

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL TROY TODD,

Defendant-Appellant.

UNPUBLISHED

May 21, 1996

No. 174612

LC No. 93-007539

Before: Jansen, P.J., and Hoekstra and D. Langford-Morris,* JJ.

PER CURIAM.

Following a bench trial in the Detroit Recorder's Court, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was thereafter sentenced to four to fifteen years' imprisonment. He appeals as of right and we affirm.

Defendant first argues that the prosecutor failed to establish the essential elements of second-degree criminal sexual conduct. The evidence at trial established that the incident occurred on June 27, 1993, in the City of River Rouge. The twelve-year-old complainant was in a store when defendant reached out and grabbed the complainant's left breast. Once outside the store, defendant told the complainant that she had "nice little titties." The video tape of the store was also shown, and the tape showed that defendant glanced at the complainant before he touched her breast.

This evidence, taken in a light most favorable to the prosecutor, is sufficient to establish the elements of second-degree criminal sexual conduct, including the intent element, beyond a reasonable doubt. *People v VanderVliet*, 444 Mich 52, 85; 508 NW2d 114 (1993); *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985); MCL 750.520a(k); MSA 28.788(1)(k).

Defendant next argues that OV 7 (offender exploitation of victim vulnerability) was improperly scored at fifteen points (offender exploits the victim due to a physical disability, mental disability, youth, agedness, or an abuse of authority status). Because there is evidence to uphold the score, we affirm the

* Circuit judge, sitting on the Court of Appeals by assignment.

sentencing judge's decision to score OV 7 at fifteen points. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993).

In this case, the evidence at trial revealed that defendant reached out and grabbed the twelve-year-old complainant's breast. Defendant was twenty-seven years old at the time of the offense. According to the video, other adult women walked past defendant in the store and he did not bother them. Therefore, we find there was sufficient evidence to support the trial court's score of fifteen points for OV 7 because defendant exploited the complainant's vulnerability due to her age. *People v Cotton*, 209 Mich App 82, 84; 530 NW2d 495 (1995); *People v Armstrong*, 212 Mich App 121, 131; 536 NW2d 789 (1995).

Last, defendant contends that his sentence of four to fifteen years violates the principle of proportionality. Although defendant's sentence exceeds the guidelines range of twelve to thirty-six months, the trial court articulated adequate reasons for exceeding the guidelines range. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). The trial court considered the psychological and physical impact on the victim, as well as the seriousness of the crime, and defendant's background (which includes one prior felony conviction). We do not find defendant's sentence to violate the principle of proportionality. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995).

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Denise Langford-Morris