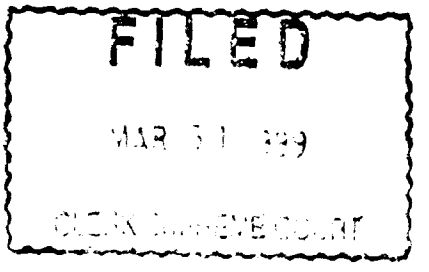
IN THE COURT OF APPEALS OF IOWA

No. 9-106 / 98-0593
Filed March 31, 1999

STATE OF IOWA,

Plaintiff-Appellee,



vs.

SWAMI SIVANANDA MAHAMUNI, a/k/a MOSHEN VENANDI, a/k/a OR, a/k/a ORR,

Defendant-Appellant.

Appeal from the Iowa District Court for Jefferson County, Lucy J. Gamon, District Associate Judge.

Defendant appeals his conviction for indecent contact with a child in violation of Iowa Code sections 709.12 (1) and (2) (1995). **AFFIRMED.**

Thomas M. Walter of Johnson, Hester, Walter & Breckenridge, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John Morrissey, County Attorney, and Timothy W. Dille, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Swami Mahamuni appeals his conviction for indecent contact with a child in violation of Iowa Code sections 709.12(1) and (2) (1995). He claims the district court improperly considered evidence of prior bad acts and his conviction was not supported by substantial evidence. We affirm on appeal.

In January 1996, Mahamuni and his fiancé were trying to find the home of a man who raised lizards. By mistake, they went to a home where Heather lived with her parents and siblings. Heather was present at the time, but they had no interaction with her. Heather's father gave them the correct address and they left.

Several weeks later, Mahamuni went alone to Heather's home. Heather, who was born in 1984 and was then eleven years old, was home taking care of her younger siblings. Mahamuni asked if there was an apartment for rent at the home next door. Heather stated she believed they had a rental apartment, but did not know if it was open at that time.

Mahamuni then commented on Heather's shirt. Heather was wearing a black shirt with brightly colored letters on it which were about five inches high and spelled "D.A.R.E." Heather testified that with his finger Mahamuni traced the "D," which was over her breast. Heather said "no," but Mahamuni continued to trace part of the "A" before Heather pushed him away and closed the door. Heather testified she felt Mahamuni touching her in the breast area and it made her uncomfortable.

Mahamuni testified to the same events. He stated he traced out the letters "D.A.R.E." in the air about eighteen inches away from Heather and he was wearing gloves at the time. Mahamuni is a native of Iran and English is his second language. He testified he often spelled words in the air in order to help him with pronunciation. Mahamuni stated Heather did not push him away, but rather he thanked her for her help and they parted amicably.

Mahamuni was charged with indecent contact with a child. Prior to trial, the district court ruled the State could present the testimony of Elysia, who was born in 1983, concerning two incidents involving defendant which she alleged occurred in 1991. The court found the evidence of prior bad acts was admissible because it tended to demonstrate a sexual pattern engaged in by defendant. At trial, Elysia testified that while playing a game with Mahamuni, he pushed her to the ground and kissed her. She also testified to an incident where he asked her to put on a hula skirt. He then picked her up and his hand began to move upward on her thigh.

The case was tried to the bench. The court concluded it would not consider the evidence of prior bad acts because the evidence was not relevant. The court determined Mahamuni was guilty of indecent contact with a child. The court found Heather was credible. The court concluded defendant touched the clothing covering the area of the child's breast. The court also found defendant did this to satisfy his own sexual desires. Mahamuni was given a suspended sentence, placed on probation, and ordered to complete the sexual offender treatment program. He appealed.

I. Mahamuni contends the district court improperly admitted the evidence of prior bad acts. He asserts the court could not help but be influenced by Elysia's testimony, even though the court stated it did not consider this evidence. He asks to have a new trial.

On evidentiary issues we review for abuse of discretion. *State v. Most,* 578 N.W.2d 250, 253 (Iowa App. 1998). In order to show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Goodson,* 516 N.W.2d 30, 33 (Iowa App. 1994).

Where improper evidence is admitted in the trial of an action at law, though the trial be to the court, prejudice is presumed and judgment will be reversed unless the record shows affirmatively that the evidence was afterward discarded. *Bellew v. Iowa State Highway Comm'n,* 171 N.W.2d 284, 291 (Iowa 1969). Here, the district court clearly stated it did not consider the evidence of prior bad acts. Thus, whether or not the court abused its discretion by admitting the evidence is irrelevant. Defendant is not entitled to a new trial based on the admission of prior bad acts evidence.

II. Mahamuni claims the State did not present sufficient evidence to support his conviction. In particular, he claims there is insufficient evidence to show he intended to arouse or satisfy his sexual desires. For this argument, defendant

admits there is sufficient evidence to show he touched the clothing over the area of the child's breast.

Our review of a substantial evidence claim is on error. *State v. Walker,* 574 N.W.2d 280, 284 (Iowa 1998). We are bound by the fact finder's decision unless the verdict is not supported by substantial evidence. *Id.* In making this determination, we must consider all the evidence in the light most favorable to the State. *State v. Bayles,* 551 N.W.2d 600, 608 (Iowa 1996). Evidence is substantial if it could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *State v. Sanborn,* 564 N.W.2d 813, 816 (Iowa 1997).

Conviction under section 709.12(2) would require a finding defendant touched the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child for the purpose of arousing or satisfying the sexual desires of either of them. The only other case which considered this issue found there was sufficient evidence defendant acted for the purpose of arousing or satisfying the sexual desires of himself or the children when he engaged in wrestling two thirteen-year-old girls and allegedly touched, fondled, or bit the breasts and genitals of each girl. *See State v. Murphy,* 462 N.W.2d 715, 717 (Iowa App. 1990).

The evidence showed Mahamuni deliberately touched the area of the child's clothing covering her breast. He did not argue he acted by mistake or accident. When Heather said "no," defendant continued to touch her breast area until she pushed him

away and closed the door to the house. Heather testified she felt Mahamuni touching her in the breast area and it made her uncomfortable.

Under the facts presented here, we find there is sufficient evidence to show Mahamuni was acting to satisfy his sexual desires. As the district court noted, it is not clear what other motive defendant could have had for touching the clothing covering the child's breast.

We affirm defendant's conviction for indecent contact with a child. Costs of this appeal are assessed to defendant.

AFFIRMED.