

IN THE COURT OF APPEALS OF IOWA

No. 7-456 / 06-0052
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT LYLE BUCKINGHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Decatur County, Gary G. Kimes,
Judge.

Robert Buckingham appeals his judgment and conviction following jury
trial for two counts of indecent contact with a minor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney
General, and Lisa Hynden Jeanes, County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Robert Buckingham appeals his judgment and conviction following jury trial for two counts of indecent contact with a minor. We affirm.

I. Background Facts and Proceedings

Two young girls, M.S. and M.H., were childhood friends with Robert Buckingham's daughter, Sarah. They each reported incidents that occurred at Buckingham's home while they were separately staying overnight.¹

When she was eleven years old, M.S. spent the night at Buckingham's home. As his daughter slept in her bedroom, Buckingham woke M.S., who was on the living room couch. He paid M.S. five dollars to talk to him and discussed the subject of priests "molesting little boys and stuff." He then offered her "about thirty or forty dollars" to touch her. She testified that she thought he meant her "private areas." She refused.

When she was also eleven, M.H. spent the night at Buckingham's home. Buckingham similarly offered M.H. money in exchange for conversation. He further asked her to take her clothes off. She testified that she thought "he might have wanted to have done other stuff," such as "sexual things." She refused.

At trial, Buckingham denied soliciting either girl. A written statement, in which he admitted he had visited child pornography web sites, was introduced into evidence. He also admitted he "did on one occasion ask a minor if she would take her clothes off for money. She said no. And that was the end. I felt so ashamed, I never mentioned it to anyone. Her name was [M.S.]"

¹ At the time of the incidents, Sarah lived with Buckingham. Sarah's mother did not live with them.

Buckingham testified he had been pressured by law enforcement officers to provide the statement.

Following a September 20, 2005 jury trial, Buckingham was convicted of two counts of indecent contact with a child, in violation of Iowa Code section 709.12(4) (2003). His subsequent motion for a new trial was denied. He was sentenced to an indeterminate term not to exceed two years. Buckingham appeals contending (1) there was insufficient evidence to support his conviction for indecent contact with a child with respect to M.H., and (2) the district court applied the incorrect standard in denying his motion for a new trial.

II. Scope and Standards of Review

Challenges to the sufficiency of the evidence supporting a guilty verdict are reviewed for correction of errors at law. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). Similarly, rulings on motions for a new trial are reviewed for errors at law, and will only be reversed for an abuse of discretion. Iowa R. App. P. 6.4; *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003).

III. Merits

A. Sufficiency of the Evidence

Buckingham contends there is insufficient evidence in the record to support his conviction with respect to M.H. because the record does not demonstrate he solicited M.H. to fondle or touch her pubes or genitals.² He contends the evidence merely establishes that he asked M.H. to disrobe in

² Pursuant to Iowa Code sections 709.8 and 709.12, an adult is guilty of an aggravated misdemeanor if he solicits a child to “[f]ondle or touch the pubes or genitals” of the child.

exchange for money and that “[t]here was nothing in [his] actions which indicated a desire to do anything further.”

We will uphold a verdict if substantial record evidence supports it. Evidence is substantial if it would convince a rational fact-finder that the defendant is guilty beyond a reasonable doubt.

We review 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, not just the evidence that supports the verdict.

The State must prove every fact necessary to constitute the crime with which the defendant is charged. The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.

State v. Webb, 648 N.W.2d 72, 75-76 (Iowa 2002) (citations omitted).

Notwithstanding his protestations to the contrary, a rational jury could have concluded there was sufficient evidence to find Buckingham guilty of indecent contact with a child with respect to M.H. See *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) (quoting *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984)) (noting jury members are free to accept or reject testimony; their function “is to weigh the evidence and ‘place credibility where it belongs’”). “[I]ntent is seldom capable of direct proof, but usually is established from the surrounding circumstances.” *State v. Miller*, 308 N.W.2d 4, 7 (Iowa 1981).

There is evidence in the record to establish that Buckingham offered M.H. money to take off her clothes, that he had visited child pornography web sites, that M.H. had the impression he wanted to engage in “sexual things,” and that he had solicited another young girl in a similar manner. Accordingly, we hold that substantial evidentiary support exists for the jury verdict with respect to M.H. We therefore affirm the conviction.

B. New Trial

Buckingham asserted the district court incorrectly applied a sufficiency of the evidence standard instead of a weight of the evidence standard in considering his motion for a new trial. *See State v. Ellis*, 578 N.W.2d 655, 658 (Iowa 1998) (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)) (defining the sufficiency of the evidence standard as “when, even after viewing the evidence in the light most favorable to the prosecution, no rational fact-finder could have found the defendant guilty beyond a reasonable doubt,” and the weight of the evidence standard as “a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other”). The State concurred in this assessment.

In overruling Buckingham’s motion for a new trial, the district court noted “[t]here is substantial evidence to support the conviction and finding of guilt by the jury.” Because we were unable to conclude from the record that the district court applied the correct legal standard in ruling on the defendant’s motion for a new trial, we reversed the ruling on that motion and remanded this matter to the district court for the limited purpose of reconsidering the motion for new trial under the weight of the evidence standard.³

Following limited remand, the district court concluded “the jury’s verdict was not contrary to the weight of the evidence” and overruled the motion for new trial. We find no error.

³ We retained jurisdiction of this appeal.

Because substantial evidentiary support exists for the jury verdict with respect to M.H. and the verdict was not contrary to the weight of the evidence, we affirm.

AFFRIMED.