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State v. Hoyle

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A Whole Different Kind of Exposure

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Greetings from my COVID-19 bunker! I hope that you are healthy and doing well as we maintain our social distance from one another.[1] I am stuck somewhere between not being essential enough to risk my life by coming to the police department while at the same time not being non-essential enough to get a paid vacation at home without having to work.[2] But even in the midst of Armageddon, I know that you need your legal update fix, so enjoy this non-essential document today from your semi-essential lawyer.

I am tired of reading about, listening to, and talking about COVID-19, however, so instead of talking about exposure to a sometimes fatal virus, let's talk about a whole different kind of exposure, namely, the indecent kind. It just so happens that the N.C. Supremes[3] dealt with a case on this topic about a month ago in State v. Hoyle.[4] By peeping through this case, we can uncover an important legal principle about the charge of Indecent Exposure that I hope will gratify your desire for knowledge.[5]

But first, let's look at the elements of this crime. Under N.C. General Statute 14-190.9, it is a Class H felony for a person:

1. At least 18 years old
2. To willfully expose the private parts[6] of his or her person
3. In any public place
4. In the presence of any other person less than 16 years old
5. For the purpose of arousing or gratifying sexual desire.[7]

The element that we are focused on today is number four: what does it mean to be "in the presence" of another person?

In Hoyle, a mother and her four year old child had just returned home from the grocery store.[8] After parking, the mother began taking the groceries in while the child played in the yard. Neil Wayne Hoyle, the defendant, drove up and parked along the street at the edge of the yard. He called out to the mom and asked for directions, but she explained she couldn't help him. He then offered to do some work on her house although she

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[1] Sting was ahead of his time when he wrote and performed "Don't Stand So Close to Me" back in 1980. A great song even 40 years later. In related news, I'm old.

[2] I'm also stuck at home with my wife and three kids (who, of course, I love dearly). Fortunately, we have enough electronic devices and internet bandwidth for everyone to binge their favorite shows at once from different rooms of the house. We're a regular "Leave it to Beaver" family over here! (The majority of you will have to google that one, I know.)

[3] "Stop! (touching your face) In the Name of Love" by the real Supremes is also a great song. And I'm not THAT old – this one was before my time.

[4] 239A18 (28 February 2020).

[5] Sorry for all of the creepy puns in that sentence. I might be going a BIT crazy in quarantine.

[6] In North Carolina, "private parts" are specifically the "external organs of sex and excretion." This does not include the buttocks nor generally the breasts.

[7] The Class 2 misdemeanor indecent exposure does not require the defendant to be 18 years old and does not require the "victim" to be any certain age.

[8] Where presumably they were able to find every product they wanted, including meat, bread, and toilet paper. The old days were simpler times.

declined. Finally, he offered her a business card. When she walked over to the passenger side window and reached in to take the business card, she saw the defendant's exposed genitals. She quickly pulled her hand back and, dropping the groceries in her hand, ran to grab the child and go inside the house. The child had been playing about twenty feet from the defendant's car.

The police were called and, according to the court, their investigation consisted of the following step: they "identified defendant by the business card he had given the mother."[9] Wow.[10]

Somehow,[11] the defendant was convicted by a jury of one count of felony indecent exposure (for the child) and one count of misdemeanor indecent exposure (for the mom) and was sentenced to ten to twenty-one months in prison. He was also required to register as a sex offender and enroll in lifetime satellite-based monitoring. At trial and on appeal, the defendant's lawyer argued that the exposure could not have been "in the presence" of the child unless the child could have actually seen the exposure had he looked. The Court of Appeals agreed with the defendant and ordered a new trial on the issue of whether the child could have seen the exposure, but the State appealed to the N.C. Supreme Court.

The Supreme Court looked at a previous case for guidance named State v. Fly.[12] In Fly, the victim was "mooned"[13] by the defendant as she climbed the stairs of her condominium building. The defendant's pants were down to his ankles and she could see the "crack of his buttocks." She yelled and he quickly pulled up his pants and ran away. Since the buttocks are not a "private part," the issue in this case was whether Mr. Fly could be convicted even though the victim could not see his genitals or anus. The court made three important points about the statute:

1. The statute does not require the victim to see the exposure; only that the exposure was willfully made in a public place and in the presence of another;
2. The exposure does not need to be to another, just in the presence of another;
3. The crime does not go to what the victim saw but to what the defendant exposed in their presence without their consent.

As a result, Fly could be convicted even though the victim did not see his private parts and could not have seen them without being positioned differently.

Based on those principles, the Hoyle court ruled that there was no requirement that the child could have seen the exposure had he looked. To rule otherwise, the court pointed out, might lead to some weird results where the victim's quality of eyesight would become an issue. For example, a defendant might be guilty for exposing himself to someone with 20/20 vision while not guilty for doing the same thing to an older person with poor vision who forgot to wear their glasses that day. Therefore, because the child in this case was roughly twenty feet away from the defendant when the exposure occurred, the N.C. Supreme Court held that the element of "in the presence of another" was satisfied and upheld the defendant's conviction.

So here's hoping that the idea for criminals carrying business cards catches on and that you can avoid exposures both to deadly viruses and to other people's genitals (without your consent, of course). Stay safe and healthy!

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[9] Look – this guy was a "professional" criminal and all professionals need business cards. In fact, if you are looking for some side work during the COVID quarantine, this might be an untapped niche market. Business cards for criminals! Guy walks in to rob a bank. Sure, he needs a demand note, but he also needs a business card. How else will the teller appreciate the professional job he did as he robbed the place? And the best part is that you can work from home as you fill these business card orders!

[10] This was so stupid, I needed two footnotes to cover it all. You know how people say that someone "wanted to get caught?" This guy was BEGGING to be locked up.

[11] Perhaps by showing the jury the defendant's business card.

[12] 348 N.C. 556 (1998). This seems like a really unfortunate name for an indecent exposure case also.

[13] The practice of mooning has been around since the Middle Ages and possibly even as far back as the 1st century A.D. However, according the the Oxford English Dictionary, using the term "mooning" to describe the action didn't gain popularity until the 1960s when those crazy hippie college kids made it popular. To be fair, the dictionary didn't call them "crazy hippies." I added that part.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

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