

NO. 34640-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JEREMIAH RAY ANGLIN

Appellant.

FILED
NOV 13 2006
COURT OF APPEALS
DIVISION TWO
KSC

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable James E. Warne, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE OUT-OF-COURT IDENTIFICATION SHOULD HAVE BEEN SUPPRESSED.

In its brief, the state argues that the trial court properly admitted identification evidence, because the witness, Maria Montes-Gomez, did not identify Anglin but only his clothing. The state points out that an identification of clothing is not subject to the same standard for admissibility as an identification of a suspect, relying on State v. Johnson, 132 Wn. App. 454, 132 P.3d 767 (2006) and State v. King, 31 Wn. App. 56, 639 P.2d 809 (1982). Br. of Resp. at 3-5.

First, the state's argument ignores Montes-Gomez's testimony. She explained at trial that when the officer asked her if Anglin was the man who had been in her house, she said she thought he was, because he was wearing the same clothes. IRP 50¹. This is similar to the identification suppressed in Johnson. There, the victim was robbed by three men. He did not get a good look at the suspect's faces during the robbery, but he did notice their clothing, and he identified them at a showup only from their clothes. Johnson, 132 Wn. App. at 457. This identification was not admitted at trial. Id.

¹ Montes-Gomez testified: "Well, I saw him – and I saw him, could see what he looked like, and then I saw that he had a brown jacket. The officer asked me if that was him, and I said, 'I think so, because he's wearing the same clothes that he had once inside the house.'" IRP 50.

Next, the state fails to recognize the crucial distinction between this case and Johnson. In that case, although the out-of-court showup identification was suppressed, the victim was permitted at trial to identify the jacket the robber had been wearing. Johnson, 132 Wn. App. at 457-58. The Court of Appeals affirmed, holding that the witness's identification of the jacket did not warrant the same due process protections which required his identification of the defendant to be suppressed. Id. at 463.

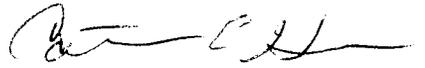
Here, on the other hand, Montes-Gomez was never asked to identify Anglin's clothing at trial. Thus, whether such an identification would implicate due process protections has no bearing on this case. The state did, however, elicit testimony from Montes-Gomez that she told the officers she thought Anglin was the man who had been in her house. As in Johnson, because this identification was based on an impermissibly suggestive showup procedure, See Brief of Appellant, § C.2, it should have been suppressed.

B. CONCLUSION

For the reasons discussed above and in Appellant's opening brief, this Court should deny the state's motion to affirm, reverse Anglin's conviction and remand for a new trial.

DATED this 13th day of November, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Catherine E. Glinski', written over a horizontal line.

CATHERINE E. GLINSKI

WSBA No. 20260

Attorney for Appellant

Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid,
properly stamped and addressed envelopes containing copies of the Reply Brief of
Appellant in *State v. Jeremiah Anglin*, Cause No. 34640-1-II, directed to:

James B. Smith
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I certify under penalty of perjury of the laws of the State of Washington that the
foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
November 13, 2006

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TACOMA, WA
U.S. DISTRICT COURT
BY: [Signature]
CLERK