

FILED
Court of Appeals
Division II
State of Washington
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NO. 53194-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIE GARZA,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Kitty-Ann Van Doorninck

No. 17-1-04384-4

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. RESTATEMENT OF THE ISSUES

- A. Is petitioner's jury instruction claim foreclosed by Supreme Court precedent?

II. STATEMENT OF THE CASE

The jury in this case was instructed as follows:

In order to convict a person of child molestation in the first degree, as defined in these instructions, it shall not be necessary that the testimony of the alleged victim be corroborated. The jury is to decide all questions of witness credibility.

Jury Instruction 4, CP 106.

III. ARGUMENT

- A. Petitioner's jury instruction claim is foreclosed by Supreme Court precedent.**

The non-corroboration instruction given in this case was appropriate and not a comment on the evidence. *State v. Clayton*, 32 Wn.2d 571, 572-78, 202 P.2d 922 (1949); *State v. Chenoweth*, 188 Wn. App. 521, 535-37, 354 P.3d 13 (2015); *State v. Zimmerman*, 130 Wn. App. 170, 182, 121 P.3d 1216 (2005); *State v. Malone*, 20 Wn. App. 712, 714-15, 582 P.2d 883 (1978).

Appellant acknowledges that the outcome in this case is controlled by *Clayton* and *Zimmerman*. Appellant's Supplemental Brief at 4. This Court should deny petitioner's claim.

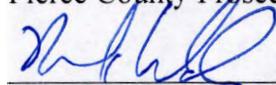
Should the Supreme Court change the relevant law in *State v. Svaleson*, No. 48855-8-II, 2018 WL 2437289 (May 30, 2018) (supreme court cause no. 96034-8), respondent requests the opportunity to present supplemental briefing on any issues which might be raised by any holding of the Supreme Court *Svaleson* (should the Supreme Court accept review).

IV. CONCLUSION

Appellant's motion is foreclosed by controlling Supreme Court precedent. This Court should reject petitioner's supplemental claim.

RESPECTFULLY SUBMITTED this 27th day of February, 2020.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



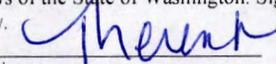
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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

Date

Signature

2.27.20 

PIERCE COUNTY PROSECUTING ATTORNEY

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