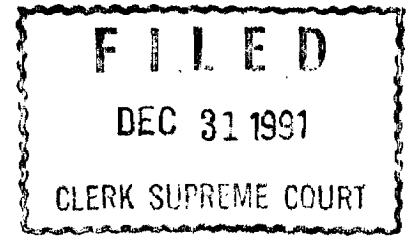


IN THE COURT OF APPEALS OF IOWA

No. 1-502 / 91-67



STATE OF IOWA,

Plaintiff-Appellee,

vs.

STEVEN RAY MCCREADY,

Defendant-Appellant.

805

Appeal from the Iowa District Court for Winnebago County, J.W. Frye, Judge.

McCready appeals his conviction, following a jury trial, for lascivious acts with a child. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, Richard L. Petersen, County Attorney, and Dennis D. Peterson, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Defendant-appellant Steven Ray McCready appeals his conviction for lascivious acts with a child. He contends the evidence is not sufficient to support his conviction and his trial counsel was ineffective. We affirm.

The defendant was alleged to have fondled and touched the pubes of a female child for the purpose of satisfying his sexual desires. The child testified at trial. She was nine years old at trial. She said when she was four or five she woke from a nap to find the defendant in bed with her and he had his hand in her pants. The police chief in Forest City testified he and a Worth County deputy sheriff visited with the defendant because they had a report the defendant had sexually abused the young girl. The officer testified the defendant told him he had fondled the complaining witness and become sexually aroused.

We review the record in the light most favorable to the State. State v. Hall, 287 N.W.2d 564, 565 (Iowa 1980); State v. Martin, 341 N.W.2d 728, 729 (Iowa 1983). We make any legitimate inferences and presumption which may fairly and reasonably be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). The jury's verdict is binding on us unless there is an absence of substantial evidence to sustain it. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence is such evidence as could convince a rational trier of fact the

defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

The elements of the crime of lascivious acts with a child in violation of section 709.8(1) of the Iowa Code (1991) are: (1) defendant, with or without the consent of the child: (a) fondled or touched the pubes or genitals of the child; (2) the defendant did so with the specific intent to arouse or satisfy his sexual desires; (3) the defendant was 18 years of age or older; (4) the child was under the age of 14 years.

The defendant contends the State failed to prove the essential element of the crime, that he touched the pubes or genitals of the child. See Iowa Code § 709.8(1) (1991).¹ He points out the child only testified the defendant had his hand in her pants and when asked whether he was touching her in her private parts she did not respond. She did testify she told the defendant's brother the defendant had touched her in the private spots.

The evidence of the victim, coupled with the testimony of the chief of police as to defendant's admissions, is substantial evidence to support a finding beyond a reasonable doubt the defendant committed the offense with which he was charged. See Schrier, 300 N.W.2d at 306. The evidence raises a fair inference of guilt and does more

1. This statute was passed in 1976 and has not been amended or changed.

than create speculation, suspicion, or conjecture. See State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981).

The defendant next claims his trial counsel rendered ineffective assistance of counsel in failing to introduce into evidence the video tape and written transcript of his interview with the police chief. He contends they rebut the police chief's allegations the defendant made the admissions. The video tape and transcript are not part of the record before us. The defendant asks this issue be preserved for a postconviction relief action.

The State resists. If defendant's claim is correct and the tapes and transcript do rebut the allegations of the police chief, there is a substantial likelihood they may have influenced the verdict. The victim was four or five when the incident occurred. Her testimony did not come until four years later. She gave little detail about what occurred and did not clearly explain how the defendant touched her. The testimony by the officer that the defendant said he touched the child and was aroused, fortified the State's contention the event had happened and the defendant had actually touched the victim in the manner defined in the statute. This issue is preserved for a postconviction relief action. See State v. White, 337 N.W.2d 517, 519 (Iowa 1983).

AFFIRMED.

Donielson, P.J., concurs; Hayden, J., specially concurs.

HAYDEN, J. (specially concurring)

I concur in the result.