

STATE V. AXE

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JACOB AXE,
Defendant-Appellant.

No. A-1-CA-37221

COURT OF APPEALS OF NEW MEXICO

October 9, 2018

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, James M. Hudson,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Nina Lalevic, Assistant Appellate Defender,
Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: DANIEL J. GALLEGOS, Judge, JENNIFER
L. ATTREP, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Defendant Jacob Axe appeals his conviction for criminal sexual contact of a minor (under 13). We issued a calendar notice proposing to affirm. Defendant has responded with a timely memorandum in opposition. Not persuaded, we affirm.

{2} Defendant continues to challenge the sufficiency of the evidence to support his conviction for criminal sexual contact of a minor (under 13). A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of “whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt.” *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation marks and citations omitted).

{3} In order to convict Defendant, the evidence had to show that Defendant intentionally touched or applied force to the breast of a child under the age of 13. [RP 83-84] Here, the State presented witness testimony (including Victim’s) and videotape evidence that Defendant committed the charged crime. [MIO 1-2] Although Defendant testified [MIO 4] that he did not intentionally touch Victim’s breast and that his furtive movements had an innocent explanation, the jury was free to interpret the evidence otherwise. See *State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656, 964 P.2d 820 (stating that “[a] defendant’s knowledge or intent generally presents a question of fact for a jury to decide”); see also *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to reject a defendant’s version of events).

{4} For the reasons set forth above, we affirm.

{5} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

DANIEL J. GALLEGOS, Judge

JENNIFER L. ATTREP, Judge