

KENDALL V. STATE, 1977-NMSC-015, 90 N.M. 191, 561 P.2d 464 (S. Ct. 1977)

CASE HISTORY ALERT: see [12](#) - affects 1977-NMCA-002

**Danny Ray KENDALL, Petitioner,
vs.
STATE of New Mexico, Respondent.**

No. 11254

SUPREME COURT OF NEW MEXICO

1977-NMSC-015, 90 N.M. 191, 561 P.2d 464

March 09, 1977

COUNSEL

Jan Alan Hartke, Chief Public Defender, Reginald J. Storment, Appellate Defender,
Santa Fe, for petitioner.

Toney Anaya, Atty. Gen., Santa Fe, for respondent.

JUDGES

SOSA, J., wrote the opinion. OMAN, C.J., and McMANUS, EASLEY and PAYNE, JJ.,
concur.

AUTHOR: SOSA

OPINION

{*192} SOSA, Justice.

{1} Defendant was convicted of fourteen felonies and one misdemeanor. The Court of Appeals affirmed in part and reversed in part. **Kendall v. State**, 90 N.M. 236, 561 P.2d 935 (Ct. App. 1977). We granted certiorari.

{2} The only issue we entertain is the Court of Appeals' reversal of defendant's conviction of criminal sexual penetration because of the trial court's failure to instruct that the jury must find that the victim was other than defendant's spouse, and the resulting remand for new trial on the issue. The reversal was improper under the facts of the case. **State v. Bell**, 90 N.M. 134, 560 P.2d 925 (1977). The defendant was properly convicted of criminal sexual penetration, and his conviction is affirmed.

OMAN, C.J., and McMANUS, EASLEY and PAYNE, JJ., concur.