COURT OF APPEALS
DECISION
DATED AND FILED

October 20, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP71-CR **Cir. Ct. No. 2007CF883**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL R. BERO,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: TIMOTHY A. HINKFUSS, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Daniel Bero appeals a judgment convicting him of two counts of exposing children to harmful material. He argues the State presented insufficient evidence to establish that he exhibited the materials to the children because he did not offer the magazines to them, but merely acquiesced in

their viewing of the pornography. We reject that argument and affirm the judgment.

¶2 In reviewing the sufficiency of the evidence to support a conviction, this court must view the evidence most favorably to the State and conviction, and affirm the verdicts unless the evidence is so lacking in probative value and force that no trier of fact could reasonably find guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Although the jury acquitted Bero of two counts of exposing his genitals and two counts of causing the children to view sexual activity, indicating the jury had a reasonable doubt as to some element of those offenses, evidence relating to those offenses also relates to the charges of exposing the children to harmful material. We review all of the evidence presented at trial in the light most favorable to the convictions. ***Id.***

¶3 The girls testified they went to Bero's apartment to get some matches. They went into Bero's bedroom to look for pornographic magazines that one of the girls new about. Bero followed them into the bedroom and told them to go away. Nonetheless, when the girls found the magazines on the bedroom floor, Bero did not tell them to stop looking at the magazines, and instead laid on the bed and fondled himself as he watched them peruse the magazines for ten minutes. One of the girls testified that Bero asked her to be his girlfriend.

¶4 In ***State v. Thiel***, 183 Wis. 2d 505, 511, 515 N.W.2d 847 (1994), responding to an argument that WIS. STAT. § 948.11(2)(a) (2007-08), is unconstitutionally overbroad, the court defined the term "exhibit" to mean "to offer or present for inspection." The court held all of the forms of exposing children to harmful material represent "a knowing and affirmative act," as distinguished from cases involving commercial display of materials to a general

consumer audience. We focus upon affirmative conduct of an individual toward a specific minor or minors. ***Id.***

¶5 Bero contends his acquiescence allowing the girls to look through pornographic magazines does not meet that definition. We disagree. To exhibit material does not require handing the material to the minors or asking them to view it. Bero's reaction to the girls' viewing his magazines constituted tacit approval of their looking at his magazines and exploitation of their curiosity. His actions represented a knowing and affirmative act of promoting their inspection of the magazines.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).