COURT OF APPEALS
DECISION
DATED AND FILED

January 26, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP902 **Cir. Ct. No. 2014FO2540**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID J. REIDINGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: KRISTINA M. BOURGET, Judge. *Affirmed*.

¶1 HRUZ, J.[1] David Reidinger was found to have violated WIS. ADMIN. CODE § UWS 18.11(2), which prohibits disorderly conduct in University

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

of Wisconsin System buildings or on university lands.[2] The evidence at trial established that others witnessed Reidinger viewing pornography in a public library on the University of Wisconsin-Eau Claire (UWEC) campus. On appeal, Reidinger argues he has a First Amendment right to view legal adult pornographic material at a public library.[3] Reidinger also vaguely alludes to a conspiracy between numerous public officers and employees to harass him. We reject these arguments and affirm.

BACKGROUND

¶2 Following a bench trial, Reidinger was found to have violated WIS. ADMIN. CODE § UWS 18.11(2) and was fined $295. Shannon Riley, a student supervisor at the McIntyre Library on the UWEC campus, testified she received a complaint from a student at 10:40 p.m. on December 14, 2014. The complaining student testified that she and her roommate were working on homework at the library when they noticed Reidinger watching pornographic material on the computer next to them.[4] Two university police officers, Edward Lancour and Amanda Henry, responded to the complaint.

¶3 Lancour and Henry met with the complaining students, who showed the officers a picture they had taken of Reidinger's computer screen that showed open pornographic images. Lancour then personally observed Reidinger watching pornographic material on the computer for approximately thirty seconds before

[2] All references to WIS. ADMIN. CODE § UWS 18.11(2) are to the August 2009 version, which remains in effect.

[3] Reidinger is proceeding pro se.

[4] The roommate testified to substantially the same facts at the trial.

asking him to close the browser and move with him to a library stairwell to discuss the matter. Lancour testified he told Reidinger his watching pornography was causing a disturbance, to which Reidinger responded that he had a constitutional right to view pornographic material at a public library. Lancour then told him they had received several complaints, and witnesses had stated that Reidinger viewing pornography at that location made them feel uncomfortable. Reidinger was issued a citation for disorderly conduct under WIS. ADMIN. CODE § UWS 18.11(2) the following day.

DISCUSSION

¶4 Disorderly conduct in the context of this case means "violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance, in university buildings or on university lands." WIS. ADMIN. CODE § UWS 18.11(2); *see also* WIS. STAT. § 947.01(1). The State need not prove that an actual disturbance resulted from Reidinger's conduct, only that the conduct was of a type that tended to cause or provoke a disturbance. *See* ***City of Oak Creek v. King***, 148 Wis. 2d 532, 545, 436 N.W.2d 285 (1989). Reidinger does not contest the findings of his having committed disorderly conduct. Rather, he raises an as-applied challenge to his citation, asserting his conduct was protected by the First Amendment. Specifically, Reidinger cites two United States Supreme Court cases that he contends establish his right to view pornography in a public location. "The constitutionality of a statute is a question of law, which we review de novo, benefiting from the analysis of the circuit court." ***State v. Crute***, 2015 WI App 15, ¶3, 360 Wis. 2d 429, 860 N.W.2d 284.

¶5 Neither of the United States Supreme Court decisions Reidinger cites in support of his argument are on point. In ***Stanley v. Georgia***, 394 U.S. 557 (1969), the Court concluded that under the First Amendment, as made applicable to the states by the Fourteenth Amendment, "*mere private possession* of obscene matter cannot constitutionally be made a crime." ***Id.*** at 559 (emphasis added). In ***Reno v. ACLU***, 521 U.S. 844 (1997), the Court struck down two provisions of the federal Communications Decency Act of 1996 that imposed criminal penalties in an attempt to protect minors from "indecent" and "patently offensive" Internet communications. ***Id.*** at 849. The Court determined these provisions lacked "the precision that the First Amendment requires when a statute regulates the content of speech." ***Id.*** at 874. Neither ***Stanley*** nor ***Reno*** establishes a First Amendment right to view pornography in a public library or any other public place.[5] Reidinger does not cite any other authority in support of his position.

¶6 Further, we observe that Reidinger was not cited under a statute or other authority that proscribed public viewing of obscene materials; rather, he was cited for disorderly conduct. Disorderly conduct laws are "aimed at proscribing conduct in terms of the results that could be reasonably expected therefrom." ***State v. A.S.***, 2001 WI 48, ¶13, 243 Wis. 2d 173, 626 N.W.2d 712. While such laws may have the incidental effect of limiting certain speech, it has long been recognized that there is a valid countervailing interest in preserving public order.

[5] Reidinger notified this court by letter that he would not file a formal reply brief, in part because he asserts the State "accepts that [***Stanley v. Georgia***, 394 U.S. 557 (1969)] and [***Reno v. ACLU***, 521 U.S. 844 (1997)] provide controlling law for this case." The State, however, does not agree those are the controlling authorities; rather, the State argues—correctly—that both cases are distinguishable. Reidinger failed to respond to this argument and we therefore deem it conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

See ***Feiner v. New York***, 340 U.S. 315, 320 (1951); ***State v. Zwicker***, 41 Wis. 2d 497, 509, 512-13, 164 N.W.2d 512 (1969). In this case, as the State points out, there was ample evidence that Reidinger's public viewing of pornography at the library was indecent or otherwise disorderly and that it tended to provoke a disturbance.

¶7 Reidinger also states he "strongly suspects" his prosecution was the result of a conspiracy between University of Wisconsin System administrators, campus police officers, and the Eau Claire County District Attorney to harass him. These unsubstantiated "suspicions," however strong they may be on Reidinger's part, are not a valid basis for dismissing his citation.[6] Reidinger's conspiracy allegations are unsupported and undeveloped, and we therefore will not address them further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).[7]

By the Court.—Judgment affirmed.

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

[6] At trial, Henry was questioned by Reidinger and denied that any University of Wisconsin System officials had pressured her to issue a citation to Reidinger.

[7] Reidinger alludes to a prior citation of him under allegedly similar circumstances that was apparently dismissed. He does not explain the relevance of any prior citation to the present case, and we therefore deem the matter inadequately developed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).