

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DANIEL GRAHAM,

Appellant.

No. 40148-7-II

UNPUBLISHED OPINION

Armstrong, J. — After a bench trial, the court found Daniel Graham guilty of felony incident exposure. Graham appeals, asserting there was insufficient evidence to prove he intentionally exposed himself. Finding the evidence sufficient to support the verdict, we affirm.

FACTS

Graham was homeless and had been camping in a wooded area of Puyallup’s Bradley Lake Park. During the summer months, Bradley Lake Park has a “very high” activity level with people using the park from dawn until dusk. 2 Report of Proceedings (RP) at 100. Graham’s campsite was near heavily trafficked trails.

One early evening in August 2009, MC¹ and Justin Stuck were walking along a trail in Bradley Lake Park’s south end. The two saw Graham standing completely naked, with his back exposed, against a tree near the trail. Graham was either masturbating or urinating. The couple was “shocked” and walked away. 2 RP 112-13, 125. They stopped to discuss the situation. MC and Stuck had just passed small children playing in the park. Stuck then saw Graham, still naked, crouched and following behind them from the trailside. When Stuck yelled at him, Graham

¹ We refer to the minor by her initials in order to protect her anonymity.

jumped into the bushes.

The couple called the police, who located Graham still naked in the park and arrested him. Vaseline covered Graham's midsection, groin, and hands. Graham admitted to Officer Gill that he was masturbating.

The State charged Graham with felony indecent exposure. The State elevated the charge to a class C felony under RCW 9A.88.010(2)(c) because Graham had previously been convicted of indecent exposure. After a bench trial, the court found Graham guilty and sentenced him to 140 days with credit for time served. Graham timely appealed.

ANALYSIS

Graham assigns error to the trial court's finding that he intentionally exposed himself. Graham contends that the evidence was insufficient to convict him of felony indecent exposure. We disagree.

I. Standard of Review

We test the sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We need not be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). Circumstantial evidence is no less reliable than direct evidence. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996). We can infer criminal intent as a logical probability from the

facts and circumstances. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact's decisions resolving conflicting testimony, evaluating the witnesses' credibility, and determining the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

II. Sufficiency of the Evidence

RCW 9A.88.010(1) states, "A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm." Under RCW 9A.08.010(1)(a), "A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime."

The State provided sufficient evidence that Graham intended to expose himself. Graham knew the park was busy during the summer. He was standing completely naked right off a heavily trafficked park trail. Graham followed MC and Stuck from the trail's edge and was still naked when arrested. Taken in the light most favorable to the State, there was sufficient evidence to infer Graham intentionally exposed himself. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Penoyar, C.J.

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Van Deren, J.