger drove to the address, and within minutes, the white car with the license plate number seen by Officer Risvold pulled behind the residence. Sergeant Schleuger identified the driver as Raymond Guthrie. Guthrie admitted he had been near Drake University on University Avenue, but denied exposing himself and denied seeing the Drake security car until he was on the interstate. Guthrie said he was in the area sending text messages and making calls to drop off materials related to his job as a residential painter.

When presented with a photo array prepared by the Des Moines Police Department, Brooke Nielsen immediately identified Guthrie as the man she saw

on October 6. Nielsen's roommates did not identify Guthrie as the man they observed on October 27.

On December 10, 2009, the State filed a trial information charging Guthrie with indecent exposure in violation of Iowa Code section 709.9, for the incident observed by Nielsen that occurred on October 6. Guthrie pled not guilty and waived his rights to a speedy trial and a jury trial. The bench trial took place on March 22, 2010. The district court issued its "Finding of Facts and Conclusions of Law" on May 6, 2010, finding Guthrie guilty of indecent exposure. Guthrie filed a motion for a new trial and in arrest of judgment on June 21, 2010. After a hearing on August 2, 2010, the district court denied the motion and sentenced Guthrie to 365 days in jail with credit for time already served. The district court also suspended a \$315 fine. The district court ordered Guthrie to have no contact with Nielsen for five years and ordered a ten-year parole with the Iowa Department of Corrections. The district court informed Guthrie he would be required to register as a sex offender when released. Guthrie filed an appeal on August 3, 2010, arguing 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.* It is the job of the trier of fact to assess the credibility of witnesses

and decide the weight of the evidence. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). 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, 418-19 (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.

Our supreme court classified the crime of indecent exposure under Iowa Code section 709.9 into four required elements:

1. The exposure of genitals or pubes to someone other than a spouse;
2. That the act is done to arouse the sexual desires of either party;
3. The viewer was offended by the conduct; and
4. The actor knew, or under the circumstances should have known, the victim would be offended.

Isaac, 756 N.W.2d at 819 (quoting *State v. Adams*, 436 N.W.2d 49, 50 (Iowa 1989)).

Guthrie does not appeal his conviction with respect to elements 1, 3, and 4. He argues the State failed to prove the second element: whether his exposure was done for the purpose of arousing his or Nielsen's sexual desires. "Our statute requires exposure to another person; it also requires that this exposure be for the purpose of sexual gratification." *Id.* at 821. Guthrie argues

that while his initial act of masturbating was done with the intent to arouse his sexual desires, the State did not prove the exposure was for that purpose.

“Whether a defendant’s exposure of his genitals to another person was done for the purpose of arousing the sexual desires of himself or the viewer can be inferred from the defendant’s conduct, his remarks, and the surrounding circumstances.” *Id.* at 820. An exposure done purposely without a sexual motive, such as streaking or urinating in public do not fall under section 709.9. *State v. Bauer*, 337 N.W.2d 209, 211-12 (Iowa 1983).

Upon our review of the facts and circumstances of this case, we conclude a rational trier of fact could reasonably find Guthrie, in furtherance of arousing his sexual desires, chose to masturbate near the Drake University campus, in an area where others were likely to see him. Nielsen saw Guthrie in his car, in a frequently travelled area, masturbating with an erect penis in the middle of the afternoon. The fact Guthrie was reclined in his vehicle, masturbating in clear view of anyone who walked by is sufficient evidence of his sexual motivation.

Guthrie contends his exposure to Nielsen was unintentional, as demonstrated by his embarrassment and attempt to cover himself. “The statute does not require the actor to be aware or have knowledge of the specific person or persons to whom he is exposing himself.” *State v. Jorgensen*, 758 N.W.2d 830, 836 (Iowa 2008) (finding substantial evidence for indecent exposure when store employees witnessed defendant masturbating in the store on a surveillance system). Guthrie tries to differentiate his case from *Jorgensen* by maintaining that his actions occurred in the relative privacy of his vehicle in contrast to a public place. Indecent exposure occurs when the individual “indulges in such

practices at a time and place where, as a reasonable person, he knows, or ought to know, his act is open to the observation of others.” *Id.* at 836. We find there was substantial evidence that Guthrie knew or should have known people would be walking along the street in the afternoon and his actions would be visible to them.

In this case, the district court explicitly communicated its findings on the credibility of the witnesses: “The Court finds the testimony of the witnesses presented by the State of Iowa to be very credible. The witnesses memory, demeanor and lack of embellishment, supports the Courts assessment of their credibility.” In contrast, the district court expressed concern about Guthrie’s credibility:

The Court does not find the testimony of Mr. Guthrie credible. Mr. Guthrie’s demeanor, body language and the manner in which he related his story adversely affected his credibility. Further, the details testified to by the other witnesses, which the Court found to be credible, that were denied by Mr. Guthrie, further eroded his credibility. For instance when Mr. Guthrie testified that he did not know the Drake Security Officer was behind Mr. Guthrie’s vehicle when Officer Risvold had his amber lights on coupled with Mr. Guthrie pulling out at a high rate of speed and squealing his tires, is not supported by commonsense. Additionally, there is a substantial difference in the hand motions necessary to send a text message and the hand motions used during masturbation.

We see no reason to disagree with the credibility findings of the district court. The district court is in a better position to determine the credibility of witnesses, and thus factual disputes that rely strongly on credibility are best resolved by the district court.

Observing the evidence in the light most favorable to the State, we conclude the State presented substantial evidence from which a rational trier of fact could find that Guthrie exposed himself to arouse his sexual desires.

AFFIRMED.