IN THE UTAH COURT OF APPEALS

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Roosevelt City,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070936-CA
v.	)	
	)	F I L E D
Jeremiah Anderson,	)	(December 18, 2008)
	)	
Defendant and Appellant.	)	2008 UT App 464

Eighth District, Roosevelt Department, 071000129
The Honorable John R. Anderson

Attorneys: Julie George, Salt Lake City, for Appellant
Clark B. Allred and Bradley D. Brotherson, Roosevelt, for Appellee

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Before Judges Thorne, Billings, and McHugh.

McHUGH, Judge:

Jeremiah Anderson appeals his conviction on three counts of lewdness involving a child, a class A misdemeanor, see Utah Code Ann. § 76-9-702.5 (Supp. 2008).[1] Anderson argues that the evidence was insufficient to support his convictions. We affirm.

"Because we are asked to review the results of a bench trial for sufficiency of evidence, we will only reverse if the trial court's findings were clearly erroneous." State v. Briggs, 2008 UT 75, ¶ 10, 616 Utah Adv. Rep. 18. "[W]e must sustain the trial court's judgment unless it is against the clear weight of the evidence, or if [we] otherwise reach[] a definite and firm conviction that a mistake has been made." Id. (second and third alterations in original) (internal quotation marks omitted).

The Utah Code defines the crime of lewdness involving a child as follows:

> (1) A person is guilty of lewdness involving a child if the person . . . intentionally or

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1. Although section 76-9-702.5 was amended after the unlawful activity occurred, that amendment does not affect Anderson's arguments on appeal. We therefore cite the current version of the code for the reader's convenience.

> knowingly does any of the following to, or in the presence of a child who is under 14 years of age:
>
> . . . .
>
> (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;
> (i) in a public place; or
> (ii) in a private place:
> (A) under circumstances the person should know will likely cause affront or alarm; or
> (B) with the intent to arouse or gratify the sexual desire of the actor or the child;
>
> . . . .
>
> (e) performs any other act of lewdness.

Utah Code Ann. § 76-9-702.5(1).

"Anderson asserts that the whole basis of his defense was that he did not expose his genitals at all" and that there is insufficient evidence to prove otherwise. We disagree. One of the children testified that she saw Anderson pulling down his pants and saw his "private areas" "a couple of times," "[a]nd . . . [was] sure that [she] saw [Anderson]." Another child testified that her "dad and [his friends] were showing their bad spots" and clarified her testimony by indicating that she meant "down there," "in their crotch area," "between their legs." Moreover, even if Anderson did not expose his genitals, there was still sufficient evidence to support Anderson's conviction. The video recorded during the event demonstrates that in between joking that he was "a pro" at making pornography and loudly bragging about his and his wife's sexual activities, Anderson licked a beer bottle that he held at his friend's crotch and caressed the bare nipple of one of the other males. Anderson also solicited the women, including the children's stepmother, to expose their breasts, and then, as one child explained, "[T]he boys . . . c[ame] over and play[ed] around like really gross with them." Moreover, Anderson lifted his own wife's breast out of her shirt, held it in his hands, and licked her nipple. In short, there was sufficient evidence that Anderson not only exposed his genitals, see id. § 76-9-702.5(1)(a), but also exposed "the female breast below the top of the areola," id., or "perform[ed] any other act of lewdness," id. § 76-9-702.5(1)(e).

Anderson further argues that "[t]he statute specifically [requires] that . . . [he acted] intentional[ly] and knowing[ly] --to cause affront or alarm or to satisfy a sexual desire" and that the State failed to prove that element. We disagree with Anderson's reading of the statute. Utah Code section 76-9-702.5 requires proof that a defendant "intentionally or knowingly" "exposes his or her genitals, the female breast below the top of the areola, . . . or the pubic area." Id. § 76-9-702.5(1)(b). If that exposure occurred in a private place, the State must then

prove that "under [the] circumstances the person should know [the exposure] will likely cause affront or alarm" or that the defendant acted "with the intent to arouse or gratify the sexual desire of the actor or the child." Id. § 76-9-702.5(1)(b)(ii) (emphasis added). Thus, even if we accept Anderson's argument that he did not act with the intent to cause affront or alarm or satisfy a sexual desire, the evidence was still sufficient if it established that, under the circumstances, Anderson should have known his actions would likely cause affront or alarm, see id. § 76-9-702.5(1)(b)(ii)(A).

It should seem obvious that exposing one's genitals, licking a female's exposed nipple, and soliciting other women to expose their breasts and then "playing around . . . with them" would likely cause affront or alarm when done a few feet from three children ages six through eleven. Even if it were not obvious, Anderson certainly should have known the offensive nature of his activities in this case. After Anderson exposed, fondled, and licked his wife's bare breast, she reminded him that children were watching. Moreover, one child specifically told Anderson and the other adults that "they were being gross."[2] Given this evidence and the graphic and disturbing nature of Anderson's actions, there is ample evidence that Anderson "should [have] known[n his actions] w[ould] likely cause affront or alarm," id.

Affirmed.

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Carolyn B. McHugh, Judge

WE CONCUR:

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William A. Thorne Jr.,
Associate Presiding Judge

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Judith M. Billings, Judge

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2. Apparently, the only response came from Anderson's wife, who retorted, "Shut up, you moron."