STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED February 19, 1999
v	No. 213076 Wayne Circuit Court
RENE COOPER, Defendant-Appellee.	LC No. 98-004119

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting defendant's motion to quash. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with indecent exposure as a sexually delinquent person, MCL 750.335a; MSA 28.567(1). At the preliminary examination a witness testified that she observed defendant remove his jacket and shirt while he was sitting in a van at a service station. She observed a portion of defendant's leg. Defendant was holding what appeared to be women's underwear. At one point defendant seemed to roll his body. A station employee testified that she saw a person drive through the station and then run through the station on foot. She could not determine if the person was clothed below the waist. She could not identify the person as defendant. A police officer testified that when defendant stepped out of the van in response to his request, the clothing on defendant's lap fell, revealing that he was naked below the waist.

The district court declined to bind defendant over as charged. The district court found that the evidence did not show that either witness observed defendant naked below the waist. The court bound defendant over on attempted indecent exposure.

Defendant moved to quash the information. The trial court granted the motion, finding that the evidence supported neither the principal charge nor the attempt charge.

We review a trial court's decision to grant or deny a motion to quash de novo to determine if the district court abused its discretion in ordering a bindover. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

On appeal, plaintiff argues that the trial court erred by granting the motion to quash. An exposure of a body part which according to conventional standards is covered in public need not actually be witnessed by another person in order to constitute indecent exposure, as long as it occurs in a public place and under circumstances in which another person might reasonably have been expected to observe it. *People v Vronko*, 228 Mich App 649, 655-657; 579 NW2d 138 (1998). Circumstantial evidence established that defendant was naked below the waist as he sat in the van and as he ran through the station.

We disagree and affirm the trial court's decision. In *Vronko*, we held that given the evidence that the defendant's legs were bare and that his hand was in the area of his crotch and was moving rapidly, a rational trier of fact could infer that his penis was exposed. Such an act constituted the crime of indecent exposure. *Vronko, supra*, at 655. The instant case is factually distinguishable. No direct or circumstantial evidence established that defendant was exposed in a public place under circumstances in which another person might reasonably have been expected to observe the exposure. Neither witness observed defendant's penis. No such observation is actually required. *Vronko, supra*, at 657. However, neither witness observed any activity that would support an inference that defendant was exposed. The evidence presented did not support the charge of attempted indecent exposure in that it did not establish that defendant intended to do an act which would constitute indecent exposure, or that he took steps in furtherance of the act going beyond mere preparation. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). No error occurred.

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot