MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Nixon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 20, 2023

Court of Appeals Case No. 22A-CR-1772

Appeal from the Marion Superior Court

The Honorable Clark Rogers, Judge

Trial Court Cause No. 49D25-2109-CM-29901

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] Michael Nixon appeals his conviction for public nudity, a Class B misdemeanor, challenging the sufficiency of the evidence. Nixon argues that his conviction must be reversed because the State failed to prove that he appeared "in a public place in a state of nudity with the intent to be seen by another person." *Appellant's Brief* at 6.

[2] We affirm.

Facts and Procedural History

[3] For over twenty years, Nixon and Margie Washington were next door neighbors in Indianapolis. Sometime during the summer of 2021, Washington hired Nixon to cut her grass. When Nixon finished mowing, Washington retrieved some cash to pay him. As Washington walked out of her house with the money, she noticed Nixon sitting on her front porch "playing with his self [sic]." *Transcript Vol. II* at 14. Washington was "shocked" that Nixon had "his private part out of his pants" and "was just sitting there playing with his self [sic] using both his hands." *Id.* at 15.

[4] On a later occasion, Washington observed Nixon sitting in a parked vehicle in front of her house "just playing with his penis." *Id.* Washington did not communicate with Nixon because "sometimes he was nice" and at other times

he would "just go off." *Id.* at 16. When other neighbors talked to Nixon about his behavior, "he would just laugh at them." *Id.* at 16.

[5] On August 2, 2021, at approximately 8:30 a.m., Washington was walking to her car that was parked behind her residence. At some point, Washington observed Nixon standing in his backyard. Washington was able to see Nixon because their yards were separated only by a four-foot-high chain link fence that also abutted a public alley. The fence enclosed the properties' backyards, and one could see the backyard when standing on the street in front of the house or in the back alley. As Washington was getting into her car, Nixon yelled for her to look at his vehicle "because somebody had hit [it]." *Id.* at 10. As Washington turned toward Nixon, she noticed that he was "just standing there with his pants open" and she could see "his private parts" and his "whole naked bottom." *Id.* at 10-11.

[6] Washington reported the incidents to police, and during the course of an investigation, she told one of the police officers that Nixon had exposed himself to her—and to her fifteen-year-old daughter—on many occasions. Thereafter, on September 27, 2021, the State charged Nixon with public indecency, a Class A misdemeanor, regarding various incidents that occurred between January 1, 2020, and August 2, 2021, and with public nudity regarding the August 2, 2021, incident.

[7] During the bench trial that commenced on July 6, 2022, the trial court granted Nixon's motion to dismiss the public indecency charge. After hearing the

evidence, the trial court found Nixon guilty of public nudity, sentenced him to a suspended jail term of 180 days, and ordered him to probation. The trial court also issued a "no contact order with Washington." *Id.* at 27.

[8] Nixon now appeals.

Discussion and Decision

[9] Our standard of review for claims challenging the sufficiency of the evidence is well-settled:

> Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020).

[10] To convict Nixon of public nudity as a class B misdemeanor, the State was required to prove beyond a reasonable doubt that Nixon knowingly or intentionally appeared in a public place in a state of nudity with the intent to be seen by another person. *See* Ind. Code § 35-45-4-1.5(c). In accordance with Ind. Code § 35-41-2-2(a), a person acts "intentionally" if it is his conscious objective to do so, and a person engages in conduct "knowingly if, when he engages in the conduct, he is aware of the high probability that he is doing so."

I.C. § 45-41-2-2 (b). A defendant's intent can be proved by circumstantial evidence, and the factfinder can infer intent "from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018). The factfinder can also utilize "reasonable inferences based on examination of the surrounding circumstances to determine the existence of the requisite intent." *White v. State*, 772 N.E.2d 408, 413 (Ind. 2002).

[11] While Nixon maintains that the evidence failed to demonstrate that he had the intent to be seen by Washington, the State established at trial that Nixon was in his backyard on the morning of August 2, 2021, where Washington could easily see his entire body. Nixon had a history of exposing himself to Washington and he called out to her several times under the pretext of having Washington view the alleged damage to his vehicle. Nixon, however, just "stood in his yard with his pants open" and his "private parts" and "whole naked bottom" exposed. *Transcript Vol. II* at 10-11. This evidence more than sufficiently established Nixon's intent to display his genitals and buttocks to Washington in a state of nudity.[1] *See, e.g., Whatley v. State,* 708 N.E.2d 66, 67 (Ind. Ct. App. 1999) (observing that whether conduct is knowingly and intentionally

[1] I.C. § 35-45-4-1(d) defines "nudity" in relevant part as "the showing of the human male . . . genitals, pubic area, or buttocks with less than a fully opaque covering . . . or the showing of covered male genitals in a discernibly turgid state."

performed may be inferred from the voluntary commission of the prohibited act as well as from the surrounding circumstances).

[12] Nixon also argues that his conviction must be reversed because he was in his backyard—which is not a public place—when Washington saw him. In *Weideman v. State,* we explained that the term "public place" in the nudity statute means "any place where the public is invited and are free to go upon special or implied invitation[;] a place available to all or a certain segment of the public." 890 N.E.2d 28, 32 (Ind. Ct. App. 2008) (quoting *State v. Baysinger,* 397 N.E.2d 580, 583 (Ind. 1979)). Focusing on the phrase "appears in a public place" contained in the statute, the *Weideman* court further determined that "the public nudity statute prohibits knowingly or intentionally being visibly nude to persons in a public place. *This would include being nude in your front yard or your neighbor's front yard if you are visible to a sidewalk or road." Id.* (Emphasis supplied). Even though Nixon was in his backyard, he neglects to note that Washington—or a pedestrian or driver in the street or the public alley—had an unobstructed view of him. In other words, the evidence showed that Nixon, in a state of nudity, was visible "to a sidewalk or road." *Id.* Thus, we reject Nixon's claim that his conviction for public nudity must be reversed because he was "standing in his own backyard." *Appellant's brief* at 7.

[13] In sum, the State demonstrated that Nixon stood in an open space in his backyard in clear view of Washington—or any passerby—and tricked her into looking at his exposed genitals and buttocks. As the evidence most favorable to the judgment established that Nixon publicly exposed himself and intended for

Washington to see him, it was reasonable for the trial court to conclude beyond a reasonable doubt that Nixon committed the offense of public nudity.

[14] Judgment affirmed.

Riley, J. and Pyle, J., concur.