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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

RAUL CAMEJO,

Petitioner,

v.

CASE NO. 83,909

STATE OF FLORIDA,

Respondent.

_____ /

ON CERTIFIED QUESTION FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

ANSWER BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL
Fla. Bar #397024
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent generally agrees with petitioner's statement of the case and facts, with the following additions. The district court's decision relates the relevant facts and procedural history as follows:

"The state petitions for a writ of certiorari from this court to quash the trial court's interlocutory ruling in a criminal case which ordered the victim of a sexual battery to undergo a psychological evaluation by a named psychiatrist. The order further provides that the report shall be reviewed by the court *in camera*, revealed only to counsel for the state and defense, kept in confidence, and that the court will later determine whether and how the report will be used in the criminal proceeding and trial. Because the defense failed to demonstrate any compelling or extreme circumstances which might have demonstrated a need for the psychological evaluation of the victim, we think the order compelling the victim's examination constitutes a departure from the essential requirements of the law. Accordingly, we grant the writ.

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Quok of DCA
Opinion
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"In this case, the state charged Camejo with one count of sexual battery and one count of battery. It does not intend to use expert psychological testimony regarding the victim's mental or emotional condition in the case below. The defense's motion for a psychological examination does not even assert that the victim is or may be incompetent to testify. Rather, the motion seeks the

examination primarily for the purpose of determining the veracity of the victim's account of the rape and battery. The motion states this case is essentially a swearing match between the victim and Camejo, and therefore determining the victim's credibility is crucial.

"The state disputes respondent's 'swearing contest' characterization of the case. The state argues that there is independent evidence which corroborates the victim's allegations. The doctor who conducted the sexual battery examination was of the opinion that physical injury noted on the outside of the victim's vagina is consistent with forced nonconsensual sexual intercourse. Also, the victim sustained physical injuries to other parts of her body consistent with a violent attack. The state also asserts that the victim reported the crime at the first opportunity to a gas station clerk who observed her in an upset and traumatized state. Finally, the state notes that there was physical damage at the crime scene consistent with a violent attack.

"The motion to compel the victim to undergo a psychological examination listed specific acts of the victim's alleged misconduct, unrelated to this case, for the purpose of establishing her emotional or mental instability. One additional act was that the victim twice telephoned Camejo after she was allegedly raped. However, this could be brought out at the trial by cross-examination or by testimony from Camejo for traditional impeachment purposes.

"The allegations which the defense argued demonstrate the

victim's mental instability were: 1) the victim was arrested for domestic violence after beating her mother; 2) a former boyfriend stated the victim had formed a fantasy future with him; 3) the victim had a previous domestic dispute with another live-in boyfriend resulting in her being beaten; 4) statements of a former boyfriend that the victim was loud and wild when drinking; and 5) that the victim hit her ex-boyfriend's car with a shovel or stick, and on another occasion put a shovel through the windshield of a car belonging to a woman who dated the victim's ex-boyfriend." State v. Camejo, 641 So. 2d 109, 109-110 (Fla. 5th DCA 1994).

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Quote of
DCA opinion.
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After a through examination of the law of this and other states, the district court held:

"In summary, we conclude that Camejo failed to demonstrate any compelling or extreme circumstances which could establish the need for a psychological evaluation of the victim. None of the bad characteristics and acts detailed in the motion provide strong evidence of the victim's psychological propensity to lie. Further, the defense has various alternative means to attack the victim's veracity without resorting to introduction of testimony of an expert based on a psychological examination of the victim. Using the balancing test and considerations set forth in *Maday* and *Delaney*, (*infra*), the victim's interests and rights in this case far outweigh those of Camejo, who will be little prejudiced by denying the examination." State v. Camejo, 641 So. 2d at 113.

Upon motion for rehearing, the district court certified a question of great public importance for resolution by this court.

This court has jurisdiction. In recognition of the concerns expressed in the dissent, and with the knowledge that any decision in this case must necessarily be limited to some extent by its facts, the respondent offers argument that attempts to respond to questions posed by specific issues in this particular case. State v. Camejo, 641 So. 2d at 114 (W. Sharp, Judge, dissenting).

SUMMARY OF ARGUMENT

This court's holding that trial courts are without authority to compel witnesses to submit to an examination of any sort should be reaffirmed in this case. Trial courts have no authority to order sexual abuse victims to undergo psychiatric examinations, especially where, as here, the victim's credibility and not her competency is challenged. There is no common law precedent for such authority, and no constitutional right to pretrial discovery. Court ordered psychiatric evaluations violate the victim's right to privacy as guaranteed by the Florida Constitution. Additionally, such an invasive examination of a person not accused or even suspected of a crime violates the witness's right against unreasonable searches and seizures. Finally, there are compelling policy reasons for protecting witness/victims from invasive examination procedures.

Should this court not accept the state's primary position that no examinations are permitted, then respondent urges this court to adopt the test formulated by the district court. First, no motion by the defense should be entertained unless the state manifests an intent to rely on expert testimony. This psychiatric or other expert testimony must be based upon personal examination of the victim of a sexual assault. The proposed expert testimony must be that the behavior of the victim is consistent with the behaviors of other victims of sexual assault. Only when these three

preconditions are met should a trial court consider ordering a victim in a sexual battery case to be examined by a psychiatrist.

The burden is on the defendant to establish a compelling need or reason for the examination. Only then are the privacy rights of the victim properly balanced against the vague due process interests asserted by the defendant. The factors formulated by the Supreme Courts of Wisconsin and West Virginia provide a useful tool to guide the trial court's consideration of this extraordinary request.

Even assuming that trial courts possess the authority to order a psychological examination, all authorities agree that the court does not have the power to compel the witness to submit to an examination. Moreover, the state contends that this authority is limited to an evaluation submitted for *in camera* review to assist the trial court in determining the witness's competency to testify. The remedy to the defendant should the victim refuse to comply is to exclude the state's psychological experts from testifying. The victim will still be able to testify, subject to vigorous cross-examination that enables the jury to consider credibility and veracity.

As in most matters, the ruling of the trial court should be reviewed on appeal pursuant to an abuse of discretion standard.

ARGUMENT

COURTS ARE WITHOUT AUTHORITY TO ORDER THE VICTIM IN A SEXUAL BATTERY CASE TO UNDERGO PSYCHOLOGICAL EXAMINATION. ALTERNATIVELY, IF THIS AUTHORITY EXISTS, THE TEST EMPLOYED BY THE DECISION BELOW SHOULD BE ADOPTED BY THIS COURT.

At the outset, the state emphasizes that at issue in this case is the victim's credibility or veracity, and not her mental competency. As will be discussed later in this brief, these two concepts are distinctly different. Many of the authorities relied upon by Camejo and his *amicus curiae* concern competency and not credibility. Credibility is a jury question, but competency to testify is a question for the trial judge to determine. Thomas v. State, 73 Fla. 115, 74 So. 1 (1917); Kentucky v. Stincer, 482 U.S. 730 (1987). If the trial court finds that a witness is presently incompetent to testify, the witness is excluded. There is no comparable procedure to determine a witness's veracity. Credibility is always a jury question and does not require expert testimony for the jury to gauge whether the witness is telling the truth. Knight v. State, 97 So. 2d 115 (1957); Glendening v. State, 536 So. 2d 212 (Fla. 1988). For centuries, cross examination has been the method for testing whether a witness's testimony is true or false.

Two other preliminary points are especially germane to this proceeding. First, the state does not intend to rely on any psychological expert testimony based upon a personal interview of

the victim. There is no battle of the experts, but rather, a unilateral attempt by the defense to present expert testimony that the victim has a psychological propensity to lie. Second, all of the facts relied upon by Camejo in support of his request to have the victim examined are available for use on cross examination, subject to relevancy and other evidentiary rules. The jury will presumably hear all of the evidence the defense believes adversely affects the victim's credibility. At issue here is whether the defense may present additional testimony in the form of an expert to offer an opinion on the witness's lack of credibility.

Although acknowledging several district court decisions¹ which seem to hold that trial courts possess the authority to order a witness to undergo a psychological examination, the state questions whether such authority exists. This court held in State v. Smith, 260 So. 2d 489, 491 (Fla. 1972), that there was no authority to compel witnesses to submit to examinations "of any sort."

No right is held more sacred, or is more carefully guarded, by the common law, than the right of an individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. The common law does not authorize a court to require the physical examination of a witness, because discovery in criminal cases was unknown at common law....Nothing contained in these rules (of

¹See, e.g., State v. Coe, 521 So. 2d 373 (Fla. 2d DCA 1988); Dinkins v. State, 244 So. 2d 148 (Fla. 4th DCA 1971).

procedure) purports to authorize a trial court to grant a motion compelling witnesses to submit to a physical examination of any sort. Id. (citations omitted).

The decision continued to state, in *dicta*, that even assuming that "in some rare instance, justice may require some type of physical examination of a witness, more must be shown than in the case *sub judice*." Id. This case was decided long before the Florida Constitution was amended to grant citizens of this state the right to privacy. Art. I, Sec. 23, Fla. Const. The legal underpinnings for Smith are even stronger now. Moreover, several district courts have reaffirmed the vitality of the holding in Smith that no right exists to have victims or witnesses undergo examination.

The Supreme Court's strong language in *Smith* must be looked upon as a firm warning to those who would feel moved to lead the jurisprudence of our state into uncharted waters by creating, via spontaneous generation, a criminal defense right to have crime victims or witnesses subjected to physical examinations. State v. Diamond, 553 So. 2d 1185, 1194 (Fla. 1st DCA 1988) (J. Nimmons, concurring).

See also, Bartlett v. Hamwi, 626 So. 2d 1040 (Fla. 4th DCA 1993); State v. Kuntsman, 19 Fla. L. Weekly D 2161 (Fla. 3d DCA October 12, 1994). The respondent requests this court to reaffirm its holding in Smith that no right exists to have crime victims or witnesses subjected to examinations of any kind.

There is no federal constitutional right to pretrial discovery

in a criminal case. United States v. Gates, 10 F. 3d 765 (11th Cir. 1994); Weatherford v. Bursey, 429 U.S. 545 (1977). Nor is a right to discovery found in the Florida Constitution. Cuciak v. State, 410 So. 2d 916, 919 (Fla. 1982) (J. Alderman, concurring); State v. Diamond, *supra*. Before the adoption of the discovery rule, the concept of discovery was "a complete and utter stranger to criminal proceedings." State v. Lampp, 155 So. 2d 10, 12 (2d DCA 1963), dismissed, 166 So. 2d 891 (Fla. 1964). The only limitation on the broad statement that there is no constitutional right to discovery is embodied in Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, which is not at issue here.

The constitutional right deemed "obvious" by *amicus curiae* is satisfied by full and fair cross examination at trial; the right of confrontation is exercised at trial and does not embody any right to pretrial discovery. Pennsylvania v. Ritchie, 480 U.S. 39 (1987). Where, as here, the information alleged to form the basis for the necessity of a psychiatric examination are available for use in cross examination, the defendant's rights are fully honored. United States v. Gates, *supra*; compare, United States v. Lindstrom, 698 F. 2d 1154 (11th Cir. 1983) (Two or three narrowly framed questions is not full and fair cross examination on issue of competency.); see also, United States v. Khoury, 901 F. 2d 948, 966 n. 17 (11th Cir. 1990).

Nor do the rules of discovery grant a defendant the right to request a witness to undergo a psychiatric evaluation. The general rule permitting discovery "as justice may require" does not permit

an invasion of the witness/victim's constitutional rights. Bartlett v. Hamwi, 626 So. 2d 1040 (Fla. 4th DCA 1993). As a matter of law, the usefulness of a compelled psychological examination is outweighed by the unnecessary annoyance and embarrassment to the victim. Fla. R. Crim. P. 3.220(e).

When evaluating any constitutional claim, the Florida Constitution has primacy, and this court must first examine the rights of the respective parties relative to the state constitution. Traylor v. State, 596 So. 2d 957, 963 (Fla. 1992). This court is bound to construe the Declaration of Rights in order to achieve individual freedom and autonomy. Id. The state contends that the victim's right to privacy and right to be free from unreasonable searches and seizures is violated by ordering her to submit to a psychological examination. Art. I, Sec. 12; Art. I, Sec. 23, Fla. Const.

The state has standing to assert the victim's constitutional rights in this case because it stands to lose from the outcome and yet has no other effective avenue for preserving its rights. Jones v. State, 640 So. 2d 1084 (Fla. 1994). Moreover, as noted by the decision below, the victim in this case was not given notice of the hearing. State v. Camejo, 641 So. 2d 109, n. 1 (Fla. 5th DCA 1994); see also, State v. Farr, 558 So. 2d 437 (Fla. 4th DCA 1990).

Article I, Section 23 of the Florida Constitution provides in part that "Every natural person has the right to be free from governmental intrusion into his private life except as otherwise provided herein." There can be no question that a psychological

examination is an intrusion into the most private aspect of a person's life. The state contends that the victim's right to privacy is violated by compelling psychiatric examinations where mental competence is not at issue.

Not only is the victim's right to privacy violated when a trial court compels psychiatric examination, the victim's right to be free from unreasonable searches and seizures is also ignored by such an order. Art. I, sec. 12, Fla. Const. Witnesses are not accused or even suspected of a crime, and yet are compelled to undergo invasive searches of the mind. This constitutes an unreasonable search forbidden by the state and federal constitutions. See, Skinner v. Railway Labor Executives Ass'n., 489 U.S. 602 (1989); see also, A Fourth Amendment Approach to Compulsory Physical Examinations of Sex Offense Victims, 57 U. Chi. L. Rev. 873 (1990). The Supreme Court of South Carolina held that no authority exists to order a witness to undergo psychiatric examination on this ground. State v. Register, 419 S.E. 2d 771 (S.C. 1992). See also, Bartlett v. Hamwi, 626 So. 2d 1040 (Fla. 4th DCA 1993).

The victims of crimes should have at the very least the same rights against unreasonable governmental searches as a person accused of a crime. Under the discovery rules, examinations are not permitted on a defendant until after he or she is formally charged with a crime. Fla. R. Crim. P. 3.220(c). This discovery rule is still subject to constitutional limitations. See, Hayes v. Florida, 470 U.S. 811 (1985). Without a finding of probable cause

of involvement in a crime, a defendant cannot be compelled to undergo examination or testing. See e.g., Saracusa v. State, 528 So. 2d 520 (Fla. 4th DCA 1988). Without probable cause that the victim is involved in a crime, a compelled physical or psychological examinations is an unreasonable search and seizure.

Pursuant to Traylor, the victim's constitutional rights to privacy and freedom from unreasonable searches must be construed to achieve individual freedom and autonomy. Victims of crime are afforded a unique status by the state constitution and statutes. Art. I, Sec. 16(b); Chapter 960, Fla. Stat. (1993). Reaffirmation of the holding of Smith prohibiting any examination adheres to these principles.

The more enlightened, if minority rule is to not permit compelled examinations of sexual abuse victims. In State v. Gabrielson, 464 N.W. 2d 434 (Iowa 1990), the Supreme Court of Iowa held that courts have no authority to order sexual abuse victims to undergo psychiatric examinations. As noted by this court in Smith, there is no statutory or common law authority granting such authority. The Iowa court noted that rape-shield statutes have been formulated to lessen the hardships victims of sexual battery must endure. Society has a need to protect these victims and encourage the reporting of crimes. Any possible benefit to the defendant was outweighed by the resulting invasion of privacy of the victim. The state urges this court to adopt this persuasive authority.

In addition to honoring the constitutional rights of the

victim, there are several policy reasons for an absolute rule forbidding psychiatric examinations. All authorities agree that even if a court has the authority to allow a psychiatric examination of the victim, the court has no power to compel the victim to submit to such an evaluation. See, Dinkins v. State, supra; 45 A.L.R. 4th 310, 315 (1986). This leaves the trial court in the awkward position of having no power to enforce its order. The sole remedy fashioned for this situation is to exclude the state's psychiatric expert from testifying. The victim is still able to testify and the jury judges the witness's testimony as usual. Second, the modern trend embodied in rape-shield statutes to lessen the attack upon the victim of sexual abuse is frustrated by forcing the victim to undergo the invasive and embarrassing examination. A psychiatric examination of the complaining witness in a sexual battery case "...is based on outmoded notions of the instability and duplicity of women in general and, as such, should be discarded altogether." State v. Camejo, 641 So. 2d at 111, quoting State v. Romero, 94 N.M. 22, 606 P. 2d 763 (1988). The state's interest in having crimes reported is obviously lessened for a crime which already has an historically low reporting rate if the victim knows a court ordered psychiatric examination is possible, even likely.²

Finally, as noted by the decision below, this rule would "open

²In reaction to a decision by this court permitting a witness/victim to be evaluated by a psychiatrist, the state suggests that defense attorneys will routinely be making such a request to deflect claims of ineffective assistance of counsel.

the door to experts determining what testimony was credible in virtually all criminal prosecutions." State v. Camejo, 641 So. 2d at 113. This battle of the experts on a witness's credibility would not be limited to criminal cases; there is no distinction between criminal and civil cases for competency, and presumably, credibility as well. See, Section 914.07, Florida Statutes (1993); Hackman v. Hyland, 444 So. 2d 1079 (Fla. 3d DCA 1984). This court should halt the slide down this slippery slope.

This court's holding that trial courts are without authority to compel witnesses to submit to an examination of any sort should be reaffirmed in this case. Trial courts have no authority to order sexual abuse victims to undergo psychiatric examinations, especially where, as here, the victim's credibility and not her competency is challenged. There is no common law precedent for such authority, and no constitutional right to pretrial discovery. Court ordered psychiatric evaluations violate the victim's right to privacy as guaranteed by the Florida Constitution. Additionally, such an invasive examination of a person not accused or even suspected of a crime violates the witness's right to be free from unreasonable searches. Finally, there are compelling policy reasons for protecting witness/victims from invasive examinations.

Should this court not accept the state's primary position that no examinations are permitted, then respondent urges this court to adopt the standards formulated by the district court. Camejo and the state agree that the test formulated by the district court are

"...certainly factors to be considered...all relevant factors should be considered." (Initial Brief, p. 10)³ This test properly balances the rights of the respective parties.⁴

If the trial court has the authority to order a witness to undergo psychological evaluation, such authority only exists to assist the trial judge to determine whether the witness is competent to testify. An *in camera* examination of the resulting report would be conducted by the judge. If the witness refuses to submit to an evaluation, the court must still determine the witness's competency to testify without the benefit of expert opinion, and may exclude the witness from testifying altogether. Either way, the defense is not entitled to review the witness's psychological evaluation.

The state reiterates the observation that at issue in this case is the witness's credibility or veracity and not her mental competency or competency as a witness. Credibility is a jury question, and expert opinions are not admissible to aid the jury in determining whether a witness is telling the truth. See generally, Glendening v. State, 536 So. 2d 212 (Fla. 1988); Knight v. State, 97 So. 2d 115 (1957). Under no circumstances should a psychological evaluation of a witness be permitted to determine whether their trial testimony is true or false because the result

³Camejo contends that the evidence presented in this case satisfied this or any test and on this point the parties disagree.

⁴The position advanced by the *amicus curiae* to lessen the standard fails to recognize that there are any competing rights to be balanced and is too extreme to warrant serious consideration or discussion.

of such an invasive procedure would be inadmissible.

Conversely, competency is a question for the trial court to determine. At issue is the witness's competency as a witness and not mental competency. There are differences between these two concepts. The Florida Evidence Code provides that all persons are competent to be a witness, except as otherwise provided by statute. Sec. 90.601, Fla. Stat. (1993). Other statutes provide that witnesses must appreciate an oath, must have personal knowledge, and must be capable of expressing themselves. Secs. 90.603, 90.604, 90.605 Fla. Stats. (1993). Competence as a witness is fixed at the time the person is offered as a witness, and not when the facts testified to occurred. Rivet v. State, 556 So. 2d 521 (Fla. 5th DCA 1990). Therefore, a mentally incompetent person could testify in a lucid interval, so long as they satisfy the statutory tests for competency as a witness. See, Ehrhardt, Florida Evidence, Sec. 603.1 (1994).

Unlike credibility, the determination of whether a witness is competent to testify is for the trial judge. Thomas v. State, 73 Fla. 115, 74 So. 1 (1917); Kentucky v. Stincer, 482 U.S. 730 (1987). When the competency of a witness is challenged during the trial, the only appellate decisions addressing the issue will be upon a finding that the witness is competent to testify because the state would have no avenue of review should the witness be excluded after the jury is sworn. Given that the standard of review is manifest abuse of discretion, it is predictable that the trial court's determination is always upheld. See, Kaelin v. State, 410

So. 2d 1355 (Fla. 4th DCA 1982); Williams v. State, 400 So. 2d 471 (5th DCA), aff'd. 406 So. 2d 1115 (Fla. 1981). Competency of a witness is an issue "...peculiarity within the discretion of the trial judge...(as it is) not fully portrayed by a base record." Swain v. State, 172 So. 2d 3,4 (Fla. 3d DCA 1965).

Although certainly far afield from the issues presented by this case, the state suggests that the trial court may have the authority to order a witness to undergo an evaluation to assist the court in determining whether the witness is competent to testify. However, no power to compel the witness to submit exists. Should the witness refuse to be evaluated, then the trial court must resolve the issue of competency without the assistance of experts. Should the witness submit voluntarily to the court order, then the results of any such evaluation should be reviewed by the trial court and not given to the parties. See and compare, Pennsylvania v. Ritchie, supra.

There is one Florida case which permits a expert to present an opinion on a testifying witness's competency, namely, Goldstein v. State, 447 So. 2d 903 (Fla. 4th DCA 1984). However, the state notes that this decision distinguishes cases such as this where credibility is at issue as expert testimony on credibility is inadmissible as improper bolstering. The state further suggests that this case is wrongly decided because competency is a question for the trial judge, and not the jury.

Assuming *arguendo* that the authority exists to order a

witness/victim to undergo a psychological examination, and assuming further that an expert's testimony would be admissible in evidence, the state agrees with Camejo that the multi-factored test adopted by the lower court provides considerations relevant to this issue.

Several conditions must be met before the trial court should entertain a motion to have a witness/victim undergo psychiatric evaluation, according to the district court's analysis. The state must announce its intent to rely on the testimony from its own expert, based upon personal examination of the victim, that in the expert's opinion, the victim's behavior is consistent with the behaviors of victims of sexual assault. It is only when the state relies upon expert testimony resulting from a personal, voluntary psychological examination that the defendant's due process rights are affected.

Once the state manifests its intent to rely on expert testimony, then the defense must present the court with evidence of a compelling need for the examination. The court should consider: 1) the nature of the examination requested and the intrusiveness inherent in that examination; 2) the victim's age; 3) the resulting physical and/or emotional effects of the examination on the victim; 4) the probative value of the examination to the issues before the court; 5) the remoteness in time of the examination to the alleged criminal act; 6) the evidence already available for the defendant's use; and 7) whether a personal interview with the victim is essential to formulation of the expert's opinion. State v. Camejo, 641 So. 2d at 112, quoting State v. Maday, 179 Wis.2d 346, 507 N.W.

2d 365 (Ct. App. 1993); State v. Delaney, 187 W.Va. 212, 417 S. E. 2d 903 (1992); see also, Gray v. State, 640 So. 2d 186 (Fla. 1st DCA 1994) (Adopting Camejo standards).

Should the victim/witness refuse to submit to an evaluation, then the state's expert should be excluded from testifying. State v. Rhone, 566 So. 2d 1367 (Fla. 4th DCA 1990); State v. Diamond, supra. The district court correctly found that in this case, Camejo has failed to sustain his burden of demonstrating a strong and compelling need for a psychological evaluation of the victim.

None of the bad characteristics and acts detailed in the motion provide strong evidence of the victim's psychological propensity to lie. Further, the defense has various alternative means to attack the victim's veracity without resorting to introduction of testimony of an expert based on a psychological examination of the victim. Using the balancing test and considerations set forth in Maday and Delaney, the victim's interests and rights in this case far outweigh those of Camejo, who will be little prejudiced by denying the examination." State v. Camejo, 641 So. 2d at 113.

The state respectfully requests this honorable court to reach the same conclusion and render a decision consistent with the authority announced in Smith, supra.

CONCLUSION

Based upon the foregoing argument and authority, the state respectfully requests this honorable court to affirm the district court's decision in all respects.

Respectfully submitted,

Robert A. Butterworth
Attorney General

Belle B. Turner

Belle B. Turner
Assistant Attorney General
FL Bar No. 397024
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing answer brief has been furnished by U.S. Mail to Lister Witherspoon, counsel for petitioner, at 721 N.W. 14th Court, Miami, FL 33125, and to Louis M. Jepeway, counsel for amicus curiae, at 19 West Flagler Street, Miami, FL 33130, this 9th day of November, 1994.

Belle B. Turner

Belle B. Turner
Assistant Attorney General