

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP492-CR

Cir. Ct. No. 2005CF54

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TROY LEE PERKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Troy Lee Perkins appeals a judgment of conviction for lewd and lascivious behavior. He contends that there was insufficient evidence to convict him. This court affirms the judgment.

BACKGROUND

¶2 Perkins was charged with causing a child under thirteen to view/listen to sexual activity contrary to WIS. STAT. §§ 948.055(1), 948.055 (2)(a), and 939.50(3)(f). He was also charged with lewd and lascivious behavior contrary to WIS. STAT. §§ 944.20(1)(b), 939.51(3)(a).

¶3 Desirae K., the nine-year-old victim, lived with her two sisters and her father at the residence of Karen Fugere. Dave Biermann also lived at the residence, and Perkins, Fugere's boyfriend, often stayed there.

¶4 At the jury trial, Desirae K. testified that when she came home from school on January 26, 2004, Perkins and Fugere were in the living room. Perkins was sitting at a computer in the living room and Fugere was on the sofa facing the television. Desirae K. stated that Fugere fell asleep while watching television. Desirae K. recalled pulling up a chair to within three feet of Perkins to watch him play a video game. Desirae K. testified that Perkins unbuckled his belt, unzipped his pants, and exposed his "thingy" to her. Desirae K. further testified that she did not believe that Perkins exposed himself accidentally. Desirae K. stated that she then asked for permission to visit a friend, but that on her way out of the apartment, Perkins called her to the bathroom where she saw him masturbate and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

ejaculate. Desirae K. viewed an anatomical drawing of a man and circled his genital region to indicate to the court what she meant by “thingy.” Desirae K. also described the size and shape of Perkins’s penis.

¶5 Biermann, Fugere and Perkins also testified at trial. Biermann stated that on the day of the incident, he was also seated in the living room and he did not see Perkins expose himself to Desirae K. On cross-examination, Biermann stated that he told the investigating officer that he was in the living room at the time of the incident. However, after examining the police report, Biermann admitted that the report did not indicate that he had been in the room at the time of the incident. Fugere testified that she was not asleep while Desirae K. was in the house and that she did not witness Perkins expose himself to Desirae K. Perkins testified that when Desirae K. came home from school that afternoon, he did not pay attention to her because he was busy repairing the computer. Perkins testified that both Biermann and Perkins were in the living room while Desirae K. was in the living room. Perkins stated that he did not expose himself to Desirae K. and that he did not even go to the bathroom while Desirae K. was home that afternoon. The jury found Perkins guilty of lewd and lascivious behavior for exposing himself in the living room, but not guilty of causing a child to view sexual activity.

DISCUSSION

¶6 Perkins contends first that the evidence did not support a guilty verdict for lewd and lascivious behavior. Perkins further argues that even if he exposed himself to Desirae K., the State did not provide sufficient evidence that the exposure was indecent.

¶7 As for Perkins’s first claim, this court may not substitute its judgment for that of the trier of fact unless no trier of fact, acting reasonably,

could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The relative credibility of witnesses is a jury question and the appellate court must “view the evidence in the light most favorable to the finding.” *Id.* at 504.

¶8 The State produced sufficient evidence to support the jury’s verdict. Perkins contends that the evidence is insufficient because Desirae K. referred to his genitalia as a “thingy.” However, Desirae K. circled the appropriate region on an anatomical drawing that clearly depicted a penis to indicate what she meant by “thingy” and she described the appearance of Perkins’ genitalia. Desirae K.’s testimony was sufficient to support the jury’s finding that Perkins exposed his penis to Desirae K.

¶9 Perkins next argues that Desirae K.’s testimony is insufficient to prove beyond a reasonable doubt that the exposure was indecent. Perkins argues that WIS. STAT. §§ 944.20 does not provide a definition of “indecent.” Although Perkins cites no case law relating to statutory ambiguity, he is essentially arguing that the statute is ambiguous because “indecent” is not defined in the statute. Perkins states that because the statute is codified under WIS. STAT. ch. 944, which covers sexual morality, the indecency must be connected to a sexual act or behavior. Perkins concludes that there is no evidence that he was looking for sexual gratification by having someone view his genitalia and, therefore, the verdict was unsupported by evidence.

¶10 We begin with the language of the statute, and if it has a plain meaning, we apply that meaning without resorting to judicial construction or relying on extrinsic sources. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110. “Statutory

language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.*, ¶45. When a term in a statute is undefined, we consult a dictionary to discern its common meaning. *Garcia v. Mazda Motor of Am., Inc.*, 2004 WI 93, ¶14, 273 Wis.2d 612, 682 N.W.2d 365. The term indecent has a common accepted dictionary meaning of “not conforming to generally accepted standards of morality.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1147 (unbar. 1993). This court is satisfied that the language of the statute is clear and unambiguous.

¶11 Desirae K. testified that Perkins unbuckled his belt, unzipped his pants and exposed his “thingy” to her. She further testified that she did not feel that Perkins did so accidentally. The jury could reasonably conclude from Desirae K.’s testimony that Perkins exposed his genitalia under circumstances that were indecent as that term is commonly understood.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

