FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,)
Plaintiff-Appellant,) Filed November 20, 1984
vs.)
JAMES DAVID LaDOUCEUR,) 4-351
Defendant-Appellee.) 83-823

Appeal from the Iowa District Court for Clinton County - L. D. Carstensen, Judge.

The defendant was found guilty by a jury of the crime of sexual abuse in the third degree. However, the trial court later sustained his motion for a new trial. The State has appealed from the order granting a new trial. The State contends the trial court erred by holding that the State should have disclosed to the defendant that one of the investigating officers had lost his interrogation notes and therefore could not testify about the wording of an oral admission made by the defendant. AFFIRMED BY OPERATION OF LAW.

Craig Ament, Assistant Clinton County Attorney, for plaintiff-appellant.

Charles L. Harrington, Appellate Defender, and Fern Shupeck, Assistant Appellate Defender, for defendant-appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ., but considered en banc.

PER CURIAM

The defendant was found guilty by a jury of the crime of sexual abuse in the third degree. However, the trial court later sustained his motion for a new trial. The State has appealed from the order granting a new trial. The State contends the trial court erred by holding that the State should have disclosed to the defendant that one of the investigating officers had lost his interrogation notes and therefore could not testify about the wording of an oral admission made by the defendant. It claims it had no duty to disclose the loss of the notes because the loss of the notes was not exculpatory and not related to the defendant's guilt or innocence. Three judges would affirm the decision of the district court and three would reverse. Pursuant to Iowa Code section 684.36(1), the decision of the district court is affirmed by operation of law.

AFFIRMED BY OPERATION OF LAW.