

Circuit Court for Allegany County
Case No: C-01-CR-17-000175

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2269

September Term, 2018

LEIGH DANIELLE WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 9, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Leigh Danielle Williams, appellant, was convicted by a jury in the Circuit Court for Allegany County of attempted kidnapping and second-degree assault. On appeal, the appellant contends that the trial court erred in finding that the five-year-old victim, J.E., was competent to testify at trial. We disagree and shall affirm.

In determining a witness's competency, the trial court makes a finding of fact, and we review that finding for clear error. *Jones v. State*, 410 Md. 681, 699 (2009) (applying the “clearly erroneous” standard of review to a competency determination). If the record shows “any competent evidence to support the factual findings of the trial court,” that finding cannot be clearly erroneous. *Goff v. State*, 387 Md. 327, 338 (2005) (internal quotations and citations omitted).

As a threshold matter, in determining the competency of a child, the trial court must determine whether the child understands the difference between the truth and a lie. *See Jones*, 410 Md. at 698-99. The child must also display “a sense of moral responsibility to tell the truth.” *Perry v. State*, 381 Md. 138, 149 (2004). The record reveals competent evidence, sufficient to support the trial court's finding that J.E. understood the difference between the truth and a lie. During an in-camera interview in chambers, J.E. verbally acknowledged that he understood the difference. Additionally, the judge, who was wearing a white shirt, asked J.E. whether it was the truth that he was wearing a red shirt. J.E. correctly responded that it was not the truth. The State also asked J.E. whether it was the truth that he was holding a cat. J.E. correctly responded that it was not the truth. There was also competent evidence that J.E. felt a moral responsibility to tell the truth. J.E.

acknowledged that he would get in trouble if he lied to the trial judge and that he needed to tell the truth to the judge in court. He also stated that he would be able to tell the truth.

Further, in determining the competency of a child, the trial court must also determine the child’s “capacity to observe, understand, recall, and relate happenings.” *Jones*, 410 Md. at 698 (quoting *Jones v. State*, 68 Md. App. 162, 166-67 (1986)). During the in-camera interview in chambers, J.E. displayed a capacity to observe, providing accurate observations of the trial judge’s white shirt and the absence of a cat in chambers. J.E. also demonstrated a capacity to recall. He recalled his age, his school, his grade, his teacher’s name, his favorite thing to do in school, his best friend’s name, what he had learned the prior day in school, and the specifics of a playground game. Finally, J.E. demonstrated a capacity to communicate, including an ability “to understand questions put and to frame and express intelligent answers.” *Id.* (quoting 2 Wigmore, Evidence § 506 (Chadbourn rev. 1979)). The record reveals repeated instances where J.E. was posed a question, comprehended the subject, and delivered a relevant response.

We, therefore, conclude that there was competent evidence on the record sufficient to support the trial court’s finding that J.E. was competent to testify at trial.

The appellant contends, however, that the trial court’s questioning of J.E. was insufficient because it did not address statements made by J.E. in an earlier interview conducted by the Department of Social Services. The appellant, however, had an opportunity to pose questions to J.E. about the prior statements during the in-camera interview in chambers, but did not do so. The appellant also failed to argue that the trial court’s questioning was insufficient despite the court giving counsel the opportunity to

raise issues before a competency decision was rendered. Moreover, as previously described herein, the trial court’s questioning was sufficient to elicit relevant testimony as to J.E.’s competency to testify.

**JUDGMENT OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**