STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1378

State of Minnesota,
Respondent,

vs.

Edward Wilson,
Appellant.

Filed September 3, 2024
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-CR-22-4994

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant argues that his convictions for two counts of fifth-degree criminal sexual conduct must be reversed because the evidence is insufficient to prove that he engaged in lewd exhibition of his genitals or masturbated while knowing or having reason to know

that he was in the presence of a minor. Alternatively, he argues that he is entitled to a new trial on one count because the district court abused its discretion in denying his request for a special verdict to identify which act the jury unanimously agreed that he committed. We affirm.

FACTS

Respondent State of Minnesota charged appellant Edward Wilson with two counts of fifth-degree criminal sexual conduct in violation of Minnesota Statutes section 609.3451, subdivision 1a(2) (2022). Count I alleged that Wilson had engaged in lewd exhibition of his genitals or masturbation in the presence of a minor during the period from December 1, 2021, through July 19, 2022. Count II alleged that Wilson had engaged in lewd exhibition of his genitals or masturbation in the presence of a minor on or about July 16 to 17, 2022. The following facts were established at trial.

From January to July 2022, Wilson resided with his girlfriend and his girlfriend's child at her apartment. The child, I.W., was under the age of 16. The apartment had two bedrooms on one side, a living room in the middle, and a kitchen on the other side; a person had to pass through the living room to get from the bedrooms to the kitchen.

One day during that time period, I.W. was in her room. Wilson knocked and, as I.W. described, "peeked open the door" to ask her if she knew where the computer charger was. I.W. fully opened the door. Wilson had a blanket over part of his lower body, but his penis was exposed. I.W. hurried out of her room, found the computer charger, gave it to Wilson, and went back to her room. When I.W. thereafter left her room to do laundry, Wilson asked her to plug in the computer charger at various places in the apartment. He then asked I.W.

to plug in the computer charger in her room, and she did. Later, Wilson asked I.W. what percent the computer's battery was at. I.W. brought the computer out of her room to the other bedroom, where Wilson was. Wilson called I.W. into the bedroom. He was lying down without any clothes on. I.W. tried to give the computer to him, but he could not reach it. So I.W. took "little steps" to pass the computer to Wilson because she did not want to be too close to him.

On another occasion during the same time period, I.W. walked out of her bedroom to go to the kitchen. Wilson was in the living room on the couch. He had a blanket on, but his penis was exposed and he was masturbating. I.W. returned to her room.

On or about July 15 to 16, 2022, I.W. had two friends over to her apartment to spend the night. I.W.'s two friends are sisters, and both sisters were under the age of 16. The three girls spent time in I.W.'s bedroom. Late in the evening, the girls went to the kitchen, put some food in the oven, and then returned to I.W.'s room to finish watching a movie. The younger sister, S.C., left the room to check on the food in the kitchen. As she was walking back to I.W.'s room through the living room, Wilson was on the couch touching his exposed penis. S.C. returned to I.W.'s room and told the other girls what she had seen. To make sure S.C. was not "hallucinating," her older sister went to check. The older sister left the room and walked to the kitchen. As she was returning to I.W.'s room, Wilson came out of the pantry. His pants were down, and she saw his exposed buttocks. The sisters texted their mother, who immediately came and picked them up from the apartment.

The jury found Wilson guilty on both counts, for engaging in "masturbation or lewd exhibition of the genitals" in the presence of I.W. (Count I) and in the presence of S.C. (Count II).

Wilson now appeals.

DECISION

I. The evidence is sufficient to sustain both convictions for fifth-degree criminal sexual conduct.

A person is guilty of fifth-degree criminal sexual conduct if "the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present." Minn. Stat. § 609.3451, subd. 1a(2). Wilson argues that his convictions must be reversed because the state failed to prove beyond a reasonable doubt that (1) he engaged in lewd exhibition of his genitals with respect to either I.W. or S.C. because "there is no evidence that he engaged in any behavior designed to call the girls' attention to his exposed penis" or (2) he masturbated while knowing or having reason to know that a minor was present.

When reviewing a challenge to the sufficiency of the evidence, an appellate court "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007) (quotation omitted). "The verdict will not be overturned if, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a

reasonable doubt, the factfinder could reasonably have found the defendant guilty of the charged offense." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted).

A. Lewd Exhibition

The district court instructed the jury that "lewd" means "openly lustful or indecent." Wilson agrees that this definition accords with caselaw. *See City of Mankato v. Fetchenhier*, 363 N.W.2d 76, 79 (Minn. App. 1985) ("The commonly accepted definition of lewdness is the quality of being openly lustful or indecent."). But Wilson argues that the evidence is insufficient to prove that his conduct met that definition because, he contends, when the conduct occurs in one's own home, lewd exhibition requires proof that the defendant took action to attract attention to their exposed genitals and no such evidence exists here. He relies on caselaw applying the indecent-exposure statute. Wilson's argument is unconvincing.

The indecent-exposure statute states, "A person who commits any of the following acts in any public place, or in any place where others are present, is guilty of a misdemeanor: (1) willfully and lewdly exposes the person's body, or the private parts thereof . . . ." Minn. Stat. § 617.23, subd. 1(1) (2022). Wilson points to *State v. Peery*, in which the supreme court reversed the appellant's conviction for indecent exposure after the appellant was observed naked through the window of his ground-floor dormitory room. 28 N.W.2d 851, 853, 855 (Minn. 1947). The supreme court explained that the statute requires sufficient evidence to find that the exposure "was committed with the deliberate intent of being indecent or lewd." *Id.* at 854. The supreme court continued, "To establish intent where the act does not occur in a public place or otherwise where it is certain to be

observed, some evidence further than the act itself must be presented." *Id.* It explained, "Ordinarily, intent is established by evidence of motions, signals, sounds, or other actions by the accused designed to attract attention to his exposed condition, or by his display in a place so public and open that it must be reasonably presumed that it was intended to be witnessed." *Id.* Wilson argues that evidence of actions to attract attention was therefore required here, where his exposure was in the home, to prove that his conduct was "lewd."

But, in cases since *Peery*, the supreme court has made clear that the indecent-exposure statute does not provide any special protection for lewd conduct in the home. In *Fordyce v. State*, the supreme court affirmed the indecent-exposure conviction of a person who was nude in his own backyard. 994 N.W.2d 893, 896, 904 (Minn. 2023). Interpreting the statute's phrase "in any place where others are present," the supreme court rejected the argument that the phrase should be defined "based on strict geographical boundaries." *Id.* at 902. Rather, the supreme court explained, the location of the alleged behavior is relevant only to whether the defendant's conduct was volitional rather than accidental, and it cited *Peery* as an example of an accidental-exposure case. *Id.* And in *State v. Stevenson*, the supreme court affirmed the defendant's conviction under the indecent-exposure statute for masturbating in his truck close to an occupied playground. 656 N.W.2d 235, 237, 241 (Minn. 2003). The supreme court rejected the idea that a defendant's privacy expectations are relevant to determining whether the defendant's conduct violated the statute. *Id.* at 240-41. Rather, quoting *Peery*, the supreme court stated that "[t]he relevant question is whether [the defendant's] conduct was so likely to be observed 'that it must be reasonably presumed that it was intended to be witnessed.'" *Id.* at 241 (quoting *Peery*, 28 N.W.2d at 854). Based

on these cases, we reject Wilson's argument that, to convict a person of "lewdly exposing" their genitals in their own home under the indecent-exposure statute, the state must prove that the defendant took action to attract attention to their exposed genitals.

Moreover, the present case does not involve the indecent-exposure statute but rather the fifth-degree criminal sexual conduct prohibition of "lewd exhibition of the genitals in the presence of a minor . . . , knowing or having reason to know the minor is present." Minn. Stat. § 609.3451, subd. 1a(2). In *Stevenson*, the supreme court affirmed not only the appellant's conviction for indecent exposure but also his conviction for attempted fifth-degree criminal sexual conduct. 656 N.W.2d at 240. The supreme court ruled that the conduct occurs "in the presence of a minor" when the conduct is "reasonably capable of being viewed by a minor." *Id.* at 239. Under that standard, the supreme court found the evidence sufficient to support the appellant's conviction because he parked his truck in a place where he knew children were playing and could, if they looked, see into his truck windows. *Id.* at 240. We are not persuaded that the fifth-degree criminal sexual conduct statute imposes a different standard to prove that a person engages in "lewd exhibition" in a minor's presence when the person is in their home.

We conclude that, under the definition of "lewd" as "openly lustful or indecent," *see Fetchenhier*, 363 N.W.2d at 79, and viewing the evidence in the light most favorable to the verdict, *see Crow*, 730 N.W.2d at 280, the evidence is sufficient to prove that Wilson engaged in "lewd" exhibition of his genitals in the presence of I.W. four times.

First, Wilson knocked on the door of I.W.'s room and subsequently partially opened the door while his penis was exposed. He then spoke with I.W., asking her where the

computer charger was, and permitted her to open the door farther. Second, Wilson again interacted with I.W. when he called her into the bedroom while he was lying on the bed with his penis exposed. When she tried to pass him the computer, he could not reach it, so I.W. had to move closer to Wilson's exposed body to give him the computer. Third, on another occasion, I.W. walked out of her bedroom to go to the kitchen. Wilson was in the living room on the couch. He had a blanket on, but his penis was exposed and he was masturbating. Fourth, while I.W. and her friends were going back and forth to the kitchen to prepare food, Wilson had his penis exposed while he was on the couch in the living room between the kitchen and I.W.'s bedroom. Each of these exposures qualifies as openly indecent, and Wilson's conduct met the definition of lewd exhibition of his genitals.

B. Masturbation

Wilson also argues that the evidence is insufficient to prove that he engaged in masturbation knowing or having reason to know that a child was present. A person is guilty of fifth-degree criminal sexual conduct if "the person engages in masturbation . . . in the presence of a minor under the age of 16, *knowing or having reason to know the minor is present*." Minn. Stat. § 609.3451, subd. 1a(2) (emphasis added). The presence requirement is not an actual-presence requirement; instead, the act must be "reasonably capable of being viewed by a minor." *Stevenson*, 656 N.W.2d at 239.

The state's case involved two instances of Wilson masturbating on the living room couch.

In one instance, the conduct was observed by I.W. She testified that she left her room to go to the kitchen and saw Wilson with his penis exposed and masturbating on the couch. The state asked I.W:

> Q: And when that happened did -- to your knowledge, did [Wilson] know you were in the house?
>
> A: I'm guessing because I didn't leave out the door or anything. I was just in my room. And because I didn't really feel like being out there for other situations that happened that I really can't remember that well. So I just stayed in my room all the time when my mom was gone.

I.W. also testified that the apartment was somewhat small. Viewing this evidence in the light most favorable to the jury's verdict, *see Crow*, 730 N.W.2d at 280, because I.W. had not left the apartment, the apartment was somewhat small, and Wilson was masturbating in the living room between the bedrooms and the kitchen, we conclude that the state proved that Wilson knew or had reason to know that his masturbation was reasonably capable of being viewed by a minor.

In the second instance, S.C. was present. Again, Wilson chose to masturbate in the living room even though the girls were going back and forth from the bedroom to the kitchen to prepare food. S.C. observed Wilson masturbating. Again, we conclude that, when the evidence is viewed in the light most favorable to the verdict, *see id.*, the evidence is sufficient to prove that Wilson knew or had reason to know that his conduct was reasonably capable of being viewed by a minor.

II. A new trial is not required on Count I.

Wilson argues that the district court abused its discretion by denying his request to provide a special verdict form to the jury on which to indicate which of Wilson's acts—the exposure during the computer incident or his masturbation on the couch in view of I.W.—constituted fifth-degree criminal sexual conduct against I.W. He contends that, if we agree that one or more of these incidents is not supported by sufficient evidence, we must remand for a new trial because there is no way to know which behavior the jury unanimously decided that he engaged in and it is possible that they agreed on an incident that lacks sufficient evidence.

This argument fails. The district court instructed the jury: "To find [Wilson] guilty of Count I, you must unanimously agree on at least one instance of masturbation or lewd exhibition of the genitals." We presume that the jury followed this instruction. *See State v. Segura*, 2 N.W.3d 142, 167 (Minn. 2024). As we explained above, the evidence is sufficient to prove that Wilson engaged in masturbation or lewd exhibition in the presence of I.W. on every occasion that was alleged. Thus, whether the jury unanimously found that he had lewdly exposed himself to I.W. or whether the jury unanimously found that he had masturbated in the presence of I.W., the evidence is sufficient to support his conviction on Count I and the denial of a special verdict form does not require a retrial on that count.

Affirmed.