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IN THE XENIA MUNICIPAL COURT, GREENE COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO	*	CASE NO. 22CRB01337
<i>Plaintiff</i>	*	
	•	JUDGE MCNAMEE
VS	*	
	•	
DARREN C. GLINES	*	DECISION AND ENTRY
<i>Defendant</i>		

This matter is before the Court pursuant to the filing of the Criminal Complaint (“Complaint”) against the Defendant herein. Said Complaint alleges that the Defendant, between the dates of November 30, 2021 and November 30, 2022, committed three separate acts that constituted a violation of O.R.C. 2907.09(A)(1), Public Indecency, a misdemeanor of the fourth degree.

RELEVANT FACTUAL BACKGROUND

There is little dispute as to the facts of the case. The Defendant herein was (and may still be) a member of the YMCA. The Executive Director of the Fairborn YMCA, Jacqueline Brockman (“Brockman”) testified. Brockman testified that the Defendant was advised by the YMCA that the Defendant was specifically authorized and told by YMCA employees, including the Executive Director herself that the Defendant was authorized and permitted to utilize the Women’s Locker Room at all YMCA facilities in the Greater Dayton area, to include the YMCA facility located in Xenia, Ohio. Despite the fact that the allegations in the Complaint allege to have taken place over the course of a year, there was no evidence or testimony presented to suggest that the Defendant was ever advised by Brockman or otherwise, that the scope and/or nature of the Defendant’s membership with the YMCA was modified or changed to terminate the Defendant’s use of the Women’s Locker Room.

The State called three witnesses, each testifying to one of the Counts brought against the Defendant. Janell Holloway testified that she could see the Defendant’s wet swimming suit laying on the bench and that she knew the Defendant was in the locker room because she could hear the Defendant breathing loudly. Angela Drollinger testified that she was shocked and upset when she saw a “naked man” (Quotations original from State’s Brief) in the women’s locker room. Lacy Bevin testified that she could see the Defendant’s buttocks as they walked up and down the common hallway.

LAW AND ANALYSIS

The offense of public indecency is set forth in R.C. 2907.09(A)(1):

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household: (1) Expose the person's private parts; * * *.

The culpable mental state for this offense is "recklessly" and is defined in R.C. 2901.22(C):

(C) A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

In the present case, to prove each element of the public indecency offense beyond a reasonable doubt, the state had to produce sufficient evidence to establish that the Defendant (1) acted recklessly; (2) exposed private parts; (3) under circumstances likely to be viewed by others; (4) likely to affront others; and (5) in the Defendant's physical proximity.

State v. Imboden, 2022 WL 17814166

The dispute in the present case focuses on two elements: 1. Exposure of private parts; and 2. Culpable state of mind. Private parts as it relates to public indecency means genitalia. State v. Jetter, 74 Ohio App.3d 535. The State must prove that the Defendant exposed the Defendant's genitalia on the complained of date or dates. In the present case, the State simply is not able to do so, as the facts as presented to the Court simply did not exist to demonstrate that the Defendant exposed any genitalia.

The state attempts to persuade the Court that Ohio Appellate Courts have consistently found that "whether a person actually did observe a defendant's private parts is immaterial". *State's Brief, page 2*. In support of its' position, the State cites to State v. Imboden (infra), for the proposition that what matters is whether the exposure is likely to be viewed by others. The Court in *Imboden* states as follows:

In the case sub judice, to prove each element of the public indecency offense beyond a reasonable doubt, the state had to produce sufficient evidence to establish that appellant (1) acted recklessly; (2) exposed his private parts; (3) under circumstances likely to be viewed by others; (4) likely to affront others; and (5) in his physical proximity. After our review of the evidence adduced at trial, we first observe that the testimony reveals that the Burgers observed appellant stand naked behind a glass door window inside his house, from inside the Burgers' home at a distance of 154 yards. The witnesses maintained they could clearly see appellant. Nevertheless, although Holly

and Tom Burger testified that they could see appellant's genitalia, they also reviewed the 30-times magnified images and testified that those images depict a true and accurate representation of what they observed. However, those somewhat blurry and grainy images do not appear to clearly depict appellant's private parts. Furthermore, Tom Burger conceded on cross-examination that, although he stated that he could see appellant naked, in his report he stated that appellant appeared to be naked and he needed his zoom lens to "affirm" appellant's nakedness. Therefore, even when viewed in a light most favorable to the prosecution, the Burgers' testimony contains conflicts and inconsistencies as to whether they could actually see appellant's private parts from their house, some 154 yards away. Consequently, we question whether this testimony meets the "beyond a reasonable doubt" standard that the state must satisfy as to this element of the crime.

State v. Imboden, No. 21CA3752, 16-17 (Ohio Ct. App. 2022), at 26. Emphasis added.

Based upon the foregoing, as well as the plain language of O.R.C. 2907.09(A)(1), this Court finds that there must be exposure of genitalia, and that exposure must be likely to be viewed by others.

The State argues that the Court should subjectively determine the quality and nature of the coverage that prevents exposure of genitalia. The Court declines to do so. The Defendant's genitalia was not visible as a result of other portions of the Defendant's body covering same. This specific fact scenario was addressed in State v. Mackie, 12th Dist. Warren County. Therein, the Trial Court granted a Criminal Rule 29 Dismissal on a public indecency charge as there was no actual exposure because the Defendant's genitalia were covered/obstructed from view by his hip. The Court fails to see any distinction in the current case. Actual exposure of genitalia is an element. See, State v. Gilreath, 2nd Dist. Greene County, and its extensive approved citation list.

Therefore, based upon the foregoing the Court finds that the evidence and testimony is insufficient to support a finding of guilt of Public Indecency. There is no question that the Defendant was in the Women's Locker Room. However, the Defendant was not charged with trespass, nor was the Defendant charged with being in an area of the YMCA where the Defendant was not supposed to be. Quite simply, the facts do not exist to support a finding of guilt, as charged.

Having found the Defendant not guilty on all Three Counts of the Complaint, the matter is hereby dismissed.

IT IS SO ORDERED.


JUDGE, David M. McNamee

4-28-2023