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Division III
State of Washington

94206-4
Supreme Court No. ____
(COA No. 33568-2-III)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL F.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR OKANAGAN COUNTY

PETITION FOR REVIEW

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Parker, Shannon, *Branded For Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 Va. J. Soc. Pol'y & L. 167 (2014) 10
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A. IDENTITY OF PETITIONER

Michael F., petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Michael seeks review of the Court of Appeals decision dated January 31, 2016, a copy of which is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Whether a trial court must analyze knowledge from the perspective of a "reasonable child" when knowledge is an essential element of the charged crime against the juvenile.

2. Whether state and federal due process requires juveniles to be afforded the right to a jury trial when they are accused of crimes.

D. STATEMENT OF THE CASE

Michael was a sophomore at Okanagan Valley High School on Christmas break when he and his old girlfriend M.B. texted about "hanging out." RP 24. M.B. came over to be with Michael while he and his friend S.B. played video games. RP 26. M.B. and Michael hugged and Michael gave M.B. a kiss when she left. RP 26-27.

M.B. and Michael had been boyfriend and girlfriend in eighth grade for about six months. RP 20. While they had initially been distant

with each other after the break up, they had become friends again. RP 22. As sophomores, they shared many of the same friends. RP 22.

The two continued to text while M.B. went to work at the movie theater. RP 27. M.B. agreed to meet the boys after her shift. RP 27-28. The two boys met M.B. at the fire hall where they waited in her car for A.W. to show up and let them in so they could play pool. RP 29. When A.W. arrived, Michael and M.B. decided to drive to the empty lot where Food Depot had been until it closed down. RP 30; RP 31.

Both Michael and M.B. agreed that after M.B. parked the car, Michael tried to hug and kiss her. RP 32. She said she resisted, knowing he had a girlfriend and that she was interested in another boy in the class. RP 41. Michael stated he stopped when M.B. said she was not interested in hugging and kissing him. RP 159, RP 136. Michael told both the police and the court he never touched her vagina or breasts. RP 163, RP 136. He denied forcing himself upon her. RP 163.

M.B. testified Michael had continued to touch her after she told him to stop, first on her leg and then on her vagina, over and under her clothing. RP 32, RP 37-39. She said he licked and bit her breasts over her bra. RP 39. She said she was unable to resist because of her size and because Michael had pushed her up against the car door. RP 40. She testified Michael told her when she told him to stop that it did not matter

how many times she said no, he would continue to force himself upon her. RP 41. No penetration occurred. RP 38.

Both Michael and M.B. agree M.B. then took Michael back to the fire hall. RP 42-43. She left to go home. RP 80.

M.B. did not tell anyone about what had happened until school started again, two weeks later. RP 47. After M.B. had told her friend C.F. her version of what had happened, C.F. asked Michael about it. RP 118. Michael told C.F. he felt bad about what had happened. RP 119. He said he had not been thinking with his head when he tried to be with M.B. RP 120. He assured C.F. he did not go "all the way." RP 120.

After M.B.'s grandmother heard the story, she called the police. RP 87. Michael was arrested for indecent liberties and gave a statement to the police consistent with his testimony before the court. RP 133.

The court found Michael guilty of indecent liberties with forcible compulsion. RP 186, CP 25.

E. ARGUMENT

1. REVIEW SHOULD BE GRANTED TO ADDRESS THE ROLE YOUTHFULNESS PLAYS WHEN KNOWLEDGE IS AN ELEMENT OF THE CHARGED OFFENSE.

The Court of Appeals found that because Michael had actual knowledge of the elements of the charged offense, it did not need to address whether the trial court should have applied a reasonable child

standard. Slip Op. at 5. And while the Court does not distinguish between how a seven-year-old and a fifteen-year-old understand what "no" means, the Court does not apply the same analysis to the differences between how an adult and a child understand the meaning of this word. Slip Op. at 7.

This analysis conflicts with the growing jurisprudence from this Court and the United States Supreme Court. RAP 13.4(b). Both courts have recognized the importance of youth in determining culpability. The reasonable child standard should have been applied to Michael. When Michael was accused of indecent liberties, he was a sophomore who hung out with his friends, played video games, and text messaged. Michael lacks the maturity and experience of an adult. *J.D.B. v. North Carolina*, 564 U.S. 261, 273, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). He has less ability to control his emotions, identify consequences, and make reasoned decisions. *State v. O'Dell*, 183 Wn.2d 680, 688, 358 P.3d 359 (2015).

Review should be granted to address whether Michael's age must be considered in determining his culpability and whether he knowingly committed indecent liberties and because the decision of the Court of Appeals conflicts with state and federal jurisprudence. *See J.D.B.*, 564 U.S. at 277; *O'Dell*, 183 Wn.2d at 688.

a. Michael's youthfulness must be considered in determining whether he had the knowledge to commit indecent liberties.

J.D.B. acknowledges a fact the non-judicial world has understood for a long time: children do not have the education, judgment, and experience of adults. *See J.D.B.*, 564 U.S. at 272. Children are not simply "miniature adults." *Id.* at 274 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). Children lack the maturity to understand and make decisions that adults take for granted. These observations restate what "any parent knows – indeed what any person knows – about children generally." *Id.* at 2403 (citing *Roper v. Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)). They are constitutionally different from adults in their level of culpability. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

The United States Supreme Court has made clear courts must examine youthful culpability differently from that of an adult. *See Montgomery*, 136 S. Ct. at 736; *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012); *J.D.B.*, 564 U.S. at 273; *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Roper*, 543 U.S. at 569. Children cannot be held to the same

standards as adults. *J.D.B.*, 564 U.S. at 273-74. Courts must take youth into consideration when determining a child's culpability.

This Court has also acknowledged children must be treated differently. In *O'Dell*, this Court even recognized youthfulness must be considered for persons who were over the age of eighteen at their sentencings. 183 Wn.2d at 688. This Court recognizes age is a mitigating factor must be examined when children are sentenced. *Id.* at 366.

This is especially true for sex offenses because of the role youthfulness plays in deciding if a child has knowledge of the wrongfulness of a criminal act. *See, e.g., State v. J.P.S.*, 135 Wn.2d 34, 39, 954 P.2d 894 (1998). For very young children, this Court has recognized the difficulty there is in proving the child understood the wrongfulness of the act. *Id.* at 43 (citing *State v. Linares*, 75 Wn. App. 404, 414, n. 12, 880 P.2d 550 (1994); *State v. J.F.*, 87 Wn. App. 787, 790, 943 P.2d 303 (1997); *State v. Erika D.W.*, 85 Wn. App. 601, 607, 934 P.2d 704 (1997)).

b. By failing to address Michael's youthfulness, the prosecution failed to establish Michael knowingly committed indecent liberties.

The Court of Appeals opinion conflicts with this jurisprudence. This Court should grant review to determine Michael's culpability is diminished because of his age. This conflict justifies review. RAP 13.4(b).

Knowledge is an essential element of indecent liberties with forcible compulsion. RCW 9A.44.100(1)(a); *State v. Lough*, 70 Wn. App. 302, 325, 853 P.2d 920 (1993), *aff'd*, 125 Wn.2d 847 (1995).

Knowledge requires a finding that the person is either (i) aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (ii) has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense. RCW 9A.08.010(1)(b). Our courts have consistently analyzed knowledge from the perspective of a reasonable person. *See, e.g., State v. Stribling*, 164 Wn. App. 867, 875, 267 P.3d 403 (2011); *State v. Shipp*, 93 Wn.2d 510, 516, 610 P.2d 1322 (1980).

Although the Court of Appeals determined Michael had actual knowledge of his misconduct, this Court should not so quickly conclude likewise. Even before the Supreme Court's sea change with respect to its interpretation of youthfulness, Washington had held that "the juvenile status of a defendant is part of his situation and relevant to a determination of whether he acted reasonably" when analyzing recklessness. *State v. Marshall*, 39 Wn. App. 180, 183, 692 P.2d 855 (1984). This same standard has been applied to negligence. *See, e.g., Bauman by Chapman v. Crawford*, 104 Wn.2d 241, 248, 704 P.2d 1181 (1985) (en banc). Review should be granted to clarify the same standard applies to knowledge. To

ignore Michael's age in determining the reasonableness of his actions is "nonsensical." *J.D.B.*, 564 U.S. at 275.

While the Court of Appeals applied a strict standard when a person says "no," this court has held otherwise. In *State v. W.R., Jr.*, this Court held consent negates the mens rea element of forcible compulsion. 181 Wn.2d 757, 764, 336 P.3d 1134 (2014). Again, while the conduct described by M.B. likely makes out an offense for an adult, the same cannot be said for a child. Without an analysis of the role youth plays in the understanding of consent, this Court cannot be satisfied that Michael was properly convicted.

Applying the knowledge element to adults is straightforward. An adult has developed the experience and maturity to know when their conflict is unlawful. The same is not true for children, especially when the child is accused of a sex offense. *J.P.S.*, 135 Wn.2d at 39. For Michael, there were many reasons why he would not have known he was committing indecent liberties. Michael had a previous relationship with M.B., which involved hugging and kissing. RP 151. M.B. drove the two of them to a dark and empty parking lot. RP 30. They had hugged and he had kissed her earlier in the evening. RP6-27. They had engaged in text-messaging earlier in the evening. RP 27.

Michael's conduct is consistent with that of a reasonable child. Michael tried to have sexual contact with M.B., but never attempted to penetrate her body. RP 38. While an adult may have understood that the behavior M.B. and Michael engaged in before the two parked did not justify attempting to have sexual contact, the answer is not so clear for a sixteen-year-old boy. This is not the actual knowledge the Court of Appeals identified in denying Michael's appeal. Slip Op. at 6.

This analysis is consistent with social science. Children do not understand the consequences of their actions when they engage in sexual activity. Robin D'Antona, *Sexting, Texting, Cyberbullying and Keeping Youth Safe Online*, 6 J. Soc. Sci. 523, 524 (2010). Scholars and researchers have consistently reported that sexual exploration is a healthy part of adolescent development. Susan S. Kuo, *A Little Privacy, Please: Should We Punish Parents for Teenage Sex?*, 89 Ky. L.J. 135, 136 (2001) (citing Philip G. Zimbardo, Psychology and Life (13th ed. 1992)). Children are not predatory like adults. Timothy E. Wind, *The Quandary of Megan's Law: When the Child Sex Offender Is a Child*, 37 J. Marshall L. Rev. 73, 113 (2003); Nastassia Walsh & Tracy Velazquez, *Registering Harm: The Adam Walsh Act and Juvenile Sex Offender Registration*, The Champion, Dec. 2009, at 20, 22 (citing Nat'l Ctr. on Sexual Behav. of Youth, Ctr. for Sex Offender Mgmt. (CSOM) & Office of Juvenile Justice and

Delinquency Prevention, *Juveniles Who Have Sexually Offended: A Review of the Professional Literature Report* (2001)). They have a low rate of recidivism (between 2-14%) and are unlikely to become adult sex offenders. Shannon Parker, *Branded For Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 Va. J. Soc. Pol'y & L. 167, 188 (2014).

Michael's actions must be analyzed with respect to the child he is. Like all children, he lacks the maturity, understanding and education to fully understand his actions. The Court of Appeals failed to make this analysis. Because its decision conflicts with decisions from this Court and the United States Supreme Court, review should be granted. RAP 13.4(b).

2. REVIEW SHOULD BE GRANTED TO ADDRESS WHETHER RECENT DECISIONS OF THIS COURT WITH RESPECT TO THE RIGHTS OF JUVENILES REQUIRES JUVENILES TO BE PROVIDED WITH THE RIGHT TO A JURY.

Review should also be granted on the question of whether Michael was entitled to a jury trial. While the Court of Appeals denied Michael's request for relief, the court did not disagree with his observations. Slip Op. at 7. Instead, the court recognized a higher court was in a better position to address this issue. *Id.* This Court should accept that invitation and find RAP 13.4(b) justifies review. This is a significant question of law under

the state and federal constitutions and involves an issue of substantial public interest. RAP 13.4(b).

Children charged with crimes in Washington had the right to a jury trial until it was taken away from them by the legislature who determined the primary purpose of juvenile court was rehabilitation and the primary purpose of adult court was accountability. *See* Ch. 18, § 2, 1905 Wash. Laws (repealed, 1937); RCW 13.40 (Juvenile Justice Act of 1977). This Court has said that should the juvenile system become sufficiently like the adult criminal system, the right to a jury for juveniles should be restored. *See, e.g., State v. Lawley*, 91 Wn.2d 654, 591 P.2d 772 (1979); *Monroe v. Soliz*, 132 Wn.2d 414, 939 P.2d 205 (1997); *see also* Code of 1881, ch. 87, § 1078; *State v. Chavez*, 163 Wn.2d 262, 274, 180 P.3d 1250 (2008).

The distinction between the courts has eroded. Juveniles like Michael face significant consequences from their convictions. Adults are now able to avoid criminal convictions when they are able to demonstrate their rehabilitation. With a virtually non-existent distinction between the courts, this Court should grant review to determine whether the right to a jury should be restored for Michael.

a. Juvenile court provides insufficient protection to justify denying Michael his right to a jury trial.

The goals of the adult and juvenile systems have reached similar balances in terms of punishment and rehabilitation. The juvenile court system has become more punitive while the adult system has focused upon rehabilitation. *In re L.M.*, 286 Kan. 460, 460, 186 P.3d 164 (Kan. 2008) This Court should take review to determine whether the failure to provide Michael with jury trial rights violated his due process.

i. <u>The advantages of remaining in juvenile court have decreased.</u>

Juveniles like Michael increasingly find themselves sentenced much like adults. Juvenile sentences have been lengthened and the legislature has added a "clearly too lenient" aggravating factor to allow manifest injustice sentences. RCW 13.40.230(2). Although courts distinguish between an "adjudication" and a "conviction," this distinction is not apparent in the code. *See* RCW 13.04.011(1); *see also In re Det. of Anderson*, 185 Wn.2d 79, 85-86, 368 P.3d 162 (2016) (citing the lack of a distinction between RCW 13.40.077, RCW 13.40.215(5); RCW13.40.480, RCW 13.50.260(4); and JuCR 7.12(c)-(d)).

This is apparent in the true life consequences Michael must deal with. Michael is required to provide the court with his personal data, including his DNA and fingerprints. RCW 43.43.754, RCW 43.43.735. No

restrictions exist on the dissemination of his record. RCW 10.97.050. Background checks apply equally to him as to an adult. RCW 43.43.830(6).

Michael must register as a sex offender. RCW 9A.44.130. While Michael has a greater ability to be removed from the registration list than an adult, there it is no guarantee he will be. *See* RCW 9A.44.143(2). Notice must be provided to law enforcement and to the schools Michael attends. RCW 13.40.215. The Department of Justice maintains an easily searchable national registry of sex offenders, including those convicted in juvenile court. *See* U.S. Dep't of Justice, *Dru Sjodin National Sex Offender Public Website*.[1]

Michael may be involuntarily committed without ever committing an adult sex offense. *See, e.g., Anderson*, 185 Wn.2d at 93. Recognizing many of the provisions in RCW 71.09 do not differentiate between youth and adults, this Court found they "nevertheless clearly apply to both." Id.

Youth convicted in juvenile court may be housed in adult prisons. RCW 13.40.280. Likewise, juveniles who are tried in adult court with the right to a jury trial, may serve their sentences in a juvenile facility until they are twenty one. RCW 72.01.410.

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[1] Available at https://www.nsopw.gov/en.

Michael's record will never be sealed. RCW 13.50.260(1). Even when sealing was made easier for juvenile offenders in 2015, children like Michael were exempted. RCW 13.50.260(4). For an indecent liberties conviction which was "actually committed" with forcible compulsion, sealing is not available. RCW 13.50.260(4).

ii. Adult courts are adopting a more rehabilitative model for offenders.

Meanwhile, adult courts increasingly act to rehabilitate defendants. Therapeutic courts have been created with the purpose of rehabilitation. RCW 2.30.010. These courts are intended to rehabilitate, focusing on addiction, domestic violence, mental health, and veterans. Washington Courts, *Drug Courts & Other Therapeutic Courts*.[2]

Every rehabilitative program created in juvenile court has an equivalent in adult court. Alternative sentences exist for juvenile and adult sex offenders and those with drug dependency. RCW 13.40.160; RCW 9.94A.670; RCW 13.40.0357; RCW 13.40.165. Diversion and deferred sentences are also available for both juveniles and adults. RCW 13.40.070; RCW 13.40.127; RCW 35.50.255; RCW 3.66.068; RCW 3.50.330; RCW 10.05; see also *LEAD, Law Enforcement Assisted Diversion*.[3]

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[2] Available at https://www.courts.wa.gov/court_dir/?fa=court_dir.psc.
[3] Available at http://leadkingcounty.org/.

Minors and young persons who are tried in adult court with the right to a jury trial can be sentenced as if they were juveniles, even when jurisdiction lapses. *State v. Maynard*, 183 Wn.2d 253, 264, 351 P.3d 159 (2015). Even where a young person over eighteen is prosecuted in adult court, youthfulness is a factor the court may consider. *O'Dell*, 183 Wn.2d at 688.

b. The Sentencing Reform Act conflicts with Michael's lack of a right to a jury trial.

The Sentencing Reform Act increasingly treats juvenile criminal history the same as it does for adult convictions. With no right to a jury, juvenile history should not be scored for adult convictions at all. *See, e.g., Hurst v. Florida*, 577 U.S. ___, 136 S. Ct. 616, 621-22, 193 L. Ed. 2d 504 (2016). The Sixth and Fourteenth Amendments require that each element of a crime be proved to a jury beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. ___, 133 S. Ct. 2151, 2156, 186 L. Ed. 2d 314 (2013); U.S. Const. amend. 6; 14. Facts which expose a person to a greater punishment than that authorized by the jury's guilty verdict is an "element" that must be submitted to a jury. *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). This right has been applied to plea bargains, *Blakely v. Washington*, 542 U.S. 296, 304, 124 S .Ct. 2531, 159 L. Ed. 2d 403 (2004), sentencing guidelines, *United*

States v. Booker, 543 U.S. 220, 230, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), criminal fines, *Southern Union Co. v. United States*, 567 U.S. ___, 132 S. Ct. 2344, 2357, 183 L. Ed. 2d 318 (2012), mandatory minimums, *Alleyne*, 570 U.S., at ___, 133 S. Ct., at 2166 and capital punishment. *Ring v. Arizona*, 536 U.S. 584, 608, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). Prior convictions do not need to be proven to a jury for sentencing purposes because the underlying facts have already been presented to a jury. *State v. Newlum*, 142 Wn. App. 730, 744, 176 P.3d 529 (2008). For Michael, this criminal history will score if he is ever convicted of a future offense because no provision exists to "wash-out" his conviction. RCW 9.94A.525(2)(a).Thus, Michael's adjudication will have a nearly indistinguishable effect from an adult conviction. Yet, unlike an adult conviction, Michael's "adjudication" was obtained without the fundamental protections afforded by a jury.

c. The denial of jury trial rights for children is contrary to the Sixth Amendment.

i. <u>The Sixth Amendment makes no distinction between adults and juveniles.</u>

The Sixth Amendment makes no distinction between adults and juveniles. In fact, at the time of the drafting of the amendment, there was no such distinction. *See* Julian Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 106 (1909).

Most challenges to this system were rebuffed by "insisting that the proceedings were not adversary, but that the State was proceeding as parens patriae." *In Re Gault*, 387 U.S. 1, 16, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). The rationale was questionable. Paulsen at 173 ("How could the reformers create this kind of court within a constitutional framework that insisted upon many of the institutions and procedures then thought to be irrelevant or subversive of the job of protecting children?").

Nonetheless in *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), a fractured court found that a state juvenile justice scheme that did not provide for a jury trial was constitutionally permissible. The plurality concluded that juvenile proceedings were not "yet" considered "criminal prosecutions" and thus the due process did not require the guarantee of the right to trial by jury in juvenile courts. *McKeiver*, 403 U.S. at 541.

ii. The original intent of the Sixth Amendment guarantees juveniles the right to a jury trial.

The United States Supreme Court's opinions on the jury trial right demonstrate that issues of reliability, efficiency and semantics are unimportant when interpreting the Constitution. The only relevant question is "what was the Framer's intent?" The language of the Sixth Amendment made no distinction between adults and juveniles regarding

the right to a jury trial. And at the time of enactment, all persons over the age of seven charged with crimes were tried by a jury. Mack at 106. Thus, no matter what label is applied to avoid the constitutional guarantee, where a person is charged with an act that results in imprisonment the only proper safeguard envisioned by the Framers is a jury trial. Review should be granted to uphold this important constitutional right. RAP 13.4(b).

d. The jury trial guarantees of the State Constitution provide juveniles the right to a jury.

Article I, § 21 provides the right to a jury trial shall remain "inviolate." Article I, § 22 provides "In criminal prosecutions the accused shall have the right to . . . [a] trial by an impartial jury . . ." This Court has recognized that the jury right may be broader under Washington's Constitution than under the federal constitution. *State v. Smith*, 150 Wn.2d 135, 156, 75 P.3d 934 (2003) (applying *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986)). *Smith* noted the textual differences between the state and federal provisions, as well as the structural differences of the constitutions, supported such a conclusion. *Id.* at 150-52. So too, does the fact that the prosecution of crimes is a matter of local concern. *Id.* at 152.

Smith, however, concluded this potential broader reach of the state guarantee did not require a jury determination of a defendant's prior "strikes" in a persistent offender proceeding. *Id.* The Court determined the

scope of the jury-trial right must be determined based on the right as it existed when the constitution was adopted. 150 Wn.2d at 153. *Smith* based its conclusion on one principal fact: there was no provision for jury sentencing when the State constitution was enacted. *Id.* at 154. Because the right did not exist when the Constitution was enacted, it was not embodied within the jury trial rights of Article I, § 21 and Article I, § 22.

By contrast, when the Washington Constitution was adopted, no differentiation existed between the right to a jury for juveniles or adults. Juveniles were still statutorily entitled to trial by jury until 1937, when the Legislature struck the right. Ch. 65, § 1, 1937 Wash. Laws at 211. The original juvenile court statute provided that "[i]n all trials under this act any person interested therein may demand a jury trial, or the Judge, of his own motion, may order a jury to try the case." Ch. 18, § 2, 1905 Wash. Laws (repealed, 1937). This provision remained substantially unchanged through revisions made in 1909, 1913, 1921, and 1929.

In *State v. Schaaf*, the Court concluded the absence of a separate juvenile court at the time of the Constitution's adoption did not mean that juveniles were now entitled to a jury trial. 109 Wn.2d 1, 14, 743 P.2d 240 (1987). *Schaaf* concluded that even though the jury trial right existed prior to 1938, the framers of the Constitution could not know of later efforts to legislate away the right. The effort in *Schaaf* to limit the framers' intent is

directly at odds with *Smith*. *Smith* held the right to a jury trial guaranteed by the state constitution is precisely the right which existed by statute and common law in 1889. 150 Wn.2d at 153. Because a juvenile in 1889 had the right to a jury, a juvenile in 2017 still has the right to a jury trial.

e. The failure to provide Michael with the right to have his case heard before a jury denied him his due process.

The recognition that children are constitutionally different impacts their right to a jury trial. If children are to be held to the same standards as adults, they must enjoy the same due process rights.

The failure to provide Michael with a jury denied him due process. With the purposes of adult and juvenile court continuing to merge, the constitutional right to a jury trial for juveniles becomes clear. This Court should grant review to address this important constitutional question.

F. CONCLUSION

Based on the foregoing, petitioner Michael Frazier respectfully requests that review be granted pursuant to RAP 13.4 (b).

DATED this 17th day of February 2017.

Respectfully submitted,

TRAVIS STEARNS (WSBA 29935)
Washington Appellate Project (91052)
Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 33568-2-III
	)	
M.R.F.,	)	
	)	
JUVENILE APPELLANT.	)	

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[X] M.R.F. C/O GENERAL DELIVERY OKANOGAN, WA 98840	(X) ( ) ( )	U.S. MAIL HAND DELIVERY __________

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. MICHAEL RILEY FRAZIER, Appellant.	)))))))))	No. 33568-2-III UNPUBLISHED OPINION

FEARING, C.J. — Michael Frazier appeals from his conviction, in juvenile court, for indecent liberties by forcible compulsion. He argues that a bench trial abridged his right to a jury trial. He claims that the trial court should have considered his age before finding that he knowingly engaged in sexual contact with force. We reject Frazier's arguments and affirm his conviction.

FACTS

At the end of eighth grade and into the succeeding summer, Michael Frazier and Mary Bartholomew dated. Mary Bartholomew is a pseudonym. The romantic relationship included hugging and kissing. They entered high school that fall. Mary ended the relationship.

On December 29, 2014, while a sophomore in high school, Michael Frazier visited his friend Stan Baker at Stan's home. Frazier was then fifteen years of age. Stan Baker is also a pseudonym. In the early evening, Frazier invited, by Snapchat, Mary Bartholomew to join him at Stan's residence. Mary visited Stan's home briefly before attending work that evening. As she left the house, Stan and Frazier walked Mary to her car. Frazier gave Mary a hug and tried to kiss her goodbye. Mary did not reciprocate. Mary, however, continued to contact Frazier through Snapchat while working. She agreed to meet Frazier and Stan, after completion of work, at Okanogan's Fire Hall, a firefighting museum with other activities available.

When Mary Bartholomew arrived at the Fire Hall, Stan Baker and Michael Frazier entered her 2004 Ford Focus. Frazier sat in the passenger seat, and Stan sat in the back. The trio chatted while Frazier and Stan waited for their friend Woody. When Woody arrived, Stan exited the car. Woody and Stan entered the Fire Hall to play pool, leaving Mary and Frazier alone in the car. Frazier asked Mary to drive to the Food Depot, a closed business, and park in the store's parking lot to talk. Mary complied.

Our analysis requires only a limited depiction of the conduct inside the car. Mary Bartholomew and Michael Frazier conversed for minutes, and then Frazier touched Mary. Mary immediately pushed Frazier's hand and declared "no" and "stop it, Michael." Report of Proceedings at 32-33. Frazier pinned Mary against the driver's door. Frazier did not stop, but repeatedly touched both Mary's breasts and private area. Frazier then

stood six feet, four inches and Mary reached five feet, three inches. Mary Bartholomew yelled, repeatedly told Michael Frazier to cease his conduct, attempted to push him, and kicked him. Mary cried. Frazier insisted that, no matter how often Mary repeated his name, he would not stop. Mary suffered bite marks on a breast and her neck. She also incurred a bruise on each thigh.

Eventually Michael Frazier got upset and ceased his behavior. Mary ordered him from her car. Frazier asked her to return him to the Fire Hall. At the Fire Hall, Frazier kissed Mary. She did not reciprocate. Frazier exited the car and entered the Fire Hall. Stan Baker asked Frazier what happened, and Frazier said nothing.

Mary Bartholomew drove home. When school started after the holiday break, Mary told a friend and her school counselor about the conduct of Michael Frazier on December 29. The friend confronted Frazier at school. Frazier replied that he felt bad about his behavior and admitted that Mary repeatedly told him to stop.

PROCEDURE

The State of Washington charged Michael Frazier with indecent liberties by forcible compulsion. On cross-examination during trial, Frazier admitted that Mary Bartholomew said no three or four times. The trial court found the testimony of Mary Bartholomew to be credible compared to the testimony of Frazier. The trial court also found that Frazier acted "knowingly" with regard to his force applied to Mary. Clerk's Papers at 23. The trial court adjudicated Frazier guilty of indecent liberties by forcible

compulsion. The trial court sentenced Frazier to fifteen to thirty-six weeks in juvenile detention. Frazier must register as a sex offender. A restraining order precludes him from any contact with Mary for life.

LAW AND ANALYSIS

Michael Frazier raises two arguments on appeal. First, because he was a juvenile at the time of the crime, the trial court should have applied the "reasonable child" standard to the mens rea requirement. Second, he was deprived of his right to a jury trial. We reject both arguments.

Mens Rea

RCW 9A.44.100(1) defines the crime of indecent liberties by compulsion as:

> A person is guilty of indecent liberties when he or she *knowingly* causes another person to have sexual contact with him or her or another:
> (a) By forcible compulsion. . . .

(Emphasis added.) In turn, RCW 9A.44.010(6) defines "forcible compulsion" as

> "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

Note that RCW 9A.44.100(1) required the State to prove Michael Frazier "knowingly" caused another person to have sexual contact with him by forcible compulsion. Washington's criminal code defines "knowingly" as:

> . . . A person knows or acts knowingly or with knowledge when:

> (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
> (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

RCW 9A.08.010(1)(b). The first subsection describes actual knowledge. The second subsection portrays constructive knowledge. Both concepts are familiar to the law. Constructive knowledge asks: what would a reasonable person in the same situation know?

Michael Frazier argues that the trial court erred when failing to recognize his age and to consider his age when assessing his culpability. Frazier contends that the knowledge standard for him and other minors should be the "reasonable child" not "reasonable person" standard. The State interprets Frazier's argument as challenging his capacity to commit the crime.

We conclude sufficient evidence supports a finding that Frazier possessed actual knowledge. Since a reasonable child or reasonable person standard applies only for constructive knowledge, we need not and do not address whether the trial court should have applied a reasonable child standard. We also do not consider Frazier to argue he lacked capacity to commit a crime and thus do not address the State's argument.

Michael Frazier contends that courts consistently analyze knowledge from the perspective of a reasonable person. He cites two cases to support this contention: *State v. Stribling*, 164 Wn. App. 867, 267 P.3d 403 (2011) and *State v. Shipp*, 93 Wn.2d 510, 610

P.2d 1322 (1980). He maintains that his knowledge should be determined in light of a person his age. Nevertheless, neither of the two cases support his argument. Neither case stands for the proposition that the trier of fact considers the knowledge of a reasonable person when the accused has actual knowledge.

In *State v. Stribling*, this court acknowledged both methods of proving knowledge, but the decision required no analysis of the nature of knowledge. In *State v. Shipp*, the Washington Supreme Court evaluated constructive knowledge. The court declared:

> [T]he statute must be interpreted as only permitting, rather than directing, the jury to find that the defendant had knowledge if it finds that the ordinary person would have had knowledge under the circumstances. The jury must still be allowed to conclude that he was less attentive or intelligent than the ordinary person.

Shipp, 93 Wn.2d at 516. Of course, this passage assumes that the trier of fact decides guilt based on constructive knowledge, not actual knowledge.

Our trial court heard sufficient evidence to establish that Michael Frazier actually knew that he caused Mary Bartholomew to have sexual contact with him by overcoming her resistance. Therefore, we need not discuss Frazier's argument regarding the reasonable person standard for purposes of constructive knowledge.

Evidence is sufficient if a rational trier of fact could find each element of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Both direct and indirect evidence may support the jury's verdict. *State v. Brooks*, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). This court draws all reasonable inferences in favor

of the State. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). The trier of fact weighs the evidence and judges the credibility of witnesses. *State v. Carver*, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

As the trial court found, Michael Frazier pinned Mary Bartholomew against a car door as she tried to escape. She yelled "no" and "stop" and pushed and kicked Frazier away. Frazier declared his intention not to stop. A seven-year-old, let alone a fifteen-year-old, knows the meaning of no. Frazier later told Mary's friend that he felt bad about what he did to Mary and that Mary repeatedly said no.

Jury Trial

Michael Frazier next contends that the trial court's failure to provide him with a trial by jury violated his due process rights. He argues that the differences between the juvenile and adult systems have so eroded that the right to a jury trial for juveniles should be restored. The State responds that major differences still exist between the juvenile and adult systems such that the right to a jury trial is not constitutionally required. As the State mentions, all of Frazier's arguments have been made and rebuffed by either the Washington Supreme Court or the United States Supreme Court. Although we might agree with some of Frazier's observations, we must reject his argument. A higher court will need to overturn precedence.

Michael Frazier argues first that the Juvenile Justice Act of 1977, chapter 13.40 RCW, violates the Washington Constitution. Article I, section 21 of the Washington

Constitution reads "[t]he right of trial by jury shall remain involate[.]" In turn, RCW 13.04.021(2) reads: "[c]ases in the juvenile court shall be tried without a jury."

The Washington Supreme Court has held that a juvenile has no right to a jury trial. *Estes v. Hopp*, 73 Wn.2d 263, 438 P.2d 205 (1968); *State v. Lawley*, 91 Wn.2d 654, 591 P.2d 772 (1979); *State v. Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987); *Monroe v. Soliz*, 132 Wn.2d 414, 939 P.2d 205 (1997); *State v. Chavez*, 163 Wn.2d 262, 180 P.3d 1250 (2008). *State v. Chavez* is the most recent case from the Washington Supreme Court that rejects many of the arguments advanced by Michael Frazier. The State charged Azel Chavez in juvenile court with attempted first degree murder, second degree unlawful possession of a firearm, first degree robbery, second degree assault, and second degree taking a motor vehicle without permission. The trial court found Chavez guilty following a bench trial.

On appeal, Azel Chavez argued that, for a juvenile, such as himself, charged with a serious offense, the balance struck between punitive and rehabilitative philosophies is identical to that struck for adult offenders. He claimed that, except for the length of his sentence and conditions of his confinement, the legal system treated him as an adult. He emphasized that the State fingerprinted, photographed, and forced him to provide a deoxyribonucleic acid sample. He noted that he could be transferred to adult prison to complete his disposition. He observed that his records cannot be sealed or destroyed, and, if he committed future crimes, the convictions would be calculated into his offender

score. After analyzing all of these arguments, the Supreme Court held that the juvenile justice system has not been so altered that juveniles charged with violent and serious violent offenses have the right to a jury trial.

In addressing Michael Frazier's constitutional argument, Washington courts consistently answer:

> [a] telling illustration of the fact that juvenile proceedings remain more lenient and more rehabilitative than adult criminal proceedings is the fact that none of the juveniles involved in this appeal availed themselves of the opportunity, pursuant to RCW 13.40.110, to request the juvenile court to decline jurisdiction and transfer the matter to the adult criminal system, where a jury trial would have been available.

State v. J.H., 96 Wn. App. 167, 182-83, 978 P.2d 1121 (1999). Michael Frazier did not seek a declination.

Michael Frazier raises two additional contentions. First, he must register as a sex offender. Second, the State might involuntarily commit him as a sexually violent predator under chapter 71.09 RCW. Based on current law, we disagree that these factors require a jury trial.

This court ruled, in *State v. J.H.*, 96 Wn. App. at 182, that the adult sex offender registration statute does not constitute punishment, but rather is a regulatory measure. It follows that community notification requirements for juvenile offenders are likewise not punitive and do not affect a juvenile offender's right to a jury trial. The Washington

Supreme Court, in *State v. Chavez*, 163 Wn.2d 262 (2008) found the reasoning in *J.H.* convincing.

RCW 71.09.030(1) allows a sexually violent predator petition if: (a) a person has been convicted of a sexually violent felony, (b) a person has been committed for a sexually violent offense as a juvenile, (c) a person has been charged with a sexually violent offense and has been determined to be incompetent to stand trial, or (d) a person has been found not guilty by reason of insanity of a sexually violent offense. Michael Frazier's use of the sexually violent predator act fails for the same reason. The fact that juvenile convictions can count as points for calculating offender scores does not create a right to jury trial. Involuntary commitment for sexually violent predators requires a separate proceeding. Though the juvenile adjudication renders Michael Frazier subject to a sexually violent predator petition, the juvenile conviction does not mandate a petition nor does the filing of a petition automatically result in involuntary commitment.

Michael Frazier also relies on the United States Constitution's Sixth Amendment. The amendment declares, in pertinent part:

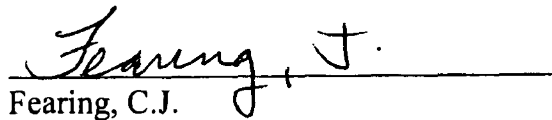
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.

Nevertheless, the United States Supreme Court has also held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971).

CONCLUSION

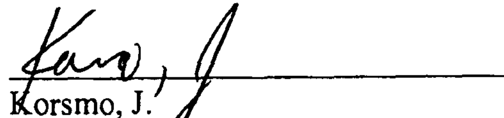
We affirm Michael Frazier's conviction for indecent liberties by forcible compulsion.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Fearing, C.J.

WE CONCUR:



Korsmo, J.

Pennell, J.