

IN THE COURT OF APPEALS OF IOWA

No. 3-970 / 12-2271
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JESUS J. RAMOS TORRES,
Defendant-Appellant.

Appeal from the Iowa District Court for Montgomery County, Richard H. Davidson, Judge.

A defendant appeals from his conviction for sexual abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Bruce E. Swanson, County Attorney, and Chandra Peterson, Student Legal Intern.

Considered by Vogel, P.J., and Mullins and Bower, JJ.

MULLINS, J.

Jesus J. Ramos-Torres waived jury and the district court found him guilty of sexual abuse in the third degree in violation of Iowa Code sections 709.1 and 709.4(2)(c)(4) (2011). Following denial of motion for judgment of acquittal, motion in arrest of judgment, and motion for new trial, Ramos-Torres appeals arguing there was insufficient evidence to establish a “sex act” occurred. We affirm.

A “sex act” is, in relevant part, “any sexual contact between two or more persons by: . . . contact between the finger or hand of one person and the genitalia or anus of another person” that is sexual in nature. Iowa Code § 702.17; *State v. Davis*, 574 N.W.2d 913, 917 (Iowa Ct. App. 1998). The victim, who was intoxicated and sleeping in a bed beside Ramos-Torres, testified Ramos-Torres kissed and rubbed her breasts and rubbed her legs, even though she told him to stop. The victim passed out and when she woke, her pants and underwear had been removed. Ramos-Torres was on top of her, had removed her tampon, and was holding it in his hand. Based on its placement, Ramos-Torres would have had to make contact with the victim’s genitalia to remove the tampon. His conduct immediately prior reveals a clearly sexual purpose to the contact. The district court found the victim’s testimony credible. The district court’s detailed findings of fact, conclusions of law, and judgment, and on-the-record ruling on the motion for new trial thoroughly addressed the issue presented. The district court found the State proved its case beyond reasonable

doubt. Pursuant to Iowa Court Rules 21.26(1)(a), (b), (d), and (e), we affirm the conviction for sexual abuse in the third degree.

AFFIRMED.