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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/1/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0373
)
Appellee,) DEPARTMENT A (AUGUST)
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
PAUL LEVON TIGGS, II,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-114702-001

The Honorable Joseph C. Welty, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel,
Criminal Appeals Section
and Myles A. Braccio, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Paul Levon Tiggs, II, appeals from his convictions and probation terms for attempted voyeurism and for stalking. Tiggs

contends that the state did not present sufficient evidence to support his convictions. We disagree, and therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶12 A grand jury indicted Tiggs for stalking V.K. between March 17 and March 24, 2011, and for voyeurism with respect to V.K. on March 17, March 18, and March 24, 2011. Tiggs pled not guilty. Before the matter proceeded to a jury trial, the state amended the indictment's voyeurism counts to allege attempted voyeurism.

¶13 At trial, the state presented evidence of the following facts. On the nights of March 17, 18, and 24, 2011, V.K., wearing her sleeping attire of sweatpants and a tank top, sat at her computer desk in the bedroom of her third-floor apartment, facing a window overlooking her building's open-air stairs. The window's vertical blinds were partially closed so that V.K. could see out at an angle. V.K. intended that the blinds prevent others from seeing in, but a person standing at the window could see in at an angle. On each of the nights in question, V.K. saw activity at the window.

¶14 On the night of March 17, V.K. saw a shadow and the top of a man's head at the window. She exited her apartment and saw Tiggs squatting at the wall. She recognized Tiggs, who lived in a different building in the same apartment complex, because she often saw him exercising in the community gym across

from her apartment and she had exchanged greetings with him a few times. Tiggs rose quickly and stated that V.K. had scared him. V.K. responded that Tiggs had scared her as well, and tried to hint that she wanted to know what he was doing by asking him several times if he was okay. Tiggs replied that he was fine and walked down the stairs. V.K. reported the incident to the complex's security officer that night and to the complex's manager the next morning.

¶15 On the night of March 18, V.K. saw eyes "creeping up" the window. V.K. called 911, but when the police arrived nobody was at the window.

¶16 On the night of March 24, the complex's security guard sat in the community gym with the lights off and watched V.K.'s apartment. From the gym, the security guard saw Tiggs walk up the stairs to V.K.'s apartment, get down on his hands and knees, and look through the window for a period of about fifteen minutes. The guard called the police. V.K. also called 911 after she noticed eyes at the window. Before the police arrived, she used her cell phone's camera and her front door's peephole to take a photograph that showed a person crouched by the window. V.K. recognized the person as Tiggs. When the police arrived, Tiggs ran from the window. The police chased Tiggs from V.K.'s building through the streets and eventually apprehended him.

¶17 At the close of the state's case-in-chief, Tiggs moved for judgments of acquittal. The court denied the motion. For his defense, Tiggs testified that he had been near V.K.'s apartment on the evenings of March 17 and March 24 because he had been walking and running through the complex for exercise. He denied ever stopping at V.K.'s window, and claimed that he ran from the police because he did not know who was chasing him.

¶18 After considering the evidence, the jury found Tiggs guilty of attempted voyeurism on March 17 and March 24, but not guilty of attempted voyeurism on March 18. The jury also found Tiggs guilty of stalking. The court entered judgment on the jury's verdicts, suspended the imposition of sentences, and placed Tiggs on concurrent ten-year probation terms for each conviction. Tiggs timely appeals. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶19 Tiggs contends that the evidence presented at trial was insufficient to support his convictions. We review the sufficiency of the evidence de novo. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). We view the evidence in the light most favorable to upholding the verdicts and resolve all conflicts in the evidence against Tiggs. See *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). We do not reweigh the evidence or determine the

credibility of witnesses. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶10 We will not reverse unless "there is a complete absence of probative facts to support the conviction[s]." *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). Sufficient evidence may be either direct or circumstantial, and may support differing reasonable inferences. *State v. Anaya*, 165 Ariz. 535, 543, 799 P.2d 876, 884 (App. 1990). Here, the evidence was sufficient to support the jury's verdicts.

I. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT TIGGS'S CONVICTIONS FOR ATTEMPTED VOYEURISM.

¶11 A person commits the crime of attempted voyeurism when he intentionally takes any action that is a step in a course of conduct planned to culminate in the knowing invasion of another person's privacy, without the other person's knowledge, for the purpose of sexual stimulation. A.R.S. §§ 13-1001(A)(2), 13-1424(A). An invasion of privacy occurs when the victim has a reasonable expectation of not being viewed and is viewed while undressed or partially dressed, while engaging in sexual

intercourse or sexual contact, while urinating or defecating, or "[i]n a manner that directly or indirectly captures or allows the viewing of the [victim]'s genitalia, buttock or female breast, whether clothed or unclothed, that is not otherwise visible to the public." A.R.S. § 13-1424(C).

¶12 Tiggs first contends that the state did not present sufficient evidence to prove that his actions were for the purpose of sexual stimulation. Tiggs points to several out-of-state voyeurism cases in which evidence such as masturbation or pornography made the defendants' sexual motivation overt, and he contends that because the state did not produce similar evidence in his case, the jury could only speculate that he acted for the purpose of sexual stimulation. We disagree. Though additional evidence would presumably have been helpful to the jury, the evidence provided was sufficient to allow the jury reasonably to infer sexual motivation. The state presented evidence that Tiggs repeatedly endeavored surreptitiously to look into V.K.'s bedroom window late at night as she sat inside in her sleeping attire, and fled when the police arrived on March 24. We cannot say that no reasonable jury considering these facts could conclude that Tiggs acted for the purpose of sexual stimulation.

¶13 Tiggs next contends that the state presented insufficient evidence to prove that V.K. had a reasonable expectation against being viewed. Again, we cannot say that no

reasonable jury could conclude that V.K. had a reasonable expectation of privacy. The state presented evidence that V.K.'s bedroom window blinds were partially closed at an angle, allowing limited visibility in and out of her third-story apartment during late-night hours. A reasonable jury could conclude from these facts that V.K. had reasonable grounds to believe that she would not be viewed.

¶14 Tiggs finally contends that because V.K. was fully clothed and not engaged in sexual activity, urination, or defecation at the times in question, she was never at any risk of voyeurism. Tiggs is incorrect. As an initial matter, he was convicted of *attempted* voyeurism. He could not know V.K.'s state of dress or her activities until he viewed her. Moreover, voyeurism includes the viewing of clothed genitalia, buttocks, or female breasts not otherwise visible to the public, without regard to the victim's activity. A.R.S. § 13-1424(C)(2)(d). Tiggs's convictions for attempted voyeurism were supported by the evidence.

II. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT TIGGS'S CONVICTION FOR STALKING.

¶15 A person commits the crime of stalking when he intentionally or knowingly engages in a course of conduct directed toward another person, the conduct would cause a reasonable person to fear for her safety, and the victim does in

fact fear for her safety. A.R.S. § 13-2923(A)(1). For purposes of this offense, a "course of conduct" includes maintaining visual or physical proximity to the victim on two or more occasions over a period of time, unless the defendant's activity is constitutionally protected or otherwise authorized. A.R.S. § 13-2923(C).

¶16 Tiggs contends that the state did not present sufficient evidence to prove that he stalked V.K. because he never attempted to bring her attention to his presence and she did not testify that she feared for her safety. As an initial matter, nothing in A.R.S. § 13-2923 requires that the defendant purposefully draw his victim's attention to his conduct. Further, contrary to Tiggs's contention, the state presented ample evidence that V.K. actually became aware of Tiggs's conduct and feared for her safety as a result. V.K. testified that she was afraid when she encountered Tiggs outside of her window on March 17, and was also afraid on March 18. She further testified that she contacted the complex's security guard and manager following the March 17 incident, called 911 on March 18 and 24, and was afraid to get close to Tiggs when the police asked her to identify him after he was detained on March 24.

¶17 Tiggs also contends that his actions were authorized because he was a resident of the complex and had the right to

use its public areas, including the area outside of V.K.'s apartment. But A.R.S. § 13-2923 does not limit stalking to acts committed on private property, and there is no evidence that Tiggs's actions were constitutionally protected or otherwise authorized by law. The evidence was sufficient to support Tiggs's conviction for stalking.

CONCLUSION

¶18 Sufficient evidence supported Tiggs's convictions. We therefore affirm the convictions and probation terms.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

KENT E. CATTANI, Judge

/s/

JOHN C. GEMMILL, Judge