

840012-1 SCSD

As Action

MEMO TO FILE

RE: Stearns County Sheriff's Department Offense Report #84001254

DATE: October 30, 1986

After thorough review of the offense report and thorough and thoughtful considerations of the fact issues and law, I make the following conclusions:

1. Review of the criminal statutes in consideration of the facts herein would only support the filing of a criminal charge under the laws prohibiting intrafamilial sexual abuse pursuant to Minnesota Statute § 609.364 to 609.3644 (1981).
2. To reach the conclusion that the perpetrator could be charged with intrafamilial sexual abuse would require proof beyond a reasonable doubt that he was a person who jointly resided intermittently or regularly in the same dwelling as the victim.
3. Careful review of the facts reveals that the conclusion stated in paragraph 2 considerably strains any reasonable interpretation of the definition of "familial relationship" contained within Minnesota Statute § 609.364, subd. 9. I have not found any case law which would support that treatment in this case where the acts occurred in the living room of the parish house.
4. Review of other information made available to me concerning the juvenile victim, age 17 years, does not support the legal requirement that the victim was sufficiently mentally defective, mentally incapacitated, or physically helpless to support prosecution for that special circumstance pursuant to the statutes regarding criminal sexual conduct pursuant to Minnesota Statute § 609.341 to 609.345.
5. During the course of the investigation concerning this matter I was provided with a report concerning the evaluation and subsequent treatment for sexual aggressiveness concerning the perpetrator, which reveals to me that appropriate treatment was voluntarily entered into and completed. Further, I am reliably informed that due to his involvement in this matter, concerns for his further contact with young persons has been identified and dealt with in an appropriate manner.

Therefore, in consideration of all of the above factors, I am not persuaded that the interests of justice require further prosecution in this matter and no prosecution is contemplated.

cc: Louis B. Leland