

IN THE COURT OF APPEALS OF IOWA

No. 7-815 / 06-0568
Filed December 28, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

DENNIS RAY HOUSE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his conviction for invasion of privacy, in violation of Iowa Code section 709.21 (2005). **REVERSED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson and Theresa Wilson, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Vogel, J., and Robinson, S.J.*

* Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VOGEL, J.**I. Background Facts & Proceedings**

On July 19, 2005, an off-duty deputy sheriff, Lance Kooiker, was in a Super Target store in Urbandale, Iowa. Deputy Kooiker observed Dennis House extend his hand underneath the skirt of a thirteen-year-old girl, E.R.¹ Deputy Kooiker then saw House place something inside his pants. Deputy Kooiker contacted store security, and House was taken to the security office. After a pat-down search a mirror was found in House's pants.

House was charged with invasion of privacy, in violation of Iowa Code section 709.21 (2005). The State alleged House used the mirror to look underneath E.R.'s skirt. E.R. testified she never saw House, did not know he had looked under her skirt with a mirror, and did not give him permission to look under her skirt. There was no investigation at the time as to what House could have seen with his mirror.

House was convicted of invasion of privacy, an aggravated misdemeanor. As he had two previous convictions for indecent exposure, he was subject to a sentencing enhancement under sections 901A.1 and 901A.2. House was sentenced to a term of imprisonment not to exceed ten years, which may not be reduced by more than fifteen percent. Iowa Code § 901A.2(2). House appeals his conviction and sentence.

II. Sufficiency of the Evidence

House contends there is insufficient evidence in the record to show he committed the crime of invasion of privacy. Section 709.21 provides:

¹ The skirt was a short skirt with attached shorts inside.

1. A person who knowingly views, photographs, or films another person, for the purpose of arousing or gratifying the sexual desire of any person, commits invasion of privacy if all of the following apply:

a. The other person does not have knowledge about and does not consent or is unable to consent to being viewed, photographed, or filmed.

b. The other person is in a state of full or partial nudity.

c. The other person has a reasonable expectation of privacy while in a state of full or partial nudity.

2. As used in this section:

a. “*Full or partial nudity*” means the showing of any part of the human genitals or pubic area or buttocks, or any part of the nipple of the breast of a female, with less than fully opaque covering.

b. “*Photographs or films*” means the making of any photograph, motion picture film, videotape, or any other recording or transmission of the image of a person.

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A guilty verdict is binding on appeal, unless there is not substantial evidence in the record to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

While we find House’s actions were despicable, we also find there is insufficient evidence in the record to show beyond a reasonable doubt that he violated all the elements required under section 709.21, specifically 709.21(2)(a). The statute would require House to view E.R. in a state of full or partial nudity, which would require a “showing of any part of the human genitals or pubic area or buttocks” Iowa Code § 709.21(2)(a). E.R.’s mother testified that sometime after the incident, and at the request of the prosecution, she had E.R.

put on the same skort, and similar, but not the same, underpants she wore at the Target store. Her mother then lay down on the floor to see how much of E.R.'s body could have been viewed with a mirror. During the trial, the following exchange took place between the State and E.R.'s mother:

Q. Now, when you had her put on this clothing and you got underneath and looked up her skirt, what were you able to see? A. You could see her inner thigh, as it would rise to where her underpants would rest, and also part of her bottom, the lower part.

Q. When you say part of her bottom, are you talking about her buttock? A. Yes

...

Q. And when you say part of her bottom was exposed, about how much of the bottom was exposed? A. Possibly an inch.

...

Q. Okay. Well, so the cut of the liner, the short part of the skort, did that expose some of the underwear? A. Not of the underwear, no.

Q. It just exposed part of her bottom, of the flesh itself? A. Yes.

Neither E.R. nor her mother testified that the positioning of the skort and similar underwear on the re-enactment was the same as the positioning of the clothing on the day House "mirrored" under E.R.'s skort. Although there was "possibly an inch" of buttock visible upon the re-enactment, there was no evidence of what, if any, of E.R.'s body was visible to House on the day of the incident. We therefore conclude House's conviction for invasion of privacy should be reversed based on insufficiency of the evidence to support the conviction. Due to our conclusion on this issue, we do not need to address the other issues raised on appeal.

REVERSED.