MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

DAVIUNE C. MINOR.

Appellant

DOCKET NUMBER WD83298

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: December 21, 2021

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Patrick William Campbell, Judge

Appellate Judges:

Division Two
Thomas N. Chapman, P.J., Karen King Mitchell, and Anthony Rex Gabbert, JJ.

Attorneys:

Rosemary Percival, Kansas City, MO — Counsel for Appellant

Attorneys:

Garrick Aplin, Jefferson City, MO — Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
DAVIUNE C. MINOR, Appellant.

WD83298 **Jackson County**

Before Division Two Judges: Chapman, P.J., Mitchell, and Gabbert, JJ.

Following a jury trial in the Circuit Court of Jackson County, Daviune Minor was convicted of three counts of first-degree statutory sodomy and three related counts of incest. Minor raises five points on appeal, arguing: (1) the trial court abused its discretion in admitting propensity evidence under article I, § 18(c) of the Missouri Constitution; (2) the trial court abused its discretion in overruling Minor's objections to comments made by the State during closing argument; (3) the evidence was insufficient to sustain Minor's convictions on Counts V and VI (which alleged first-degree statutory sodomy and incest based on penile-to-anus contact); (4) the trial court abused its discretion in admitting State's Exhibits 31 and 32; and (5) the trial court abused its discretion in allowing a Child Protection Center interviewer to testify as an expert witness about the disclosure process for child victims. Because the trial court abused its discretion by admitting some of the propensity evidence, the court would normally reverse Minor's convictions and sentences and remand the matter for further proceedings consistent with this opinion. Given the general interest and importance of the questions presented, the court does not finally decide Minor's appeal, but instead transfers his appeal to the Missouri Supreme Court pursuant to Rule 83.02.

CASE ORDERED TRANSFERRED TO MISSOURI SUPREME COURT PURSUANT TO RULE 83.02.

Division Two Majority holds:

(1) The trial court abused its discretion in admitting propensity evidence to establish that Minor had committed an unadjudicated prior act of first-degree statutory sodomy against a child victim where the probative value of the detailed and expansive testimony was substantially outweighed by the danger of unfair prejudice that accompanied it. Because there was a reasonable probability that the improperly admitted evidence affected the outcome of the trial, reversal was warranted.

(2) The trial court did not abuse its discretion in admitting propensity evidence to establish that Minor had previously committed an act of first-degree statutory sodomy as a juvenile where the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice that accompanied the brief reading to the jury from the Petition and Findings in the prior juvenile adjudication.

(3) The evidence was sufficient to sustain Minor's convictions on Counts V and VI. Although Minor's convictions on Counts V and VI should be reversed and the matter remanded for new trial due to the merits of Minor's first point, double jeopardy considerations required review of Minor's sufficiency of the evidence argument raised in his third point.

Majority Opinion by: Thomas N. Chapman, Presiding Judge December 21, 2021
Anthony Rex Gabbert, Judge, concurs.

Judge Mitchell's Concurring Opinion states:

Though I concur with the result reached by the majority, I write separately because I believe that most of the evidence admitted under Article I, § 18(c), of the Missouri Constitution failed to meet a threshold requirement for admission under § 18(c) insofar as the evidence's purpose was to corroborate a propensity witness's testimony, rather than to corroborate the victim's testimony or independently demonstrate Minor's propensity to engage in the charged conduct. There are only two purposes for the admission of evidence under § 18(c): (1) corroborating the victim's testimony; and (2) demonstrating the defendant's propensity to commit the charged crime(s). To demonstrate a defendant's propensity, the evidence offered must show clearly that the defendant has a natural tendency to behave in a particular way and is prone to a specific type of bad behavior. Evidence that fails to address the defendant's behavior and serves only to corroborate other evidence reflecting on the defendant's behavior is not admissible under § 18(c) insofar as corroborating propensity evidence is not a permissible purpose for admission of evidence under § 18(c). Here, the evidence from M.W. and T.F., as well as State's Exhibits 3, 15, and 16, were admitted solely to corroborate testimony from L.W. Though L.W.'s testimony reflected directly on Minor's behavior, the remaining evidence failed to do so and had no other purpose than corroborating L.W.'s testimony. Thus, it was inadmissible under § 18(c).

Concurring Opinion by: Karen King Mitchell, Judge December 21, 2021

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