

## SUMMARY STATEMENT

*State of Idaho v. Gregg James Miller*  
Docket No. 45028

Gregg James Miller was convicted by a jury of one count of felony eluding a police officer and one count of misdemeanor injury to a child. The circumstances arose when Miller drove recklessly through his neighborhood with his minor child in the car. When Miller finally stopped, the child got out and ran to a friend's house, while Miller was taken to the ground and arrested at gunpoint.

Miller appealed and challenged his conviction for injury to a child. He argued first that there was a fatal variance between the information, the jury instructions, and a statement in the prosecutor's closing argument. He also asserted the prosecutor committed misconduct by making various statements during closing arguments. Miller did not object to these alleged errors during trial. Consequently, Miller raised the two claims on appeal as fundamental error pursuant to *State v. Perry*, 150 Idaho 209, 245 P.3d 961 (2010).

The Court of Appeals held that Miller failed to establish a fatal variance between the charging document and the jury instructions, in combination with the prosecutor's statement. As to the claim of prosecutorial misconduct, the Court of Appeals held that none of the comments were improper. Thus, because Miller failed to establish that any errors constituted a clear violation of an unwaived constitutional right, he could not establish fundamental error. The Court of Appeals therefore affirmed the judgment of conviction.