COURT OF APPEALS
DECISION
DATED AND FILED

May 22, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 01-0088-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE INTEREST OF RYAN T.S.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

RYAN T.S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Affirmed.*

¶1 PETERSON, J. Ryan T.S. appeals a dispositional order adjudicating him delinquent of first-degree sexual assault of a child under the age

of thirteen, contrary to WIS. STAT. § 948.02(1).[1] Ryan argues that the evidence was insufficient to support the finding of delinquency because the State failed to prove beyond a reasonable doubt that Ryan acted with intent to become sexually aroused or gratified. We conclude that the evidence was sufficient. Therefore, we affirm.

BACKGROUND

¶2 On April 6, 2001, a delinquency petition was filed against Ryan, then fourteen years old, alleging that he sexually assaulted a four-year-old girl at Ryan's mother's daycare business. The petition alleged that while helping the girl change into a swimsuit, Ryan touched her vaginal area for approximately fifteen seconds.

¶3 At the fact-finding hearing, officer David Zielke and Michelle Nyman, a social worker, both testified they had interviewed Ryan. They testified that at the interview, Ryan stated he had inserted his finger into the girl's vagina for fifteen seconds before he realized what he was doing was wrong and stopped.

¶4 However, Ryan testified that his finger slipped down onto the girl's vaginal area for three to four seconds and that he was mistaken when he told Zielke and Nyman that it was fifteen seconds. He also denied having told Zielke and Nyman that he inserted his finger into the girl's vagina.

¶5 Relying on Ryan's statements to Zielke and Nyman, the trial court found that all of the elements of sexual assault had been met. The court

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version.

specifically found that Ryan intended to become sexually aroused or gratified. The trial court adjudicated Ryan delinquent of first-degree sexual assault. This appeal followed.

STANDARD OF REVIEW

¶6 We may not substitute our judgment for that of the trial court unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value that the trial court, acting reasonably, could not have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). If any possibility exists that the trial court could have drawn the appropriate inferences from the evidence to find guilt, we may not overturn a verdict even if we believe the trial court should not have found guilt based on the evidence before it. ***Id.***

DISCUSSION

¶7 Ryan argues that there are no facts in the record supporting the inference that he had intended to become sexually aroused or gratified. We disagree.

¶8 WISCONSIN STAT. § 948.01(5)(a) defines sexual contact as:

> Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

Intent to become sexually aroused or gratified, like other forms of intent, may be inferred from the accused's conduct and from the general circumstances of the

case, although the trier of fact "may not indulge in inferences wholly unsupported by any evidence." ***State ex rel. Kanieski v. Gagnon***, 54 Wis. 2d 108, 117, 194 N.W.2d 808 (1972).

¶9 The record establishes that Zielke and Nyman met with Ryan shortly after receiving a complaint from the child's mother. During the meeting, Ryan told Zielke and Nyman that while putting a swimsuit on the child, he allowed his finger to reach into her vaginal area and he let his finger remain there for about fifteen seconds. Ryan then told Zielke and Nyman that he came back to a "right state of mind," realized what he was doing was wrong, and stopped.

¶10 In his testimony at trial, Ryan gave a different version of events. However, we must look at the evidence in a light most favorable to the State. The trial court is permitted to find intent from statements or conduct. Here the trial court inferred from Ryan's statements to investigators that he touched the child for the purposes of sexual arousal or gratification. We conclude that the evidence supports the trial court's findings. Therefore, we affirm the dispositional order adjudicating Ryan delinquent of first-degree sexual assault.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.