

SUMMARY STATEMENT

State v. Elijah Z. Nuss

Docket No. 45683

Elijah Z. Nuss was charged with lewd conduct with a minor. At the time of trial, the victim was sixteen years old. Before trial, the district court informed the parties that it would allow a “facility dog” to be present during the victim’s testimony. Nuss objected, arguing that the facility dog’s presence would be prejudicial.

The district court overruled the objection, and the case proceeded to trial. Before the presentation of evidence, the district court instructed the jury about the possible presence of a facility dog and to disregard its presence. During a recess before the victim took the stand, the facility dog’s handler situated the facility dog under the witness’s seat and took a seat behind the witness stand. After the victim’s testimony, the district court excused the handler and allowed the facility dog to exit the courtroom in the jury’s presence.

The jury found Nuss guilty, and he timely appealed. Nuss argues the district court abused its discretion by allowing the facility dog’s presence, the handler’s presence, and the facility dog to exit the courtroom in the jury’s presence and that the facility dog and its handler’s presence prejudiced Nuss’s right to a fair trial. The Idaho Court of Appeals held that Idaho Code § 19-3023 requires the district court to allow the presence of both a facility dog and its handler during a child’s testimony, absent written findings of undue prejudice; the facility dog and its handler did not prejudice Nuss’s constitutional right to a fair trial; and the district court properly instructed the jury about the presence of the facility dog and its handler.