

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, RESPONDENT,
v.
JOSHUA ARMANDO ALDANA, APPELLANT.**

DOCKET NUMBER WD85526

DATE: October 10, 2023

Appeal From:

Ray County Circuit Court
The Honorable David Harrison Miller, Judge

Appellate Judges:

Division Four: Gary D. Witt, Chief Judge, Presiding, Cynthia L. Martin, Judge, and
Chad Gaddie, Special Judge

Attorneys:

Kristen Shively Johnson, Jefferson City, MO, for respondent.

James Roy Brown, Kearney, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Four Judges: Gary D. Witt, Chief Judge, Presiding, Cynthia L. Martin, Judge, and Chad Gaddie, Special Judge

Joshua Armando Aldana ("Aldana") appeals the judgment of the Circuit Court of Ray County, Missouri ("trial court"), convicting him, after a jury trial, of three counts of abuse of a child, section 568.060, RSMo, and sentencing him to terms of five years, four years, and five years, all to be served concurrently. On appeal, Aldana alleges the trial court: (1) plainly erred in submitting the verdict director for count I in that it involved "multiple acts" not requiring a unanimous jury verdict; (2) erred in submitting the disjunctive verdict director for Count I in that there was not sufficient evidence to support one of the alternatives; (3) plainly erred in submitting the verdict director for count II in that the verdict director was not the correct MAI instruction and did not include the required cross-reference; (4) plainly erred in submitting the verdict director for count III in that the verdict director was not the correct MAI instruction and did not include the required cross-reference; (5) erred in failing to ensure that the complete text of certain mandatory jury instructions was submitted to the jury; and (6) erred in allowing into evidence testimony regarding a prior bad act of Aldana.

AFFIRMED.

Division Four holds:

The trial court did not plainly err in submitting to the jury the verdict director for count I. This case is not a multiple acts case. The abusive act alleged was the causing of the victim's ("Victim") facial injuries at some point between July 31, 2017, and August 3, 2017. Instead of multiple distinct acts of abuse on multiple occasions, as occurred in *State v. Celis-Garcia*, 344 S.W.3d 150 (Mo. banc 2011), the verdict director for count I in this case allowed the jury to find, in the disjunctive, two different *means* of causing a single set of injuries, all motivated by the same occurrence. In addition, there was sufficient evidence of both alternatives in the disjunctive verdict director, so there was no error in giving this instruction.

The trial court did not plainly err in giving the verdict-directing instructions for counts II and III. Although the instructions should have included a cross reference to MAI-CR 4th 406.20, the disciplinary justification for use of force on a child, Aldana did not preserve this issue for appeal. Aldana presented evidence that he was Victim's father and that his intent was to "discipline" Victim by "spanking" her "in a reasonable manner." The trial court fully set forth the discipline justification defense in the instructions, and both parties discussed the discipline defense in their closing, so the jury was not so misdirected by the instructions that the error affected the jury's verdict. *See State v. Hawkins*, 58 S.W.3d 12, 19 (Mo. App. E.D. 2001).

Aldana did not establish that the trial court erred in failing to ensure that the complete text of the verdict directors for counts II and III were submitted to the jury. The trial court read the full instructions to the jury before they were sent to deliberate, and then the court said on the record that it was marking the original jury instructions that it had just read to the jury as Court's Exhibit 8 and that Court's Exhibit 8 was being sent back to the jury room with the jury. This is highly indicative that the original instructions sent back to the jury room during the guilt phase of the trial included the complete set of instructions exactly as the court had read them to the jury. Also, the parties had an opportunity to review the instructions before the instructions were sent back to the jury during the penalty phase.

The trial court did not abuse its discretion in allowing into evidence rebuttal testimony regarding a prior bad act by Aldana. Aldana had testified that his use of force on Victim was merely reasonable discipline. The limited testimony from his ex-wife that he had thrown his infant son several feet when the son would not stop crying was rebuttal to show that he was not engaging in reasonable discipline with Victim but was acting in frustration with the child as he had done in the past with his infant son.

Opinion by: Gary D. Witt, Judge

October 10, 2023

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