

IN THE COURT OF APPEALS OF IOWA

No. 7-951 / 07-0296
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY HARLEY JORGENSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

Troy Jorgensen appeals his judgment and sentence for indecent exposure. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, Paul L. Martin, County Attorney, and Carlyle D. Dalen and Steven D. Tynan, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Employees of a store watching a closed-circuit surveillance system saw a man expose himself. The State charged Troy Jorgensen with indecent exposure. Iowa Code § 709.9 (2005). Jorgensen waived his right to a jury trial and stipulated to a trial on the minutes of testimony and exhibits. After considering these documents, the district court found him guilty. Jorgensen appeals his judgment and sentence, contending the evidence was insufficient to support the district court's finding of guilt.

Iowa Code section 709.9 states:

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, 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 Iowa Supreme Court has broken this statute down into four elements:

1. The exposure of genitals or pubes to someone other than a spouse, or, in the alternative, the commission of a sex act in the presence or view of a third person;
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.

State v. Adams, 436 N.W.2d 49, 50 (Iowa 1989). Jorgensen maintains he "did not expose himself 'to' the employees with the specific intent to arouse his or their desires, inasmuch as he was unaware of their presence via the closed circuit video system." Additionally, he asserts he "could not have known the employees would be offended by his conduct."

A reasonable fact-finder could have found otherwise. Jorgensen was in a store. Three store employees saw him expose his penis. They watched him on the surveillance video as he followed a woman from one area of the store to another. While he was following her, Jorgensen continued to “fondle himself.” Two of the three employees went to the store floor to locate the woman that was being followed. When Jorgensen saw the employees, he stopped fondling himself.

From this evidence, it was clear that Jorgensen exposed himself to someone other than his spouse, satisfying the first alternative of the first element.¹ It is also clear that he did the act to arouse himself, satisfying the second element. As for the third element, the female store customer who was being followed was not identified. However, the three store employees were slated to testify that they found Jorgensen’s act offensive. We are not convinced the probative value of their observation was diminished by the fact it was filtered through a video camera. This brings us to the fourth element—whether Jorgensen knew or should have known that the store employees would be offended. When Jorgensen saw two of the employees on the store floor, he immediately stopped fondling himself. This action suggests he knew that the employees might find his conduct offensive.

We conclude the district court’s finding of guilt is supported by substantial

¹ With respect to element one, the State elected not to pursue the alternative requiring proof of “the commission of a sex act in the presence of or view of the third person.”

evidence. Accordingly, we affirm Jorgensen's judgment and sentence for indecent exposure.

AFFIRMED.