

IN THE
MISSOURI SUPREME COURT

LEONARD TAYLOR,)
)
)
 Appellant,)
)
 vs.) No. SC 88426
)
 STATE OF MISSOURI,)
)
)
 Respondent.)

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT, DIVISION 6
THE HONORABLE MICHAEL P. DAVID, JUDGE

APPELLANT'S SUBSTITUTE STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

Leonard Taylor, Appellant, was convicted after a jury trial of one count of the unclassified felony of forcible rape in the Circuit Court for the City of St. Louis, the Honorable Michael P. David, presiding. On March 10, 2006, the court sentenced Mr. Taylor to one hundred years of imprisonment. Notice of Appeal was timely filed.

The Missouri Court of Appeals, Eastern District, issued an opinion in ED 87796 and, on its own motion, transferred this case to the Missouri Supreme Court pursuant to Rule 83.02. This Court has jurisdiction of this appeal, Article V, Section 10, Mo. Const.; Rule 83.02.

* Statutory citations are to RSMo 2000 unless otherwise indicated. The Record on Appeal will be cited to as follows: Legal File (LF); and Transcript (Tr.).

STATEMENT OF FACTS

The state charged Leonard Taylor with one count of the unclassified felony of forcible rape and an alternative count of the class C felony of statutory rape, alleging he forcibly raped Precious Lee, his stepdaughter, in the City of St. Louis (LF 28, Tr. 199). At trial, Ms. Lee testified that on July 10, 2000, she and some family members went to a park in Alton, Illinois, the town where they lived (Tr. 199, 201). Mr. Taylor then asked Ms. Lee, who had her driver's permit, to drive him across the bridge (Tr. 202). The two left the park and Ms. Lee drove across the bridge, with Mr. Taylor giving her directions (Tr. 203). He had her stop at a house, where he took his gun out of the glove compartment and went inside (Tr. 203-04). Ms. Lee did not know where the house was located (Tr. 203). Mr. Taylor came back to the car and directed her to another house, where he did the same thing (Tr. 204-05). Again, Ms. Lee did not know where this house was located, although she believed it was in the City of St. Louis (hereinafter City), as opposed to St. Louis County (hereinafter County) (Tr. 205). When Mr. Taylor got back in the car, they went to a woman named Winnifer's house, somewhere around Union and Page in the City, where they stayed for quite awhile (Tr. 207).

From Winnifer's house, they drove for about five minutes to a liquor store (Tr. 208). Ms. Lee did not know where the liquor store was located, but she testified that it was in the City (Tr. 208, 233, 235). Mr. Taylor went into the liquor store and came out with some liquor, and he then told Ms. Lee to "pull off" and he put his hand inside her shirt on her chest (Tr. 208). Ms. Lee testified she was upset and told him she

didn't want to drive, so she got into the passenger's side and Mr. Taylor started driving, eventually stopping at what looked like an abandoned grocery store (Tr. 209). Because she was upset, Ms. Lee did not pay attention to where they were driving or how long they drove between the liquor store and the grocery store, or even whether they traveled north, south, east, or west (Tr. 209, 235-36). She did not know where the grocery store was, but testified she was positive it was in the City (Tr. 210, 236, 242-43).

Ms. Lee testified that in the parking lot of the abandoned grocery store, Mr. Taylor hit her in the face, told her to open the door while he got out of the driver's side and came around to the passenger's side, and told her to take her pants down (Tr. 210-12). She testified that he then got on top of her and put his penis in her vagina (Tr. 213).

Ms. Lee testified that Mr. Taylor returned to the driver's side and drove them back home to Alton, passing Halls Ferry Circle on the way (Tr. 215-16).

In December of 2004, Ms. Lee told St. Louis City Police Detective John Blaskiewicz about the incident (Tr. 223, 251, 253-54). Detective Blaskiewicz drove Ms. Lee around to places in the City and the County to try to locate the abandoned grocery store, but she did not see any places that she recognized (Tr. 224, 255). They looked in the vicinity of Halls Ferry Circle, where Ms. Lee particularly said things looked familiar, and then they broadened the search, with the detective taking her to all the abandoned grocery stores (Tr. 260, 264). Ms. Lee told him she was sure it

happened in the City, even though she could never identify where it actually did happen (Tr. 224-25, 259-60, 264).

The verdict director as to the forcible rape charge, mirroring MAI-CR 320.01, read:

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 Precious Lee, 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.¹

(LF 44).

In opening statements of the trial, defense counsel informed the jury that:

¹ The verdict director went on to define “forcible compulsion” and “sexual intercourse,” but these definitions are not pertinent to this appeal.

Our evidence is also going to show that she doesn't know where the crime occurred.

Our evidence is going to show that when she talked to Detective Blaskiewicz that Detective Blaskiewicz took her around to five different abandoned grocery stores in the vicinity of Halls Ferry Circle, which is where she said she passed on the way back to Alton and so she believed it was near that area

Our evidence is going to show that on the west side of that is St. Louis County and on the east side...[o]n the east side it would be the city and since she doesn't know where it happened, our evidence is going to show that it didn't happen in the city of St. Louis.

(Tr. 196-97).

At the close of the state's case, defense counsel filed a motion for judgment of acquittal (Tr. 290-91; LF 38-39).² Specifically, defense counsel argued improper venue, since Ms. Lee's testimony indicated she did not know where the incident happened (Tr. 291). The trial court ruled that "there's enough to submit to the jury on that issue," and denied the motion (Tr. 291; LF 38).

Thereafter, the court also ruled, over defense counsel's objections, that although the court was "bothered by the Supreme Court approved instructions which say that if

² Defense counsel also previously filed, on the first day of trial, a motion to dismiss for improper venue.

you find and believe from the evidence beyond a reasonable doubt that on a certain date in a certain location,” defense counsel would not be allowed to argue to the jury that the state did not prove beyond a reasonable doubt that the offense occurred in the City of St. Louis (Tr. 297-302). Defense counsel made an offer of proof, asserting he 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,” and contending he should be allowed to argue the instructions and the facts as applied to the instructions (Tr. 300-01). Counsel also included this issue in the timely-filed motion for new trial and argued the point at Mr. Taylor’s sentencing hearing (LF 58, Tr. 326-27).

The court denied Mr. Taylor’s motions for new trial and sentenced Mr. Taylor to a term of imprisonment of one hundred (100) years in the Missouri Department of Corrections (Tr. 358, 363; LF 72-74). To avoid repetition, additional facts may be adduced in the argument portion of this brief.

POINT RELIED ON

The trial court erred and abused its discretion in ruling that defense counsel could not argue to the jury during closing arguments that the state did not prove the offense occurred in the City of St. Louis, because the ruling violated Mr. Taylor’s rights to due process of law, to a fair trial, and to a fair and impartial jury under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the verdict director, which mirrored the applicable Missouri Approved Instruction, required that the jury find beyond a reasonable doubt that the offense occurred in the City of St. Louis, and prohibiting defense counsel from arguing the evidence as it pertained to the instructions lessened the state’s burden of proof.

State v. Huckleberry, 823 S.W.2d 82, 86 (Mo. App. W.D. 1991);

State v. Erwin, 848 S.W.2d 476, 481 (Mo. 1993);

State v. Speedy, 543 S.W.2d 251, 254 (Mo. App. St.L.D 1976);

U.S. Constitution, IV, V, VI, and XIV Amendments;

Missouri Constitution, Article I, §10 and 18(a);

Rule 28.02; and

MAI-CR 320.01.

ARGUMENT

The trial court erred and abused its discretion in ruling that defense counsel could not argue to the jury during closing arguments that the state did not prove the offense occurred in the City of St. Louis, because the ruling violated Mr. Taylor’s rights to due process of law, to a fair trial, and to a fair and impartial jury under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the verdict director, which mirrored the applicable Missouri Approved Instruction, required that the jury find beyond a reasonable doubt that the offense occurred in the City of St. Louis, and prohibiting defense counsel from arguing the evidence as it pertained to the instructions lessened the state’s burden of proof.

Standard of Review and Preservation

Appellate review of a trial court’s ruling on a closing argument is for an abuse of discretion. State v. Dismang, 151 S.W.3d 155, 163 (Mo. App. S.D. 2004) (citation omitted). An abuse of discretion occurs when a ruling is clearly against the logic of the circumstances before the trial court. Id. Error is reversible if it constitutes an abuse of discretion by the trial court and prejudices the defendant. Id.

When the trial court indicated it would not allow defense counsel to argue to the jury that the state did not prove the offense occurred in the City of St. Louis, defense counsel made an offer of proof, asserting he 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,” and contending he should be allowed to argue the instructions and the facts as applied to the instructions (Tr. 300-01). Counsel also included this issue in the timely-filed motion for new trial and argued the point at Mr. Taylor’s sentencing hearing, and it is therefore properly preserved for appeal (LF 58, Tr. 326-27). Rule 29.11(d).

Pertinent Facts

The state charged Leonard Taylor with one count of the unclassified felony of forcible rape and an alternative count of the class C felony of statutory rape, alleging he forcibly raped Precious Lee, his stepdaughter, in the City of St. Louis (LF 28, Tr. 199). At trial, Ms. Lee testified that on July 10, 2000, she and some family members went to a park in Alton, Illinois, the town where they lived (Tr. 199, 201). Mr. Taylor then asked Ms. Lee, who had her driver’s permit, to drive him across the bridge (Tr. 202). The two left the park and Ms. Lee drove across the bridge, with Mr. Taylor giving her directions (Tr. 203). He had her stop at a house, where he took his gun out of the glove compartment and went inside (Tr. 203-04). Ms. Lee did not know where the house was located (Tr. 203). Mr. Taylor came back to the car and directed her to another house, where he did the same thing (Tr. 204-05). Again, Ms. Lee did not know where this house was located, although she believed it was in the City of St. Louis, as opposed to St. Louis County (Tr. 205). When Mr. Taylor got back in the car, they went to a woman named Winnifer’s house, somewhere around Union and Page in the City, where they stayed for quite awhile (Tr. 207).

From Winnifer’s house, they drove for about five minutes to a liquor store (Tr. 208). Ms. Lee did not know where the liquor store was located, but she testified that it

was in the City (Tr. 208, 233, 235). Mr. Taylor went into the liquor store and came out with some liquor, and he then told Ms. Lee to “pull off” and he put his hand inside her shirt on her chest (Tr. 208). Ms. Lee testified she was upset and told him she didn’t want to drive, so she got into the passenger’s side and Mr. Taylor started driving, eventually stopping at what looked like an abandoned grocery store (Tr. 209). Because she was upset, Ms. Lee did not pay attention to where they were driving or how long they drove between the liquor store and the grocery store, or even whether they traveled north, south, east, or west (Tr. 209, 235-36). She did not know where the grocery store was, but testified she was positive it was in the City (Tr. 210, 236, 242-43).

Ms. Lee testified that in the parking lot of the abandoned grocery store, Mr. Taylor hit her in the face, told her to open the door while he got out of the driver’s side and came around to the passenger’s side, and told her to take her pants down (Tr. 210-12). She testified that he then got on top of her and put his penis in her vagina (Tr. 213).

Ms. Lee testified that Mr. Taylor returned to the driver’s side and drove them back home to Alton, passing Halls Ferry Circle on the way (Tr. 215-16).

In December of 2004, Ms. Lee told St. Louis City Police Detective John Blaskiewicz about the incident (Tr. 223, 251, 253-54). Detective Blaskiewicz drove Ms. Lee around to places in the City and the County to try to locate the abandoned grocery store, but she did not see any places that she recognized (Tr. 224, 255). They looked in the vicinity of Halls Ferry Circle, where Ms. Lee particularly said things

looked familiar, and then they broadened the search, with the detective taking her to all the abandoned grocery stores (Tr. 260, 264). Ms. Lee told him she was sure it happened in the City, even though she could never identify where it actually did happen (Tr. 224-25, 259-60, 264).

The verdict director as to the forcible rape charge, mirroring MAI-CR 320.01, read:

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 Precious Lee, 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 (emphasis added).³

(LF 44).

In opening statements of the trial, defense counsel informed the jury that:

³ See FN 1.

Our evidence is also going to show that she doesn't know where the crime occurred.

Our evidence is going to show that when she talked to Detective Blaskiewicz that Detective Blaskiewicz took her around to five different abandoned grocery stores in the vicinity of Halls Ferry Circle, which is where she said she passed on the way back to Alton and so she believed it was near that area.

Our evidence is going to show that on the west side of that is St. Louis County and on the east side...[o]n the east side it would be the city and since she doesn't know where it happened, our evidence is going to show that it didn't happen in the city of St. Louis.

(Tr. 196-97).

At the close of the state's case, defense counsel filed a motion for judgment of acquittal (Tr. 290-91; LF 38-39). Specifically, defense counsel argued improper venue, since Ms. Lee's testimony indicated she did not know where the incident happened (Tr. 291). The trial court ruled that, "there's enough to submit to the jury on that issue," and denied the motion (Tr. 291; LF 38).

Thereafter, the following colloquy ensued:

[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 Precious Lee. 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, 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).

Defense counsel was therefore not allowed to argue to the jury that the state had not proved that the offense occurred in the City of St. Louis. The jury subsequently found Mr. Taylor guilty of forcible rape, and the court sentenced Mr. Taylor to imprisonment for one hundred years (LF 51, 72-74; Tr. 307-315, 319-320, 363).

Analysis

Missouri Approved Instructions are approved by the Missouri Supreme Court, and are therefore presumptively correct. State v. Huckleberry, 823 S.W.2d 82, 86 (Mo. App. W.D. 1991). See also Rule 28.02. In this case, there is no question that the verdict director provided in the jury instructions mirrored a pattern instruction approved by the Missouri Supreme Court. See MAI-CR 320.01; LF 44. MAI-CR 320.01 provides, in pertinent part:

(As to Count ____, if) (If) you find and believe from the evidence beyond a reasonable doubt:

First, that (on) (on or about) [*date*], in the (City) (County) of

_____,

State of Missouri, the defendant had sexual intercourse with [*name of victim*], and

then you will find the defendant guilty (under Count ____) of forcible rape (under this instruction).

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.

MAI-CR 320.01.

Appropriately, the verdict director in this case read:

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 Precious Lee, and

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.

(LF 44).

The instruction, which mirrors the pattern instruction approved by the Missouri Supreme Court, clearly indicates that the jury must find from the evidence beyond a reasonable doubt that the offense occurred in the City of St. Louis. The circuit court was powerless to declare the approved pattern instruction erroneous. See Huckleberry at 86. Additionally, it should be noted that the circuit court *did not* remove the

disputed language from the verdict director. In fact, the court *followed* MAI-CR 320.01, but then refused to allow defense counsel to argue to the jury the evidence as it pertained to the instruction that *the court itself* provided the jury.

It is true that the appellate cases cited by the trial court assert that “[v]enue is not an integral part of the offense and thus need not be proved beyond a reasonable doubt: it may be inferred from all the evidence.” State v. Harper, 778, S.W.2d 836, 838 (Mo. App. S.D. 1989). State v. King, 662 S.W.2d 304, 308 (Mo. App. S.D. 1983); State v. Speedy, 543 S.W.2d 251, 254 (Mo. App. St.L.D 1976). See also State v. Lingar, 726 S.W.2d 728, 732 (Mo. banc 1987). However, these cases all dealt with the necessary standard that must be achieved in order to even submit the case to a jury in that venue. In fact, in Speedy, the Court specifically concluded that from the “facts and circumstances” provided by the evidence, “*the jury reasonably could find*” that appellant committed the offenses in St. Louis County, and therefore venue was proper in St. Louis County. Speedy at 254 (emphasis added).⁴

Here, Mr. Taylor is not arguing that venue was improper and the case should not have been submitted to the jury in the City of St. Louis. Instead, he is arguing that once the case was submitted to the jury, the question of whether the offense occurred in the City of St. Louis became a question of fact for the jury to determine, and that here, *the jury reasonably could find* that the offense *did not* occur in the City of St.

⁴ The Court went on to hold in that case that “[a]ssuming the above conclusion could be subject to question, appellant waived the issue of venue.” Id.

Louis. According to the pattern instruction approved by the Missouri Supreme Court, the jury must find this fact beyond a reasonable doubt. MAI-CR 320.01. Thus, the trial court erred and abused its discretion in declaring the approved instruction erroneous and in prohibiting defense counsel to argue the evidence and the instruction to the jury.

Mr. Taylor was prejudiced by such error because it lessened the state's burden of proof. "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of *every fact* necessary to constitute the crime with which he was charged." (emphasis in original). State v. Erwin, 848 S.W.2d 476, 481 (Mo. 1993) (quoting Sandstrom v. Montana, 442 U.S. 510, 520 (1979)).

Here, the verdict director, based upon the applicable Missouri Approved Instruction, indicated the jury must find beyond a reasonable doubt the offense occurred in the City of St. Louis. Had defense counsel been allowed, there is ample evidence he could have emphasized to the jury regarding this issue:

- Ms. Lee insisted that the incident occurred in the City, even though she could never identify the location (Tr. 210, 224-25, 236, 242-43, 255, 259-60, 264).
- She testified that she was so upset while Mr. Taylor drove from the liquor store to the abandoned grocery store that did not pay any attention to where they were

driving or how long they drove between the liquor store and the grocery store, or even whether they traveled north, south, east, or west (Tr. 209, 235-36).

- She testified that she is very familiar with the County and this did not happen in the County, even though she also testified that during at least one of the earlier stops, she only *believed* they were in the City instead of the County (Tr. 205 they were in the City or the County (Tr. 210, 242, 205).
- The location she particularly recognized was Halls Ferry Circle, which defense counsel opined during opening statement is close to where the City and the County meet (Tr. 216, 260, 264).

In fact, defense counsel told the jury during his opening statement that the evidence would show Ms. Lee didn't know where the incident happened and that it was not the City of St. Louis (Tr. 197), but counsel was then denied the opportunity to follow up on this assertion during closing argument. It is reasonably probable that any of these arguments would have persuaded the jury that the state did not prove beyond a reasonable doubt the incident occurred in the City of St. Louis, as the instruction required (LF 44), and that the outcome of the trial would therefore have been different.

Instead, the trial court deliberately lessened the state's burden of proof from what is clearly provided in the pattern instruction approved by the Missouri Supreme

Court when it prohibited defense counsel from emphasizing this evidence and arguing the instruction to the jury. The trial court was powerless to declare the Missouri Approved Instruction erroneous, and thus abused its discretion and committed prejudicial error when it did so. See Huckleberry, supra.

Even if this Court concludes that the instruction is in conflict with the substantive law and the trial court should therefore have declined to follow MAI-CR 320.01 (See State v. Carson, 941 S.W.2d 518, 520 (Mo. banc 1997), defense counsel should have at the *very least* been allowed to argue to the jury that the facts did not support a reasonable inference that the crime occurred in the City of St. Louis. However, the trial court prevented even this argument when counsel asked if he could still argue that “she’s not sure where it happened,” and the court responded, “[o]nly as it might reflect on whether it, in fact, happened” (Tr. 301).

Such error denied Mr. Taylor’s rights to due process of law, to a fair trial, and to a fair and impartial jury under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution. Accordingly, this Court should reverse Mr. Taylor’s conviction and remand for a new, fair trial.

CONCLUSION

WHEREFORE, Appellant Leonard Taylor respectfully prays this Honorable Court to reverse his conviction in Circuit Case Number 041-3965 and remand for a new, fair trial not inconsistent with the Court's opinion.

Respectfully Submitted,

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Certificate of Compliance and Service

I, Michelle Rivera, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word in Times New Roman size 13 point font. Including the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 5,651 words, which does not exceed the 31,000 words allowed for an appellant's brief.

The floppy disk filed with this brief contains a complete copy of this brief. It has been scanned for viruses using a McAfee VirusScan program. According to that program, the disks provided to this Court and to the Attorney General are virus-free.

Two true and correct copies of the attached brief and a floppy disk containing a copy of this brief were mailed, postage prepaid this 23rd day of April, 2007, to Dora A. Fichter, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.

Respectfully Submitted,

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APPENDIX

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