IN THE COURT OF APPEALS OF IOWA

No. 9-020 / 08-0504
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANK RICHARD DOTSETH,
Defendant-Appellant.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge.

The defendant appeals from his conviction of five counts of third-degree sexual abuse. **AFFIRMED.**

Dean Stowers of Rosenherg, Stowers & Morse, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, and Andrew F. Vandermaaten, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Frank Dotseth appeals from his conviction of five counts of third-degree sexual abuse, in violation of Iowa Code section 709.4(2)(b) (2007). He contends there is insufficient evidence to support the conviction. He also contends the court erred in refusing to instruct the jury on his religious practices and beliefs. We review these claims for corrections of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008) ("Sufficiency-of-the-evidence challenges are reviewed for correction of errors at law."); *State v. Martinez*, 679 N.W.2d 620, 623 (Iowa 2004) ("We review the trial court's refusal to give a requested instruction for correction of errors at law.").

Dotseth is an ordained minister and practitioner of his own religion, the Church of One. He admits that in 2006, he touched the vagina of a thirteen-year-old neighbor with his fingers. He claims the contact occurred when he was applying oils to the girl as part of a holistic treatment of a rash in her pubic area. This occurred on five separate occasions, each treatment lasting approximately fifteen minutes. On the fifth occasion, the victim claims Dotseth penetrated her vagina with his penis three times.

A jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007). Substantial evidence is evidence that could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. *Id.* When reviewing a challenge to the sufficiency of the evidence, 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 evidence in the record. *Id.*

Dotseth admits his fingers came in contact with the victim's vagina, but argues the contact was not "sexual in nature" as established in *State v. Pearson*, 514 N.W.2d 452, 455 (Iowa 1994). In *Pearson*, our supreme court found that the sexual nature of an act can be determined by the type of contact and the circumstances surrounding it. *Pearson*, 514 N.W.2d at 455.

> Such circumstances certainly include whether the contact was made to arouse or satisfy the sexual desires of the defendant or the victim. However, the lack of such motivation would not preclude a finding of sexual abuse where the context in which the contact occurred showed the sexual nature of the contact. Other relevant circumstances include but are not limited to the relationship between the defendant and the victim; whether anyone else was present; the length of the contact; the purposefulness of the contact; whether there was a legitimate, nonsexual purpose for the contact; where and when the contact took place; and the conduct of the defendant and victim before and after the contact.

Id.

Viewing the evidence in the light most favorable to the State, we conclude the nature of the act and the circumstances surrounding it support a finding the act was sexual in nature. Dotseth admitted he touched the girl's clitoris and inserted fingers inside her vagina without wearing gloves. He also admitted he may have talked to the girl about sexual feelings during that time. He explained that her claim he had intercourse with her could have been caused by inadvertently hypnotizing her. The jury was free to accept or reject any of Dotseth's claims and to place credibility where it belongs. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

Dotseth next contends the court erred when it failed to give two jury instructions regarding his religious practice and beliefs. Assuming arguendo that error was preserved, we conclude the district court did not err in refusing to instruct the jury as requested. Dotseth asserts the court should have instructed the jury on Iowa Code section 622.10, which provides that "a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity . . . ." Although Dotseth alleges this instruction was necessary to prevent the jury from drawing an inference of guilt because Dotseth did not tell the victim's parents about his treatment of her, section 622.10 does not apply to this situation. In addition, no confidential communication or testimony is involved here. The child told her sister and Dotseth's wife about her rash, and there is no evidence the child approached Dotseth as a clergyman.

Dotseth also argues the jury should have been instructed about a religious exception for the sexual conduct. He contends the following instruction should have been given:

> Defendant has asserted that he touched J.B. as he did for the purpose of treating her condition pursuant to the practice of his religious beliefs and for no other purpose. The burden is on the State to prove beyond a reasonable doubt that defendant's touching of J.B. was sexual in nature. To meet this burden the State must prove beyond a reasonable doubt that defendant was not touching J.B. for religious treatment purposes that he has alleged and that his touching was sexual in nature.

This instruction was unnecessary as the jury was instructed, "In order for the act to be a sex act, the contact must be sexual in nature" in another instruction. *See State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996) ("As long as a requested

instruction correctly states the law, has application to the case, *and is not stated elsewhere in the instructions*, the court must give the requested instruction." (emphasis added)). Dotseth had every opportunity to argue his theory of defense with the given instructions.

AFFIRMED.