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**DISTRICT II**

May 22, 2013

To:

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

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2012AP1580-CR

State of Wisconsin v. Charles L. Amweg (L.C. # 2011CF371)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Charles L. Amweg 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).<sup>1</sup> We affirm the judgment of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

Amweg was charged with two counts of first-degree sexual assault of a child for having sexual contact with brothers N.A.P. and M.A.P., who were six and seven years old, respectively, at the time of the alleged assaults. A jury found Amweg guilty of sexually assaulting N.A.P. and not guilty of sexually assaulting M.A.P.

On appeal, Amweg contends that there was insufficient evidence to support his conviction for sexually assaulting N.A.P. Specifically, he asserts that there was insufficient evidence that he touched N.A.P. or that, if he did, he did so with the intent to become sexually aroused or gratified.

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 Amweg of first-degree sexual assault of N.A.P., the State was required to prove that (1) Amweg had sexual contact with N.A.P. and (2) N.A.P. was under the age of thirteen years at the time of the alleged sexual contact. WIS JI-CRIMINAL 2102E. Sexual contact is defined, in relevant part, to mean intentional touching that sexually arouses or gratifies the defendant. *See* WIS. STAT. § 948.01(5)(a).

At trial, the State presented testimony from N.A.P. that “Uncle Chuck” touched him “in the private” while N.A.P. was peeing, that he uses his private to pee, and that his private is on the front of his body. During this testimony, N.A.P. marked on a diagram where he was touched. The jury also saw a video recording of an interview of N.A.P. conducted by a detective in which N.A.P. described the touching, though he said that it occurred in Amweg’s bedroom rather than in the bathroom. Thus, although there were inconsistencies in N.A.P.’s account, we conclude that there was sufficient evidence for the jury to find that Amweg touched N.A.P.’s penis.

We also conclude that there was sufficient evidence for the jury to find that Amweg acted with the intent to become sexually aroused or gratified when he touched N.A.P.’s penis. As noted by the State, intent may be inferred from a defendant’s conduct. Here, Amweg was fifty-five years old when he touched six-year-old N.A.P.’s penis. There is nothing in N.A.P.’s testimony or any other evidence presented that suggested that the touching was accidental or for any nonsexual purpose. Accordingly, the jury could reasonably infer from the fact that Amweg touched a young child’s penis that he did so for the purpose of becoming sexually aroused or gratified.

Upon the foregoing reasons,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*