

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 22 1988

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

RANDY LYNN ALLISON,)

Defendant-Appellant.)

247

8-284
87-1128

Appeal from the Iowa District Court for Scott County
(129162-01), David J. Sohr, Judge.

Defendant appeals his conviction of third-degree sexual
abuse in violation of Iowa Code section 709.4(3) (1987).

AFFIRMED.

Raymond E. Rogers, Acting Chief Appellate Defender, and
B. John Burns, Assistant Appellate Defender, for
defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Sheryl
A. Soich, Assistant Attorney General, for
plaintiff-appellee.

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

SCHLEGEL, J.

Defendant was convicted of third-degree sexual abuse in violation of Iowa Code section 709.4(3) (1987). On appeal, he contends that his due process rights were violated by a jury instruction defining a "sex act" in such a manner that he could be found guilty of sexual abuse without a showing of general intent. We affirm.

The victim, K.A., was a girl 12 years old at the time of trial. Defendant Randy Lynn Allison was 19. The facts in this case are highly disputed. K.A. testified at trial that she left school with Allison on the afternoon of November 25, 1986, because he wanted her to baby-sit for him. She claimed that once she was in Allison's apartment, he invited her to remove her clothing, removed his clothing, and performed a sex act on her. Allison claims K.A. asked him to provide her with a ride to a community birth control clinic, and that they agreed that he would pick her up from school under the pretext that she would baby-sit his child. Allison claimed that K.A. later changed her mind about going to the clinic and he took her to his apartment. Allison claimed that K.A. went into his bathroom and asked him to follow her. Allison claims that K.A. was undressed except for her underwear, and at K.A.'s insistence, he removed his clothes and sat beside her on the bed. He claims that K.A. then touched Allison's penis with the palm of her hand and that he rubbed her belly with

his left hand. He vehemently denied that any sex act took place.

The statute under which defendant was convicted provides, in pertinent part:

Sexual abuse in the third degree. Any sex act between persons who are not at the time cohabiting as husband and wife is sexual abuse in the third-degree by a person when the act is performed with the other participant in any of the following circumstances:

* * *

3. The other participant is a child [under 14 years old, § 702.5].

§ 709.4(3) Code (1987). Allison contends on appeal that the trial court denied him due process of law when it declined to give the jury an instruction on general intent. Specifically, Allison contends that the due process violation occurred when the general definition of a "sex act" or "sexual activity" as set out in jury instruction number 19 was given to the jury in the absence of a separate instruction on general intent.

We find defendant's claim to be without merit and hold that State v. Tague, 310 N.W.2d 209, 211 (Iowa 1981), is controlling in this case. In Tague, the Iowa Supreme Court held that Iowa Code section 709.4(3) does not require knowledge or intent, and pointed to the State's interest in regulating the sexual activity of its younger citizens. The court further noted that strict liability concepts are commonly employed in cases such as this to "put the burden

upon the person standing in a responsible relation to a public danger even though he might otherwise be innocent." Id. (citing W. LaFave & A. Scott, Criminal Law, § 31 (1972)).

In the case at bar, the jury could have found, from the evidence presented at trial, that all three elements of section 709.4(3) had been met. We hold that the jury was properly instructed in the law in this case, see State v. VanRees, 246 N.W.2d 339, 343 (Iowa 1976), and we affirm defendant's conviction of third-degree sexual abuse.

AFFIRMED.