



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

January 8, 2014

To:

Hon Donald A. Poppy
Calumet County Courthouse
206 Court Street
Chilton, WI 53014

David R. Karpe
Karpe Law Office
448 W. Washington Ave.
Madison, WI 53703

Barbara Van Akkeren
Clerk of Circuit Court
Calumet County Courthouse
206 Court Street
Chilton, WI 53014

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Nicholas W. Bolz
District Attorney
206 Court Street
Chilton, WI 53014

You are hereby notified that the Court has entered the following opinion and order:

2013AP865-CR

State of Wisconsin v. Marvin A. Sittman (L.C. # 2010CF101)

Before Brown, C.J., Reilly and Gundrum, JJ.

Marvin A. Sittman appeals from a judgment convicting him of first-degree sexual assault of a child. He contends that there was insufficient evidence to support his conviction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the judgment of the circuit court.

¹ Unless otherwise noted, all references to the Wisconsin Statutes are to the 2011-12 version.

In 2010, Sittman was charged with one count of first-degree sexual assault of a child for having sexual contact with eight-year-old I.B.L. by touching her vagina with his mouth and hand. A jury found him guilty of the assault.

On appeal, Sittman contends that there was insufficient evidence to support his conviction. Specifically, he asserts that the evidence was insufficient for the jury to conclude that he touched I.B.L.'s vagina.

In reviewing the sufficiency of the evidence to support a conviction, this court may not substitute its judgment for that of the jury unless the evidence, viewed most favorable to the State and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). If any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, this court may not overturn a verdict even if we believe that the jury should not have found guilt based on the evidence before it. *Id.*

To convict Sittman of first-degree sexual assault of I.B.L., the State was required to prove that: (1) Sittman had sexual contact with I.B.L.; and (2) I.B.L. was under the age of thirteen years at the time of the alleged sexual contact. *See* WIS. STAT. § 948.02(1)(e) (2009-10). Sexual contact is defined, in relevant part, to mean the intentional touching by the defendant of the intimate parts of another person. WIS. STAT. § 939.22(34)(a) (2009-10). Intimate parts are defined as “the breast, buttock, anus, groin, scrotum, penis, vagina or public mound of a human being.” WIS. STAT. § 939.22(19) (2009-10).

At trial, I.B.L. testified to the assault and described the area Sittman touched as the area that helped her “pee.” Citing this description, Sittman now claims the evidence showed only that he touched I.B.L.’s urethra and not her vagina. We reject this overly narrow argument. As a matter of Wisconsin criminal law, the vagina consists of a female’s external genitalia. *See State v. Morse*, 126 Wis. 2d 1, 5, 374 N.W.2d 388 (Ct. App. 1985) (construing the term vagina more broadly than its literal medical definition to mean the female external genitalia). As a matter of female anatomy, a girl’s external genitalia includes the opening of the urethra. Accordingly, we are satisfied that there was sufficient evidence for the jury to conclude that Sittman touched I.B.L.’s vagina.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals