

**SUMMARY STATEMENT**  
*State of Idaho v. Kirk A. Ericson*  
Docket No. 50537

In this case arising out of Ada County, the Court of Appeals affirmed Kirk A. Ericson's judgment of conviction for forcible penetration by use of a foreign object. While giving a massage to J.D. in his role as a massage therapist, Ericson penetrated J.D.'s vagina with his finger and put his hand on her breast. During the jury trial, testimony included that J.D. was unable to give consent at the time of the incident. On appeal, Ericson argues that the State failed to present sufficient evidence to support his conviction for forcible penetration by use of a foreign object. Ericson also argues that the district court abused its discretion in excluding certain testimony.

The Idaho Court of Appeals held that Ericson failed to show that the State presented insufficient evidence to support his conviction for forcible penetration by use of a foreign object. At trial, J.D. testified that she was unable to speak or move when Ericson stuck his finger inside her vagina. Testimony was presented that tonic immobility is not a voluntary reaction but rather an uncontrolled biological response. Together, the testimony of J.D. and the testimony regarding tonic immobility satisfied the elements that J.D. lacked a sound mind and was incapable of understanding and acting with discretion in the ordinary affairs of life as required by the forcible penetration statute.

The Court also held that the district court reasonably excluded proposed testimony from a care provider regarding J.D.'s memory as not being relevant. It was not relevant because the proposed testimony came from a witness who had no knowledge of the incident and had treated J.D. only once (almost ten months before the crime); and because J.D. testified for about four hours without any indication that she had a problem recalling events. Even if the evidence could be said to have had some relevancy, Ericson also failed to demonstrate that the district court erred in determining that any such relevance was substantially outweighed by confusion of the issues or would inject undue delay.

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