

SUPREME COURT OF SOUTH DAKOTA

State of South Dakota v. Richard Aca Moss

754 N.W.2d 626 (S.D. 2008) · No. No. 24581 · Decided July 9, 2008

SUMMARY

The Supreme Court of South Dakota affirmed Richard Aca Moss's conviction for indecent exposure. The court held that the statute did not require actual knowledge that a present victim would be annoyed, offended, or alarmed, and concluded that the evidence was sufficient. It also held that Moss was not entitled to a jury instruction concerning the uncharged offense of public indecency because it was not a lesser-included offense and was not material to his defense.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Sabers, Justice
JURISDICTION	South Dakota
DECIDED	July 9, 2008
DOCKET	No. 24581
DISPOSITION	affirmed
PROCEDURAL POSTURE	Moss was convicted by a magistrate court jury of indecent exposure. The circuit court affirmed, and Moss appealed to the Supreme Court of South Dakota, challenging the sufficiency of the evidence and the denial of a proposed jury instruction concerning the uncharged offense of public indecency.
STANDARD OF REVIEW	The sufficiency of the evidence was reviewed by determining whether evidence in the record, viewed with the most favorable reasonable inferences, was sufficient for a rational jury to find guilt beyond a reasonable doubt; the Court did not reweigh evidence or assess witness credibility. Statutory interpretation was reviewed de novo. Refusal of a proposed jury instruction was reviewed for abuse of discretion, and reversal required prejudicial error.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Richard Aca Moss v. State of South Dakota

TOPICS

criminal procedure

statutory interpretation

evidence

standard of review

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PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Moss's conviction for indecent exposure under SDCL 22-24-1.2.
2. Whether the magistrate court abused its discretion by refusing to instruct the jury that Moss's conduct could constitute the related but uncharged offense of public indecency.
3. Whether Moss preserved for appellate review his claim that he should have been permitted to argue in closing that the State could have charged public indecency.

HOLDINGS

1. The evidence was sufficient to support the conviction. SDCL 22-24-1.2 does not require the defendant to have actual knowledge that a particular victim or witness who is present will be offended, annoyed, or alarmed; it requires awareness of circumstances under which the exposure would likely produce that result. The detectives could also qualify as members of the public and victim/witnesses for purposes of the statute.
2. Moss was not entitled to an instruction on public indecency because public indecency was not a lesser-included offense of indecent exposure and a finding of guilt on public indecency would not constitute a legal defense to the charged offense. The magistrate court therefore did not abuse its discretion in refusing the instruction.
3. The Court declined to review the claim because the trial court's ruling on the proposed argument was not final and Moss did not identify a place in the record where he was later prevented from making the argument.

KEY QUOTATIONS

“Because this element only requires an awareness that factual circumstances existed under which the exposure would likely offend, annoy or alarm, the test is objective.” (630)

“The first rule is that the language expressed in the statute is the paramount consideration.” (631)

“An instruction on a separate, uncharged, but “lesser” crime—in other words, an alternative theory of the crime—is required only when a guilty verdict as to the alternative crime would amount to a defense to the charged crime, i.e., when being guilty of both crimes is mutually exclusive.” (635)

FACTUAL BACKGROUND

Moss and Ron Miklos went to an area beneath an abandoned bridge in Elmwood Park in Sioux Falls, South Dakota, after learning that undercover detectives were observing activity in the park. In the detectives' presence, Moss pulled down his pants while Miklos performed oral sex on him. The bridge area was partially visible from the park's parking lot and was near baseball fields, playground equipment, a picnic shelter, and a bike path.

PROCEDURAL HISTORY

A magistrate court jury found Moss guilty of violating SDCL 22-24-1.2. The magistrate court denied Moss's motion for judgment of acquittal and his request for an instruction on public indecency. The circuit court affirmed the conviction, and the Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Bordeaux, 2006 SD 12, 710 N.W.2d 169
- State v. Motzko, 2006 SD 13, 710 N.W.2d 433
- State v. Ducheneaux, 2007 SD 78, 738 N.W.2d 54
- State v. Plenty Horse, 2007 SD 114, 741 N.W.2d 763
- Goetz v. State, 2001 SD 138, 636 N.W.2d 675
- In re West River Elec. Ass'n, Inc., 2004 SD 11, 675 N.W.2d 222
- City of Sioux Falls v. Ewoldt, 1997 SD 106, 568 N.W.2d 764
- Burnett v. Myers, 42 S.D. 233, 173 N.W. 730 (1919)
- Meinders v. Weber, 2000 SD 2, 604 N.W.2d 248
- Cooper v. Cooper, 299 N.W.2d 798 (S.D. 1980)
- State v. Martin, 2004 SD 82, 683 N.W.2d 399
- Cody v. Edward D. Jones Co., 502 N.W.2d 558 (S.D. 1993)
- Sanborn v. Commonwealth, 754 S.W.2d 534 (Ky. 1988)
- Hudson v. Commonwealth, 202 S.W.3d 17 (Ky. 2006)
- State v. Goodman, 384 N.W.2d 677 (S.D. 1986)
- State v. McGarrett, 535 N.W.2d 765 (S.D. 1995)
- State v. Giroux, 2004 SD 24, 676 N.W.2d 139
- United States v. Brown, 33 F.3d 1002 (8th Cir. 1994)
- Lewis & Clark Rural Water System, Inc. v. Seeba, 2006 SD 7, 709 N.W.2d 824