

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2506

Cir. Ct. No. 2006JV32

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN THE INTEREST OF JUSTIN W.C., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JUSTIN W.C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Iowa County:
GEORGE S. CURRY, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Justin W.C., date of birth 12/16/92, appeals the adjudication of delinquency finding that he exposed his genitals to a child contrary

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

to WIS. STAT. § 948.10(1). He contends the evidence at the fact-finding hearing was insufficient to support the court's determination. We disagree and affirm.

¶2 Justin was charged in a petition filed under WIS. STAT. ch. 938 with first-degree sexual assault of a child under the age of thirteen contrary to WIS. STAT. § 948.02(1)(b) and exposure of his genitals to a child contrary to WIS. STAT. § 948.10(1). The charges arose out of Lindsey P.'s statements to her mother that Justin had touched her "privates" and had shown her his privates. After a trial to the court, the court decided that there was insufficient evidence on the sexual assault charge but found him guilty of exposing his genitals to a child.

¶3 When there is a challenge to the sufficiency of evidence to support a finding of violating a criminal statute, we may overturn that determination only if the evidence viewed most favorably to the State is so lacking in probative value and in force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990); WIS. STAT. § 938.243(1)(h).

¶4 In order for Justin to be adjudicated guilty of violating WIS. STAT. § 948.10(1), the State had to prove beyond a reasonable doubt that Justin exposed his genitals to a child under the age of eighteen for the purpose of his sexual arousal or gratification. Section 948.10(1); WIS JI—CRIMINAL 2140.

¶5 Lindsey testified at trial that Justin pulled down his pants and showed her his privates. Her mother testified that Lindsey told her Justin had his privates out and wanted her to touch it, but she did not want to touch it. In addition, Detective Reukauf testified that Lindsey told him that Justin pulled down his pants and showed her his privates. With respect to the element that the exposure of genitals be for the purpose of sexual arousal or sexual gratification,

Lindsey testified that Justin pulled down both his pants and her pants and asked her to touch his privates. In addition, Detective Reukauf testified that, when he asked Lindsey if Justin did anything with his private part, Lindsey stated that he squeezed it. This evidence supports a finding that Justin exposed his genitals for the purpose of sexual arousal or gratification. The circuit court explained that it found this element was satisfied because of Lindsey's testimony that he asked her to touch his penis and she declined.²

¶6 We conclude there was sufficient evidence for the court's finding beyond a reasonable doubt that Justin exposed his genitals in violation of WIS. STAT. § 948.10(1). Accordingly, we affirm the adjudication of delinquency.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

² Justin discusses in his brief the fact that in closing argument the prosecutor referred to the elements of the crime of lewd and lascivious behavior, *see* WIS. STAT. § 944.20(1)(b), which was not charged and does not contain the element of having the purpose of sexual arousal or gratification. Justin also points out that initially the court made a finding, based on the prosecutor's argument, that the elements for lewd and lascivious behavior had been proven beyond a reasonable doubt. However, when Justin's trial counsel brought the error to the court's attention, the court analyzed the evidence based on the elements for exposing genitals, WIS. STAT. § 948.10(1), and expressly addressed the issue of sexual arousal or gratification. Justin appears to suggest that the initial references to the offense of lewd and lascivious behavior by both the prosecutor and the court somehow lead to or contribute to the conclusion that there is insufficient evidence for the offense actually charged—exposing genitals. We do not agree.

