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### Summary of Ebeling v. State, 120 Nev. Adv. Rep. 50

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***Ebeling v. State*, 120 Nev. Adv. Rep. 50, 91 P.3d 599 (Nev. 2004)<sup>1</sup>**

**CRIMINAL LAW – SEXUAL ASSAULT; REDUNDANCY OF  
MULTIPLE CONVICTIONS**

**Summary**

The defendant contended that the district court erred in sentencing him on redundant convictions.

**Disposition/ Outcome**

The Supreme Court of Nevada (“the court”) vacated one conviction of lewdness with a minor, and one conviction of indecent exposure. The case was then remanded to the district court for resentencing in accordance with its opinion.

**Factual & Procedural History**

Prior to trial, the district court filed an order stating that Ebeling could not be convicted of both the sexual assault and the lewdness charge, because the two were based on a single incident. Specifically, that Ebeling committed sexual assault by engaging in anal intercourse with W.C., and lewdness by touching W.C.’s buttocks with his penis.<sup>2</sup>

In a separate charge, the State also alleged at trial that Ebeling had indecently exposed himself to F.P. and N.E. in a single incident, but charged him with two counts.<sup>3</sup>

Based on the testimony at trial, but despite the pre-trial order, appellant Greg E. Ebeling was convicted of multiple counts stemming from sexual acts involving five minor victims: four counts of sexual assault, seven counts of lewdness with a child under the age of fourteen, one count of attempted sexual assault, and three counts of indecent exposure.<sup>4</sup> Following a jury trial, the jury convicted Ebeling on all fifteen charges. The district court then sentenced Ebeling to eleven life sentences, with possibility of parole after eighty years.<sup>5</sup>

**Discussion**

The defendant argued that the district court erred in sentencing him on both the sexual assault and lewdness charges, and the court agreed.<sup>6</sup> The State argued that the physical assault charge of anal intercourse was distinct and separate from Ebeling

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<sup>1</sup> By Scott Whittemore.

<sup>2</sup> *Ebeling*, 91 P.3d at 600.

<sup>3</sup> *Id.* at 601.

<sup>4</sup> *Id.* at 600.

<sup>5</sup> *Id.* at 600.

<sup>6</sup> *Id.* at 601. (Ebeling also raised five issues on appeal that the court found to be without merit, two issues that were not addressed because Ebeling failed to object and the instances were neither improper, nor rose to level of plain error, and finally, that even if the State misstated their evidence in its closing argument, it was a harmless error.)

touching the victim's buttocks with his penis. However, the court found that the testimony did not reflect that interpretation, as the touching was merely incidental to the assault. Thus, the court concluded that the convictions for the two charges were redundant<sup>7</sup>, citing to *State v. Koseck*, 113 Nev. 477, 936 P.2d 836 (1997).<sup>8</sup>

Ebeling also challenged that the district court erred when it sentenced him two separate count of indecent exposure for the simultaneous exposure of his penis to F.P. and N.E., and the court agreed. Since Ebeling committed only a singular act of indecent exposure, N.R.S. 201.220(1) only provides for one charge of indecent exposure<sup>9</sup>, quoting that "a court should not normally presume that a legislature did not intend multiple punishments for the same offense absent clear expression of legislative intent to the contrary..."<sup>10</sup>

### **Conclusion**

Thus, the Supreme Court of Nevada affirmed the judgment of conviction against Ebeling, and reversed in part. The case was remanded to the district court to vacate one of Ebeling's indecent exposure convictions, and to vacate his conviction for lewdness against W.C.

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<sup>7</sup> *Id.* at 601. *See also* *State v. Koseck*, 113 Nev. 477, 936 P.2d 836 (Nev. 1997).

<sup>8</sup> *Id.* at 837 (the propositions that, 1) redundant convictions would not comport with legislative intent, and 2) convictions for lewdness and sexual assaults based on the same act would not comport with legislative intent.) *See also* *Albitre v. State*, 103 Nev. 281 (Nev. 1987).

<sup>9</sup> *Ebeling*, 91 P.3d at 603. *See also* NEV. REV. STAT. 201.220(1).

<sup>10</sup> *See* *Talacon v. State*, 102 Nev. 294, 300, 721 P.2d 764, 768 (Nev. 1986).