

BOISE, THURSDAY, SEPTEMBER 17, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	Docket No. 35687
v.)	
)	
VANCE A. WATKINS,)	
)	
Defendant-Appellant.)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Hon. Phillip M. Becker, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

This is a petition for review of an Idaho Court of Appeals decision vacating the conviction of Vance A. Watkins and remanding his case for a new trial. A jury convicted Watkins of one count of lewd conduct with a minor pursuant to I.C. § 18-1508. The court of appeals held that the trial court abused its discretion in admitting testimony from the State's DNA expert, who did not conduct the DNA testing herself and whose testimony was based upon information she obtained through conversations with a colleague and upon that colleague's notes. The colleague did not testify. While Watkins alleged that the admission of the expert's DNA testimony violated both the rule against hearsay and his Sixth Amendment right to confrontation, the court of appeals based its decision on the hearsay ground and declined to address the constitutional issue.

On December 9, 2004, a grand jury indicted Watkins on a single count of lewd conduct with a minor for allegedly having oral, anal, and genital contact with a six-year-old girl. The girl told a school counselor, law enforcement, and health and welfare officials that Watkins was having sexual intercourse with her.

At trial, the State's DNA expert, Dr. Carla Finis, testified that, according to tests performed at her private laboratory, Identigentix, Watkins' DNA was in the semen on the girl's underwear and inside of a condom, while the girl's DNA was on the outside of the condom. Dr. Finis, however, was not at Identigentix to receive the evidence in person, nor did she perform the DNA testing herself. Instead, Dr. Finis relied on conversations with her colleague Kermit Channell, as well as Channell's notes, to form her conclusions about the tested evidence. Watkins objected that Dr. Finis' testimony regarding what Channell did with the evidence upon receiving it at Identigentix was hearsay. Watkins later objected to Dr. Finis' testimony regarding how Channell tested

the evidence on the grounds that “she didn’t have any personal independent knowledge of how this testing was performed.” Finally, Watkins objected to Dr. Finis’ ultimate conclusion regarding the testing on “the grounds [previously] stated.”

The jury convicted Watkins, and the district court sentenced him to life with fifteen years fixed. Watkins appealed to the Idaho Court of Appeals, asserting in his opening brief that the district court’s admission of Dr. Finis’ testimony regarding the handling and testing of the evidence violated his Sixth Amendment right to confrontation. In his reply brief, Watkins asserted as an additional issue that Dr. Finis’ testimony was inadmissible hearsay. The court of appeals ordered the parties to submit supplemental briefing because Watkins failed to adequately address either the Sixth Amendment issue or his hearsay argument in his briefing. Watkins and the State did submit supplemental briefing in which they addressed both the confrontation and hearsay issues. Despite the State’s argument that the issue was waived because Watkins failed to argue it in his opening brief, the court of appeals decided Dr. Finis’ testimony was inadmissible hearsay. The court held that because the State had addressed the hearsay issue in its supplemental briefing, the fact that Watkins failed to raise it in his opening brief did not cause the State any harm. The court vacated Watkins’ judgment of conviction and remanded the case for a new trial. The State timely petitioned for review, asserting that the court of appeals erred in deciding that Watkins’ failure to raise the hearsay issue in his opening brief was mooted by the fact that the State had an opportunity to brief the issue in supplemental briefing and that it erred in determining that Dr. Finis’ testimony was not admissible pursuant to the hearsay exception in Idaho Rule of Evidence 703.

BOISE, THURSDAY, SEPTEMBER 17, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
v.)	Docket No. 35687
)	
CHRISTOPHER DAVID FLEGEL,)	
)	
Respondents.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Theresa A. Hampton, Hampton & Elliott, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

In 2004, Christopher Flegel was indicted by a grand jury for lewd and lascivious acts with a minor victim, K.J., then a ten-year-old girl. Flegel was an airline employee assisting K.J. during a layover in the Boise airport. In his first trial in March of 2005, the court instructed the jury both on (1) the crime of lewd and lascivious conduct and (2) on the lesser-included charge of sexual abuse of a minor. Flegel was acquitted on the count of lewd and lascivious conduct but the jury was hung on the sex-abuse charge.

The court permitted the indictment to be amended to include only the charge of sexual abuse of a minor. At a second trial in December of 2005, the State put on essentially the same evidence, but the jury was only instructed on the single count of sexual abuse. The jury instructions permitted the jury to find Flegel guilty of sexual abuse if he “caused or had sexual contact” with K.J. with the intent of gratifying his sexual desires. The instructions then defined “sexual contact” as “any physical contact between the child and the actor,” leaving open the possibility that the jury could convict him for essentially the same conduct for which he had been acquitted at the first trial. Flegel did not object to the jury instructions. The jury then returned a general guilty verdict.

Flegel appealed his conviction, asserting that the instructions violated his rights under the Double Jeopardy Clause by allowing him to be convicted for essentially the same conduct that he had been acquitted of in his first trial. The Court of Appeals vacated the conviction and remanded for retrial, finding that the jury instructions were not harmless because they might have “contributed to” the conviction. The State appeals this ruling, arguing that the Court of Appeals misstated the harmless-error test. The State further contends that the jury instructions were harmless beyond a reasonable doubt because the jury would have convicted Flegel for sexual abuse of a minor regardless of the erroneous instruction.

BOISE, THURSDAY, SEPTEMBER 17, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

EVAN EDWARD MORGAN, JR.)
)
 Petitioner-Appellant,)
)
 v.)
)
 SEXUAL OFFENDER CLASSIFICATION)
 BOARD,)
)
 Respondent.)

Docket No. 35913

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. D. Duff McKee, District Judge.

Alan E. Trimming, Ada County Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

This is a petition for review of the decision by the Idaho Court of Appeals affirming the district court's order upholding the designation by the Sexual Offender Classification Board (SOCB) of Evan Edward Morgan, Jr., as a violent sexual predator (VSP).

The facts in this case are not in dispute. In 1998, Morgan pled guilty to lewd and lascivious conduct with a minor and to possession of sexually exploitative material. Morgan's lewd and lascivious conduct involved his inappropriately touching his five-year-old neighbor. Morgan is, and was at the time he violated the child, confined to a wheelchair.

At the time Morgan received a tentative parole date, the SOCB designated him as a VSP. Morgan appealed his designation to the district court. Despite having access to a summary of the information that the SOCB relied upon in concluding that he was a VSP, Morgan filed a motion requesting that the district court release to him the individual documents that the SOCB relied upon in making its decision. The district court denied Morgan's request and affirmed the SOCB's designation. Morgan appealed the district court's decision to the Idaho Court of Appeals, alleging that the district court erred in denying his request for documents and in affirming his designation as a VSP in light of the fact that he is confined to a wheelchair. The court of appeals affirmed the district court, and this Court granted Morgan's petition for review.