

FILED

DEC 17 2020

ANGIE SPARKS, Clerk of District Court
By *[Signature]* Deputy ClerkMONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

STATE OF MONTANA,

Cause No. ADC-2020-133

Plaintiff,

v.

FINDINGS OF FACT,
CONCLUSIONS OF LAWS AND
ORDER

RAFAEL BENJAMIN GRANA,

Defendant.

Defendant Rafael Benjamin Grana (Grana) is charged with the felony offense of indecent exposure. The parties appeared for a bench trial on December 14, 2020. Deputy Lewis and Clark County Attorneys Josh Nemeth represents the State. Greg Beebe and Brent Flowers represent Grana.

From the testimony and evidence presented, the Court enters the following:

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1 **FINDINGS OF FACT**

2 1. On March 13, 2020 the State filed an information charging
3 Grana with a single count of indecent exposure, a felony, in violation of Montana
4 Code Annotated § 45-5-504(1)(b), alleged to have occurred on January 28, 2020.
5 The body of the information contained the following:

6 "The facts constituting the offense contained are that on or about
7 the 28th day of January, 2019 (sic), the above-named defendant committed the
8 offense of INDECENT EXPOSURE (3rd offense), a felony, in that he knowingly
9 or purposely exposed his penis to S.N., under circumstances to which the person
10 knows the conduct is likely to cause affront or alarm in order to arouse or gratify
11 his own sexual response or desire or the sexual response or desire of any person,
12 in violation of Section 45-5-504(1)(b), MCA."

13 2. Sommer Nistler (Nistler) resides in Helena, Montana. On
14 January 28, 2020 at approximately 8:15 a.m., Nistler drove her children to
15 school. Thereafter Nistler drove to Carroll College to visit the Adoration Chapel
16 at Trinity Hall, a girl's dormitory situated on the Carroll College campus. Nistler
17 attends the chapel often, to meditate and pray for approximately one hour before
18 continuing on with her day.

19 3. On January 28, 2020, after leaving her children at school,
20 Nistler drove her Ford F-150 crew cab pickup truck to Carroll College. Upon
21 arrival, Nistler parked the truck in a campus parking lot adjacent to Trinity Hall,
22 in a parking space designated for visitors to the chapel. According to Nistler, this
23 parking lot is most frequently used on campus and is full of vehicles or nearly so
24 every time she visits the chapel at Trinity Hall. The parking space she occupied

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1 is adjacent to a wide sidewalk that students, faculty and others use to access the
2 campus and Trinity Hall.

3 4. Upon completing her prayers in the chapel, Nistler returned
4 to her pickup truck where she continued to meditate. At approximately 9:15
5 a.m., she noticed a car drive into the parking space to the left of her pickup, i.e.,
6 on the driver's side. Nistler looked to her left and noticed the driver, a male and
7 sole occupant of the vehicle, who appeared to be digging into his pockets.

8 Nistler is unsure whether the man saw her when he took the parking space next to
9 her. She observed the driver stayed in the vehicle but otherwise paid no attention
10 to him. Approximately ten (10) minutes later, Nistler again looked to her left.

11 The driver was wearing a shirt and beanie-style hat but his pants were down. He
12 held a cellular telephone in the air with his right hand while masturbating with
13 his left hand. His penis was erect as he actively masturbated. Nistler indicated
14 this was a very busy time on the Carroll College campus, with numerous students
15 and faculty using the parking lot and sidewalk. According to Nistler, the man
16 was looking toward the sidewalk and Turner Hall as he masturbated.

17 5. Nistler was shocked by what she observed. Because the
18 pickup truck was higher than the other vehicle, Nistler could clearly see
19 everything in the interior. A moment later, when the man noticed Nistler looking
20 at him, he backed out of the parking space and continued driving in reverse until
21 he exited the parking lot. Nistler used her cellular telephone to photograph the
22 man and his vehicle and to call the 911 emergency dispatch center. The
23 photographs in evidence, State's Exhibits 2 and 3, show Grana driving a brown
24 Toyota sport utility vehicle with Lewis and Clark County license plates as he left
25 the parking lot. Nistler identified Grana in the courtroom as the man she

1 observed on January 28, 2020 at Carroll College. She had never met him before
2 this incident and has not seen him since.

3 6. Nistler was uncertain whether anyone else observed Grana
4 while he masturbated but testified that any person who walked by his vehicle
5 would have clearly seen him. Grana was parked close to the sidewalk. The
6 windows in his vehicle were clear, not tinted.

7 7. Nistler was highly disturbed by the incident. For a period of
8 time thereafter she was afraid to return to the chapel unless accompanied by her
9 husband.

10 8. Nistler acknowledged no one walked between her pickup
11 and Grana's vehicle when it was in the parking lot. She also testified Grana did
12 not appear to notice her upon parking his vehicle and did not look at her initially.
13 Because the windows in Nistler's pickup are tinted, Grana may not have noticed
14 her upon taking an adjacent parking space.

15 From the foregoing Findings of Fact, the Court enters the
16 following:

17 CONCLUSIONS OF LAW

18 1. The Court has jurisdiction over the parties and subject
19 matter.

20 2. The State of Montana has the burden of proving the guilt of
21 the Defendant beyond reasonable doubt.

22 3. "A person commits the offense of indecent exposure if the
23 person knowingly or purposely exposes the person's genitals or intimate parts by
24 any means . . . under circumstances in which the person knows the conduct is
25 likely to cause affront or alarm in order to . . . arouse or gratify the person's own

1 sexual response or desire or the sexual response or desire of any person.” Mont.
2 Code Ann. § 45-5-504(1)(b).

3 4. To convict Grana of indecent exposure, the State must prove
4 each of the following elements: (1) he exposed his genitals or intimate parts; (2)
5 under circumstances in which he knew the conduct was likely to cause affront or
6 alarm; (3) in order to arouse or gratify his own sexual response or desire or the
7 sexual response or desire of any person; and (4) he acted knowingly or purposely.

8 5. “A person acts knowingly with respect to the result of
9 conduct described by a statute defining an offense when the person is aware that
10 it is highly probable that the result will be caused by the person's conduct.”
11 Mont. Code Ann. § 45-2-101(35).

12 6. “A person acts purposely with respect to a result or to
13 conduct described by a statute defining an offense if it is the person's conscious
14 object to engage in that conduct or to cause that result.” Mont. Code Ann.
15 § 45-2-101(65).

16 7. Circumstantial evidence may be used to determine the
17 existence of a particular mental state. A finder of fact may infer the Defendant's
18 mental state from the Defendant's acts and from all facts and circumstances
19 involved. Mont. Crim. Jury Instr. 1-117(b).

20 8. By masturbating in a car parked in a busy parking lot on a
21 college campus at 9:15 a.m. when classes were in session, Grana acted under
22 circumstances in which he knew the conduct was likely to cause affront or alarm.
23 He acted knowingly. The evidence indicates Grana was aware there existed a
24 high probability that his conduct would cause a specific result, i.e. affront or
25 alarm to anyone who observed him. He also acted purposely. In the public

1 location Grana chose to masturbate, it was his conscious object to cause affront
2 or alarm. The evidence is uncontroverted Grana acted in order to arouse or
3 gratify his own sexual response.

4 9. Upon considering the facts and circumstances presented in
5 this matter, the Court concludes there is sufficient evidence by which the State
6 has proven the essential elements of indecent exposure under Montana Code
7 Annotated § 45-5-504(1)(b), which require the State to establish that Grana
8 purposely or knowingly exposed his genitals. See State v. Ommundson,
9 2008 MT 340, 346 Mont. 263, 194 P.3d 672. Grana is guilty of the offense of
10 indecent exposure.

11 10. Grana's argument the State failed to prove he knowingly or
12 purposely exposed his genitals to Nistler is without merit. Under the general
13 principles of statutory construction, the "purposes of the provisions governing the
14 definition of offenses are. . . to give fair warning of the nature of the conduct
15 declared to constitute an offense." Mont. Code Ann. § 45-1-102(c). The statute
16 unambiguously identifies the nature of conduct which constitutes an offense.

17 11. Grana's argument (the State must prove he knowingly or
18 purposely exposed his genitals to S.N., as set forth in the information) is similarly
19 unavailing. Montana Code Annotated § 46-11-401(1) provides that a criminal
20 charge "must be a plain, concise, and definite statement of the offense charged,
21 including the name of the offense, whether the offense is a misdemeanor or
22 felony, the name of the person charged, and the time and place of the offense as
23 definitely as can be determined." Contrary to Grana's claim, "[a] charge may
24 not be dismissed because of a formal defect that does not tend to prejudice a
25 substantial right of the defendant." Mont. Code Ann. § 46-11-401(6).

1 12. By filing the information, the State apprised Grana of the
2 nature offense charged. Although it was unnecessary to do so in this instance, a
3 "court may permit an information to be amended as to form at any time before a
4 verdict or finding is issued if no additional or different offense is charged and if
5 the substantial rights of the defendant are not prejudiced." Mont. Code Ann.
6 § 46-11-205. Grana suffered no prejudice when the State's information named
7 the person to whom he exposed his genitals.

8 From the foregoing Findings of Fact and Conclusions of Law, the
9 Court enters the following:

10 **ORDER**

11 **IT IS HEREBY ORDERED**, for the offense indecent exposure,
12 in violation of Montana Code Annotated § 45-5-504(1)(b), the Defendant is
13 **GUILTY**.

14 The Montana Department of Corrections shall prepare a pre-
15 sentence investigation pursuant to Montana Code Annotated § 46-18-111. The
16 investigation must include a psychosexual evaluation of the Defendant and a
17 recommendation as to treatment.

18 The Defendant shall appear before the Court for a sentencing
19 hearing on Wednesday, February 10, 2021 at 9:00 a.m.

20 DATED this 18th day of December 2020.

21
22 Mike Menahan
23 MIKE MENAHAN
24 District Court Judge
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1 pc: Josh Nemeth, via courthouse mail
2 Brent Flowers; via courthouse mail
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4 MM/sm/FOF, CL & Order
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