

A-23-801 In re Interest of Steven V.

Separate Juvenile Court of Douglas County, Judge Candice Novak

Attorneys for Appellant: Nicholas E. Wurth

Attorney for Appellee: Jackson Stokes (Douglas County Attorney's Office)

Juvenile Adjudication: First Degree Sexual Assault

Action taken by Trial Court: Facts: The State filed a petition against Steven V., a 12-year-old boy, asserting that he violated Neb. Rev. Stat. § 28-319.01 (Reissue 2016), which makes it a crime for someone 19 years of age or older to subject another person under 12 years of age to sexual penetration. The allegations arose out of an alleged sexual assault of a 7-year-old boy. Steven moved to dismiss the case because the juvenile court does not have jurisdiction of a person who is over 18 years of age of age, and therefore, it could not have jurisdiction and determine the case because the crime charged required the actor to be at least 19 years old. In response, the State asked the court for leave to amend the complaint to allege a violation of Neb. Rev. Stat. § 28-319 (Reissue 2016), which, in part, makes it a crime for any person to subject another to sexual penetration (1) without the consent of the victim, or (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct. In the alternative, the State asked the court to conform the pleadings to the evidence. The court took all motions under advisement and proceeded to hear the matter. At the end of the case, the State renewed its motion to amend the petition to conform to the evidence and Steven renewed his motion to dismiss. Steven asserted that the State's request to amend the petition violated his due process and notice rights. The court took the matter under advisement and in a written order granted the State's motion to amend the pleadings to conform to the evidence and found that Steven had sexually penetrated the victim without the consent of the victim and knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct in violation of § 28-319 . It denied Steven's motion to dismiss as untimely.

Assignments of Error on Appeal: Steven assigns that the juvenile court erred in (1) overruling his motion to dismiss as untimely, (2) granting the State leave to amend the petition after the case was submitted, (3) finding that the State proved that sexual penetration occurred beyond a reasonable doubt, and (4) finding that the State proved that Steven knew or should have known that the victim was incapable of resisting or appraising the nature of his conduct.