

No. SC88426

In the
Missouri Supreme Court

STATE OF MISSOURI,

Respondent,

v.

LEONARD TAYLOR,

Appellant.

Appeal from the City of St. Louis Circuit Court
Twenty-Second Judicial Circuit, Division Six
The Honorable Michael P. David, Judge

RESPONDENT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal from a conviction for forcible rape, § 566.030, RSMo 2000, for which appellant was sentenced, as a prior and persistent offender, to one hundred years in the Missouri Department of Corrections. On March 10, 2007, the Court of Appeals, Eastern District, issued an opinion affirming appellant's conviction and sentence, and on its own motion, the Court of Appeals transferred the case to this Court pursuant to Supreme Court Rule 83.02. State v. Taylor, No. ED87796 (Mo. App., E.D. March 10, 2007). Therefore, jurisdiction lies in this Court. Article V, § 10, Missouri Constitution (as amended 1982).

STATEMENT OF FACTS

Appellant, Leonard Taylor, was charged in the Circuit Court of the City of St. Louis with one count of forcible rape (Count I) (L.F. 28-29). In an alternative count, the information charged appellant with statutory rape (Count II) (L.F. 28-29). The information also alleged that appellant was a prior and persistent offender (L.F. 29). On January 31 and February 1, 2006, appellant was tried before a jury, the Honorable Michael P. David presiding (Tr. 18-319). Appellant does not challenge the sufficiency of the evidence. Viewed in the light most favorable to the verdict, the following evidence was adduced at trial:

In July of 2000, the victim, P.L., lived with appellant (her step-father), her mother, and her siblings in Alton, Illinois (Tr. 199-200). P.L. was sixteen years old and was learning how to drive (Tr. 198, 201, 287). Around noon or 1:00 p.m. on July 19, 2000, appellant, P.L, and P.L.'s younger brother and step-sister went to Salu Park in Alton to watch a basketball game (Tr. 202). When they arrived at the park, appellant told P.L that he wanted her to drive across the bridge to St. Louis (Tr. 202). Appellant said that they would drive across the bridge and would come back (Tr. 203). P.L.'s brother and step-sister stayed at the park, and P.L. and appellant drove across the bridge (Tr. 202-203). P.L. was driving and appellant was sitting in the front passenger seat (Tr. 203). When they crossed the bridge,

appellant placed his hand on P.L.'s chest and said that he was checking to see if her heart was beating fast (Tr. 206).

After crossing the bridge, appellant began giving P.L. instructions where to drive (Tr. 203-204). Appellant first directed P.L. to drive to an abandoned house (Tr. 203). There, appellant exited the car, went into the house, and took a gun with him (Tr. 203-204). Appellant returned in approximately 15 minutes and directed P.L. to drive to another house (Tr. 204). P.L. drove to another house, which she believed to be in the City of St. Louis (Tr. 206). Appellant exited again, carrying a gun (Tr. 205). He went into the house and returned in approximately 5 to 10 minutes (Tr. 205). Appellant placed the gun in the glove department and directed P.L. to drive to a house on Union and Page in St. Louis City (Tr. 206-207). Appellant and P.L. went to the house of a woman named Winnifer (Tr. 206-207). In Winnifer's house, appellant told P.L. to go upstairs and watch television (Tr. 207). Appellant and P.L. stayed in Winnifer's house for a long time (Tr. 207). When they left Winnifer's house, it was dark outside (Tr. 207).

Appellant directed P.L. to drive to a liquor store, which was about five minutes away from Winnifer's house (Tr. 208). Appellant went into the store and bought some liquor (Tr. 208). When appellant returned, he directed P.L. to drive again, and put his hand on her chest inside her shirt

(Tr. 208). P.L. told appellant to stop and appellant said that he was checking to see if she was scared (Tr. 209). Then, appellant said: "You think I'm trying to touch you?" and P.L. replied "Yeah" (Tr. 209). Appellant said: "Well, I can touch you if I want to. Those are my titties. I can do that." (Tr. 209). P.L. started crying and told appellant that she did not want to drive any more (Tr. 210). Appellant told P.L. that he would drive (Tr. 209). P.L. stopped the car and moved to the front passenger seat (Tr. 210). Appellant sat in the driver's seat and began driving (Tr. 210). Appellant drove to what appeared to be an abandoned grocery store, which was about five or ten minutes away from the liquor store (Tr. 209-210). It was dark and P.L. did not know where they were, but she was sure that they were still in the City of St. Louis (Tr. 209-210).

P.L. was crying and told appellant that she wanted to go home (Tr. 210-211). Appellant hit P.L. in the face (Tr. 210). He told P.L. to open the door and to stand up (Tr. 212). Appellant came around from the driver's side and told P.L. to pull down her pants (Tr. 212). P.L. complied (Tr. 212-213). Appellant pushed P.L. down on the car seat, and inserted his penis in her vagina (Tr. 212-213). After appellant was finished, he got up into the driver's seat and proceeded to drive to their home in Alton, Illinois (Tr. 215-216). Appellant told P.L. not to tell anyone and that he was going to kill her

mother and her siblings if she told (Tr. 215-216). On the way home, P.L. saw Halls Ferry Circle, a landmark in the City of St. Louis (Tr. 216).

Appellant and P.L. arrived at their house around midnight (Tr. 282). P.L.'s step-sister Jennifer Perry (appellant's biological daughter) noticed that appellant and P.L. had blood on their shirts and that P.L. had blood on her nose (Tr. 282-283). She asked P.L. and appellant about the blood (Tr. 282-283). P.L. told Ms. Perry that she and appellant had been in some person's house, that P.L. played with a child, and that the child had head-butted her in the face (Tr. 283-285). Appellant did not respond to Ms. Perry's question (Tr. 284).

P.L. did not tell anybody about the rape until appellant left the family six months later (Tr. 221-222). Then, she told her mother and her boyfriend, but she did not report the crime (Tr. 222).

In December of 2004, Detective John Blaskiewicz with the City of St. Louis Police Department was contacted by the police in Jennings and asked to investigate the rape (Tr. 251-252). He met with P.L. and took her to various places in the City of St. Louis (Tr. 255-256). P.L. could not recognize the location of the liquor store or the grocery store, but some of the places where Detective Blaskiewicz took her looked familiar and she was certain that the crime occurred in the City of St. Louis (Tr. 210, 225, 256).

Appellant did not testify at trial. At the close of all the evidence, the jury found appellant guilty of forcible rape as charged in Count I in the information (L.F. 51). The court sentenced appellant, as a prior and persistent offender, to one hundred years in the Missouri Department of Corrections (L.F. 72).

On March 10, 2007, the Court of Appeals, Eastern District, issued an opinion, affirming appellant's conviction and sentence. State v. Taylor, No. ED87796. The Court of Appeals transferred this case to this Court on its own motion pursuant to Supreme Court Rule 83.02. State v. Taylor, No. ED87796 (Mo. App., E.D. March 10, 2007). This appeal follows.

ARGUMENT

The trial court did not abuse its discretion in preventing appellant from arguing in closing argument that the state failed to prove venue "beyond a reasonable doubt" because this argument was a misstatement of the law and appellant suffered no prejudice from the court's ruling.

Appellant claims that the trial court abused its discretion in prohibiting him to argue in closing argument that the state failed to prove beyond a reasonable doubt that the crime occurred in the City of St. Louis (App. Br. 11-26). Appellant argues that the jury was instructed to find beyond a reasonable doubt that the crime occurred in the City of St. Louis and that appellant was entitled to argue the evidence as it pertained to the jury instruction (App. Br. 11-26).

Facts

Prior to trial, appellant filed a motion to dismiss the case due to the lack of venue (L.F. 37). The motion was denied (L.F. 37).

At trial, the victim testified that she did not know where she was at all times, but that she was certain that the abandoned grocery store where appellant raped her was in the City of St. Louis (Tr. 210, 225, 242). Detective John Blaskiewicz with the City of St. Louis Police Department, who investigated the crime, took P.L. to different locations in the north part

of St. Louis City, P.L. did not recognize the exact location of the rape, but when they reached St. Louis County, P.L. stated that they had gone too far and that they needed to go back into the city (Tr. 255-256).

At the close of all the evidence, the following discussion was held at the bench:

[PROSECUTOR]: We do have that issue of venue because if they're going to be arguing this isn't even in St. Louis City, it should be in the county, I don't think that's proper under the case law.

THE COURT: Well, I did look at your case law. You gave me three cases. And the case law is very clear saying that it must not be proven beyond a reasonable doubt, that inference is permissible.

The more recent of those cases is State versus Harper, 778 S.W.2d 836. Although venue was waived in that case, the Court does not deem it waived here, but the general proposition that venue not being an integral part of the offense need not be proven beyond a reasonable doubt is gleaned from that case.

The Court was also directed to State versus King on 662 S.W.2d 304 and State versus Speedy in 543 S.W.2d 251. The Court quite frankly is bothered by the Supreme Court approved

instructions which say that if you find and believe from the evidence beyond a reasonable doubt that on a certain date in a certain location, and sees that as inconsistent with the case law.

I don't have anything more recent than the 16 or 17 year ago opinion, but this Court is old enough to recall that that language that currently exists in paragraph first has generally been around long before this Court began practice.

[DEFENSE COUNSEL]: That's true, your Honor.

[PROSECUTOR]: I ask defense not be allowed to say the State hasn't proved beyond a reasonable doubt the City of St. Louis because I think that's improper.

[DEFENSE COUNSEL]: However, based on the instructions I think that I can say that they didn't prove it beyond a reasonable doubt.

THE COURT: But these instructions existed at the time this case law was decided.

[DEFENSE COUNSEL]: Well, Judge, are those Eastern District Cases, Western District Cases, Supreme Court cases or what?

THE COURT: I don't see a Supreme Court case.

[DEFENSE COUNSEL]: I think the instructions of the Missouri Supreme Court hands down would take precedence over an appellate court decision.

THE COURT: Well, in State versus Harper a motion for rehearing or transfer to the Supreme Court as well as an application to transfer that case to the Supreme Court were both denied.

[DEFENSE COUNSEL]: No precedential value whatsoever, your Honor.

[PROSECUTOR]: The remedy would be to transfer the case which you know we can't do. He's asking to find someone not guilty based on venue because I think that's improper because we know that the remedy for improper venue is transfer.

[DEFENSE COUNSEL]: Well, grant my motion to transfer it to the county and be done with it.

[PROSECUTOR]: There's no evidence it happened in the county.

[THE COURT]: My suggestion is that the Supreme Court take a look at the instructions. The elements of the offense are Count I or Count II are the actions by the defendant, in other

words, sexual intercourse with [P.L.]. They have different second and third allegations, but that is one of the elements of the offense. Venue is not an element of the offense. Mr. Estes [defense counsel], I'm going to give you something to appeal.

[DEFENSE COUNSEL]: Okay.

[THE COURT]: I think the Supreme Court should look at a way to revise the instructions to not mislead the jury. Quite frankly, the instructions which have been given for year after year can do nothing but mislead the jury with the potential risk that even if the jury believes all of the essential elements have been proven beyond a reasonable doubt, that even absent argument a jury could find that they had to make that finding that it occurred within the venue beyond a reasonable doubt even absent any argument to the effect. And if they do, we can't go beyond that verdict.

But the Court can and believes it should based on the case law provided prohibit counsel from arguing that, from arguing that the State had to prove venue beyond a reasonable doubt.

[DEFENSE COUNSEL]: Okay, Judge. For the record I was certainly going to argue that the State has not proven that it

even happened in the city of St. Louis beyond a reasonable doubt. So essentially you're ruling that I cannot argue the instructions and the facts and the law as applied to the facts? That's exactly what you're saying, Judge.

[THE COURT]: All I'm saying is that the argument that the location of the offense is an element of the offense and that because the State did not prove that element beyond a reasonable doubt, that the defendant should be acquitted is precluded.

[DEFENSE COUNSEL]: I guess I just made my offer of proof what I was intending to offer.

[THE COURT]: I think that's probably a fair statement. The Court certainly recognizes the general proposition that the subject of the instructions is fair game and if the higher courts wish to reverse these other cases, I certainly take no personal offense at being referred to in the first line of the subsequent opinion as the learned trial judge dot dot dot.

[DEFENSE COUNSEL]: I could still argue that she's not sure where it happened, though, can't I?

THE COURT: Only as it might reflect on whether it, in fact, happened. I mean if you've got some information that goes to establish the defense that this did not happen.

[DEFENSE COUNSEL]: Well, I think it goes to her credibility.

THE COURT: And with respect to that goes to her credibility and the argument is that I am not precluding –

[DEFENSE COUNSEL]: Precluding me from saying that, okay.

[THE COURT]: I'm not precluding you from challenging her credibility on a variety of grounds, one of which she doesn't even know where it took place.

[DEFENSE COUNSEL]: Okay.

[THE COURT]: But to argue that the State has therefore failed to prove an essential element of the offense, i.e., venue is precluded because it's not an essential element of the offense. And clearer instructions would obviate this whole discussion.

(Tr. 297-302).

Appellant argued in his closing argument as follows:

It's not just what I'm saying. It's what the witnesses themselves said throughout the course of this trial.

And that's why you should find [appellant] innocent on both charges. He didn't do either one. I mean and if she was telling the truth, you would think she would at least have known where it happened.

[PROSECUTOR]: Objection, Judge.

THE COURT: Overruled. Closing argument.

[DEFENSE COUNSEL]: I didn't even get into that, but she went all over into St. Louis with Detective Blaskiewicz to at least five places Detective Blaskiewicz testified to. Some places looked familiar. Some places didn't. She could never say where it happened.

You know, you need to use your reason and common sense at some point. It makes sense that you know what happened and where it happened.

She actually, you know, another that I didn't even think of until just now, she said at trial it happened in the parking lot in front of or off to the side and she told Detective Blaskiewicz that it happened in the rear of the store.

And there's so many inconsistencies, you just can't believe her. You can't deprive [appellant] of his liberty based on just her word with no real corroboration, no real physical evidence,

no scientific evidence, no objective evidence whatsoever. She had a motive to lie. She is lying. Thank you, ladies and gentlemen.

(Tr. 314-315).

The verdict director submitted to the jury read as follows:

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that between July 19, 2000 through July 20, 2000, in the City of St. Louis, State of Missouri, the defendant had sexual intercourse with [P.L.], and

Second, that defendant did so by the use of forcible compulsion, and

Third, that defendant did so knowingly,
Then you will find the defendant guilty under Count I of forcible rape.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

(L.F. 44).

Analysis

The trial court has broad discretion in controlling the scope of closing argument and the appellate court will reverse the trial court's ruling only upon a clear showing of an abuse of discretion. State v. Sheridan, 188 S.W.3d 55, 62 (Mo. App., E.D. 2006). Misstatements of the law are impermissible during closing argument, and a positive and absolute duty rests upon the trial judge to restrain such arguments. State v. Lockett, 165 S.W.3d 199, 206 (Mo. App., E.D. 2005). The trial court abuses its discretion when a ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. State v. Brown, 939 S.W.2d 882, 883-884 (Mo. banc 1997).

Although venue is submitted to the jury as something they must find in order to determine a defendant's guilt, it is not an integral part of the offense and *need not be proved beyond a reasonable doubt*; it may be inferred from all the evidence. State v. Mack, 903 S.W.2d 623, 626 (Mo. App., W.D. 1995); State v. Thompson, 147 S.W.3d 150, 157 (Mo. App., S.D. 2004); *see also* State v. Reese, 795 S.W.2d 69, 74 (Mo. banc 1980)("Venue is not an essential element of the offense and need only be established by preponderance of the evidence, to the satisfaction of the court"). The test as to whether venue has been proven is whether the facts and circumstances

of the crime give rise to a reasonable inference that the crime occurred within the jurisdiction of the trial court. State v. Smith, 988 S.W.2d 71, 76 (Mo. App., W.D. 1999); State v. Mack, 903 S.W.2d at 626; State v. Seaton, 817 S.W.2d 535, 538 (Mo. App., E.D. 1991).

In the present case, the trial court acted within its discretion in prohibiting appellant's argument that the state failed to prove venue "beyond a reasonable doubt." Appellant wanted to argue that the state failed to prove venue "beyond a reasonable doubt" (Tr. 301). This argument was a misstatement of the law and the court properly prevented appellant from misstating the law in closing argument.

Appellant argues that the jury instruction contained language requiring the jury to find appellant guilty if it believed beyond a reasonable doubt that the crime occurred in the City of St. Louis, and that he should be allowed to argue the facts as they pertain to the instruction (App. Br. 22-25). While the jury instruction did contain language requiring the jury to find venue beyond a reasonable doubt, this wording of the instruction is in conflict with the substantive law. When an instruction conflicts with the substantive law, the substantive law prevails over the instruction. See State v. Beck, 941 S.W.2d 518, 520 (Mo. banc 1997)("If an instruction following MAI-CR3d conflicts with the substantive law, any court should

decline to follow MAI-CR3d or its Notes on Use"). The court here properly followed the substantive law on the issue of the issue of venue.

Furthermore, the court did not prevent appellant from arguing that the facts did not support *reasonable inferences* that the crime occurred in the City of St. Louis, which is the proper burden of proof. The court made it clear that:

All I'm saying is that the argument that the location of the offense is an element of the offense and that because the State did not prove that element beyond a reasonable doubt, that the defendant should be acquitted is precluded.

[T]o argue that the State has therefore failed to prove an essential element of the offense, i.e., venue is precluded because it's not an essential element of the offense. And clearer instructions would obviate this whole discussion.

(Tr. 300-301).

Appellant never attempted to argue the facts as they related to reasonable inferences of venue, but only discussed the facts of venue as they affected the victim's credibility (Tr. 301-302, 314-315). Accordingly, appellant cannot show that the trial court prevented him from arguing the facts as they related to the proper standard of proving venue.

Moreover, appellant cannot show prejudice from his inability to argue that the state failed to prove venue "beyond a reasonable doubt." With or without appellant's argument, the jury was required to find venue before finding appellant guilty (L.F. 44). The jurors are presumed to follow the court's instructions. State v. Forrest, 183 S.W.3d 218, 229 (Mo. banc 2006). The verdict director submitted to the jury also required a finding all essential elements of forcible rape (L.F. 44). See § 566.030, RSMo 2000 (A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion).

Sufficient evidence was presented to support the jury's finding that the crime occurred in the City of St. Louis. The victim testified that she was certain that the abandoned grocery store where appellant raped her was in the City of St. Louis and was able to reference one of the locations near the crime scene as a house on Union and Page in the City of St. Louis (Tr. 206-207, 210, 225, 242). Detective Blaskiewicz with the City of St. Louis, who investigated the crime, took the victim to different locations in the north part of St. Louis City, and testified that when he and the victim went to St. Louis County, the victim indicated that they had gone too far and that they needed to go back into the city (Tr. 255-256). This evidence supported a finding of venue. State v. Morgan, 645 S.W.2d 134, 136 (Mo. App., E.D. 1982) (References to activities connected with the crime as occurring at

some prominent streets in the City of St. Louis and references to the Eighth and Ninth Police Districts-commonly known to residents of St. Louis-was sufficient to establish that the crimes took place in the City of St. Louis).

Because the jury was instructed on all elements of the crime of forcible rape and was required to find appellant guilty only if it found that the crime occurred in the City of St. Louis, appellant suffered no prejudice from his inability to argue in closing argument that the state failed to prove venue beyond a reasonable doubt. Therefore, appellant's claim should be denied.

CONCLUSION

In light of the foregoing, respondent submits that appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 4,187 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2003 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 11th day of May, 2007, to:

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APPENDIX

Sentence and Judgment.....A1
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