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Category:Signal-watcher Category:Windows compression software Category:Windows security software 69 Cal.App.2d 316 (1945) THE PEOPLE, Respondent, v. JOEL SWEET, Appellant. Crim. No. 1972. California Court of Appeals. Third Dist. May 27, 1945. Charles E. Radding for Appellant. Robert W. Kenny, Attorney General, and T. G. Negrich, Deputy Attorney General, for Respondent. THOMPSON, J. On December 20, 1943, appellant was arraigned and pleaded not guilty to an indictment for a violation of section 288 of the Penal Code, and denied probation. On January 4, 1944, the case came on for trial, and by stipulation of counsel the defendant admitted a prior felony conviction. On motion of the district attorney, made at the close of the testimony in support of the charge, the prior conviction was set aside, and a plea of guilty entered. [1a] The indictment charges that the defendant committed a lewd and lascivious act on the body of a 10-year-old boy, "to wit: by placing his hand upon the private part of said child, contrary to the provisions of Section 288 of the Penal Code of the State of California." The defendant contends that the evidence is insufficient to support the judgment, that it was error to set aside the judgment of the prior conviction, that the court erred in refusing to instruct the jury that the defendant could not be convicted under section 288 unless the child was of tender years, and that the court abused its discretion in denying probation. It is urged, by counsel for the defendant, that the child "was the prime mover and active agent in the commission of the crime." The defendant, a 42-year-old man, was employed as a window tender in the Naval Air Station at Alameda. He lived in a barracks with five other seamen. The child was a boy who was the son of the janitor of the naval base and the defendant's *318 roomer. A special relationship existed between the janitor and the child. In December of 1943, the defendant observed that the child was reading a comic book, "or something like that, that went like this," and that when he read the comic book the child "put his hand on his private parts." The witness testified that he saw the act "three

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