

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3315-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW F. G.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Matthew F.G. appeals from a judgment convicting him of first-degree sexual assault of a child, with a child responsibility enhancer, and from an order denying his postconviction motion. The victim was his three-year-old daughter, Evette K.G. The issues are whether the trial court properly

allowed into evidence statements Evette made to a social worker, and whether the jury heard sufficient evidence to find Matthew guilty. We affirm on both issues.

¶2 The State alleged that on August 11 or 12, 1999, Matthew inserted his fingers into Evette's vagina while giving her a bath. At trial, Matthew testified that he touched her crotch area solely for the purpose of applying diaper rash cream. Evette testified equivocally, but made some statements that supported Matthew's version of events. However, Evette's mother, Kathy, testified that Evette had complained about her father's insertion of his fingers, and had told Kathy that Matthew repeated "I love you" while he did it. In Evette's accounts given shortly after the event there was no mention of cream. Kathy added that Evette had previously, about one year earlier, complained that "daddy sticks his fingers up my crotch."

¶3 Dr. Bohn, Evette's physician, testified that he examined Evette one or two days after the assault but found no rash or redness that would require diaper cream. Dr. Bohn also testified that Evette showed her how Matthew touched her crotch, and said that she had told no one else because the event was her father's secret.

¶4 Dr. Bohn referred Evette to a sexual assault nurse, Jill Fisher. During the examination, Fisher asked Evette if anyone had ever hurt her in her private places, and Evette responded that her father had hurt her by rubbing her crotch.

¶5 Over objection of defense counsel, social worker Kathy McDonald also testified to her interview with Evette shortly after the assault. The statements Evette made to McDonald were consistent with those she made to her mother, Dr. Bohn, and Fisher.

¶6 There was no physical evidence, and Matthew argued that the jury found him guilty because it believed that Evette's out-of-court statements proved that he sexually assaulted her. The trial court subsequently denied postconviction relief, resulting in this appeal.

¶7 Matthew contends that McDonald's testimony should have been excluded as hearsay and as unfairly prejudicial cumulative evidence. He also contends that the State failed to prove that he touched Evette for the purpose of sexual gratification, a necessary element of the crime. *See* WIS. STAT. §§ 948.01(5)(a) and 948.02(1) (1999-2000).¹

¶8 We need not decide if admitting McDonald's testimony was error, because it had no measurable effect on the verdict. Evette testified to the events surrounding the assault, and Evette's mother, Dr. Bohn, Fisher, and McDonald all related similar versions of what Evette told them shortly after the event. Matthew concedes that McDonald's testimony added nothing new to the other accounts, but contends that it was unfairly prejudicial to repeat the same story several times in testimony. However, he does not adequately explain why that is so. He cannot reasonably contend that the jury probably would have disbelieved Evette's statements had McDonald not related essentially the same story as three other witnesses.

¶9 The jury heard sufficient evidence to find beyond a reasonable doubt that Matthew touched Evette for the purpose of sexual gratification. Evidence is sufficient if a trier of fact, acting reasonably, could be convinced of guilt beyond a

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

reasonable doubt by the evidence which it had a right to believe and accept as true. *State v. Hamilton*, 120 Wis. 2d 532, 540-41, 356 N.W.2d 169 (1984). On review, we view the evidence in the light most favorable to the State, and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the conviction is the one we must adopt. *Id.* at 541. Here, Evette's statements to Dr. Bohn allowed the inference that Matthew wanted to keep the touching secret. Evette stated that while he touched her, Matthew repeatedly said "I love you" to her. Although Matthew said he touched Evette only to apply diaper rash cream, the jury heard testimony that Evette showed no signs of diaper rash or redness shortly after the assault. The jury also heard testimony that, shortly after the event, Evette stated that Matthew inserted his fingers into her vagina. The jury could reasonably find that act inconsistent with applying cream to an external rash or irritation. They could reasonably infer from this evidence that the touching was for the purpose of sexual gratification.

By the Court.—Judgment and order affirmed.

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