

**BOISE, THURSDAY, APRIL 10, 2025, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 51377**

**STATE OF IDAHO,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **CODY JOHN SEWARD,** )  
 )  
 **Defendant-Appellant.** )  
 )

---

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Rick Carnaroli, District Judge.

Attorneys of Idaho; Sarah E. Tompkins, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

---

Cody John Seward appeals from his conviction for lewd conduct with a child under the age of sixteen, pursuant to Idaho Code § 18-1508. Seward argues that a fatal variance exists between the charging document and the jury instructions given at trial. In particular, the information alleged that Seward had committed a “lewd and lascivious act upon and/or with the body of a minor . . . by genital to oral contact.” At trial, the court instructed the jury that guilt could be established if the State proved “the defendant, CODY JOHN SEWARD, committed an act of genital-oral contact and/or any other lewd or lascivious act upon or with the body of [the victim].” Seward claims that the addition of “and/or any other lewd or lascivious act” within the approved jury instruction created a fatal variance that violated Seward’s due process rights, and constituting fundamental error. Seward also claims the district court abused its discretion in sentencing Seward to forty years with twenty-five years determinate.