STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of WAYNE JAMES SIIRA, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

WAYNE JAMES SIIRA,

Respondent-Appellant.

UNPUBLISHED
May 19, 2000

No. 212497
Oakland Circuit Court
Family Division
LC No. 97-063836-DL

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Respondent, a juvenile, was adjudicated guilty of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g; MSA 28.788(7), and placed on juvenile probation. He appeals as of right. We affirm.

The complainant, who was fourteen when this incident occurred, is respondent's next door neighbor. They had known one another many years and had been friends. On a September evening in 1997, the complainant was in her backyard bringing her dog in the house. Respondent was in his garage. He called over to the complainant, asking that she talk to him. She went to the fence that separated their yards and they spoke for a few minutes. The complainant turned to leave, taking her dog into the house.

According to the complainant, respondent jumped the fence, approached her from behind and grabbed her around her neck. He demanded a "bj" from the complainant, which she understood to mean a "blow job." She refused, and each time she refused, respondent tightened his grip around her neck. Eventually, the complainant fell to the ground, and the two wrestled for a time. When the complainant was on her back, respondent sat on her knees. She testified that she could not move and that respondent was in control.

She continued to refuse respondent's requests for a blow job. Respondent commented that he could torture her if she would not comply with his request. He put his hand or finger up the eight-inch leg of the complainant's shorts and touched her vaginal area with his finger, over her underwear. After he removed his finger, respondent repeated his request for a blow job two or three more times. The complainant continued to refuse. She eventually freed herself from respondent by hitting him in his chest. She went to another neighbor's home, from where she contacted her sister. Her sister called police.

Respondent admitted to police that he and the complainant had been talking. He said that he jumped the fence to pet her dog. He claimed that he wrestled with the complainant and put her in a scissors hold, squeezing her legs with his legs. At this time, he asked her for a blow job. He told police that, when he got up, he put his hand on the complainant's leg and that his hand might have gone under her shorts and touched her crotch area. The police officer testified that respondent never told him that he asked for a blow job as a joke.

Respondent first argues that his adjudication of responsibility is against the great weight of the evidence. He asserts that the prosecution failed to present sufficient evidence that he had the intent to penetrate the complainant. We disagree.

Where, as here, no motion for new trial challenging the weight of the evidence is brought in the trial court, this Court treats the issue as one involving a challenge to the sufficiency of the evidence. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). In reviewing a claim that the evidence was insufficient to support a conviction, this Court examines the evidence in a light most favorable to the prosecution to determine whether the prosecution presented sufficient evidence to allow a trier of fact to find the accused guilty beyond a reasonable doubt. *Id*.

To prove assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g; MSA 28.788(7), the prosecution must admit evidence (1) of an assault; (2) with a sexual purpose; (3) that the sexual purpose involves some actual entry of the other person's genital or anal openings or an oral sexual act; and (4) aggravating circumstances, such as the use of force or coercion. *People v Santana*, 139 Mich App 484, 497; 363 NW2d 702 (1984). Actual touching is not required, and it is not necessary to demonstrate that the sexual act began or was completed. *Id*.

We find sufficient evidence of intent. Respondent asked the complainant several times for a blow job. He "tortured" the complainant by putting his finger up her shorts and touching her vaginal area, indicating that this is what he would do if she would not comply with his request. During the assault, the complainant thought that respondent truly wanted a blow job, although she indicated that she did not want to believe this because they were friends. The prosecution was not required to show that the act began by offering evidence that respondent reached into his pants or undid his pants, as respondent suggests. By respondent's demands and conduct, his intent to commit oral penetration was sufficiently proven.

Next, respondent argues that the juvenile court made insufficient findings of fact on each of the necessary elements of the offense. We disagree.

The trial court's findings of fact are reviewed for clear error. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997). A finding of fact is clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

Although MCR 2.517(A)(1) does not apply in juvenile proceedings, MCR 5.901, we believe that to "secure fairness, flexibility, and simplicity," and carry out the object of safeguarding the rights and proper interests of the parties, MCR 5.902, the juvenile court should articulate sufficient findings of fact. The purpose of the articulation requirement is to facilitate appellate review. *People v Johnson (On Remand)*, 208 Mich App 137, 141; 526 NW2d 617 (1994). Where it is apparent that the court was aware of, and addressed, the factual issues, remand for additional articulation of those findings is unnecessary if it would not facilitate appellate review. *Id.*

A reading of the juvenile court's findings of fact and conclusions of law demonstrates that it was fully aware of the factual issues. While the juvenile court did not specifically state that respondent's conduct was for a sexual purpose, it is apparent from the facts and the court's recitation of the facts that it found that respondent's conduct was committed for a sexual purpose. Respondent asked for oral sex and touched the complainant in her vaginal area, over her underwear. Respondent admitted that he asked for a blow job. We conclude that remand for further articulation is unnecessary.

Finally, respondent challenges the constitutionality of the Sex Offenders Registration Act, MCL 28.721 *et seq*.; MSA 4.475(1) *et seq*. Respondent argues that the registration requirement is unconstitutional because it does not afford an offender an opportunity for a hearing regarding dangerousness or predatory nature. He also challenges the registration requirement as cruel or unusual punishment. This issue was not raised before the juvenile court. Therefore, it is not preserved for appeal. *People v Hogan*, 225 Mich App 431, 437-438; 571 NW2d 737 (1997).[1]

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens

[1] We note that this Court recently rejected a juvenile respondent's claim that the Sex Offenders Registration Act violates the prohibition against cruel or unusual punishment set forth in the 1963 Const, art 1, § 16. *In re Ayres*, 239 Mich App 8, 10; ___ NW2d ___ (1999).