IN THE COURT OF APPEALS OF IOWA

FILED
OCT 2 0 1988
CLERK SUPREME COURT

190

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
PATRICK SHANE HIGGINS,) 8-363 / 87-1311
Defendant-Appellant.)

Appeal from the Iowa District Court for Jasper County (No. 07293) - Van Wifvat, Judge.

Defendant appeals his conviction in the district court on three counts of sexual abuse in the third degree, in violation of Iowa Code section 709.4(5), after a jury trial. **AFFIRMED.**

Jane Harlan, Monroe, for defendant-appellant.

Thomas J. Miller, Attorney General; Sheryl A.Soich, Assistant Attorney General; and Cliff Wendel, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J. 191

Defendant appeals his conviction by a jury for three counts of sexual abuse in the third degree in violation of Iowa Code section 709.4(5). Defendant contends that he was denied substantive and procedural due process when he was convicted without a showing of criminal intent. When faced with an alleged constitutional violation, we base our evaluation on the totality of the circumstances. State v. Johnson, 395 N.W.2d 661, 663 (Iowa App. 1986). Our review is de novo. State v. Harlan, 301 N.W.2d 717, 718 (Iowa 1981). We affirm.

The victim, J.U., is fifteen years old. She had voluntarily had sexual intercourse with the defendant on three separate occasions. J.U. had also written to the defendant and expressed interest in him. Defendant was thirty-two years old. Defendant admits that he was aware that the age of consent in Iowa is fourteen years, but claims he was unaware of the exception to that general rule concerning persons six or more years older than their victims.

The statute 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:
>
> * * * * * * *
>
> 5. The person is six or more years older than the other participant, and the other participant is fourteen or fifteen years of age.

Iowa Code § 709.4(5) (1987). 192

Defendant claims that he was denied due process when he was convicted of three forcible felonies without a showing of criminal intent. However, this crime does not require knowledge or intent. State v. Tague, 310 N.W.2d 209, 211 (Iowa 1981). Statutes regarding sexual offenses employ strict liability in order to protect the public welfare and do not violate due process. Id. See also W. LaFave and A. Scott, Criminal Law, § 31 (1972).

Defendant also claims that he did not know the law regarding statutory rape, and should not be expected to know the law. The argument that the defendant does not know that his conduct is proscribed by criminal law is not an acceptable defense for any crime. See Wharton's Criminal Law, § 77, p. 374 (12 ed. 1978).

Defendant further argues that mistake in age is a defense in some jurisdictions. However, even if mistake in fact as to the victim's age were a viable defense in this state, we do not find any evidence to support such a theory. Defendant knew the victim's age. What the defendant is really claiming is that he was not aware that his sexual acts with a person of this age were proscribed by law.

Upon our review of the totality of the circumstances in this case, we affirm the conviction.

AFFIRMED.