

Opinion issued February 22, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00190-CR

JOHNATH ROIRICK JOSEPH, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Case No. 1517017**

MEMORANDUM OPINION

Johnath Joseph was charged with the felony offense of indecency with a child by exposure. *See* TEX. PENAL CODE § 21.11(a)(2)(A). Joseph pleaded not guilty and not true to two enhancement paragraphs. He waived his right to a jury. The trial court, after hearing evidence and argument, found Joseph guilty of the charged

offense, found the allegations in the enhancement paragraphs true, and assessed his punishment at 25 years' confinement.

On appeal, Joseph contends that the evidence is insufficient to support his conviction. We affirm.

BACKGROUND

One afternoon during the summer of 2016, Verna Bilberry was sitting on the porch of her apartment in southeast Houston while her granddaughter, the apartment manager's two daughters, and another girl ran around outside, playing Pokémon Go on a shared cellphone. The girls ranged in age from 7 to 11 years old.

Bilberry's adult son waited by the apartment driveway for a ride. When his ride arrived, he got into the car. A few moments later, the car returned. Bilberry's son jumped out and said "Mama, that man is in the window jacking off." Bilberry walked over to Joseph's large front window, which overlooked the parking lot. The window began about a foot above the floor of the apartment and rose to about six or seven feet in height. The window blinds were up, offering a full view inside the apartment. Joseph was standing inside, facing the window, with no clothes on and looking straight ahead. His genitals were exposed and he was fondling himself. The girls were running behind Bilberry in the parking lot. One of the girls—she believed the youngest one—exclaimed, "oh, he naked."

Bilberry called 911 and walked with the girls to the apartment manager's office. In the hour and a half before the police arrived, the apartment manager and eight or nine male residents gathered in front of Joseph's apartment and confronted him about his behavior. Joseph, still naked, told the men that he did not want to speak with them; he wanted to speak "to the women." In the ensuing melee, the large window in Joseph's apartment was broken and Joseph was assaulted. Joseph retreated into his apartment and closed the door.

Bilberry described the apartment complex as a small one, where everyone knew each other. About three months before the incident, Joseph moved into the apartment three doors down from Bilberry's. Bilberry recalled an earlier encounter with Joseph. She was visiting with several neighbors outside of her apartment. Joseph approached them and remarked, "I don't like older women. I like them 12 and under." After that, Bilberry, who spent time on her porch nearly every day, watched Joseph if he was outside when the girls were playing. If he looked a certain way at them, she would warn him, "I am looking at you."

DISCUSSION

A. Standard of review and applicable law

We apply the legal standard for sufficiency of the evidence articulated in *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788 (1979); see *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011); *Pena v. State*, 441 S.W.3d

635, 640 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). Under this standard, we consider all of the evidence in the light most favorable to the verdict to determine whether any “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 318–19, 99 S. Ct. at 2788–89 (1979); *accord Gear*, 340 S.W.3d at 746. We may not substitute our judgment for that of the factfinder by reevaluating the weight or credibility of the evidence; instead, we defer to the factfinder’s responsibility to fairly resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from the facts. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007); *see Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

Direct and circumstantial evidence are equally probative. *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015). Circumstantial evidence alone may be enough to uphold a conviction, provided that the cumulative force of all the incriminating circumstances suffices to support the conviction. *Id.* A jury ordinarily must draw inferences about a defendant’s intent or state of mind from the evidence concerning his actions and the surrounding circumstances. *Ledesma v. State*, 677 S.W.2d 529, 531 (Tex. Crim. App. 1984); *Tottenham v. State*, 285 S.W.3d 19, 28 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd).

A person commits the offense of indecency with a child younger than 17 years of age if, with intent to arouse or gratify the sexual desire of any person, the person

exposes any part of his genitals knowing a child is present. *See* TEX. PENAL CODE § 21.11(a)(2)(A). Further, the child need not be aware of the exposure, only present when it occurred; thus, the offense “is complete once the defendant unlawfully exposes himself in the required circumstances.” *Harris v. State*, 359 S.W.3d 625, 631 (Tex. Crim. App. 2011).

B. Analysis

Joseph contends the evidence is legally insufficient to prove that he acted with knowledge of a child’s presence. He notes that there is no evidence that he did anything to draw the children’s attention to him or to his window, and that he was masturbating against the wall away from the window. He argues that no evidence shows that he was watching the girls or that he saw them.

With respect to the element of knowledge, however, proof of active attention-getting conduct is not a prerequisite for conviction; rather, a factfinder may infer that the defendant knew of a child’s presence from the defendant’s conduct, remarks, and other circumstances. *See Turner v. State*, 600 S.W.2d 927, 930–31 (Tex. Crim. App. [Panel Op.] 1980); *Ercanbrack v. State*, 646 S.W.2d 480, 481–82 (Tex. App.—Houston [1st Dist.] 1982, no pet.). As a reviewing court, we are bound to defer to reasonable inferences that support the judgment. *See Williams*, 235 S.W.3d at 750.

Evidence in the record supports a reasonable inference that Joseph knew that the girls were playing outside. During daylight hours, Joseph was visible through

the apartment window standing against the opposite wall, naked and masturbating. Bilberry testified that Joseph's blinds were open, and he was visible to the apartment parking lot. Joseph was gazing out the window, which looked out over the parking lot. The girls ran behind Bilberry in that parking lot. One of the girls exclaimed that she noticed that Joseph was naked. Standing naked and masturbating in front of a large window during daylight hours, with children playing in the near vicinity, supports an inference of knowledge. *See Casper v. State*, 634 S.W.2d 39, 40 (Tex. App.—Tyler 1982, no pet.) (holding that evidence of defendant standing in front of open window waving and fondling his exposed genitals in view of child playing outside constitutes conduct from which knowledge and intent can be inferred).

From her porch that day, Bilberry observed that the girls were “running through the parking lot, running for the Pokémons.” They were not staying in any one particular spot, but were “running all over.” Further, Bilberry testified that Joseph previously had expressed a preference for girls younger than twelve. On earlier occasions, she had noticed Joseph watching the girls while they played outside. The trial court reasonably could have inferred that the girls were within Joseph's view and made enough noise running around the small apartment complex for Joseph, who lived three doors down from Bilberry, to notice them.

We conclude that a rational factfinder could have found beyond a reasonable doubt that Joseph knew children were present when he stood in front of his apartment

window and exposed his genitals. We therefore hold that the trial court did not err in finding Joseph guilty of indecency with a child by exposure.

CONCLUSION

We affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Bland, Lloyd, and Caughey.

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