

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY RAMBUS,

Defendant-Appellant.

UNPUBLISHED

October 3, 2000

No. 214176

Oakland Circuit Court

LC No. 98-158543-FH

Before: Collins, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was sentenced, as a fourth habitual offender, MCL 769.12; MSA 28.1084, to five to twenty years' imprisonment. We affirm.

Defendant first argues that the trial court erred by denying his motion for a directed verdict and that there was insufficient evidence to support his conviction. Because defendant rested after his motion for a directed verdict, the evidence this Court must consider for both arguments is the same.

This Court must determine if there was sufficient evidence to justify a rational trier of fact finding guilt beyond a reasonable doubt. In doing so, this Court must view the evidence in a light most favorable to the prosecution. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). The elements of second-degree criminal sexual conduct are: (1) engaging in sexual contact with a person under thirteen years of age; and (2) the sexual contact must be such that it "can reasonably be construed as being for the purpose of sexual arousal or gratification." *People v VanderVliet*, 444 Mich 52, 76; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Here, the victim testified that she was under thirteen and that defendant kissed her and squeezed her breasts, saying, "those are kind of big." Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that defendant squeezed the victim's breasts for the purpose of sexual arousal or gratification. *Johnson, supra; VanderVliet, supra*.

Further, the victim's testimony was corroborated by prior consistent statements to her brothers and her father's fiancée, whom the victim told soon after the touching occurred. The victim's testimony

was only contradicted by Bonnie Beach, who testified that the victim confirmed her brother's statement that defendant touched her butt, and not her breasts. However, Beach testified that she has a hearing disability and must read lips. Questions regarding credibility are to be determined by the trier of fact and neither the trial court nor this Court may second guess the trier of fact's credibility determinations regardless of inconsistencies or vagueness. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997); *People v Wolfe*, 440 Mich 508, 519; 489 NW2d 748, amended 441 Mich 1201 (1992). Viewing the evidence in a light most favorable to the prosecution, the jury could have rationally believed the testimony of the victim and found defendant guilty beyond a reasonable doubt. *Johnson, supra*.

Defendant next argues that his sentence violates the principle of proportionality. We disagree. A sentence imposed upon an habitual offender is reviewed for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997).¹ "A trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society." *Id.* at 326; see *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000).

Second-degree criminal sexual conduct is punishable by imprisonment for not more than fifteen years. MCL 750.520c(2); MSA 28.788(3)(2). Sentencing guidelines do not apply to habitual offenders. *Hansford, supra* at 323. The fourth habitual offender statute, MCL 769.12; MSA 28.1084, provides that a court may sentence a defendant to imprisonment for life, or a lesser term, where the subsequent felony, here second-degree criminal sexual conduct, is punishable upon first conviction for a maximum term of five years or more. MCL 769.12(a); MSA 28.1084(a). Defendant was sentenced within the statutory limits to five to twenty years.

Defendant was on parole for second-degree murder when he committed the current crime. Further, defendant has a lengthy and violent criminal history, which includes a disorderly conduct conviction in 1961; a conviction for aggravated assault in 1963; a conviction for assault with intent to do great bodily harm in 1968; a parole violation for carrying a concealed weapon in 1969; and several drunk driving convictions in the 1970s. Defendant also pleaded guilty to possession of a firearm by a felon and was sentenced concurrently with the current crime. Defendant's history, along with the current conviction and the possession of a firearm by a felon conviction, evidence that defendant cannot conform his conduct to the laws of society. The trial court did not abuse its discretion in sentencing defendant within the statutory limits. *Hansford, supra* at 326.

Affirmed.

¹ Although both parties argue that that the "principle of proportionality" standard of review adopted by *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), applies here, we conclude that the above-quoted standard applies to habitual offenders. *Hansford, supra*.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ Brian K. Zahra