

No. 1-11-2292

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VILLAGE OF ARLINGTON HEIGHTS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 97 CR
	)	
LAWRENCE GACKOWSKI,	)	Honorable
	)	Ellen B. Mandeltort,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Quinn and Simon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant was properly convicted of disorderly conduct in violation of municipal ordinance where evidence established that defendant alarmed and disturbed minor neighbors by standing naked in his home in plain view of those residents so that they could see his genitalia. The Village did not try defendant for offenses different than those alleged in the complaint. Defendant was not prejudiced by trial court's limitation of evidence of bias by one of the witnesses.
- ¶ 2 Defendant Lawrence Gackowski was convicted of disorderly conduct in a bench trial and given one year of court supervision. On appeal he contends that the evidence was insufficient to prove his guilt by a preponderance of the evidence and that he was found guilty of offenses with

which he was not charged. He also contends that the trial court erred in limiting the testimony he could elicit concerning the bias of one of the witnesses for the Village of Arlington Heights (the Village).

¶ 3 At trial, 13-year-old Darrion Roszkowiak testified that on September 13, 2010, at about 7:25 p.m., he was eating dinner in the kitchen of his Arlington Heights home. He looked out the kitchen's sliding glass door and saw defendant, who was his neighbor, "playing with his penis" behind his glass patio door. Darrion's backyard backed up to defendant's backyard, with a five-foot fence between them. Darrion testified that from his vantage point he could see all of defendant's patio door except for about one foot at the bottom of it. The blinds to defendant's patio door were open and the lights were on. Darrion testified that he saw defendant "playing with" his penis and moving his hand in a forward motion on his penis for about one minute. Defendant was completely naked at the time. Darrion told his father what he had seen and his father yelled at defendant. A police officer subsequently came to their home and conversed with Darrion's father outside. Darrion saw defendant's lights come back on and defendant, who was still nude, began walking back and forth. At this point, Darrion went outside to tell his father and the police officer.

¶ 4 Darrion's 16-year-old sister, Angelica, testified that at the time of the incident she was sitting next to Darrion, eating dinner. When she looked up, she saw defendant, naked, touching his penis. Defendant was facing her house. Angelica testified that her house was on a hill, slightly higher than defendant's house, so that despite the fence in between, she could see defendant's upper body, beginning at his lower hip. Angelica ran upstairs and did not come down again until her father called the police.

¶ 5 A forensic police officer came to the house on a later date to take photographs. He testified that the distance between Jason's sliding door and defendant's patio door was

approximately 50 feet.<sup>1</sup> From the Gackowskis' glass door, where he was standing, he could see all of defendant's patio door.

¶ 6 Jason Roszkowiak testified that at the time of the incident, he was eating dinner with two of his children, Angelica and Darrion. Angelica suddenly got up and Darrion told Jason that defendant was playing with himself. Jason walked to his sliding glass door and saw defendant, who was naked, "grasping" his penis. Jason opened the sliding door and yelled at defendant to "[k]nock it off." At that time, defendant was facing Jason and Jason's children. His lights were on and the curtains on his patio door were open. Jason then called the police. As he spoke to a police officer in his garage, Darrion ran up and said "Dad, he's doing it again." From his vantage point that evening he could see approximately three quarters of that door. On cross-examination, Jason testified that he had torn down a prior fence between his property and defendant's property, but he denied that he blamed defendant for that.

¶ 7 Arlington Heights police officer John Bzdusek testified that he responded to Jason's call that evening. Without objection from the defense, Bzdusek testified that Jason told him that he was sitting at his kitchen table, eating dinner with his children, when he and his children saw defendant standing in front of defendant's patio door, completely naked. Defendant appeared to be grabbing his exposed genitals. Jason yelled at defendant, who then closed his blinds and turned off the lights in his house. Bzdusek began a conversation with Jason in the garage, but Darrion came running in and said that defendant was doing it again. When Bzdusek went back to Jason's sliding glass door in the kitchen, he could see all of defendant's patio door except for one foot at the bottom. The lights were on in defendant's home and the blinds on his patio door were open. Bzdusek saw defendant walking around his house wearing only boxer or gym shorts.

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<sup>1</sup>Jason Roszkowiak subsequently testified that the distance was approximately 75 yards.

Bzdusek then went to defendant's home and knocked on the door. Defendant came to the door, wearing only boxer shorts.

¶ 8 Defendant testified that at the time in question his two daughters had just left the house and he was in the family room of his home, next to the kitchen, doing laundry in his soccer shorts. He denied that he was ever naked in front of his patio door. He also testified that he and Jason had been involved in verbal altercations in the past about the fence between their properties. At some point, Jason replaced his fence. Defendant testified that his sliding patio door was all glass except for an eight-inch header. He also testified that the patio door had no curtains or drapes, but instead had an opaque coating over it, to reflect the sun.

¶ 9 Following closing arguments, the court convicted defendant of disorderly conduct. Defendant was subsequently placed on one year of court supervision. This appeal ensued.

¶ 10 Defendant contends that he was not proved guilty of disorderly conduct. The Village ordinance at issue provides that "[A] person commits disorderly conduct when he or she knowingly does any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." Arlington Heights Code, art. V, sec. 8-501. Defendant was charged with disorderly conduct in that he "[a]larmed and disturbed residents under 18 years of age at [the Roszkowiak's home] by standing naked in plain view so minor residents could see [his] genitalia [sic]." The standard of proof for violations of municipal ordinances is the clear preponderance of the evidence. *City of Chicago v. Joyce*, 38 Ill. 2d 368, 372 (1967); *City of Champaign v. Sides*, 349 Ill. App. 3d 293, 301 (2004). A clear preponderance of the evidence is established when a fact is more probably true than not. *In re Arthur H.*, 212 Ill. 2d 441, 463-64 (2004). On review, we will reverse the trial court's finding based on this standard only if it is contrary to the manifest weight of the evidence, where the opposite conclusion is clearly evident. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 11 Defendant argues that he had a right to be naked in his own home. But according to the Village's evidence, defendant was not merely nude in his own home. He chose to stand nude, facing the Roszkowiak's glass sliding door through his glass patio door, with the lights on and his drapes open. He drew attention to his penis by touching it. The Village's evidence also establishes that three eyewitnesses, two of them minors, saw defendant acting in this manner from the confines of their own home. Defendant contends that there was no proof that he acted knowingly or knew that anyone was looking at him. But he was looking out his patio door toward the Roszkowiak's glass door, and they were able to see him. Furthermore, when Jason yelled at him, defendant first closed his blinds and turned off his lights, but then turned the lights on again, opened his blinds, and began to walk around his house, still nude. Defendant contends that there was no proof that his actions alarmed or disturbed anyone. But Angelica, Jason's 16-year-old daughter, testified that when she saw defendant, naked and touching his penis, she immediately ran upstairs and stayed there until her father called the police. Darrion also ran and told his father and Officer Bzdusek that defendant was "doing it again." Based upon these facts, we find that the trial court's determination that defendant violated the Village ordinance was not contrary to the manifest weight of the evidence.

¶ 12 Defendant contends that he was not charged with certain acts that he was convicted of committing. Defendant refers to the evidence that he played with, touched, or grasped his penis and the evidence that he moved his hand in a forward motion on his penis. As we have noted, he was charged with standing naked in plain view so that minors could view his genitalia. The acts which defendant describes were not elements of the charge against him, nor were they treated as such by the trial court. These actions constituted additional evidence that defendant had drawn attention to his genitalia. The Village was not required to include all the evidence it intended to introduce in its charge against defendant. Defendant did not object to this evidence at trial. Nor

does he contend that he was taken by surprise by this evidence, or that it interfered with his defense. See *People v. Collins*, 214 Ill. 2d 206, 219 (2005).

¶ 13 Defendant's final contention is that he was prejudiced because the trial court limited his efforts to show that Jason was biased against defendant because he believed defendant was responsible for Jason having to replace his backyard fence. Although a trial court cannot deny a defendant the right to show the bias of a witness, the court does have broad discretion to preclude repetitive or harassing questioning concerning bias. *People v. Leak*, 398 Ill. App. 3d 798, 722 (2010). Accordingly, a trial court's restriction of the scope of cross-examination will not support a reversal unless we find that the court clearly abused its discretion, resulting in manifest prejudice to the defendant. *Leak*, 398 Ill. App. 3d at 722. Here, defense counsel was permitted to ask Jason whether he blamed defendant for having to replace his fence. Jason denied any such belief. In addition, defense counsel was permitted to elicit from defendant testimony that he had prior arguments with Jason concerning Jason taking down his fence. Defendant testified that he had prior arguments with Jason and that on one occasion he asked Jason why he was taking down his fence. The clear implication to be drawn from this testimony was that one of the arguments defendant had with Jason concerned that fence. The court did not permit defense counsel to elicit from defendant what Jason said in response, or defendant's speculation about why Jason would lie about the complaint against defendant. But we find that, given the testimony of Jason and defendant concerning this alleged source of bias, the court did not abuse its discretion in limiting defense counsel's questioning concerning possible bias.

¶ 14 For the reasons set forth in this order, we affirm the finding of the trial court that defendant was guilty of disorderly conduct and the one-year period of supervision imposed on defendant.

¶ 15 Affirmed.