

## SUMMARY STATEMENT

### *State v. Von Ehlinger* Docket No. 50087

Aaron Von Ehlinger, a former Idaho State Representative, was convicted of raping a legislative intern by an Ada County Jury. He appealed to the Idaho Supreme Court, asserting that his judgement of conviction should be vacated due to constitutional and evidentiary errors committed during his trial.

Von Ehlinger raised three issues on appeal. First, he challenged the admission of a forensic nurse's testimony that repeated hearsay statements made to her by the victim. He argued that the testimony was admitted in violation of his rights under the Sixth Amendment's Confrontation Clause. He maintains that although he failed to timely object on the proper grounds, the admission was still fundamental error, thus entitling him to relief on appeal. Second, he argued that the district court erred by overruling his trial counsel's objection to a leading question asked by the State during direct examination of the forensic nurse. Finally, he contended that there was insufficient evidence to support his conviction.

On appeal, the Idaho Supreme Court affirmed Von Ehlinger's conviction. The Court held that Von Ehlinger had failed to demonstrate that his Sixth Amendment rights were violated. Because his trial counsel did not contemporaneously object to the forensic nurse's testimony on Confrontation Clause grounds, or move to strike it, he could not raise this issue on direct appeal unless it amounted to "fundamental error." To show this, Von Ehlinger had "the burden of clearly demonstrating that the failure to object was *not* a tactical decision." *See State v. Perry*, 150 Idaho 209, 243 P.3d 961 (2010). The Court concluded that he "failed to plausibly dispel the possibility that the failure to object was a calculated and tactical choice." The Court held:

Whether such a tactic was wise or misguided is not for us to say in this appeal. . . . Therefore, after carefully reviewing the totality of the record, especially noting defense counsel's apparent strategy at trial—which was to admit that the alleged sexual conduct occurred but cast doubt on [the victim's] claim that it was nonconsensual—we hold that Von Ehlinger has failed to plainly demonstrate that the failure to object was not a tactical decision by his trial counsel. Because Von Ehlinger has not carried that burden, he fails to satisfy the fundamental error test.

The Court also determined that the district court did not commit a reversible error by allowing the State to ask the forensic nurse a leading question. The Court noted that any error stemming from the allegedly leading question was harmless because the witness never answered the question, and the question itself was not misleading. Finally, the Court concluded that there was sufficient evidence to sustain a finding by the jury that Von Ehlinger committed the crime of rape beyond a reasonable doubt.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\****