

STATE OF MICHIGAN  
IN THE 41B DISTRICT COURT FOR THE COUNTY OF MACOMB

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THE PEOPLE OF THE STATE OF MICHIGAN,

vs

File No. 08-2313SC

THOMAS ANDREW D'ANGELO,

Defendant.

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JURY TRIAL

BEFORE THE HONORABLE SHEILA MILLER, DISTRICT JUDGE

Clinton Township, Michigan September 11, 2008

APPEARANCES:

For the PEOPLE:

Mr. Stephen Steinhart, P49083  
Assistant Prosecuting Attorney  
One South Main, 3<sup>rd</sup> Floor  
Mount Clemens, Michigan 48043

For the DEFENDANT:

Mr. Thomas Tomko, P40804  
39850 Van Dyke, Suite 200  
Sterling Heights, Michigan 48313

RECORDED BY:

Kara Jacquemain, CER#7863  
Certified Electronic Recorder  
(586) 569-7833

Doc. 31 Att. 3



A Yes, sir.

Q And who were you there with?

A Just myself.

Q And where were you, what were you doing?

A I was on the computer, on my e-mail, on the Michigan Talent, looking for a job.

Q About how long were you there for? About from when?

A Approximately over all about forty-five minutes.

Q And do you know what time you showed up?

A I'd say around, maybe, three p.m.

Q Fair to say you were there from maybe three to four, give or take?

A Right.

Q Were you watching the clock exactly?

A No, not really.

Q Could it have been fifty-five, could it have been thirty-five?

A It could have been thirty-five, forty.

Q And what room was this in?

A This was in the adult computer lab, on the upper floor of the Clinton Macomb Township Library.

Q And how many people were in that room?

A I'd say about fifteen people, approximately.

Q And what was the make up of the people in the library, I mean, was it open for regular hours?

A I was sitting at computer number twenty-three and to my right, computer terminal number twenty-four, there was a male individual that was making noises.

Q Did you see that person here today?

A Yes, I did.

Q Can you just point to him and tell me what he's wearing?

A He's sitting with the defense counsel up here, in a gray suit.

Q Not Mr. Tomko, the person -

A Not Mr. Tomko, no.

MR. STEINHART: Your Honor, if this record may reflect, this witness has identified the defendant, Mr. D'Angelo.

THE COURT: Yes.

MR. STEINHART: Thank you.

BY MR. STEINHART:

Q Have you ever met this person before in your life, up to this day?

A No, sir, I have not.

Q Have you ever heard his name, any, any contact whatsoever?

A No, sir, I have not.

Q And you said he was right, you were on number twenty-three, he was on number twenty-four?

A Yes, sir.

Q Can you please describe how the seating was? How close was he to you?

A I would say as close as Mr. Tomko is to his client.

Q And you were doing your work and he was right next to you, right?

A Yes, sir.

THE COURT: For the record, you've indicated a matter of one foot.

MR. STEINHART: Thank you, Judge.

THE COURT: Is that right, sir?

THE WITNESS: Yes, ma'am.

BY MR. STEINHART:

Q So did you have a clear view of Mr. D'Angelo and, as well as his computer?

A Yes, sir.

Q And how is your eyesight, sir?

A It's, I have pretty good peripheral sight. I don't wear glasses.

Q Can you please tell me what, if anything, he was doing that drew your attention.

A Well, when the, when the defendant would make a, almost like a chirping noise, I would just glance over, catch something coming up on the screen of pornographic women, undressed, okay, and, and I noticed that his hands, each and every time he would chirp, his hand, his left hand

would go down into his crotch area and he was massaging his genitals.

Q When you say chirp, what do you mean?

A Well, it was like a chirp or a grunt. When he would see, when he would see an explicit photo of a woman, undressed, unclothed.

Q Are you saying, assume to be the noise that he would make would correlate with the nude picture?

A Yes.

Q Chirp, grunt, did it, how would you describe, can you further describe the noise at all?

A As, like a, like a grunting sound, is all I could express it as.

Q How many different times did you hear him make the sound?

A It was off and on for about forty-five minutes, but on three different occasions, I did notice that he was, he was, had his left hand on, you know, inside his, inside the, he had the zipper down on his pants, on his trousers.

Q You remember his zipper and his trousers were down?

A Yeah.

Q And where was one hand?

A His right hand was on the computer terminal and when he would make that chirping sound, I noticed that his arm

would go down gradually and he would open up the flap on his, he had a flannel, a checkered flannel shirt on, and he would reach inside his fly area and start massaging his genitals.

Q Did you ever actually see his penis though?

A No.

Q Why not?

A Because he, his hand, his left hand, this part top here, I don't know what it's called medically, but you could not see it. But I presume that, that he would open up with his right hand, the -

MR. TOMKO: Objection as to speculation, Judge.

MR. STEINHART: Judge, he can say what he saw.

MR. TOMKO: He can't say what he presumed.

THE COURT: Just what you saw, sir.

THE WITNESS: What I saw was that his, his left hand was entering into a, a, the area of his genitals, inside of his trousers.

BY MR. STEINHART:

Q Again, when a nude picture would come up, when a nude picture would come up, would it correlate with more activity?

A Yes, there was a patter.

Q There was a pattern?

A Yes.

aggressor. I said nothing to him at the time, I went and complained, made a, made a concerned complaint with the supervising librarian and I asked for them to go and to observe him.

Q Is it my understanding that you actually saw his hand inside his pants, though, is that correct?

A Yes.

Q And you actually saw the zipper down?

A Yes.

MR. TOMKO: Object as to leading, please, and redundant questions. He's already answered these questions.

MR. STEINHART: I'm just clarifying, Your Honor, and I think these are things that he did say before. If they're redundant, I can move on, Your Honor.

THE COURT: Asked and answered is sustained.

MR. STEINHART: I can move on, Your Honor.

THE COURT: Go ahead.

BY MR. STEINHART:

Q So after you saw this behavior three different times, what did you do next?

A I logged off on the computer, the computer terminal and I went directly to the current librarian that was on duty. She notified her supervisor.

Q And at that point, did you ever have any more contact

April 12<sup>th</sup>?

MR. TOMKO: On April 12<sup>th</sup> of 2008?

THE WITNESS: Yes.

BY MR. TOMKO:

Q So on that day, you talked to someone from Clinton Township Police?

A Yes, sir.

Q Oh, and you explained to them what went on, is that true?

A Yes, sir, I did.

Q And did you, you explained to them that you sat next to Mr. D'Angelo for about an hour?

A Yes, sir.

Q And you also observed that, you told them that you observed for about forty-five minutes that he was looking at hard core porn, is that true?

A Yes, sir.

Q Tell us what you mean by hard core porn?

A Well, the sexually provocative positions of the females that were unclothed were in a, in a position of, they had their fingers in their vagina, for example, or spread eagle, or they would have positions from the back side.

Q I know it's embarrassing and I'm not trying to -

A I don't know if you classify that as a hard, hard core, but I didn't say hard core, I said pornography.

Q Well, no, you didn't tell the police officer that he was



looking at hard core porn websites?

A I said he was looking, he was either, either on an e-mail document attachments or he was on a website of a pornographic nature that had pornographic pictures. Now I don't know what you consider hard core, I don't know if this is semantic.

Q Well, no, I'm using words that I see in quotations in a report that says, you reported that Mr. D'Angelo was looking at, in quotes, hard core porn website.

THE COURT: Mr. Tomko, is there a question?

BY MR. TOMKO:

Q So the question is, what do you mean, first of all, did you say he was looking at hard core -

THE COURT: He's already answered that question, that he never said hard core.

BY MR. TOMKO:

Q Okay, you never said that?

A No, sir, I did not. I said pornographic.

Q Okay, all right.

A I don't see where there's a difference, though, to be honest with you. Maybe, maybe I'm wrong.

Q Well, I don't know, I'm asking what you meant, that's all. And, so at no time in your testimony did you say that Mr. D'Angelo took any of his private parts out of his pants, is that true?

A That's true, I did not.

Q And so you never saw that?

A I saw his hand enter into his opened, opened zipper, and massage his genitals.

Q From your perspective, massaging his genitals, correct?

A Yes, sir, I believe he was stroking and he was also pumping with his hand.

Q That's from your perspective?

A That's what I saw. It's whenever he was chirping or grunting when he was watching the photo on the terminal.

Q You also, you also mentioned something about three times, you saw this occur on three occasions?

A Three different occasions within a forty-five minute period, but there was others, other chirpings or grunting, which I didn't bother to watch.

Q And you also mentioned something else about ten or fifteen. Is the ten or fifteen you meant, was the ten or fifteen times you saw him observing this pornography?

A No, no sir.

Q What was ten or fifteen?

A Ten or fifteen was, was relevant to the pattern of his grunting and also putting, entering his hand into his crotch area and massaging his genitals.

Q Wait, now I'm confused.

A It was a -

Q Wait until the question. First question, you said you saw him touch his genitals three times, true or false?

A That's true.

Q Okay. You said now that you heard grunting ten or fifteen times, is that true?

A Yes, sir.

Q You never saw him expose himself?

A No, sir.

Q Now you said something new, you said something about pumping. You didn't say that on direct examination, you just said that now. You said that -

THE COURT: Mr. Tomko, I'm going to ask you to refrain from making statements and just ask questions. You can reserve your statements for argument.

MR. TOMKO: Okay.

BY MR. TOMKO:

Q You mentioned that you talked to a library worker, correct?

A Yes, sir.

Q What did you tell the library worker?

A I made a concerned complaint with the librarian that was on duty at that time.

Q Who was that person?

A I, I don't know who she was, there was three.

Q It was a woman though?

There was four or five people that did do that. The noise was real, it was quite obvious.

MR. TOMKO: That's all I have, Judge.

THE COURT: Re-direct?

MR. STEINHART: Yes.

RE-DIRECT EXAMINATION

BY MR. STEINHART:

Q How many other people were nearby, within his range or vicinity?

A I'd say there was approximately fifteen people in, approximately, in the library, the computer lab at that time.

Q Were you the closest person next to him?

A Yes.

Q And sir, originally I asked, and you used the word chirping, you used that word a couple of different times, I just want to clarify, were there any other noises besides chirping, that you heard?

A None that I recall; like a chirp, grunt.

Q And do you recall you made any statements to the police officer about the noises he was making?

A I don't recall, I may have, I don't recall.

Q Would it refresh your memory if you looked at the police report?

A I do remember that I, I alleged that he was, I believed

he was masturbating. I think I did mention that to them, and also, I mentioned it to the librarian, the supervisor.

Q Well, let me back up to the question. Would it help refresh your memory if you looked at the police report to see if you made any other statements?

A Yes, sir.

MR. STEINHART: May I approach, Your Honor?

THE COURT: Yes.

BY MR. STEINHART:

Q And would that help refresh your memory, sir?

A Yes, sir, it would.

Q And were there any other noises that were made?

A There's no noises other than that.

Q Now you never made a written statement, is that correct?

A No, sir, I did not, not written, no. It was verbal.

Q So you made a verbal statement and then the officer then made a report, is that correct?

A Yes, sir.

Q I just want to clarify some things you were sure of and what you weren't sure of, following up with Mr. Tomko's questions. Were you certain that the zipper was down?

A Yes, sir.

Q Were you certain that his hand was on himself, touch his private?

A I would say it was early afternoon, but I don't recall specifically at all.

Q Again, it was the, the reference library that brought this to your attention, is that true?

A Correct.

Q And when something was brought to your attention, what did you do?

A I went out to the reference desk to assess the situation.

Q Okay. And did you do that?

A I did.

Q And what happened?

A There was a gentleman at the reference desk who was making a complaint.

Q Okay. Did you speak with that gentleman?

A I did.

Q What was the nature of the complaint?

A He was concerned that there was someone in the computer lab, whom he claimed, I believe he said he was masturbating, but I don't recall exactly.

Q And so, this is a situation, and I, I, I suppose it might be covered by some type of procedure in the library. Is there a procedure that covers such a complaint?

A There is a behavior policy, yes.

Q Okay. What is that policy? What is that policy? What is the procedure?

such a way that I would be viewing the front of the computers to see if I could verify what the complaint was.

Q And, in doing that, were you able to verify anything?

A I could verify that the gentleman in question was at the computer that he referenced.

Q Could you verify anything else?

A Nothing specific.

Q Did you go and speak with the person?

A I did not.

Q The person we're talking about is Mr. D'Angelo?

A Correct.

Q So you didn't go speak with him?

A No.

THE COURT: And who was the person making the complaint, Ms. Bodner?

THE WITNESS: Mr. Parent.

THE COURT: Thank you.

BY MR. TOMKO:

Q And did you observe the computer to see if there was anything unusual on the computer screen?

A From the distance that I was, I could not see the computer screen at all.

Q What was the distance that you were, from the computer? From here to the end of the room or further?

A Possibly, probably a little bit further. It's a separate room with glass windows and I did not go into the room.

Q Would it be fair to say, when you say a little further, are you talking about a distance of thirty feet or more?

A Thirty feet further than the end of this room?

Q Thirty feet from where you were sitting to where you saw the computer?

A Possibly. I'm not a good judge of distance.

Q But from where you were observing, you could not see what was on the computer screen, is that fair to say?

A Correct.

Q Did you notice any unusual behavior by Mr. D'Angelo?

A No.

Q Did you, now, the computer room itself, my understanding is that it's a separate room. Is that true?

A Correct.

Q It has, like, glass walls and doorways to get in and out?

A Correct.

Q Did you enter into that room?

A No.

Q That day, did you receive any other complaints from any other people at the library about Mr. D'Angelo?

A No.

Q Once this was reported to you and you went and observed what you did, nothing you observed on the computer screen



that if he wanted to call the police, that he could, but I was not going to call the police for him and I repeated that several times.

Q So it was Mr. Parent's decision and desire to call the police?

A Absolutely.

MR. STEINHART: Your Honor, I just want to object. This is leading, this is Mr. Tomko's witness.

THE COURT: Sustained.

MR. STEINHART: Thank you, Judge.

BY MR. TOMKO:

Q In your policy and procedure, was this a situation, based on your observations and the complaint you heard, that the library or yourself or another person should be calling the police?

A We prefer that the individual making the complaint call the police because they're the ones who have absolutely witnessed whatever it is they're objecting to. Because I did not witness anything, I chose not to call the police.

Q And so you, you mentioned that, you said an offer, the first offer was to direct him to call the police?

A Yes.

Q And what changed after that?

A He was very insistent that we call the police. I was

treatment for any condition?

A Well, I had discussed, I had a problem, I started working out in early April, like the first week in April, I was athletic in school throughout my academic career, I ran track and played football and what not and yes, I developed a jock rash in the first week of April from working out.

Q Did you seek any medical advice?

A No, I didn't seek medical advice, but I did ask a doctor that I know for advice on what, what kind of, you know, lotion, or whatever I should put on it, so-

Q You sought some doctor's advice then?

A Yes.

Q And you said it was a jock itch condition, did it give you any symptoms?

A Well, a jock rash usually develops first and I have very sensitive skin so I've gotten these over the years, you know, on a regular basis and it usually starts out as a rash first and sometimes it develops into like an itching type of thing, if it lasts long enough.

Q Okay. Shortly after this incidence, were any photographs taken?

A Yes, the day after the incident.

Q Would you recognize those photographs?

A Yes, I would.

Q Let me show you what's been marked as defendant's exhibit B and C, take a look at those Tom and tell me when you're done.

A Yes.

Q Do you remember those pictures being taken?

A I sure do.

Q Are those pictures that show you?

A Yes, they do.

Q And what does it show?

A It shows that I have a jock rash on the right side of my groin, where my thigh meets, you know, like the side of my testicle, there.

MR. TOMKO: Judge, we move for admission of exhibits B and C.

MR. STEINHART: No objection, Your Honor.

THE COURT: Non verbal response.

BY MR. TOMKO:

Q So did this cause a, cause a itching condition for you?

A Yes, the day I was in the library, I noticed the itching started getting worse, progressively worse.

Q What time did you go to the library on April 12<sup>th</sup>, 2008?

A I actually went to the library, it was probably about one or one-thirty or so. I remember the Red Wings played that afternoon. It was like a play off game or something.

A Was I what?

Q Did one of the police officer's ask you what happened?

A Yes, he pulled me out of the computer lab and took me outside the door in the non-fiction part of the library and he didn't really ask me. What he did was he immediately said was, so, you're looking at porn in there, eh? That's what he said, quote, unquote.

Q Did you respond?

A Yes. I said absolutely not, I would never look at porn in the library.

Q Were you ever asked what happened besides that?

A Well, I didn't get a chance to respond, hardly, he came back with his second phrase, was, we have a gentleman here that says you were masturbating in there as well, quote, unquote. And I was like, whoa, that's absolutely false and I want to know who is making this allegation, that's what I said.

Q Okay. And then what happened?

A Well then, then he turned around and stated, don't you know there's surveillance video's in the computer lab? And I said, no, I didn't know that, but I would like to take a look at them.

Q Did that ever happened?

A No. He immediately took me outside. I was handcuffed behind my back and he took me out, down both sets of