

FILED
Jun 20, 2012
Court of Appeals
Division III
State of Washington

NO. 302067-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

SAMUEL WADE HOWARD, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 10-1-00110-1

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENT OF ERROR

The State's evidence was sufficient to support a finding of guilt.

II. STATEMENT OF FACTS

The State agrees with Mr. Howard's rendition of facts contained at pages 1-3 of his brief.

III. ARGUMENT

A defendant's conviction is supported by sufficient evidence when, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Under this test, all reasonable inferences from the evidence will be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). By claiming insufficiency of the evidence, the defendant admits the truth of the State's evidence, and all inferences that can reasonably be drawn from that

evidence. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

To find Mr. Howard guilty, the trial court had to find beyond a reasonable doubt that he: (1) made an open and obscene exposure of his person; (2) that he acted intentionally; and (3) that he knew that such conduct was likely to cause reasonable affront or alarm. RCW 9A.88.010(1)(2)(c).

Mr. Howard is contesting the sufficiency of the evidence to prove that he intentionally exposed himself, or that he knew that his conduct was likely to cause reasonable affront or alarm. More simply put, Mr. Howard suggests that because his skirt "scooted up" by accident, he did not know that he could be causing reasonable affront or alarm.

Contrary to Mr. Howard's assertions, the evidence supports the trial court's conclusion that he exposed himself intentionally. His intent was boldly demonstrated, not only by his

attire, but also the fact that he wore that attire while walking along a public highway. (CP 61). What is more, this incident occurred during the morning hours, in the chilly month of January. Surely, Mr. Howard would have been aware that his sensitive parts were being subjected to the elements. Most telling, however, were Mr. Howard's statements to the officer that he was hoping to get "picked up by a man" because he was "horney." (CP 61). Undoubtedly, a rational trier of fact could conclude from these facts that Mr. Howard exposed himself intentionally.

In his brief, Mr. Howard argues that he was acting with the intent of finding a love interest, and not with the intent to expose himself and knowingly cause affront or alarm; that, in fact, he was attempting to "attract" not "alarm." While there is no reason to doubt that Mr. Howard was looking for love along the public highway, that fact only bolsters the conclusion

that he was showing his genitalia intentionally, much like the way a peacock displays its feathers when seeking a mate.

The fact that Mr. Howard was trying to attract someone does not mean that he did not know he was risking the affront of many in hopes of attracting the affection of just one person. He apparently believed that the risk was worth the potential reward.

After finding that Mr. Howard had intentionally exposed his genitals, the court could reasonably infer that Mr. Howard knew his conduct was likely to cause reasonable affront or alarm. Demonstrative of having that knowledge, Mr. Howard told the officer on their way to the jail that it "wasn't right for him to be walking on the side of the road like that with kids going by in a school bus." (CP 61).

Mr. Howard cites to *State v. Snedden*, to support his argument that the crime of indecent exposure requires a "targeted victim," and the

evidence in this case fails to satisfy that requirement. *State v. Snedden*, 149 Wn.2d 914, 73 P.3d 995 (2003). The issue before the Court in *Snedden* was whether the crime of indecent exposure is a "crime against a person" for purposes of the burglary statute. *Snedden*, at 919. *Snedden* argued that indecent exposure was a crime against morality, and not one against a person. *Snedden*, at 919. The Court disagreed and stated that, "[a] targeted victim is implicit in the statutory language because only a victim could be affronted or alarmed by the obscene conduct." *Id.*

Although the *Snedden* Court utilized the language, "targeted victim," this case has never been cited as authority imposing an additional element to the crime of indecent exposure. See, e.g., *State v. Vars*, 157 Wn. App. 482, 237 P.3d 378 (2010). Instead, the thrust of the Court's reasoning was that, by definition, indecent exposure requires conduct to be done with the

knowledge that it will "cause a reasonable affront or alarm, and only a person can be affronted or alarmed by such conduct." *Snedden*, at 923 (emphasis added). It could be said that the Court overemphasizes its point with the phrase "targeted victim," because the defendant in that case directed his actions at particular individuals.

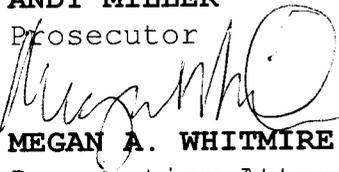
IV. CONCLUSION

As argued above, the evidence presented to the trial court at Mr. Howard's stipulated facts trial was sufficient to convince a reasonable trier of fact beyond a reasonable doubt that Mr. Howard committed the crime of indecent exposure. Accordingly, Mr. Howard's conviction should be affirmed.

RESPECTFULLY SUBMITTED this 20th day of June 2012.

ANDY MILLER

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on June 20, 2012.



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