IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

SCOTT EVAN WEYANT,

Appellant.

DOCKET NUMBER WD82502

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 31, 2020

APPEAL FROM

The Circuit Court of Adair County, Missouri
The Honorable Russell E. Steele, Judge

JUDGES

Division One: Chapman, P.J., and Pfeiffer and Gabbert, JJ. CONCURRING.

ATTORNEYS

Eric S. Schmitt, Attorney General, and Julia E. Rives, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

Christian E. Lehmberg, Assistant State Public Defender, Columbia, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
SCOTT EVAN WEYANT, Appellant.

WD82502 **Adair County**

Before Division One Judges: Thomas N. Chapman, Presiding Judge, and Mark D. Pfeiffer and Anthony Rex Gabbert, Judges

Mr. Scott E. Weyant ("Weyant") appeals from the judgment of the Circuit Court of Adair County, Missouri ("trial court"), finding him guilty, following a jury trial, of sodomy in the first degree. The State had charged that Weyant "knowingly had deviate sexual intercourse with [the victim] by the use of forcible compulsion."

In Weyant's sole point on appeal, he asserts that the trial court plainly erred in submitting the instruction defining deviate sexual intercourse. He claims that the instruction impermissibly submitted a disjunctive phrase in violation of MAI-CR 420.12 because it instructed the jury that they could find the act was done for the purpose of either arousing or gratifying the sexual desire of any person *or* terrorizing another. He summarily concludes that this court should treat his case like a "multiple acts" case as described in *State v. Celis-Garcia*, 344 S.W.3d 150 (Mo. banc 2011), and that we should reverse on the grounds that the disjunctive submission of the definition of deviate sexual intercourse destroyed juror unanimity as to his conviction for sodomy in the first degree.

AFFIRMED.

Division One holds:

1. *Celis-Garcia* does not apply here. This is not a "multiple acts" case; rather, the State charged Weyant and presented evidence of one act of unlawful digital penetration occurring on the specified date. To find that the charged offense of sodomy in the first degree occurred, it was proper for the jury to find that Weyant's purpose in digitally penetrating his victim was *either* for sexual gratification *or* to terrorize his victim. In either instance, the jury was still required to unanimously agree that *the act* of digital penetration satisfied the element of "deviate sexual intercourse" necessary for conviction of the crime for which he was charged.

2. Sexual gratification *or* terrorizing the victim are both listed as optional "purpose" choices in the MAI-CR 420.12 definition of "deviate sexual intercourse." There is nothing in MAI-CR 420.12 or the associated Notes on Use mandating that the State must elect that the act

was done for one purpose or another; rather, the only requirement is that the act (in this case, digital penetration) "must be consistent with the language selected in the definition of deviate sexual intercourse." There was substantial evidence at trial that Weyant's purpose in committing the crime was for the purpose *both* of sexual gratification *and* terrorizing his victim. Weyant does not contest the evidentiary basis for the disjunctive submission of his purpose in committing the crime. Accordingly, the trial court did not err, plainly or otherwise.

Opinion by: Mark D. Pfeiffer, Judge March 31, 2020

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