

FILED
JUN 19 2009
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

83177-7

SUPREME COURT NO. _____
COA NO. 61753-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

S.J.W.,

Respondent.

FILED
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
2009 JUN 19 AM 8:13
RONALD R. CARPENTER
CLERK

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

The Honorable Vickie Churchill, Judge

ANSWER TO STATE'S PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTY

Respondent S.J.W., the appellant below, asks this Court to deny the State's Petition for Review. If this Court grants the State's petition, however, S.J.W. asks this Court to also decide the additional issues raised in the Court of Appeals.

II. COURT OF APPEALS DECISION

The State's petition for review seeks review of the Court of Appeals decision in State v. S.J.W., ____ Wn. App. ____, 206 P.3d 355 (2009). A copy of the decision is attached to the State's petition.

III. ISSUES PRESENTED FOR REVIEW

1. Is a fourteen-year-old incompetent to testify when his parents as well as his life-long physician testified his mental disability renders him unable to distinguish fact from fiction?

2. When a witness demonstrates an inability to truly relate past events by answering both yes and no to identical propositions, should the witness's testimony be stricken as incompetent?

3. When a police officer questions a fourteen-year-old rape suspect while standing between the suspect and the only exit and repeatedly places his hand on the butt of his gun, is there a custodial interrogation requiring Miranda¹ warnings?

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

IV. STATEMENT OF THE CASE

On appeal from his conviction for third degree rape, S.J.W. argued the complaining witness, a fourteen-year-old, developmentally disabled child, was incompetent to testify. Specifically, S.J.W. argued that at the competency hearing, the burden of proof is on the proponent of the testimony to show competency by a preponderance of the evidence. S.J.W. further argued his own statements were admitted in violation of Miranda.

The Court of Appeals agreed with S.J.W. that the burden at the competency hearing was on the State, as the proponent of the testimony. However, the Court concluded based on the record that the witness was competent and denied S.J.W.'s Miranda claim.

V. REASONS WHY THE STATE'S PETITION FOR REVIEW SHOULD BE DENIED

Contrary to the State's assertion in its petition, the Court of Appeals decision does not conflict with State v. Smith, 97 Wn.2d 801, 650 P.2d 201 (1982). The Court of Appeals correctly noted that Smith "concerns challenges to an adult witness's competency under the "unsound mind" exception in RCW 5.60.050(1)," rather than subsection (2) of that statute, which is at issue in this case. Slip. Op. at 13. Thus, the court correctly concluded Smith does not apply in this case. Id. The Court of Appeals decision in this case is entirely consistent with established precedent placing the burden on the proponent of a child

witness to establish competency by a preponderance of the evidence, once competency has been challenged. See In re Dependency of A.E.P., 135 Wn.2d 208, 223, 956 P.2d 297 (1998); State v. Karpenski, 94 Wn. App. 80, 100-01, 971 P.2d 553 (1999). Therefore, review should be denied.

However, if this Court grants review, it should also review whether the record sufficiently established the witness's competency, whether S.J.W. was in custody when questioned by police, and whether, without the incompetent testimony and inadmissible statements, insufficient evidence existed to support his conviction.

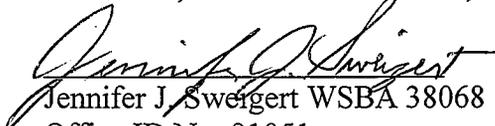
VI. CONCLUSION

This Court should deny the State's petition. If review is accepted, however, it should also review the additional issues S.J.W. raised on appeal.

DATED THIS 17th day of June, 2009.

Respectfully submitted,

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Today I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to attorneys of record in this jurisdiction if containing a copy of the document to which this declaration is attached.

ISLAND COUNTY TT - 3 CLIENT
I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name _____ Date 6-17-09
Done in Seattle, WA