FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, Appellee, v. RICHARD NAVEDO, Appellant.	)	Filed October 19, 1978 633 61405

Appeal from Johnson District Court - Robert Osmundson, Judge.

Defendant appeals conviction of statutory rape. Affirmed.

Jon M. Kinnamon and J. Nicholas Russo, of Iowa City, for appellant.

Richard C. Turner, Attorney General, Raymond W. Sullins, Assistant Attorney General, and Jack W. Dooley, Johnson County Attorney, for appellee.

Submitted to Donielson, Acting C.J., Snell, Oxberger and Carter, JJ.

62

PER CURIAM

Defendant appeals his conviction for statutory rape in violation of § 698.1, The Code, 1975. Defendant was over age 25, and the prosecutrix was age 16 at the time of the incident. Defendant asserts the trial court erred in overruling his demurrer to the information which raised the following issues: (1) whether § 698.1 establishes a conclusive presumption that a female under age 17 cannot consent to sexual intercourse with a male over age 25 thereby denying defendant due process of law and compulsory process; (2) whether the statute by distinguishing between males over age 25 and under age 25 is arbitrary and capricious and denies defendant equal protection of the law; and (3) whether the statute violates equal protection by providing that males can be convicted of rape for having sexual relations with females under a stated age while there is no penalty for females having sexual relations with males under the same age. Each of these three issues is argued in the present appeal as grounds for reversal.

I. The claim that the statute upon which defendant's conviction was based creates a conclusive presumption of the presence of a material element of the crime is without merit. In response to a similar claim, the court in State v. Drake, 219 N.W.2d 492, 496 (Iowa 1974) stated:

> [W]e are not dealing with a presumption (or, more correctly, inference) at all. The statute is not concerned with presumption or inferences. Rather it flatly prohibits the act defendant commited.

Because the premise upon which defendant's constitutional claim is based is false, the claim must be rejected.

II. We next consider together the related contentions that the statute by distinguishing between males over age 25 and under 25 denies defendant equal protection and that the statute violates equal protection by providing that males can be convicted of rape for having sexual relations with females under a stated age while there is no penalty for females having sexual relations with males under the same age. State v. Drake, supra, clearly deals with the first of these contentions and holds that the classification made in the statute with respect to males over age 25 does not offend against the equal protection or due process clauses of the 14th amendment to the federal constitution. Drake is dispositive of that issue.

It is perhaps less clear that the Drake decision holds squarely on the validity of the classification whereby young females are protected and young males are not. But the reasoning and the language of the Drake decision, when applied to the instant case, requires that that issue also be resolved adversely to defendant. Drake recognizes that there are physiological and psychological differences between males and females (here young males and females) which are sufficient to sustain the classification which the statute contains. Such a result accords with that reached by a number of courts with respect to the same or similar issues. See, e.g., Hall v. McKenzie, 537 F.2d 1232, 1235 (CA4 1976); People v. Salinas, 551 P.2d 703, 705-06 (Colo. 1976); State v. Elmore, 24 Or. App. 651, 546 P.2d 1117, 1118-19 (1976); State v. Craig, 169 Mont. 150, 545 P.2d 649, 652-53 (1976); People v. Reilly, 85 Misc. 2d 702, 381 N.Y.S.2d 732, 738-39 (1976); People v. Mackey, 46 Cal. App. 3d 775, 120 Cal. Rptr. 157 (1975); Finley v. State, 527 S.W.2d 553, 556 (Tex. 1975).

We have considered all issues presented and find no basis for reversal.

AFFIRMED.