

Affirmed and Opinion Filed May 3, 2017



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01122-CR

**ABUNDIO RIVERA VAZQUEZ, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 397th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 066595**

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Evans
Opinion by Justice Bridges

Abundio Rivera Vazquez appeals his improper photography or video recording conviction. The jury convicted appellant and sentenced him to ten years' confinement and a \$10,000 fine. In a single issue, appellant argues the evidence is legally and factually insufficient to support his conviction. We affirm the trial court's judgment.

On September 8, 2015, Irma Jimenez and her daughter Yesenia were shopping at a Kroger in Sherman, Texas. Yesenia, who was eight months pregnant at the time, was wearing an "open-flared dress." Irma noticed appellant staring at Yesenia. Appellant opened his phone, left it open, kneeled down, and took photos or video of Yesenia's genital area. Irma was certain appellant took photos because she "witnessed this." Irma was "very angry" and told Yesenia

appellant was taking pictures and to call the police. Appellant heard Irma's statements and "got nervous and took off running from the store."

Rachel Reinsch, a Kroger pharmacy employee, was working on the day of the offense and saw appellant "just wandering around" in the store. Reinsch immediately recognized appellant because she used to work with appellant's ex-wife. Reinsch was about to go to lunch, but she stayed because appellant was "being creepy." About an hour after appellant fled, police arrived at the store, interviewed Irma and Yesenia, and received a still photo of appellant leaving the store and a CD of the video surveillance of the store.

The next day, Plano police detective Cody Woods went to appellant's house and got no response when he knocked on the door. Woods heard a banging in the backyard and walked around to where he could see appellant in the backyard through the crack of the gate in the privacy fence. Woods identified himself as a police officer, and appellant stopped what he was doing, reached his left hand into his left pocket, and "took off running towards the back of his house out of [Woods'] sight." A few moments later, appellant returned and identified himself. Woods asked appellant for consent to come in the backyard and look for a cell phone Woods believed appellant had discarded in the backyard. Appellant consented to Woods coming in the backyard, where Woods saw an "open crawl space at the back of the house that was in the direction where [appellant] ran." Appellant initially consented to Woods searching the crawl space area but withdrew his consent before Woods was able to conduct a search.

Woods reviewed the Kroger surveillance footage, which showed appellant going to aisle 11 where the offense was alleged to have taken place and running out of the store. On September 17, 2015, Woods executed a search warrant at appellant's residence and found a "box of a track phone" but no phone. Woods believed the box was "the package to the phone that he had replaced the other one with." Woods later found the new phone in appellant's vehicle which

had been towed to an impound lot following appellant's arrest on September 19. Pursuant to a search warrant, Woods searched the new phone but did not find any numbers or pictures in it.

At trial, Irma testified about the circumstances surrounding the offense. Specifically, Irma testified she saw appellant open his phone, kneel down, and take pictures of Yesenia's genital area under her skirt. The State introduced the Kroger surveillance video and Reinsch's testimony about seeing appellant "being creepy" in the store. The State introduced evidence appellant had previously pled guilty to taking pictures up a woman's skirt at Target in May 2011 and taking pictures of a woman in a changing room at a Goodwill Store in July 2011. The jury found appellant guilty of improper photography or video recording. At punishment, the State introduced evidence appellant pled guilty to indecent exposure in May 2013 and had gotten on the ground and looked up a woman's skirt at a Belk store in October 2012 and a Hobby Lobby in July 2015. The jury sentenced appellant to ten years' confinement, and this appeal followed.

In a single issue, appellant argues the evidence is legally and factually insufficient to support his conviction. In making this argument, appellant relies on the fact that no photograph was discovered on his phone depicting the intimate area of another person.

The Texas Court of Criminal Appeals has held that the *Jackson v. Virginia*, 443 U.S. 307 (1979) legal-sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (plurality op.). In reviewing a challenge to the sufficiency of the evidence, we examine all of the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 895. We defer to the fact-finder's credibility and weight determinations because it is the sole judge of the witnesses'

credibility and the weight to be given their testimony. *See Jackson*, 443 U.S. at 326 (“a court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution”); *Brooks*, 323 S.W.3d at 894.

A person commits the offense of invasive visual recording if, without the other person’s consent and with intent to invade the privacy of the other person, the person photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view. TEX PENAL CODE ANN. § 21.15(b)(1) (West Supp. 2016). “Intimate area” means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person. *Id.* § 21.15(a)(2). The indictment in this case alleged appellant, with intent to invade the privacy of complainant and without her consent, photographed the genitals, pubic area, anus or buttocks of complainant, and complainant had a reasonable expectation of privacy that the genitals, pubic area, anus or buttocks were not subject to public view.

Here, Irma and Reinsch placed appellant at the Kroger at the time of the alleged offense, and surveillance video showed appellant in the store and running out of the store. Irma testified she saw appellant open his phone, kneel down, and take pictures of Yesenia’s genital area under her skirt. When appellant heard Irma tell Yesenia appellant was taking pictures and to call the police, appellant ran away. When police confronted appellant, he had “lost” his phone and acquired a new one. Under these circumstances, we conclude the evidence was legally sufficient to show appellant committed the offense of improper photography or video recording. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 895. We overrule appellant’s issue.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ABUNDIO RIVERA VAZQUEZ, Appellant

No. 05-16-01122-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 397th Judicial District
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Trial Court Cause No. 066595.

Opinion delivered by Justice Bridges.

Justices Lang-Miers and Evans participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered May 3, 2017.