

**SUMMARY STATEMENT**  
*State of Idaho v. Wade William Denny*  
Docket No. 51076

In this case arising out of Bannock County, the Court of Appeals affirmed Wade William Denny's judgment of conviction for sexual battery of a minor child sixteen to seventeen years of age and rape. Officers responded to a neighborhood after a sixteen-year-old girl called 911 and requested assistance. When officers arrived, the girl claimed she had been with Denny at a house party. The girl then reported that she may have been raped and given drugs. The girl was transported to the hospital where a rape kit was performed and the DNA evidence collected was later confirmed as belonging to Denny. Denny was charged with felony sexual battery of a minor child sixteen to seventeen years of age and rape.

Before trial, the State informed Denny and the district court that the girl had not been located and served with a subpoena to appear as a witness at trial. The State believed the girl was avoiding service because she was in a romantic relationship with Denny. The State filed a motion for an order allowing, under I.R.E. 804(b)(5), the admission at trial of statements by the girl to the 911 operator, the responding officers, and the sexual assault nurse evaluator. The district court reviewed phone calls between Denny and the girl since Denny's incarceration. The district court concluded I.R.E. 804(b)(5) applied because Denny had discouraged the girl from testifying or cooperating with the State. The district court allowed the State to present the evidence, and Denny was found guilty of both charges.

On appeal, Denny argued the district court abused its discretion when it admitted the statements because Denny did not cause the girl's unavailability as a witness. The Court rejected Denny's argument and held that the district court's finding that the girl was not available as a witness due to Denny's wrongdoing was supported by substantial and competent evidence. Therefore, the Court held the district court did not abuse its discretion in finding that the statements from the girl qualified for the exception in I.R.E. 804(b)(5) and in admitting the statements as evidence at trial.

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