

IN THE COURT OF APPEALS OF IOWA

No. 0-269 / 08-1915
Filed June 30, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LARRY JAMES GRADY,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson,
Judge.

Larry Grady appeals from his conviction and sentence for attempting to entice away a minor and seeks discretionary review of his conviction and sentence for third-degree harassment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa Wilson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Hunter and Linda Zanders, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J. takes no part.

EISENHAUER, J.

Larry Grady appeals from his conviction and sentence for attempting to entice away a minor. He contends the evidence is insufficient to support his conviction. He also seeks discretionary review of his conviction for third-degree harassment, arguing his trial counsel was ineffective.

The charges against Grady stem from an incident on June 18, 2008, in which Grady and a companion asked a thirteen-year-old boy to get into their van. They offered the boy twenty dollars and told him they would take him wherever he wanted to go. Even after the boy told him “no” and asked him to stop talking to him, Grady persisted in asking him to get in the van. The boy memorized the van’s license plate and identified Grady in a photographic array as one of the men in the van.

On appeal, Grady contends there was insufficient evidence to support his conviction for attempting to entice a minor. He argues the evidence is insufficient to show he had the specific intent to commit an illegal act upon the boy when he attempted to entice him away. See Iowa Code § 710.10(3) (2007) (defining the elements of attempting to entice away a minor). We review his claim for the correction of errors at law. *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009). Our goal is to determine whether the evidence could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* We view the evidence in the light most favorable to the State. *Id.*

When viewing the evidence in the light most favorable to the State, we find there is sufficient evidence by which the jury could find Grady intended to commit

an illegal act upon the boy. Grady and his companion attempted to get the boy to get inside their van by offering to drive him anywhere he wanted to go and by offering him twenty dollars. They persisted in asking him to get inside the vehicle, even though he repeatedly said no and asked them to stop speaking to him. Although there is no direct evidence of an intent to commit an illegal act, there is sufficient evidence by which the jury could infer Grady was attempting to entice the boy away for the purpose of performing an illegal act upon him. See *State v. Quinn*, 691 N.W.2d 403, 408 (Iowa 2005) (holding “a fact finder could reasonably infer that the intent to commit an illegal act on [the child] could have been false imprisonment” where the defendant pulled his car into a driveway, rolled down his window, said “hi” to the child, and gestured with his finger for her to come to him).

Grady also alleges his trial counsel was ineffective with regard to his conviction for third-degree harassment, a simple misdemeanor. A defendant convicted of a simple misdemeanor in district court may not appeal as a matter of right, but may apply for discretionary review. *Tyrell v. Iowa Dist. Ct.*, 413 N.W.2d 674, 675-76 (Iowa 1987). Grady failed to make an application for discretionary review as required by Iowa Rule of Appellate Procedure 6.201(1) (2008). Our court may treat a notice of appeal as an application for discretionary review. Iowa R. App. P. 6.108 (2009). However, Grady also failed to file a notice of appeal for his harassment charge as required by Iowa Rule of Criminal Procedure 2.73(1). Because the appeal and the application for discretionary

review are both untimely, we decline to consider the merits of his appeal in regard to the third-degree harassment conviction.

AFFIRMED.