

SUMMARY STATEMENT

State v. Phillip R. Smalley

Docket No. 44233

In a case arising out of Kootenai County, the Court of Appeals affirmed a judgment of conviction for two counts of sexual abuse of a vulnerable adult and one count of forcible sexual penetration by a foreign object. The victim alleged that she was sexually assaulted by Smalley at the assisted living facility where the victim lived and where Smalley worked alone as the overnight caregiver. Prior to trial, the State moved to take the victim's testimony by video deposition on the basis that the victim was physically unable to attend court proceedings due to her age and because she was bedridden and under hospice care. The district court granted the motion. The victim's deposition was taken and the State moved to admit the victim's deposition video and transcript in lieu of her live testimony at the trial. The district court granted the motion, finding the victim was unavailable. A jury found Smalley guilty of all three counts charged by the State.

Smalley asserted that the State failed to prove that the victim was a vulnerable adult within the meaning of I.C. § 18-1505(4)(e). Smalley contended that, although the State presented evidence that the victim was physically infirm, the State was required to prove that the victim was mentally unable to protect herself--that she was mentally unfit, not just physically unfit. Smalley also contended that the district court erred in finding the victim was unavailable and in admitting the victim's deposition in lieu of her live testimony in violation of the Confrontation Clause and the Idaho Rules of Evidence.

The Court of Appeals held that, under the plain language of I.C. § 18-1505(4)(e), a victim may qualify as a vulnerable adult based on physical impairments alone and that the State presented sufficient evidence from which the jury could conclude that the victim was a vulnerable adult. Further, the district court did not abuse its discretion in admitting the victim's deposition testimony in light of its conclusion, based on the evidence presented, that the victim was unavailable to testify due to her physical infirmities and inability to attend trial in light of her infirmities.