

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TERRY WILLIAM LINT,

Defendant-Appellee.

UNPUBLISHED
September 8, 2000

No. 220313
Isabella Circuit Court
LC No. 99-008777-FH

Before: Doctoroff, P.J., and O'Connell and Wilder, JJ.

O'Connell, J. (concurring).

I reluctantly concur with the majority's result.

I write separately to request that our Supreme Court grant leave in this case and clarify the statutory definition of an "act of gross indecency." The current state of the law in this area is confusing, and our courts need further direction. In the present case, the trial court may have properly applied the case law, yet we are reversing its order quashing the gross indecency charge. We do so, not because the trial court incorrectly applied the law, but because the law is capable of two different interpretations. I believe that the Supreme Court is responsible for clarifying, on a case-by-case basis, this difficult area of the law. This case presents an opportunity for the Court to provide further clarification.

I also concur with the majority's conclusion that whether the complainant was "mentally incapable" or "mentally incapacitated" at the time of the offense was a factual question for the jury to determine. With respect to the gross indecency charge, I believe that if the act occurred in a place where an unsuspecting member of the public could be exposed to the conduct, then it met the definition of a public place. A jury must resolve whether the prosecution established this element of the offense. *People v Williams*, 237 Mich App 413, 417; 603 NW2d 300 (1999), modified in part 462 Mich 861 (2000).

I would reluctantly reverse the decision of the trial court.

/s/ Peter D. O'Connell