

**IN THE COURT OF APPEALS OF IOWA**

No. 1-013 / 09-0586  
Filed March 7, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**BRION CHARLES SCHAEFER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

Brion Charles Schaefer appeals his conviction for indecent contact with a child. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Michelle Wagner, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Mansfield, J., and Miller, S.J.\* Tabor, J., takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MILLER, S.J.**

**I. BACKGROUND FACTS.**

A jury found Brion Charles Schaefer guilty of Indecent Contact with a Child, in violation of Iowa Code section 709.12 (2005), an aggravated misdemeanor. The district court sentenced Schaefer to a prison term and a fine, both of which it suspended. Schaefer appeals his conviction.

At trial Schaefer moved for a “directed verdict,”<sup>1</sup> asserting a lack of sufficient evidence to sustain a conviction. On appeal he asserts, as he did in the trial court, that there was insufficient evidence he was eighteen years of age or older at the time of the alleged offense.<sup>2</sup> Schaefer argues the court therefore erred in overruling his motion.

**II. SCOPE AND STANDARDS OF REVIEW.**

Our scope and standards of review of challenges to sufficiency of the evidence are well-settled:

Our review of sufficiency-of-evidence challenges is for correction of errors at law. The jury’s findings of guilt are binding on appeal if supported by substantial evidence. Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.

In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. Direct and circumstantial evidence are equally probative. A verdict can rest on circumstantial evidence alone. However, the evidence must at least raise a fair inference of guilt as to each essential

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<sup>1</sup> For purposes of this appeal we will treat Schaefer’s motion as a motion for judgment of acquittal. See *State v. Deets*, 195 N.W.2d 118, 123 (Iowa 1972) (holding that grant of motion for directed verdict is tantamount to a judgment of acquittal in a criminal action), *overruled on other grounds by State v. Walker*, 574 N.W.2d 280, 283 (Iowa 1998).

<sup>2</sup> An essential element of Indecent Contact with a Child is that the defendant be eighteen years of age or older at the time of the offense. Iowa Code § 709.12. The jury was so instructed in Jury Instruction No. 5.

element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient.

*State v. Kirchner*, 600 N.W.2d 330, 333-34 (Iowa Ct. App. 1999) (internal citations and quotation omitted).

We give consideration to all the evidence, not just the evidence supporting the verdict. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). It is the State's burden to prove beyond a reasonable doubt each and every element of the crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368, 375 (1970).

### **III. DISCUSSION.**

From the evidence presented at trial the jury could find the following facts. At the time of the incident giving rise to the charge against Schaefer, Schaefer was residing in a basement bedroom in the home of his cousin, Eric. Eric was holding a "get-together" at his home. It included a backyard bonfire that continued from some time in the evening of May 19, 2006, until 5:00 a.m. or 6:00 a.m. on the morning of May 20, 2006. The get-together included Eric, Schaefer, a neighbor, and about three other persons. Schaefer was observed drinking beer.

T.J., a twelve-year-old female, was babysitting Ethan, Eric's four-year-old son. She and Ethan arrived at Eric's home at about 9:00 p.m. or 10:00 p.m. on May 19. T.J. stayed overnight to babysit Ethan. The charge against Schaefer arose out of events that occurred the night of May 19-20, 2006.

At the early January 2008 trial Eric testified that he was then twenty-eight years of age and had known Schaefer "[my] whole life." Schaefer was present in

the courtroom during the trial and was identified by T.J. as the person who had had indecent contact with her.

In *State v. Thompson*, the defendant was charged with Lascivious Acts with a Child. *State v. Thompson*, 365 N.W.2d 40, 41 (Iowa Ct. App. 1985). The statute under which he was charged required proof that the defendant was eighteen years of age or older. See Iowa Code § 709.8(3) (1983). On appeal Thompson asserted the trial court should have sustained his motion for judgment of acquittal, arguing, similarly to Schaefer's argument in this case, that there was no substantial evidence of his age. *Thompson*, 365 N.W.2d at 41.

On appeal, we affirmed Thompson's conviction. *Id.* at 43. There, as in this case, the State presented no direct evidence of the defendant's age. *Thompson*, 365 N.W.2d at 41. In affirming Thompson's conviction, we found that the facts that (1) Thompson was present in the courtroom during the entire trial, (2) he was recognized and identified by witnesses, (3) he was a chef and repaired television and radio equipment, (4) he had been served a drink by a twelve-year-old child's mother, (5) he had participated in the Big Brother program, and (6) he had purchased beer and cigarettes, constituted substantial evidence from which the jury could find that Thompson was eighteen years of age or older.

In this case (1) Schaefer was present in court during trial, (2) he was recognized and identified by T.J. as the person who had had indecent contact with her, (3) he was apparently living independently from any parents, and (4) he

was consuming beer.<sup>3</sup> Most importantly, Schaefer's cousin, Eric, who was twenty-eight years of age at the time of trial and thus would have been about twenty-six years of age at the time of the incident giving rise to the charge against Schaefer, testified that he had known Schaefer all of his twenty-eight years of life, strongly indicating that Schaefer was of an age at least approximately the same as Eric's age.

#### **IV. CONCLUSION AND DISPOSITION.**

We find the evidence that Schaefer was eighteen years of age or older is at least as strong as was the evidence in *Thompson* that Thompson was eighteen years of age or older. We conclude the jury was presented with substantial evidence from which it could find beyond a reasonable doubt that Schaefer was eighteen years of age or older at the time of the incident giving rise to the charge against him. We affirm Schaeffer's conviction.

**AFFIRMED.**

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<sup>3</sup> Iowa Code section 123.47(2) (2005) provided that a person under legal age shall not have beer in their possession or control. Legal age was defined by section 123.3(19) as "twenty-one years of age or more."