NO. 46156-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOSEPH PAUL OATES, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-02231-1

BRIEF OF RESPONDENT

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B. STATEMENT OF THE CASE

On November 22, 2013, twelve year-old S.J.V. was awoken by her father, Johannes Voogt, at about 6:00 in the morning. RP 59, 61, 78. She got dressed in her bedroom, by her closet, then ate breakfast and finished getting ready for school. RP 80. There are two windows in S.V.J.'s room. RP 80. Only one of the windows has a curtain on it because the curtain in the other window broke. RP 81. The existing curtain was sheer. RP 81. From her room, S.V.J. could see into her own backyard as well as part of her neighbor's (the defendant). RP 81. It took S.V.J. about five minutes to get dressed that morning, and there was a point at which she was unclothed. RP 83.

S.V.J.'s father was a close friend of the defendant, Joseph Oates. RP 59. They had been friends for about twenty years and next-door neighbors for about five or six years. RP 59. On a typical day, Mr. Voogt would get up at 6:00 a.m. and make sure his daughter was up and getting ready for school. RP 60-61. He typically leaves the house at 6:45 or 6:50 in the morning and takes S.V.J. with him. RP 61. On that morning of

November 22nd, Mr. Voogt got up and then woke S.V.J. up. RP 61. He then went out to start his truck because it was an unusually cold morning. RP 60-61. After starting his truck he went around the side of the house to smoke a cigarette. RP 62. He did this because his children did not know that he smokes. RP 62. While at the side of the house smoking, Mr. Voogt heard rustling in the leaves. RP 63. He looked over to find out the source of the noise and saw the defendant come from the back corner of the property with a hood pulled down over his head ducked down below the fence. RP 63. He was sneaking along the back corner of the yard, up against the fence. RP 63.

Evidently not realizing Mr. Voogt was there, the defendant got in close proximity to Mr. Voogt and Mr. Voogt said "Joe, what are you doing?" RP 63-64. The defendant looked at the ground and did not answer Mr. Voogt. RP 63. After repeating the question a few more times, the defendant told Mr. Voogt that he was out there to have a cigarette. RP 63-64. He also said "I was looking at the fence." RP 64. The defendant then retrieved a cigarette from his front pocket. RP 63. Mr. Voogt stated "[I]t took me about two seconds to figure out with the lights on in the house what he was doing in the back corner." RP 63. In response to the defendant's claimed reasons for being there, Mr. Voogt said "Bullshit," threw his cigarette on the ground and walked back into his house. RP 64.

He immediately checked to make sure S.J.V. was not in her room, and then told his wife about what happened. RP 65. Mr. Voogt later contacted the school resource officer at Camas High School, who instructed him to make a report with the Washougal Police Department. RP 66. On his way to the Washougal Police, Mr. Voogt tried to call the defendant but the defendant did not answer. RP 66. Mr. Voogt then called the defendant's roommate, who was a mutual friend, and the roommate answered. RP 67. Mr. Voogt asked the roommate, Robert Greene, to give the phone to the defendant. RP 67. Mr. Greene did so, and Mr. Voogt spoke to the defendant. RP 67. The defendant began to explain himself, saying that he was just out in the backyard to have a smoke and look at the fence. RP 67. Mr. Voogt responded angrily, and told the defendant that the police were coming to talk to him and he better be there to speak to them when they arrived. RP 67. Mr. Voogt testified that one can see very clearly into his daughter's room from the area where the defendant was standing. RP 74. Mr. Voogt said a six-foot tall person could easily see over the fence if you're standing right up next to it. RP 75-76. He also testified that some boards are damaged, and there's a split in the fence where one could see through. RP 76.

Officer Koutelieris of the Washougal Police Department investigated this case. RP 102. He arrived at the defendant's house and

asked the defendant if he knew why he (Koutelieris) was there. RP 102. The defendant replied, "Yes," and said that his friend, Mr. Voogt, found him looking at S.J.V.'s bedroom window that morning while he was smoking. RP 102. The defendant was not, in fact, smoking when Mr. Voogt caught him. RP 69. Mr. Voogt testified that the defendant typically smoked in his car at the front of his house. RP 97. The defendant admitted that when he saw S.V.J.'s bedroom light turn on, he walked over to the back of the bushes to look. RP 103. He admitted that he was trying to look at the bedroom and began to think to himself, "What the fuck am I doing?" RP 103. Officer Koutelieris asked the defendant what he meant by that statement, and the defendant replied that he had been trying to get a look at S.J.V. while she was in her bedroom. RP 103. The defendant specifically told Koutelieris that he was trying to look inside S.J.V.'s bedroom. RP 115. The defendant was cooperative and took Officer Koutelieris to the place he was standing when he was trying to look at S.J.V. RP 103-05. The location is depicted in Exhibit 2, a photograph admitted for the jury's consideration. RP 105. Exhibit 6, a photograph admitted for the jury's consideration, showed the view inside S.J.V.'s bedroom. RP 108. S.J.V.'s curtainless window could be clearly seen from the defendant's yard. RP 112-13.

Robert Green had been the defendant's roommate for about a year and a half at the time of this incident. RP 118. Mr. Green met the defendant through the Voogt's. RP 118. Mr. Green testified that the defendant typically smoked in the front seat of his car, while listening to the radio or on his phone. RP 120. He recalled Mr. Voogt calling that morning and asking to speak with the defendant. RP120. The defendant took the phone outside to speak with Mr. Voogt. RP 120. When the defendant returned, Mr. Green asked him what was going on. The defendant replied "I fucked up bad. S.J.V.'s light was on. Joe caught me." RP 121. The defendant was agitated after the call. RP 122.

The jury returned a verdict of guilty to the charge of attempted voyeurism. RP 241, CP 112. This timely appeal followed. CP 139.

C. ARGUMENT

The defendant claims the evidence is insufficient to sustain his conviction for attempted voyeurism. He claims that the State failed to prove that he attempted to view S.J.V. in her bedroom while she changed for school for the purpose of gratifying his sexual desire.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. Amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct

1068, 25 L.Ed.2d 368 (1970); State *v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If "any rational jury could find the essential elements of the crime beyond a reasonable doubt", the evidence is deemed sufficient. *Id.* An appellant challenging the sufficiency of evidence presented at a trial "admits the truth of the State's evidence" and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman,* 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

"Criminal intent may be inferred from circumstantial evidence or from conduct, where the intent is plainly indicated as a matter of logical probability." *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991), citing *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) and *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The appellate court's role does not include substituting its judgment for the jury's by reweighing the credibility of witnesses or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). "'It is not necessary that [we] could find the defendant guilty.

Rather, it is sufficient if a reasonable jury could come to this conclusion. '" *United States v. Enriquez-Estrada*, 999 F.2d 1358 (9th Cir. 1993), (quoting *United States v. Nicholson*, 677 F.2d 706, 708 (9th Cir. 1982)).

The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers,* 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "The fact finder…is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence." *State v. Olinger*, 130 Wn.App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films: (a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or (b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place. A person commits the crime of attempted voyeurism if he, with the intent to commit the crime of voyeurism, does any act which is a substantial step toward the commission of voyeurism. RCW 9A.28.020(1).

A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation. *State v. Johnson,* 173 Wn.2d 895, 899, 270 P.3d 591 (2012).

The defendant claims that the State failed to prove that when he attempted to surreptitiously view S.J.V. in her bedroom while she was changing for school, that he did so in an attempt to gratify his sexual desire. This is so, he claims, because he was fully clothed at the time he was caught trying to peep at twelve year-old S.J.V., and there was no evidence that he was doing anything of a sexual nature such as having his hands near his genitals or being sexually aroused. See Brief of Appellant at 8-9. Oates' argument is meritless.

As an initial matter, his reliance on *State v. Powell*, 62 Wn.App. 914, 917, 816 P.2d 86 (1992), is misplaced. In *Powell*, a child molestation case, the Court of Appeals was clearly concerned that the State had failed to prove anything beyond innocent or inadvertent touching of the clothed intimate areas of the victim. *Powell* does not stand for the proposition that in an attempted voyeurism case, a defendant must be found in a state of sexual arousal or performing a sex act in order for his admitted, purposeful attempt at peeping at a twelve year-old girl changing in her bedroom to be deemed for the purpose of sexual gratification.

Here, Oates seems to ignore that the conviction was for attempted, not completed, voyeurism. The State proved that the substantial step he took to view S.J.V. in her bedroom at six o'clock in the morning, when she changes for school and when it is dark outside (such that she cannot see outside, but someone outside can see in), was done for the purpose of his resultant sexual gratification. Stated another way, he attempted to peep at her in her bedroom when she was changing so that he would be able to, at the time of viewing, gratify his sexual desire. The evidence showing that Oates was attempting to view S.J.V. for the purpose of gratifying his sexual desire was overwhelming. He was sneaking to the area of his yard where he could view her through her uncovered window at a time when he knew she would be changing her clothes and when he believed he would not be detected. He had a hood over his head. He was not smoking, which was his excuse for being there after he was caught. Finally, he admitted that he tried to view S.J.V. in her bedroom, without her knowledge or consent, and that he got "caught." He told both Robert Green and the police that Mr. Voogt "caught" him trying to look at S.J.V. He was visibly rattled after getting off the phone with Mr. Voogt. He told Officer Koutelieris that he was trying to look at S.J.V. in her bedroom, and that he knew it was wrong because he thought "what the fuck am I doing?" The jury saw photographs showing his view into her room from where he

stood in the yard. The defendant admitted that when he saw S.V.J.'s light go on, he made his way over to where he could view her in her bedroom. When Mr. Voogt confronted him, he instantly realized what the defendant was doing by looking up toward S.J.V.'s room. There is no doubt about what the defendant was doing and why.

The defendant cites to *State v. Halstein*, 122 Wn.2d 109, 119-20, 857 P.2d 270 (1993), for the proposition that in order to prove a crime requiring a finding of sexual gratification, the State must prove both the defendant's "purpose" and "sexual gratification." Oates is mistaken. *Halstein* dealt with the proof required to show sexual *motivation*, not sexual gratification. *Id.* The *Halstein* Court observed that sexual gratification is "not an oblique concept." *Id.* In this case, again, the evidence that the defendant's purpose was to gratify his sexual desire was overwhelming.

Oates also claims that the State failed to prove he attempted to act with the purpose of gratifying his sexual desire because the State failed to show that he "succeeded" in looking into S.J.V.'s bedroom, and that even if he did, it was a fleeting look. See Brief of Appellant at 8. As to the former claim, the State was not required to show that the defendant succeeded in viewing S.J.V. It was required to show that he took a substantial step toward viewing S.J.V., and that such attempted viewing

was for the purpose of gratifying his sexual desire. Although it is true that Oates testified that he briefly glanced at S.J.V.'s window while he was outside to smoke a cigarette, the jury resolved that disputed fact against Oates. The evidence is sufficient to sustain Oates' conviction for attempted voyeurism.

D. CONCLUSION

The defendant's conviction should be affirmed.

DATED this 22nd day of December, 2014.

Respectfully submitted:

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