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Aug 30, 2016
Court of Appeals
Division I
State of Washington

No. 74061-0-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

K.L.G., Appellant.

BRIEF OF RESPONDENT

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A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- 1. Did the Respondent have a right to a jury trial in a juvenile proceeding because he was charged with a sex offense when other juveniles do not have this right and when case law has consistently held that given the juvenile's systems focus on rehabilitation versus punishment, juvenile respondents do not have a right to a jury trial.**

C. STATEMENT OF THE CASE

1. Substantive Facts

On May 6, 2015, a house party occurred at a location on the Lummi Reservation. During the party, juveniles and adults were drinking. At some point, several of the attendees left to acquire more alcohol, leaving Tricia Nevins and K.L.G. at the house. According to Nevins, once the others left, K.L.G. dragged her from the living room by her wrists and threw her onto the bed. He removed her pants and forced his penis into her vagina. Nevins three month old son was in the room at the time. Nevins screamed and K.L.G. covered her mouth. After K.L.G. was finished, he left the room and Nevins was eventually able to get to a neighbor's house to call for help. CP 3-4.

2. Procedural History

On May 27, 2015, the Respondent was arraigned on an Information alleging a violation of RCW 9A.44.050(1)(a),(b), Rape in the Second Degree. On August 10, 2015, an order was entered waiving declination to adult court and retaining jurisdiction in the juvenile court. CP 9-14. Retention was based in part on the agreement of the parties that given the legal parameters of the Juvenile Justice Act (JJA), meaningful consequences, rehabilitation, and community protection would be better available in the juvenile system for this particular Respondent. CP 9-14. The defense specifically sought this retention with full knowledge that, amongst its many benefits to the Respondent, juvenile court would not include a right to a jury trial.

An Adjudication Hearing commenced on September 14, 2015, in the courtroom of the Honorable Judge Charles Snyder of the Whatcom County Superior Court, and concluded on September 16, 2015. At that time, the Court announced its verdict, adjudicating the Respondent guilty of Rape in the Second Degree, and continuing Disposition to a time agreed on by the parties. Disposition was held on October 5, 2015, with the court considering appropriate consequences and treatment available under the Juvenile Justice Act. CP 37-43. The court adopted an agreed recommendation of the parties for a standard range sentence of 30-40

weeks in the custody of the Juvenile Justice and Rehabilitation Administration (JJ&RA) and 36 months of sex offender treatment. CP 37-43. The court heard from the Juvenile Probation Office about drug and alcohol treatment that would be available to the Respondent while he was at JJ&RA.

On July 1, 2016, the Respondent/Appellant filed an opening brief in this Court, alleging a single error that he was not afforded a jury trial.

D. ARGUMENT

1. This appeal should be denied because it was not raised below and does not constitute manifest error.

Even though K.L.G. sought adjudication in Juvenile Court, he now takes exception to not being afforded a jury trial. This is being raised for the first time on appeal. Generally a court will not consider an issue that has not been raised in the trial court. *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). The court may review an issue for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). “Manifest” requires the defendant show actual prejudice. *State v. O’Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). There must be a plausible showing that the asserted error had a practical and identifiable consequence in the trial of the case. *Id.* The error must be so obvious on the record that the issue warrants appellate review. *Id.* at 100.

2. This appeal should be denied since controlling authority states that there is no constitutional right to a jury trial for juvenile respondents as the purposes of the juvenile offender system differ from the adult offender system.

The Washington State Supreme Court has consistently held that because of well-defined differences between Washington's juvenile justice and adult criminal systems, the JJA does not violate constitutional provisions by denying a right to a jury trial. See *State v. Chavez*, 163 Wn.2d 262, 180 P.3d 1250 (2008); *State v. Schaaf*, 109 Wn.2d 1, 10, 743 P.2d 240, 244 (1987); *State v. Lawley*, 91 Wn.2d 654, 655 (1979); *State v. Weber*, 159 Wn.2d 252, 264–65, 149 P.3d 646 (2006); *Monroe v. Soliz*, 132 Wn.2d 414, 939 P.2d 205 (1997); *Estes v. Hopp*, 73 Wn.2d 263, 438 P.2d 205 (1968). Most recently in *Chavez*, the State Supreme Court held that, "the juvenile justice system has not been so altered that juveniles charged with violent and serious violent offenses have the right to a jury trial." *Chavez*, 163 Wn.2d 262, 272. This precedent continues to be controlling on this Court and should be applied in the present case.

Division I has likewise previously recognized that the JJA is constitutional in its denial of the jury trial right. *State v. J.H.*, 96 Wn. App. 167, 978 P.2d 1121 (Div. I, 1999). In *J.H.*, the Court consolidated the appeals of twelve juveniles who asserted error at not being afforded a

jury trial. *J.H.*, 96 Wn. App. 167. Applying Washington case precedent, this Court found the JJA proper and denied the appeals. This Court applied the precedent of *State v. Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987), and recognized its reasoning still applicable:

Juvenile offenders are afforded special protections under the present system, and we perceive no valid reason to jeopardize those protections by making juvenile proceedings fully akin to adult proceedings.

Id. at 1130, citing *Schaaf*, 109 Wn.2d 1, 22; see also *Chavez* 163 Wn.2d 262. *Schaaf* and *Chavez* remain good law and controlling on this Court.

Since the case law has continued to uphold the *Schaff* analysis of juvenile jury rights in general, *See J.H.* at 185; *Chavez* at 269, the Respondent is arguing that due to the nature of the charge here, a sex offense, a right to jury trial should nevertheless attach. This issue was considered by Division 1 in *J.H.*, wherein the court determined that because, “[t]he adult sex offender registration statute does not constitute punishment,...[i]t follows that community notification requirements for juvenile offenders are likewise not punitive.” *J.H.*, 96 Wn.App. at 182. The court, therefore, concluded that the notification requirements “do not affect a juvenile offenders’ right to a jury trial.” *Id.* As such, sex offenses should not be distinguished from other juvenile offenses for the purposes allowing jury trials for one and not for the other.

E. CONCLUSION

For the above reasons, the State of Washington respectfully requests that the Court deny the appeal.

Respectfully submitted this 30 August 2016.



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CERTIFICATE

I certify that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant's counsel of record, addressed as follows:

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