

NO. 71399-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

ERIK NALAN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE J. WESLEY SAINT CLAIR

**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL FACTS .....	1
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	5
SUFFICIENT EVIDENCE SUPPORTS NALAN'S CONVICTION FOR INDECENT LIBERTIES.....	5
D. <u>CONCLUSION</u> .....	11

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Alvarez, 128 Wn.2d 1,  
904 P.2d 754 (1995)..... 5

State v. Delmarter, 94 Wn.2d 634,  
618 P.2d 99 (1980)..... 6

State v. Fiser, 99 Wn. App. 714,  
995 P.2d 107, review denied,  
141 Wn.2d 1023 (2000)..... 6

State v. Galbraith, 69 Wn.2d 664,  
419 P.2d 800 (1966)..... 6

State v. Hill, 123 Wn.2d 641,  
870 P.2d 313 (1994)..... 6

State v. Salinas, 119 Wn.2d 192,  
829 P.2d 1068 (1992)..... 5

State v. Swanson, \_\_\_ Wn. App. \_\_\_,  
327 P.3d 67 (2014)..... 7

State v. Vars, 157 Wn. App. 482,  
237 P.3d 378 (2010)..... 5, 6, 7, 8, 10

Statutes

Washington State:

RCW 9A.88.010 ..... 6

Rules and Regulations

Washington State:

CrR 3.5..... 4

**A. ISSUE PRESENTED**

To prove indecent exposure, the State must show that the defendant intentionally made any open and obscene exposure of his or her person knowing that such conduct was likely to cause reasonable affront or alarm. The State presented evidence that Nalan stood naked in his apartment complex parking lot while a witness drove by. The witness saw Nalan was naked, but Nalan's hands covered his genitals. Nalan, still naked, turned and ran into his apartment when the witness approached another tenant in the parking lot. Is this sufficient evidence by which any rational trier of fact could have found Nalan exposed his genitals and found Nalan guilty of indecent exposure?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State charged Erik Nalan by information with indecent exposure for his actions on September 13, 2012. CP 1. The Honorable J. Wesley Saint Clair presided over the bench trial in King County Juvenile Court. RP 3;<sup>1</sup> CP 57. The court found Nalan

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<sup>1</sup> The verbatim report of proceedings consists of a single volume dated October 22, 2013; December 5, 2013; and January 14, 2014.

guilty as charged. RP 144-47; CP 57-60. The court imposed a standard range disposition of 12 months of supervision and 36 hours of community restitution. RP 167-91; CP 34.

## **2. SUBSTANTIVE FACTS**

At approximately 7:00 p.m. on September 13, 2012, Craig Richardson drove through the Avana apartment complex parking lot. RP 92-94; CP 57. Richardson wanted to get a sense of the area later in the evening prior to moving in with his children. RP 108. As he drove into the complex parking lot, he saw a naked male, later identified as Nalan, standing by the carport. RP 94; CP 57-59.

Richardson drove slowly and looked several times to confirm that the male was in fact naked. RP 94-95; CP 57. He was approximately 10-15 feet away. RP 94. Richardson clearly saw the naked male as it was still light out in the evening. RP 94. He was surprised that the male had ventured so far away from the building to the carport while "buck naked." RP 109, 110-11. He estimated that the male was approximately 20 feet from the apartment building. RP 110-11.

The naked male appeared nonchalant, as if he had simply come outside for a breath of fresh air. RP 103. Richardson saw that the naked male had his hands covering his genitals. RP 103; CP 59. The naked male did not run away upon seeing Richardson driving past him. RP 103. Richardson continued driving through the parking lot until he saw another tenant. RP 95. He stopped his car and approached the tenant to inquire if the tenant had also seen the naked male. Id. The tenant had not seen the male. Id. As soon as Richardson walked toward the tenant, the naked male ran back into the apartment building. Id.

Richardson was shocked at seeing the naked male in the complex parking lot. RP 108; CP 59. He decided not to move into the apartments due to what he had seen. RP 104; CP 58-59. He informed the apartment complex management that he no longer planned to move in and told them about the naked male by the carport. RP 104. He called 911 and described the naked male as a heavy-set white male with reddish hair and glasses. RP 111; CP 58.

Officer Erik Martin responded to the apartments. RP 17.<sup>2</sup> Martin spoke to Richardson, who directed him to apartment building B. Id. Martin learned from another tenant in building B that the younger male in apartment B-102 matched the description of the naked male. RP 18-19, 31; CP 58. Martin went to apartment B-102. RP 19; CP 58. Nalan answered the door. RP 19; CP 58.

Martin made brief conversation with Nalan. RP 19. He told him he was concerned that Nalan had been outside naked. RP 20-21; CP 58. Nalan responded that he enjoyed being naked and that it aroused him. RP 21; CP 58-59. He explained that he was aroused because occasionally people would walk or drive by the area and he would potentially be caught. RP 21, 119. He said he had been going outside naked for about four months when his mother was not at home. RP 21, 119. After confirming that Nalan felt safe and was not in any distress, Martin left without arresting Nalan. RP 46-47, 49.

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<sup>2</sup> The trial court incorporated Officer Martin's testimony from the CrR 3.5 hearing into the trial.

**C. ARGUMENT**

**SUFFICIENT EVIDENCE SUPPORTS NALAN'S  
CONVICTION FOR INDECENT LIBERTIES.**

Nalan asserts that the State did not prove that he exposed his genitals and, therefore, did not present sufficient evidence to convict Nalan of indecent exposure. This argument should be rejected because there was sufficient direct and circumstantial evidence from which any rational trier of fact could find the essential elements of indecent exposure beyond a reasonable doubt.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The appellate court draws all reasonable inferences in favor of the State and interprets them "most strongly against the defendant." Id.

A claim of insufficiency admits the truth of all of the State's evidence. State v. Vars, 157 Wn. App. 482, 492, 237 P.3d 378

(2010). Circumstantial and direct evidence are equally reliable.

State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). A trial court's unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

In order to convict Nalan of indecent exposure, the State had to prove beyond a reasonable doubt that Nalan intentionally made any open and obscene exposure of his person knowing that such conduct was likely to cause reasonable affront or alarm. RCW 9A.88.010. The statute does not define the term "any open and obscene exposure." Vars, 157 Wn. App. at 489-90. However, the term has long been defined in Washington common law "as 'a lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety requires shall be customarily kept covered in the presence of others.'" Id. at 490 (quoting State v. Galbraith, 69 Wn.2d 664, 668, 419 P.2d 800 (1966)).

Indecent exposure requires an exposure of the offender's private parts or genitalia. Vars, 157 Wn. App. at 491. However, the State is not required to prove that a witness saw the offender's genitalia. Id. at 498. The use of the word "open" in the phrase "any open and obscene exposure" does not mean "seen." State v. Swanson, \_\_\_ Wn. App. \_\_\_, 327 P.3d 67, 69 (2014). The crime requires only that an obscene exposure occurred in the presence of another and that the offender knew that the exposure was likely to cause reasonable affront or alarm. Vars, 157 Wn. App. at 491.

An examination of Vars is instructive. Vars was convicted of indecent exposure for wandering naked around a Kirkland neighborhood at approximately 2:00 a.m. Id. at 487. One witness looked out of his bedroom window and saw a completely nude man, later identified as Vars, walking swiftly down the street. Id. The witness observed Vars' buttocks, but not his genitalia. Id. A little after 5:00 a.m., another witness driving through the neighborhood saw Vars run through his headlights. Id. Vars was naked, but wearing a ski mask, and his arms were in the air. Id. Again, this witness saw only Vars' naked buttocks. Id.

Both witnesses called 911 to report what they had seen. Id. A police officer located Vars about an hour later. Id. Vars was still

nude, but held a bundled garment in front of his genitalia. Id. Upon seeing the patrol car, Vars fled. Id. Officers later found him as he was pulling on his pants. Id. Through a large rip in the pants, officers saw that Vars was not wearing any underwear. Id. at 487-88.

The court in Vars found that these facts provided sufficient evidence to convict Vars. Id. at 492. Vars had been seen naked and walking through a residential neighborhood with his arms in the air. Id. at 493. Even though neither of the witnesses had directly seen Vars' naked genitalia, there was sufficient circumstantial evidence for a rational trier of fact to conclude that Vars had exposed his genitals in the presence of another and that he did so in a manner likely to cause affront or alarm. Id.

Here, the State presented sufficient evidence for a rational trier of fact to convict Nalan of indecent exposure. Witness Richardson saw Nalan naked in the apartment complex parking lot on a September evening about 7:00 p.m. RP 94; CP 57. Nalan stood outside long enough for witness Richardson to drive by, look several times, and then stop his car and approach another tenant. RP 94-95; CP 57. Nalan saw Richardson, but did not run away. RP 103. Instead he appeared "nonchalant, like he came out for a

breath of fresh air.” Id. Only once Richardson parked his car and approached another tenant, did Nalan turn and run back inside the apartment building approximately twenty feet away. RP 95, 110-11.

Nalan explained to Officer Martin that he liked being naked in the parking lot because it aroused him. RP 21; CP 58-59. Specifically, he was aroused by the prospect of people walking or driving by and being “caught.” RP 21. Nalan said that he had been venturing outside naked to stand in the parking lot on occasions over the last four months. RP 21, 119. He did so only when his mother was not at home. RP 21, 119.

From Nalan’s statements and Richardson’s observations, the reasonable inference is that Nalan did expose his genitalia. Nalan stood outside long enough for Richardson to drive by, look several times, stop, and then approach another tenant. Given the distance of approximately twenty feet that Nalan had to travel from the apartment building to his location by the carport in the parking lot, that Nalan then stood there for some time, and that then Nalan ran twenty feet back to the building, Nalan could not have covered his genitals with his hands the entire time.

Indeed, Nalan explained that he enjoyed the “process of being naked” and that the prospect of being “caught” was what Nalan found arousing. RP 21; CP 58-59. Though he may have covered his genitalia with his hands when witness Richardson saw him, he did not do so because he was simply getting some air and was trying to preserve his modesty. He did not somehow get caught outside without his pants and then try to cover up. He deliberately went outside completely naked and did so because he found the prospect of getting caught by others arousing. The reasonable inference is that Nalan did in fact expose his genitalia.

As in Vars, the State was not required to prove that a witness observed Nalan’s naked genitalia. The State had to prove only that Nalan made an open and obscene exposure in the presence of another and knew that the exposure was likely to cause reasonable affront or alarm. A reasonable trier of fact could rationally conclude that Nalan did expose his genitalia because that was his purpose in venturing outside naked. The amount of time he spent outside and that he ventured twenty feet from the building to the carport, stood there for a period of time, and then ran back to the building, along with his own statements provide sufficient circumstantial evidence to support that inference. Therefore, the

State presented sufficient evidence to convict Nalan of indecent exposure.

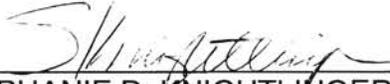
**D. CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Nalan's conviction and sentence.

DATED this 15<sup>th</sup> day of July, 2014.

Respectfully submitted,

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By:   
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana M. Nelson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. ERIK NALAN, Cause No. 71399-0-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame  
Name  
Done in Seattle, Washington

7/16/14  
Date

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