

## SUPREME COURT OF OREGON

### State ex rel. Juvenile Department v. S.P.

346 Or. 592 (2009) · Decided August 13, 2009

#### SUMMARY

The Oregon Supreme Court reviewed whether statements made by a three-year-old sexual-abuse victim to CARES Northwest staff were testimonial under the Sixth Amendment's Confrontation Clause. The court also held that the juvenile's challenge under *State v. Campbell* to the stipulated unavailability of the child was unpreserved and not reviewable as plain error. The court affirmed the Court of Appeals' decision.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                      |
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| COURT                 | Supreme Court of Oregon                                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Durham, J.                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Oregon                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | August 13, 2009                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | The State sought review of a Court of Appeals decision holding that statements made by a three-year-old child during a CARES evaluation were testimonial under the Sixth Amendment and reversing the juvenile court's jurisdictional finding as to first-degree sodomy while affirming jurisdiction as to first-degree sexual abuse. |
| STANDARD OF REVIEW    | Review for errors of law under ORS 19.415(4).                                                                                                                                                                                                                                                                                        |
| PRECEDENTIAL VALUE    | Published Oregon Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                |
| PARTIES               | State ex rel. Juvenile Department v. S.P.                                                                                                                                                                                                                                                                                            |

#### TOPICS

[sixth amendment](#)[hearsay](#)[evidence](#)[criminal procedure](#)[preservation of error](#)

#### PRACTICE AREAS

[constitutional criminal procedure](#)[juvenile delinquency](#)[evidence](#)[appellate procedure](#)

#### QUESTIONS PRESENTED

1. Whether the youth preserved a Campbell-based challenge to the juvenile court's acceptance of the parties' stipulation that the child was unavailable and incompetent to testify.
2. Whether the child's statements to CARES personnel were testimonial under the Sixth Amendment's Confrontation Clause.
3. Whether statements made during a CARES evaluation serving both medical and forensic purposes are testimonial when CARES personnel act as proxies for police.
4. Whether the Court of Appeals correctly left intact the juvenile court's jurisdictional finding based on first-degree sexual abuse while reversing the finding based on first-degree sodomy.

## HOLDINGS

1. A party that stipulated in the juvenile court to the child's unavailability could not raise on appeal, without having preserved the issue below, a claim that the juvenile court was independently required under Campbell to determine the child's competency and unavailability.
2. The child's statements to CARES personnel describing the abuse and identifying the youth as the perpetrator were testimonial under the Sixth Amendment.
3. Because the youth had no prior opportunity to cross-examine the unavailable child, the Sixth Amendment barred admission of the CARES statements in the juvenile delinquency proceeding.

## KEY QUOTATIONS

*"In conclusion, we hold that N's statements to CARES, in which he identified youth as his abuser and described the occurrence and extent of the abuse, are testimonial."* (627)

*"Because youth had no prior opportunity to cross-examine N, the Confrontation Clause of the Sixth Amendment bars admission of those statements in this proceeding."* (627)

*"N acted as a witness; he bore testimony against youth."* (624)

## FACTUAL BACKGROUND

A three-year-old child made statements to his parents indicating that the youth had touched and attempted to suck the child's penis. During a CARES Northwest evaluation conducted by a pediatrician and social worker, with a sheriff's deputy monitoring, the child described the abuse and identified the youth as the perpetrator. CARES coordinated with DHS and law enforcement, provided its evaluation report to detectives, and recommended further investigation. The child was stipulated to be unavailable to testify, and the juvenile court admitted his statements.

## PROCEDURAL HISTORY

The juvenile court admitted the child's statements to his parents and to CARES under Oregon's hearsay exceptions and found the youth within its jurisdiction for conduct constituting first-degree sodomy and first-degree sexual abuse if committed by an adult. The Court of Appeals held the CARES statements testimonial and inadmissible under Crawford, vacated the sodomy jurisdictional finding, and affirmed the sexual-abuse finding.

The Oregon Supreme Court affirmed the Court of Appeals, reversed the juvenile court's sodomy jurisdictional finding, affirmed jurisdiction on other grounds, and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The juvenile court's jurisdictional finding based on conduct that would constitute first-degree sodomy if committed by an adult was reversed. The jurisdictional finding on other grounds, including first-degree sexual abuse, was affirmed, and the case was remanded to the juvenile court for further proceedings.

## CASES CITED

- Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 3d 314 (2009)
- State ex rel. Juv. Dept. v. S.P., 218 Or. App. 131, 178 P.3d 318 (2008)
- State v. Kennedy, 295 Or. 260, 264-68, 666 P.2d 1316 (1983)
- State v. Campbell, 299 Or. 633, 705 P.2d 694 (1985)
- State v. Wyatt, 331 Or. 335, 345-47, 15 P.3d 22 (2000)
- Shields v. Campbell, 277 Or. 71, 77, 559 P.2d 1275 (1977)
- State v. Hitz, 307 Or. 183, 188, 766 P.2d 373 (1988)
- State v. Steen, 346 Or. 143, 155, 206 P.3d 614 (2009)
- State v. Fults, 343 Or. 515, 523, 173 P.3d 822 (2007)
- Clay/Luttrell v. Pay Less Drug Stores, 276 Or. 673, 677, 556 P.2d 125 (1976)
- Ohio v. Roberts, 448 U.S. 56, 66, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980)
- Davis v. Washington, 547 U.S. 813, 822-30, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006)
- State v. Mack, 337 Or. 586, 593-95, 101 P.3d 349 (2004)
- State v. Camarena, 344 Or. 28, 37-41, 176 P.3d 380 (2008)
- White v. Illinois, 502 U.S. 346, 352-57, 112 S. Ct. 736, 116 L. Ed. 2d 848 (1992)
- Bourjaily v. United States, 483 U.S. 171, 173, 183-84, 107 S. Ct. 2775, 97 L. Ed. 2d 144 (1987)
- In re Gault, 387 U.S. 1, 56-57, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967)
- Carey v. Population Services International, 431 U.S. 678, 692 n. 14, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977)
- Giles v. California, 554 U.S. 353, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008)