MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

JAMES PATRICK DODD, JR.

APPELLANT.

DOCKET NUMBER WD83687

DATE: November 23, 2021

Appeal From:

Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Richard A. Starnes, Jefferson City, MO, for respondent.

Kenneth C. Hensley, Raymore, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
JAMES PATRICK DODD, JR., APPELLANT.

WD83687 Jackson County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

James Dodd ("Dodd") appeals from the judgment of the Circuit Court of Jackson County, Missouri ("trial court") convicting Dodd of two counts of first-degree child molestation, section 566.067. RSMo; one count of first-degree statutory sodomy, section 566.062, RSMo; one count of attempted first-degree statutory sodomy, section 566.062, RSMo; one count of second-degree statutory rape, section 566.034, RSMo; and three counts of second-degree statutory sodomy, section 566.064, RSMo. The charged offenses involved two victims who were molested and raped by Dodd during different time periods. Both victims were related to a woman Dodd was dating at the time of the offenses. Dodd raises two issues on appeal: (1) the evidence presented at trial was insufficient to support a conviction on counts I-VII; and (2) the offenses against the two separate victims were improperly joined in the indictment and were not severed. We affirm.

AFFIRMED.

Division Three holds:

The evidence presented at trial was sufficient to support convictions on counts I-VII. At trial, both victims testified regarding the multiple instances of molestation and rape Dodd perpetrated against them. The testimony of a single witness is sufficient to support a conviction even if the testimony of the witness is inconsistent. *State v. Bell*, 936 S.W.3d 406, 408 (Mo. banc 2002). Dodd presented evidence at trial that contradicted the State's evidence, but on appeal we must accept as true all of the evidence favorable to the verdict, including all favorable inferences drawn from the evidence and disregard all evidence and inferences to the contrary. *State v. Weaver*, 481 S.W.3d 927, 930 (Mo. App. W.D. 2016). Dodd essentially asks this Court to apply the Corroboration Rule and Destructive Contradictions Doctrine, which were judicially created standards of evidentiary review specific to sexual offense cases, because the victims' testimonies were inconsistent and contradicted by Dodd's witnesses. Both doctrines were abolished by the Missouri Supreme Court in *State v. Porter*, 439 S.W.3d 208, 211, 213 (Mo. banc 2014). Dodd's suggestion that we reweigh the evidence would violate both the applicable standard of review and the Supreme Court's abolition of the former doctrines of evidentiary review.

The trial court did not err by failing to sever the counts pertaining to the two victims. Whenever two or more offenses are jointly charged in an indictment or information, the statute

requires the court to order both or all offenses to be tried together. Section 545.885, RSMo. If it appears that a defendant or the state is substantially prejudiced by a joinder of the offenses for trial, upon a written motion of the defendant or the state and upon a particularized showing of substantial prejudice, the court may grant a severance of offenses and provide whatever relief justice requires. *Id*.; Rule 24.07. If a defendant fails to object to the joinder of offenses before trial, he waives the right to obligate the State to "elect among the counts" as to which counts it will try. *State v. Shubert*, 747 S.W.2d 165, 168 (Mo. App. W.D. 1988). Dodd's claim must fail because he did not raise the issue of severance prior to trial. Dodd's argument is therefore reduced to a contention that the trial court should have acted *sua sponte* to sever the claims. However, the trial court is prohibited by statute from severing the claims absent a written motion by one of the parties. Therefore, the trial court did not err by not severing the counts. And even if Dodd filed a motion to sever, joinder was proper because the offenses charged were "of the same or similar character." Section 545.140.2, RSMo; Rule 23.05. Both victims were underage girls; Dodd had penis-to-vagina contact with both victims; Dodd used his relationship with the victims' relatives to secure alone time with them; each incident occurred in the house of the victims' relative. Accordingly, the offenses were properly joined, and the trial court did not err.

Opinion by: Gary D. Witt, Judge November 23, 2021

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