

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 26, 2002**

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. 01-2654-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 98 CM 14093**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RONALD C. SMITH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.<sup>1</sup> Ronald C. Smith appeals from a judgment entered after the trial court found him guilty of one count of exposing his genitals to a child, contrary to WIS. STAT. § 948.10 (1999-2000).<sup>2</sup> Smith claims that the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

evidence was insufficient to sustain the conviction. Because the record contains sufficient evidence to uphold the conviction, this court affirms.

## I. BACKGROUND

¶2 On December 16, 1998, at approximately 7:50 a.m., as the twelve-year-old victim was leaving the building, she encountered Smith in the hallway of the apartment complex where both resided. As the victim walked past Smith and started down the stairs, Smith called out to her. The victim turned toward Smith, and witnessed Smith exposing his penis. The victim then turned away and proceeded down the stairs. On December 23, 1998, Smith was charged in a complaint, which alleged that he exposed his genitals to a child.

¶3 A court trial was held on March 5, 2001. The victim was the only witness for the prosecution. The defense offered no witnesses. The court found Smith guilty and he was sentenced to six months in the House of Correction. He now appeals.

## II. DISCUSSION

¶4 The sole issue in this case is whether there was sufficient evidence to support the conviction of exposing genitals to a child in violation of WIS. STAT. § 948.10(1). This court concludes that the evidence was sufficient.

¶5 In reviewing a sufficiency of the evidence claim, the appellate standard of review is limited.

[I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a

reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

*State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citations omitted). Where there are inconsistencies within a witness's or witnesses' testimony, it is the trier of fact's duty to determine the weight and credibility of the testimony. *Thomas v. State*, 92 Wis. 2d 372, 382, 284 N.W.2d 917 (1979). An appellate court will substitute its judgment for that of the trier of fact only when the fact finder relied on evidence that was "inherently or patently incredible"—that kind of evidence which conflicts with nature or with fully established or conceded facts. *State v. Tarantino*, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

¶6 In this case, there was ample evidence for the trial court to conclude that Smith had exposed his genitals to a child. The elements of the crime charged are: (1) exposing genitals to a child; and (2) for the purpose of sexual arousal or sexual gratification. WIS. STAT. § 948.10. Smith contends that there was insufficient evidence on the second element. This court disagrees.

¶7 Smith suggests that the lack of testimony on this element by the victim precludes a conviction. The fact that the only witness did not offer testimony in support of the second element is not dispositive. Rather, the fact finder was free to infer intent from all the facts and circumstances. Here the trial court found that the second element was satisfied. This court cannot say that there is no evidence to support such a finding or that there is no possibility that a reasonable fact finder could reach the decision the trial court reached.

¶8 First, the victim did testify that the exposure occurred in a common hallway and that Smith called her attention to the exposure. Second, it is reasonable for the fact finder to infer that an adult would not call out to a child, and then expose his genitals in a common hallway for accidental or innocent purposes. The jury instructions state that the fact finder should apply common sense and general knowledge to determine whether a crime was committed.

¶9 Smith suggests that there may have been a non-criminal purpose for his exposure—he may have exposed himself as a sick joke to see the child victim’s reaction. This court is not to search the record for other reasonable alternatives for a defendant’s conduct. Rather, this court is limited to determining whether there is a possibility that a reasonable jury could have found this defendant guilty beyond a reasonable doubt. As noted, this court cannot conclude that the trial court’s inference that the exposure was done for sexual gratification or arousal is unreasonable. It was one reasonable inference from the facts in this case.

¶10 Likewise, this court does not find dispositive the fact that the victim testified Smith did not have an erection at the time of the exposure. Although WIS. STAT. § 948.10 requires that the perpetrator’s purpose of exposure must be for sexual arousal or gratification, it is not required that the sexual arousal or gratification occur concurrently with the act of exposure. The intent to receive sexual arousal or gratification from the act is all that is required. The existence of an erection may provide proof of intent to experience sexual arousal or gratification. However, in many cases, the lack of a visible erection does not negate the existence of such intent. This does not mean that the sexual arousal or gratification did not occur later or even that Smith experienced the gratification without any visible signs of an erection.

*By the Court.*—Judgment affirmed.

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

