COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2377 **Cir. Ct. No. 02JV001483**

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

IN THE INTEREST OF JARROD H.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JARROD H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

¶1 CURLEY, J.[1] Jarrod H. appeals from an order finding him delinquent, after the trial court found him guilty of second-degree sexual assault,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

use or threat of force or violence, and battery, contrary to WIS. STAT. §§ 940.225(2)(a) and 940.19(1) (2001-02).[2] Jarrod H. submits that in his court trial, based upon stipulated facts, the trial court erred in determining that the stipulated facts were sufficient to prove a completed act of second-degree sexual assault.[3] He argues that the facts only support a conviction for attempted second-degree sexual assault. After reviewing the stipulated facts, this court concludes that the State, via the stipulated facts, proved Jarrod H. guilty of the completed act of second-degree sexual assault, by use or threat of force or violence, and affirms the trial court's order.

I. BACKGROUND.

¶2 Jarrod H. was born on April 25, 1990, and, as a result of a CHIPS proceeding, is a ward of the State of Indiana. The CHIPS action was commenced several years ago, after Jarrod H. was found outside his home wearing unsuitable clothing, and a further investigation revealed that Jarrod H. and a younger sister had been left alone. Jarrod H. also reported to the police that his mother would sometimes bind him with duct tape and leave him in a closet for long periods of time. The police also observed marks on the children's bodies, and later learned that the marks were the result of whippings administered by their mother with an extension cord.

¶3 On July 24, 2002, Jarrod H. was a patient in a private psychiatric hospital in Milwaukee. He was sent there for observation after he attacked a

[2] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[3] Jarrod is not contesting the battery charge.

worker at his last placement in an institution in Indiana. Julie F., a nurse at the hospital, reported that Jarrod H. summoned her into his room, claiming that there was something wrong with an electrical socket. Once in the room, Jarrod H. grabbed her and threw her to the floor. He placed his hand over her mouth to prevent her from screaming and attempted to grab her breasts, but was unable to do so. A struggle ensued. During the struggle, Jarrod H. attempted to put something in Julie F.'s mouth to keep her from summoning help. As they rolled around on the floor, Jarrod H. tried to undo his pants and pull down Julie F.'s waistband. While Julie F. was face down on the floor, Jarrod H. was pressing his groin against her buttocks. When a fellow employee entered the room, he observed Jarrod H. on top of the nurse with his groin pressed against her buttocks. He also saw Jarrod H. punch Julie F. several times. Jarrod H. later gave a statement to the police, after being advised of his ***Miranda*** rights,[4] indicating that he wanted to touch the victim's breasts and vaginal area. In response to a question posed by an officer, Jarrod H. admitted that he wanted to have sex with the nurse and that he knew sex was "putting your penis in her butt."

¶4 Jarrod H. was charged with second-degree sexual assault, use or threat of force or violence, and battery. Eventually, the parties agreed to a court trial based upon stipulated facts. The stipulated facts were based on the police reports, and consisted of the victim's and Jarrod's accounts of what occurred, supplemented by the co-employee's account of the incident. After reviewing the statements, the trial court determined that sufficient evidence existed to find that

[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Jarrod H. had committed the crime of second-degree sexual assault. As a result, Jarrod H. was sent to a secure correctional facility for one year.

II. ANALYSIS.

¶5 Jarrod H. argues that:

> [T]he state did not prove beyond a reasonable doubt that [he] committed a complete act of second[-]degree sexual assault with threat of force or violence. The state did not show that Jarod H. [sic] had sexual contact with Julie F. for the purpose of sexual gratification or humiliation.[5]

(Footnote added.) Rather, Jarrod H. submits that the contact between his groin and Julie F.'s buttocks was the result of incidental contact.

¶6 "[W]here the parties have stipulated to the facts, and thus the [trial] court makes no factual findings, only legal issues remain and, therefore, our review is *de novo*." ***Westhaven Assocs. Ltd. v. C.C. of Madison, Inc.***, 2002 WI App 230, ¶16, 257 Wis. 2d 789, 652 N.W.2d 819.

¶7 As in every criminal case, the State is obligated to prove, beyond a reasonable doubt, each essential element of the crime. *See* ***State v. Hamilton***, 120 Wis. 2d 532, 540, 356 N.W. 2d 169 (1984). A charge of second-degree sexual assault by use or threat of force or violence contains three elements that the State must prove: (1) that the defendant had sexual contact with the victim; (2) that the victim did not consent to the sexual contact; and (3) that the defendant had sexual contact with the victim by use or threat of force. WIS JI—CRIMINAL 1208.

[5] Jarrod is spelled several ways. This court has elected to use the spelling found on the judgment roll and the amended dispositional order.

¶8 The sole dispute between the parties centers on the element of sexual contact. "Sexual contact" is defined in WIS. STAT. § 940.225(5)(b) as meaning any of the following:

> 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 for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains elements of actual or attempted battery under s. 940.19 (1).

Intimate body parts are: "the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being." WIS. STAT. § 939.22(19). Inasmuch as Jarrod H.'s groin and Julie F.'s buttocks are both intimate body parts, the only remaining issue is whether the State proved that Jarrod H. touched Julie F. for one of the purposes found in the statute. Jarrod H. contends that the State failed to prove that the contact was for the purpose of sexual gratification. This court is satisfied that the stipulated facts provided sufficient proof that Jarrod H. did not inadvertently touch Julie F.'s buttocks.

¶9 Jarrod H. argues that since he explained to the police that he intended to touch Julie F.'s breasts, the State failed to prove that he touched Julie F.'s buttocks with his groin for the purpose of sexual gratification. This is not, however, the only conclusion that can be reached from the stipulated facts. While Jarrod H.'s original intent may have been to touch Julie F.'s breasts, it is clear that he pressed his groin against Julie F.'s buttocks for sexual gratification purposes and not as a result of their scuffle. First, Julie F. reported that Jarrod H. attempted to undo his pants. When an assailant is unsuccessful in touching a victim's breasts and is struggling with the victim, the assailant's attempt to undo his pants can only be seen as an act in furtherance of the sexual attack. Also, the

victim reported that Jarrod H. did not simply touch her buttocks with his groin, but pressed his groin against her buttocks. The co-employee also corroborated this perception. This fact suggests something more than an incidental touching. Furthermore, any doubt about Jarrod H.'s intent at the time was removed by his later statements—he told the police that he wanted to have sex with Julie F. and that he believed sex was placing one's penis in the buttocks of another. Thus, this court, like the trial court, concludes that a strong inference from the record supports a finding that Jarrod H.'s contact with the victim was for sexual gratification purposes. Accordingly, the order of the trial court is affirmed.

By the Court.—Order affirmed.

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