STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 9, 2008
v	No. 279128 Wayne Circuit Court
DAVID LEE LINDSEY, a/k/a DARRYL TAYLOR, a/k/a KENNY JOHNSON, Defendant-Appellant.	LC No. 07-004705-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of third-degree criminal sexual conduct, MCL 750.520d(1)(b), and was sentenced to seven to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues he was denied the right to a fair trial by the trial court's decision to admit into evidence a poem written by complainant. Defendant claims the poem was inadmissible hearsay. Because we conclude that the poem was not admitted to prove the truth of the things asserted, and because defendant fails to show that he was prejudiced in the matter, we disagree. Defendant additionally argues that he is entitled to a new trial because the trial court articulated insufficient findings of fact and conclusions of law. Because the entire record shows that the trial judge was aware of the issues in the case, and correctly applied the law, we again disagree.

The minor complainant testified that, early in September 2006, while in the back sitting room of his foster mother's home with defendant, defendant exposed himself to complainant and demanded that complainant perform oral sex on him. Out of fear, complainant complied. Complainant's English teacher testified that, in response to an assignment, complainant wrote a poem in late September whose contents led her to speak with complainant and the school's social workers. Defense counsel objected to the poem's admission; however, after determining that complainant's credibility and motivation were at issue, the trial court asked the teacher to read the poem into the record.

MRE 801(d)(1)(B) provides that a statement is not hearsay if "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and is offered to rebut an express or

implied charge against the declarant of recent fabrication or improper influence or motive." In this case, the trial court's expressed concern for complainant's credibility and motivation indicates that the poem was admitted under this exemption, and thus not for the truth of the matters asserted. Complainant testified at trial that defendant sexually assaulted him, complainant was subject to cross-examination regarding the poem, and the poem was consistent with his competent testimony. For these reasons, the poem was not hearsay, as defined by the rules of evidence, and its admission was not error.

Moreover, even though the parts of a poem indicating that a man had imposed some distressing aggression on complainant in the month of September were potentially prejudicial, we are confident that the trial judge, sitting as the trier of fact, was able to properly consider of that evidence. Preserved, nonconstitutional error does not require reversal "unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). Because the information in the challenged poem was, at worst, cumulative to complainant's competent testimony, any prejudice defendant might have suffered was minimal.

Continuing to the second issue on appeal, the factual findings of a trial court will not be disturbed unless clearly erroneous. See MCR 2.613(C); *People v Hesch*, 278 Mich App 188, 192; 749 NW2d 267 (2008). A finding is clearly erroneous if, after a review of the entire record, the appellate court is "left with a definite and firm conviction that a mistake has been made." *Id.*

Where a court tries an action without a jury, the court is obliged to "find the facts specially," and "state separately its conclusions of law." MCR 2.517(A)(1). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts." MCR 2.517(A)(2). Findings of fact are sufficient if it appears from the entire record that the trial court was aware of the issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134-35; 494 NW2d 797 (1992). Having reviewed the record as a whole, we conclude that the trial court correctly applied the facts asserted to the correct law. We note that the trial court took special care to ensure it fully understood defense counsel's arguments, and expressly rejected the defense theory that complainant was seeking revenge. We further note that the court gave thorough consideration to deciding whether to admit the challenged poem. It is clear that the trial court's ultimate conclusions were neither arbitrary nor based on prejudice. For these reasons, we conclude that defendant suffered no prejudice from the trial judge's limited statements of factual findings and legal conclusions, and is not entitled to a new trial or a remand for further fact-finding.

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio