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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Modoc)

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In re I.M., a Person Coming Under the Juvenile Court  
Law.

C078034

THE PEOPLE,

(Super. Ct. No. JL14028)

Plaintiff and Respondent,

v.

I.M.,

Defendant and Appellant.

Appointed counsel for I.M., a minor, has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*); *In re Kevin S.* (2003) 113 Cal.App.4th 97, 119.) Having reviewed the record, we affirm the juvenile court's dispositional order.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

## **FACTUAL AND PROCEDURAL BACKGROUND**

In October 2013, eight-year-old M.W. lived in Alturas with her mother, Alison, stepfather, Daniel, and sister, H. Prior to August 2013, the minor (Daniel's son and M.W.'s stepbrother) lived there as well until August 2013, when he moved to Idaho to live with his aunt. The minor returned to Alturas for a week in November and two weeks in December, spending part of the time at Daniel's house and part of the time at his biological mother's house.

Sometime around the end of December 2013 when the minor was staying at the house, Alison found M.W. sleeping on the bathroom floor. Later that day, M.W. told Alison her "pee-pee was hurting." Alison took M.W. to the bathroom and found blood in M.W.'s underwear. Alison asked, " 'Did anybody touch you? What's going on?' " M.W. said, " 'I don't know where that came from.' "

On March 16, 2014, M.W. told Alison and Daniel that she had been watching cartoons when the minor came over, sat on the couch next to her, and started rubbing her inner thigh. M.W. told the minor she was going to scream, and the minor said, " 'You scream, and I'll kill you.' " When M.W. tried to run to her room, the minor blocked her. M.W. escaped by running around a chair and into her bedroom. After hearing M.W.'s account, Daniel called the police.

Officer Russell Turner responded to the home and spoke with M.W., who reiterated what she had told her parents. Officer Turner left the home briefly to respond to an unrelated call. When he returned, Alison informed him that, during his absence, M.W. came to her and said she had not told him everything. M.W. revealed that the minor followed her into the bedroom, exposed his penis, pulled down her pants, and tried unsuccessfully to insert his penis into her vagina. M.W. also stated that the minor's penis touched her stomach and "left a wet spot on her shirt." M.W. described the minor's penis as " 'slimy.' " M.W. told Alison she did not initially disclose everything to Officer Turner because "she was scared" and she did not want her parents "to break up."

On March 20, 2014, M.W. was interviewed by Samantha Fenner at "CARES." M.W. told Fenner the minor stared at her, then sat down on the couch next to her and started rubbing her leg. She tried to escape but the minor blocked her. When she ran into her bedroom, the minor followed and pushed her against the wall. He pulled down his pants and tried to pull down hers, but she held onto her belt loops. M.W. told Fenner the minor's "private part," which was "slimy," touched her stomach and leaked through her shirt, although she never saw his penis. M.W. was able to escape to the bathroom.

On July 3, 2014, while en route to a counseling appointment, M.W. told Alison she had not initially disclosed everything to Officer Turner because she was afraid her mother and father would break up and take sides, and because she was afraid of the minor. She also told Alison she was embarrassed and did not want everybody to know all the details or blame her for what happened.

A day or two later, Alison told the prosecutor about the new information from M.W. The prosecutor contacted Officer Turner to re-interview M.W.

Officer Turner re-interviewed M.W. on July 16, 2014. M.W. acknowledged she had not told Officer Turner everything in her prior interview. She informed him that the minor followed her into the bedroom. She got onto the bed and curled up under the blankets with her face down. The minor pulled the blankets off of her, pulled down her boxer shorts and underwear, grabbed her by her hips and "tried to put his private parts into her bottom." M.W. clarified by pointing to her groin area and saying "it's where [the minor] goes pee," and said her bottom was where she goes "poop." She said that, as the minor tried to insert his penis into her anus, he became angry and said he "couldn't put it in." M.W. said the minor's penis touched her "bottom." She also told Officer Turner she was scared. M.W. said that while the minor was trying to "fix it" -- meaning putting his penis inside of her -- she was able to push him and escape to the bathroom, where she stayed until her mother found her the next morning.

On August 14, 2014, M.W. met with Assistant District Attorney Sophia Meyer and Robin Farnam, the victim services coordinator. M.W. told them she had not told Officer Turner “ ‘the whole truth’ ” because she did not want to cry in front of him. She said the minor had choked her as he held her against the wall in the bedroom. M.W. also said she was crouched under the covers on the bed, and the minor pulled off her underwear when she was on the bed.

A delinquency petition (Welf. & Inst. Code, § 602, subd. (a))<sup>1</sup> filed against the minor alleged felony attempted rape (Pen. Code, §§ 261, subd. (a)(2), 664) and misdemeanor annoying or molesting a child (Pen. Code, § 647.6).

At the August 27, 2014, contested jurisdictional hearing, an amended delinquency petition was filed adding a new second allegation of attempted sodomy (Pen. Code, §§ 286, subd. (a), 664).

M.W. testified at the contested hearing. She stated the minor stared at her, then sat next to her on the couch and began rubbing her leg, making her afraid. She got up and tried to go to her bedroom but the minor blocked her. She managed to get around him and went into her bedroom. He followed her into the bedroom and pushed her against the bed. M.W. curled up under the blankets on her bed and tried to hide. The minor pulled the blankets off of her and tried to pull down her boxer shorts. As M.W. grabbed onto the dresser in an attempt to get away from him, the minor tried to insert his penis into her “bottom.” M.W. was finally able to escape to the bathroom and slept there overnight. M.W. testified she did not initially provide Officer Turner with all of the information because she was afraid she would “get in trouble” and because she was afraid to cry. M.W. also testified the minor tried to put his “private part” into her “pee-pee” and that he tried to choke her.

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<sup>1</sup> Unspecified statutory references are to the Welfare and Institutions Code.

At the end of the prosecution's case-in-chief, the juvenile court granted the minor's motion to dismiss the first allegation for attempted rape pursuant to section 701.1.

At the conclusion of the contested hearing, the juvenile court found the second allegation for attempted sodomy not true, but sustained the petition as to the third allegation for misdemeanor annoying or molesting a child.

Following the presentation of evidence and argument by both parties at the November 3, 2014, dispositional hearing, the minor was adjudged a ward of the juvenile court pursuant to section 602 and placed in the care and custody of the probation department for placement in a suitable foster or group home. The juvenile court also imposed fees and fines.

The minor filed a timely notice of appeal.

#### **WENDE REVIEW**

We appointed counsel to represent the minor on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) The minor was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from the minor. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

**DISPOSITION**

The dispositional order is affirmed.

MURRAY, Acting P. J.

We concur:

DUARTE, J.

RENNER, J.