

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LESLIE RALPH COONS,

Defendant-Appellant.

UNPUBLISHED

May 30, 2000

No. 219214

St. Joseph Circuit Court

LC No. 97-008639-FH

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The trial court sentenced defendant to a term of three to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

I

Defendant argues that he was denied a fair trial by the misconduct of the prosecutor. Because he did not object at trial to the alleged misconduct, appellate review is precluded unless a curative instruction could not have eliminated possible prejudice or failure to consider the issue would result in a miscarriage of justice. See *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999).

Defendant claims that the prosecutor improperly appealed to the sympathy of the jury. After reviewing the challenged comments, we disagree. The prosecutor did not ask the jury to suspend its judgment and decide the case on the basis of sympathy. See *People v Hoffman*, 205 Mich App 1, 21; 518 NW2d 817 (1994). Rather, the prosecutor argued that it was unlikely that the complainant had fabricated his story because he had been repeatedly required to describe the embarrassing details of the sexual molestation to both close family members and numerous strangers. A prosecutor is free to argue the evidence and all reasonable inferences arising from it as they relate to her theory of the case, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), and may argue from the evidence that a witness is credible, see *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997).

Similarly, the prosecutor did not act improperly by arguing that two other witnesses had no reason to lie. The prosecutor did not vouch for the credibility of the witnesses by implying that she had some special knowledge that they were testifying truthfully. See *Bahoda*, *supra* at 276.

Finally, the prosecutor was not required to phrase her arguments in the blandest of all possible terms. *People v Ullah*, 216 Mich App 669, 678-679; 550 NW2d 568 (1996). Because a curative instruction could have eliminated any possible prejudice from the challenged comments, and failure to consider the issue further will not result in a miscarriage of justice, reversal is not required. See *Noble*, *supra*.

II

Next, defendant contends that the trial court erred in admitting the testimony of prosecution witness Pat Pond. Defendant argued below that the testimony was not relevant. However, on appeal, he asserts that the prosecutor did not provide proper notice of her intent to use other-acts evidence, as required under MRE 404(b). To preserve an evidentiary issue for appeal, the party opposing the admission of evidence must object at trial on the same ground that the party asserts on appeal. MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). Because this issue is not preserved, this Court should reverse only if defendant establishes that he was prejudiced by the error or that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Because defendant's claim is without merit, we find neither prejudice to defendant nor impairment to judicial proceedings. Pond testified regarding defendant's prior *statements*, not his prior *acts*. See *People v Goddard*, 429 Mich 505, 514-515; 418 NW2d 881 (1988). Because evidence of the statements was admissible under MRE 801(d)(2) and was relevant to whether the sexual contact with the complainant had occurred for the purpose of sexual gratification,¹ the trial court did not abuse its discretion in admitting the testimony.

III

Finally, defendant maintains that his sentence is disproportionately severe. A trial court's imposition of a particular sentence is reviewed on appeal for an abuse of discretion, which will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant's three-year minimum sentence is within the guidelines range and is therefore presumptively proportionate. See *People v Lyons*, 222 Mich App 319, 324; 564 NW2d 114 (1997). In arguing that his sentence is disproportionate, defendant emphasizes that he has no prior felony convictions. However, defendant's lack of a criminal record does not constitute an unusual circumstance sufficient to overcome the presumption of proportionality. See *People v Piotrowski*, 211 Mich App 527, 533; 536 NW2d 293 (1995). Defendant's sentence is proportionate to the

seriousness of the circumstances surrounding the offense and the offender; accordingly, we conclude that the trial court did not abuse its discretion in sentencing defendant. See *Milbourn, supra*.

Affirmed.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ Mark J. Cavanagh

¹ See MCL 750.520a(k); MSA 28.788(1)(k); MCL 750.520c(1)(a); MSA 28.788(3)(1)(a).