IN THE COURT OF APPEALS OF IOWA

No. 8-1027 / 08-0110
Filed February 19, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES LEROY HULS,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, John D. Ackerman, Judge.

Defendant appeals his conviction and sentence of lascivious conduct with a minor, contending (1) the State presented insufficient evidence that the girl was disrobed or partially disrobed and (2) the $250 fine was not authorized by statute.

CONVICTION AFFIRMED, CASE REMANDED FOR RESENTENCING.

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, and Coleman McAllister, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

James Huls photographed an eleven-year-old girl in different outfits that he provided. The State charged him with lascivious conduct with a minor. Iowa Code § 709.14 (2005).[1] Prior to a bench trial, the State and Huls agreed the State would have to prove the following:

> 1. On or about November 5, 2006, in Sioux County, Iowa, Defendant did force, persuade, or coerce [H.C.], with or without her consent, to disrobe or partially disrobe.
> 2. At that time Defendant was over age 18 and in a position of authority over the victim.
> 3. [H.C.] was a minor.
> 4. Defendant did so with the purpose of arousing or satisfying the sexual desires of either the Defendant or [H.C.].

The district court concluded that the State met its burden of proof on all four elements. The court found Huls guilty as charged and imposed sentence, which included a civil penalty of $250 pursuant to Iowa Code section 692A.6.

On appeal, Huls contends (1) the State presented insufficient evidence that the girl was "disrobed or partially disrobed when viewed by [him]" and (2) the $250 civil penalty was not authorized by statute.

I. We review Huls's challenge to the sufficiency of the evidence for errors of law, with the district court's fact-findings binding us if supported by substantial evidence. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984).

The district court made detailed findings of fact supported by a credibility finding. We find it unnecessary to repeat or summarize those findings. Because

[1] Iowa Code section 709.14 provides:

> It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

they are supported by more than the requisite quantum of evidence, we uphold them.

As part of his sufficiency-of-the-evidence challenge, Huls also contends the statute contains an implicit requirement that he "observe [the child] in a state of disrobement or partial disrobement." However, section 709.14 does not contain a "viewing" requirement. *Cf.* Iowa Code § 709.9 (requiring exposure of genitals or sexual act "in the presence or view of a third person"). As the district court stated:

> If the defendant's interpretation of the statute is correct, a person could not be convicted if he/she persuaded a minor in another room to take all their clothes off and then exit the room and appear in front of the adult in a nude or partially nude state. This is not a common sense interpretation of the provision of section 709.14. Nor does it make sense in a case like this one, where an adult persuades a minor in another room to disrobe and put on clothes which exposes the minor's breasts, legs and thighs and then exit the room at the defendant's request so that the adult is able to observe the minor, all of which is done with the specific intent of arousing or satisfying his/her sexual desires. Common sense tells us that what the statute requires is that the arousal be the result of the disrobing; i.e., what the defendant is able to see after the disrobing, not the physical motions of taking off the clothes.

We discern no error in this reasoning and affirm the conviction.

II. Huls next argues that the $250 penalty was not authorized by statute. The State agrees. Iowa Code section 692A.6(2) authorizes a civil penalty of $200 rather than $250. Therefore, we remand for resentencing as to this penalty only.

CONVICTION AFFIRMED, CASE REMANDED FOR RESENTENCING.