IN THE COURT OF APPEALS OF IOWA

No. 2-858 / 11-1515
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID LEE FRAZIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Stephen B. Jackson, Judge.

Defendant appeals his convictions for second-degree sexual abuse and lascivious acts with a child. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Nicholas Scott, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., Tabor, J., and Huitink, S.J.*

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

HUITINK, S.J.

David Frazier appeals from judgment convicting him of sexual abuse in the second degree and lascivious acts with a child in violation of Iowa Code sections 709.3(2) and 709.8(1) (2009). Frazier contends the evidence of record is not sufficient to support the jury's verdicts finding him guilty on both counts and the trial court's resulting judgment must be reversed. Because we find the evidence of record sufficient to support the jury's verdicts, we affirm the trial court's judgment on both counts.

I. Background Facts & Proceedings.

The record includes evidence of the following. On May 30, 2010, Frazier was living with a woman and her four children after he was evicted from his apartment. On that evening, Frazier and the children watched two movies, and the children fell asleep on the floor. One of the children, K.Y., who was then seven years old, testified she woke up and a scary movie was on so she got up on the couch beside Frazier. At that time K.Y. was wearing pajamas and underwear, and she stated Frazier was wearing "his undies." K.Y. stated that while she was on the couch, Frazier "touched my private" with his hand underneath her clothing. She stated his hand was moving and "went inside my private." She testified Frazier told her to keep it a secret. The next day K.Y. told her father and stepmother what had occurred.

When Frazier was interviewed by police officers about the incident he stated K.Y. had fallen asleep on the couch and he picked her up to put her back down on the floor. He stated that while he was picking her up he may have accidentally inserted his finger into her vagina, and this was for less than a

minute. In a written statement Frazier asserted that while he was moving her he had one hand between her legs and that "I accidentally rubbed her in the wrong way, and my pinky could have accidentally went in her."

The record also indicates K.Y. testified Frazier touched her "private" underneath her clothing and he touched her skin. She also stated Frazier's hand "went inside my private." She testified the "private" was "[t]he part that you go pee out of."

After the State rested its case, Frazier moved for judgment of acquittal. The trial court denied Frazier's motion. The jury found Frazier guilty on both counts. The court sentenced Frazier to a term of imprisonment not to exceed twenty-five years on the charge of second-degree sexual abuse, and not to exceed ten years on the charge of lascivious acts with a child, to be served concurrently. The court determined Frazier would be required to register as a sex offender and he was subject to the special sentence found in section 903B.1.

II. Standard of Review.

We review claims challenging the sufficiency of evidence in a criminal case for the correction of errors at law. *State v. Dalton*, 674 N.W.2d 111, 116 (Iowa 2004). We will uphold the jury's verdict when it is supported by substantial evidence. *State v. Hagedorn*, 679 N.W.2d 666, 668 (Iowa 2004). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We view the evidence in the light most favorable to the State, "including legitimate inferences and presumptions that may fairly and reasonably be

deduced from the record evidence." *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005).

III. Merits.

A. Frazier contends the district court should have granted his motion for judgment of acquittal because the State failed to present sufficient evidence to show he actually touched the child's genitals. The offense of second-degree sexual abuse requires there to have been a "sex act." Iowa Code §§ 709.1, 709.3. The term "sex act" includes "contact between the finger or hand of one person and the genitalia or anus of another person." *Id.* § 702.17. Additionally, the offense of lascivious acts with a child includes the element that the person fondles or touches the pubes or genitals of a child. *Id.* § 709.8(1).

As mentioned here, K.Y. testified Frazier touched her "private" underneath her clothing and he touched her skin. She also stated his hand "went inside my private." She defined the "private" as "[t]he part that you go pee out of." Furthermore, Frazier's statements to law enforcement indicated he may have accidentally inserted his finger into her vagina. We conclude there is substantial evidence in the record to show Frazier touched the genitals of the child.

B. Frazier also contends there is insufficient evidence in the record to show he had the requisite intent to arouse or satisfy the sexual desires of himself or K.Y. The offense of lascivious acts with a child is committed when a person touches the genitals of a child "for the purpose of arousing or satisfying the sexual desires of either of them." *Id.*

Intent is a necessary element of the offense of lascivious acts with a child. *State v. Haines*, 259 N.W.2d 806, 811 (Iowa 1977). "The intent requisite to

conviction for lascivious acts with a child may be inferred from the nature of the act itself." *State v. Most*, 578 N.W.2d 250, 254 (Iowa Ct. App. 1998). "The sexual nature of the contact can be determined from the type of contact and the circumstances surrounding it." *State v. Pearson*, 514 N.W.2d 452, 455 (Iowa 1994). A defendant's sexual intent is a question of fact for the jury to decide. *State v. Polly*, 657 N.W.2d 462, 468 (Iowa 2003).

There is substantial evidence in the record to support a finding that Frazier had the intent to arouse or satisfy the sexual desires of either himself or K.Y. The evidence showed Frazier touched the child's genitals, moved his hand around, and put a finger in her vagina. The sexual nature of his actions may be inferred from the actions themselves. *See Most*, 578 N.W.2d at 254. The fact he told her to keep his actions a secret is also a factor to consider. The jury was free to accept or reject Frazier's statement that he had "accidentally" placed a finger in the child's vagina. *See State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) (noting jury members were free to give a defendant's testimony such weight as they found it should receive).

We determine the district court did not err in denying Frazier's motion for judgment of acquittal. We affirm his convictions.

AFFIRMED.