

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERROLD EDWIN WINDES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46048

FILED

FEB 17 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count each of felony and gross misdemeanor indecent exposure. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Jerrold Edwin Windes to serve a prison term of 19 to 48 months for the felony count and a concurrent jail term of 12 months for the gross misdemeanor count.

Windes contends that the district court erred in granting the State's petition for a peremptory writ of mandamus because the justice court acted within its discretion by ruling that the six-year-old child-victim was incompetent to testify.¹ In particular, Windes contends that the child-victim was incompetent to testify because she had problems with her memory, lacked "mathematical acumen," and could not accurately remember to whom she had spoken about the crime. We conclude that Windes' contention lacks merit.

¹Windes expressly preserved the right to appeal this issue in the plea agreement. See NRS 174.035(3).

The district court granted the writ petition and remanded for further voir dire because it determined that the record was insufficient to review the issue of the child-witness's competency. We conclude that the district court did not err in granting the writ. There was insufficient evidence in the record to support the justice court's finding of incompetency under the factors set forth in Evans v. State.² We note that the transcript of the voir dire indicates that the child-victim was able to distinguish between truth and falsehood, and there was no testimony indicating that she had been "coached" or that she had the inability to communicate. Accordingly, further voir dire was necessary to determine the competency of the child-victim under the analysis set forth in Evans.

Having considered Windes' contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

²117 Nev. 609, 28 P.3d 498 (2001).

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk