MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

Respondent

v.

ROBERT J. TABBERER,

Appellant

DOCKET NUMBER WD83536

DATE: June 29, 2021

Appeal From:

Circuit Court of Clay County, MO
The Honorable Shane T. Alexander, Judge

Appellate Judges:

Division One
Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr., Judge, Thomas N. Chapman, Judge

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Attorneys:

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Counsel for Respondent

Attorneys:

Michael K. Hill, Kansas City, MO,
Counsel for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
ROBERT J. TABBERER, Appellant.

WD83536 **Clay County**

Before Division One Judges: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr., Judge, and Thomas N. Chapman, Judge

Robert J. Tabberer appeals from a judgment entered upon a jury verdict convicting him of one count of statutory rape in the first degree, Section 566.032, RSMo 2016, one count of statutory sodomy in the first degree, Section 566.062, RSMo 2016, and one count of incest, Section 568.020, RSMo 2016. Tabberer contends the circuit court, 1) plainly erred in submitting Instruction No. 6 to the jury, arguing that the State presented evidence of multiple acts of alleged sexual intercourse, yet the verdict directors did not specify any one of these incidents, thereby allowing for the possibility that the jury did not reach unanimous verdicts as to the same incidents; 2) plainly erred in submitting Instruction No. 8 to the jury, arguing that the State presented evidence of multiple acts of alleged deviate sexual intercourse, yet the verdict directors did not specify any one of these incidents, thereby allowing for the possibility that the jury did not reach unanimous verdicts as to the same incidents; 3) and plainly erred in submitting Instruction No. 9 to the jury, arguing that the State presented evidence of multiple acts of alleged sexual intercourse, yet the verdict directors did not specify any one of these incidents, thereby allowing for the possibility that the jury did not reach unanimous verdicts as to the same incidents.

AFFIRMED.

Division One holds:

(1) The circuit court did not plainly err in submitting Instruction No. 6 to the jury. Tabberer fails to make a threshold showing that plain error occurred and, even if the generic evidence of multiple rapes in conjunction with one particularized incident warranted more specifically identifying the particularized incident in the verdict director, Tabberer has not established a reasonable likelihood that any error by the trial court in failing to *sua sponte* do so affected the verdict.

(2) The circuit court did not plainly err in submitting Instruction No. 8 to the jury. Although Tabberer claims that there was evidence at trial of multiple, particularized acts of Tabberer placing his mouth on H.T.'s vagina between the dates of January 1, 2016 and May 31, 2016, Tabberer details none of these alleged multiple, particularized

acts on appeal and, consequently, fails to show that an instruction drafted more specifically than Instruction No 8 was necessitated by the evidence.

(3) The circuit court did not plainly err in submitting Instruction No. 9 to the jury. Tabberer fails to make a threshold showing that plain error occurred and, even if the generic evidence of multiple rapes in conjunction with one particularized incident warranted more specifically identifying the particularized incident in the verdict director, Tabberer has not established a reasonable likelihood that any error by the trial court in failing to *sua sponte* do so affected the verdict.

Opinion by: Anthony Rex Gabbert, Judge Date: June 29, 2021

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