

SUMMARY STATEMENT

State v. Ostler, Docket No. 43915

In an appeal from Bear Lake County, the Supreme Court affirmed Scott Ostler's conviction for three counts of lewd conduct and one count of sexual abuse of a minor. After Ostler's first trial a jury found him guilty of three felonies: two counts of lewd conduct and one count of sexual abuse of a minor. The district court subsequently set aside Ostler's guilty verdict and ordered a new trial because the State charged Ostler with conduct that may have occurred while he was younger than fourteen. On retrial, the State charged Ostler with an additional fourth felony lewd conduct charge. On appeal, Ostler argued the State committed fundamental error, violating Ostler's right to due process by conducting a vindictive prosecution, when the State added the fourth charge after the mistrial. The Court of Appeals vacated Ostler's fourth lewd conduct conviction and decided that the addition of the fourth felony charge after a mistrial had raised a presumption of vindictiveness. The Supreme Court granted the State's petition for review. The Supreme Court affirmed Ostler's conviction because Ostler's failure to object below deprived the State of an opportunity to rebut the presumption of vindictiveness.