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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. A-1-CA-37221

5 **JACOB AXE,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

8 **James M. Hudson, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Nina Lalevic, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VIGIL, Judge.**

1 {1} Defendant Jacob Axe appeals his conviction for criminal sexual contact of a
2 minor (under 13). We issued a calendar notice proposing to affirm. Defendant has
3 responded with a timely memorandum in opposition. Not persuaded, we affirm.

4 {2} Defendant continues to challenge the sufficiency of the evidence to support his
5 conviction for criminal sexual contact of a minor (under 13). A sufficiency of the
6 evidence review involves a two-step process. Initially, the evidence is viewed in the
7 light most favorable to the verdict. Then the appellate court must make a legal
8 determination of “whether the evidence viewed in this manner could justify a finding
9 by any rational trier of fact that each element of the crime charged has been
10 established beyond a reasonable doubt.” *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118
11 N.M. 762, 887 P.2d 756 (internal quotation marks and citations omitted).

12 {3} In order to convict Defendant, the evidence had to show that Defendant
13 intentionally touched or applied force to the breast of a child under the age of 13. [RP
14 83-84] Here, the State presented witness testimony (including Victim’s) and videotape
15 evidence that Defendant committed the charged crime. [MIO 1-2] Although
16 Defendant testified [MIO 4] that he did not intentionally touch Victim’s breast and
17 that his furtive movements had an innocent explanation, the jury was free to interpret
18 the evidence otherwise. *See State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656,
19 964 P.2d 820 (stating that “[a] defendant’s knowledge or intent generally presents a

1 question of fact for a jury to decide”); *see also State v. Sutphin*, 1988-NMSC-031,
2 ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to reject a
3 defendant’s version of events).

4 {4} For the reasons set forth above, we affirm.

5 {5} **IT IS SO ORDEREED.**

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MICHAEL E. VIGIL, Judge

8 **WE CONCUR:**

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DANIEL J. GALLEGOS, Judge

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JENNIFER L. ATTREP, Judge