In the Missouri Court of Appeals
Eastern District

DIVISION FIVE

STATE OF MISSOURI,	)	
	)	No. ED112921
Respondent,	)	
	)	
v.	)	
	)	
PRESTON GREMMINGER,	)	
	)	Filed: December 9, 2025
Appellant.	)	

Appeal from the Circuit Court of Franklin County
The Honorable Matthew W. Houston, Judge

A jury found Preston Gremminger guilty of two counts of statutory sodomy in the first degree, one count of statutory rape in the first degree, and two counts of incest. The circuit court sentenced Gremminger to 128 years' imprisonment.

Gremminger appeals, claiming the circuit court erred in excluding evidence that one of the victims made a previous allegation of sexual abuse, improperly admitting propensity evidence, and rejecting included offense instructions. This Court affirms the circuit court's judgment.

BACKGROUND

Gremminger had two daughters with an ex-girlfriend. Daughter 1 was born in July 2012. Daughter 2 was born in November 2013. From 2017-22, Gremminger lived with a woman in a camper on her parent's property. The woman had one daughter, "Stepdaughter," from a previous relationship. Gremminger's offenses against these three children occurred during the time he lived in the camper.

Stepdaughter was nine years old at the time of trial. Stepdaughter testified that one night when she was four or five years old, she was watching a movie with her mother, Gremminger, and Gremminger's son in the living room. Stepdaughter was on the same couch as Gremminger and fell asleep. Gremminger then touched her on her vagina and bottom under her clothes. Stepdaughter testified that she felt Gremminger's fingers moving in her bottom and on the outside of her vagina.

Daughter 1 was eleven years old at the time of trial. Daughter 1 testified that Gremminger put his penis in her vagina more than ten times when she stayed with Gremminger. Daughter 1 testified that Gremminger's penis felt "[s]limy" when it touched her, and it felt "[w]eird" when he put his penis inside her and was "moving around." Daughter 1 said Gremminger would do this to Daughter 2 as well.

Daughter 2 was ten years old at the time of trial. Daughter 2 testified that Gremminger touched the inside of her vagina with his fingers multiple times, usually at night or early in the morning while everyone was asleep. Daughter 2 testified that Gremminger would remove her pants and underwear and tell her that he was "just

checking for ticks." Daughter 2 testified that she saw Gremminger do the same thing with Daughter 1.

The jury found Gremminger guilty of all charges. The circuit court sentenced Gremminger to forty years imprisonment for each count of statutory sodomy in the first degree, forty years imprisonment for statutory rape in the first degree, and four years imprisonment on each count of incest. The circuit court sentenced Gremminger consecutively on each count for a total 128 years' imprisonment.

ANALYSIS

The circuit court did not err in excluding Stepdaughter's alleged allegation of other abuse

Gremminger claims the circuit court abused its discretion in excluding evidence that Stepdaughter allegedly accused her Aunt's boyfriend of abuse. Gremminger argues the evidence was admissible and its exclusion deprived him of an opportunity to impeach one of the victims.

The offer of proof failed to preserve the issue for appellate review

On cross-examination, Stepdaughter denied telling her aunt that her aunt's boyfriend touched her. Defense counsel later sought to admit Aunt's testimony that Stepdaughter did in fact make this allegation. The circuit court sustained the State's objection to Aunt's testimony on this issue.

Defense counsel made a narrative offer of proof in an attempt to preserve the issue for appeal. However, the offer of proof was insufficient, and Gremminger's claim is not preserved. "To preserve a claim of error regarding the exclusion of evidence at trial, the

proponent of the evidence must make an offer of proof establishing what the evidence would have been, its purpose and object, and each fact essential to establishing its admissibility." *State v. Campbell*, 675 S.W.3d 223, 228 (Mo. App. 2023).

"The offer of proof must demonstrate the relevancy of the offered testimony, must be specific, and must be definite." *State v. Reynolds*, 713 S.W.3d 275, 280 (Mo. App. 2025) (quoting *State v. Shutters*, 697 S.W.3d 13, 21 (Mo. App. 2024)). Courts strictly apply the offer-of-proof requirement because circuit judges "should be given an opportunity to reconsider [their] prior ruling against the backdrop of the evidence actually adduced at trial." *State v. Wilson,* 678 S.W.3d 692, 697 (Mo. App. 2023) (quoting *State v. Hughes*, 563 S.W.3d 119, 124 (Mo banc. 2018)).

"The preferred method for making an offer of proof is to question the witness outside the presence of the jury." *Shutters*, 697 S.W.3d at 21 (quoting *State v. Murphy*, 534 S.W.3d 408, 415 (Mo. App. 2017)). While an offer of proof may be made by counsel in "narrative form, it is more difficult for counsel to present a detailed and specific summary of a witness's testimony without presenting conclusions of counsel." *Id*. "Mere conclusions of counsel will not suffice." *Id*. When counsel narrates an offer of proof rather than offering witness testimony, there is "a greater risk that the court will find the offer insufficient." *Id*.

Here, defense counsel opted to make a narrative offer of proof. Counsel's offer established only that Aunt would testify Stepdaughter "accuse[d] [Aunt's boyfriend] of touching her." This offer contained no other information about the alleged disclosure, including when or where it was purportedly made, who was present, and whether there

were any details regarding the alleged "touching." Further, the offer of proof failed to establish that Aunt had personal knowledge of Stepdaughter's alleged allegation—a fact necessary to permit Aunt to testify about this subject. *See Tisius v. State*, 519 S.W.3d 413, 421 (Mo. banc 2017) (holding a witness may testify only "to those matters of which the witness has personal first-hand knowledge"). The offer also failed to establish the prior allegation of abuse was in fact false. "A prior report of sexual abuse that is not shown to be false does not speak to, does not bear on, and is not relevant to the ultimate issue of a witness's credibility." *State v. Brown*, 717 S.W.3d 589, 595 (Mo. App. 2025) (internal citations and quotations omitted). On its face, the offer of proof is insufficient to preserve this issue for appeal.

The Court declines plain error review

"Plain error review by its nature is discretionary." *State v. Vitale*, 688 S.W.3d 740, 750 (Mo. App. 2024). "The plain error rule is to be used sparingly and may not be used to justify a review of every point that has not been otherwise preserved for appellate review." *State v. Warren*, 702 S.W.3d 48, 60 (Mo. App. 2024) (quoting *State v. Garoutte*, 694 S.W.3d 624, 627 (Mo. App. 2024)).

The record before the Court does not reflect an evident, obvious, or clear error by the circuit court. Therefore, this Court declines to review this point for plain error.

The circuit court did not err in admitting propensity evidence

Gremminger raises two points on appeal, claiming the circuit court erred in admitting testimony from his Sister and Mother that he sexually abused Sister. Gremminger argues there was no probative value to the testimony because it was

duplicative to the testimony of a police officer. Gremminger also argues the testimony was unfairly prejudicial in that it was inescapably inflammatory and emotionally charged.

Additional relevant facts

Three propensity witnesses testified at trial. The State's first witness was Gremminger's mother. Mother testified that when Gremminger was fourteen she checked on her sleeping daughter and found Gremminger "with his pants down and he had an erection and he had his hand on [Sister's] private." She testified that Sister was seven or eight years old at the time. Mother's direct examination spanned approximately two pages of transcript, not including the pages covering defense counsel's objection.

The second witness was Sister. Sister did not "fully" remember the abuse described in Mother's testimony, but testified from the time she was five or six years old until she was eight years old, Gremminger subjected her to "sexual encounters." The sexual acts included performing oral sex on each other and touching each other's genitals. Sister recalled that Gremminger would often tell her to "relax" when these acts occurred. Sister's direct-examination testimony comprised approximately four transcript pages.

The State's third witness was a police officer who interviewed Gremminger in November 2006. At time of the interview, Gremminger was fourteen years old. Gremminger told the officer that he touched Sister's breasts and vagina with his hands and mouth. The officer's direct-examination covers approximately two transcript pages.

The Court instructed the jury that it could not find Defendant guilty of the charged crimes simply because it believed he may have committed "other offenses or bad acts in the past." *See* MAI-CR 410.10. The instruction admonished the jury that, if it found

Gremminger committed criminal sexual acts against Sister, it could consider that evidence only "for the purpose of demonstrating the propensity to commit the offenses for which he is charged."

Standard of Review

The circuit court "has broad discretion to admit or exclude evidence during a criminal trial, and error occurs only when there is a clear abuse of discretion." *State v. Loper*, 609 S.W.3d 725, 731 (Mo. banc 2020). "The [circuit] court abuses its discretion when its 'ruling admitting or excluding evidence is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.'" *State v. Watson*, 697 S.W.3d 44, 52 (Mo. App. 2024). "[I]f reasonable persons can differ about the propriety of the action taken by the [circuit] court, then it cannot be said that the [circuit] court abused its discretion." *State v. Williams*, 548 S.W.3d 275, 287 (Mo. banc 2018).

Historically, "[o]ur country's jurisprudence has generally prohibited the use of propensity evidence in criminal cases." *Watson*, 697 S.W.3d at 53. "However, the enactment of Article 1, section 18(c) of the Missouri Constitution carved out an exception to this general rule by relaxing the standard for the admissibility of propensity evidence in sex-abuse cases involving minors." *Id.*

Article 1, section 18(c) extinguishes the "absolute ban on admissibility, assuming logical and legal relevance is otherwise established." *Id.* (quotation omitted). This Court must determine whether the "evidence was (1) logically relevant—in that it tends to make

the existence of a material fact more or less probable; and (2) legally relevant—in that it has probative value that is not outweighed by the danger of unfair prejudice." *Watson*, 697 S.W.3d at 53.

Gremminger's prior abuse was logically relevant

Gremminger argues there was no probative value to Mother and Sister's testimony because it was duplicative of the officer's testimony. Therefore, Gremminger believes their testimony carried "little probative value."

"Before propensity evidence can be said to have any probative value, it must be sufficient for the jury to conclude the defendant actually committed the prior criminal act." *Williams*, 548 S.W.3d at 288. In considering probative value, "courts also examine whether a defendant 'actually had a propensity to commit the charged crime at the time it is alleged to have occurred.'" *Watson*, 697 S.W.3d at 53-4 (quoting *Williams*, 548 S.W.3d at 289). "Factors to consider in this evaluation include the similarity between the prior act and the charged act, the amount of time between the acts, and the prosecution's need for the evidence to prove its case." *Id.* (quotation omitted). Similarities in victims' age, relationship to the defendant, and accounts of abuse are highly probative when making this evaluation.

The testimony was not duplicative. The three propensity witnesses offered varied testimony. Mother testified of a single discrete instance of sexual abuse. Sister herself described years of sexual abuse perpetrated on her by Gremminger. This is not redundant to the officer's testimony but rather independent confirmation of Gremminger's admissions to the officer.

Mother and Sister's testimony that Gremminger actually sexually abused Sister was highly probative in establishing a similar pattern of conduct. In all accounts of abuse—those by Sister and the victims in this case—the victims were all female relatives, all between the prepubescent ages of three and ten at the time of the abuse, and all shared similar accounts of abuse perpetrated on them while they were supposed to be sleeping.

Additionally, this evidence served to address Gremminger's challenges to the officer's credibility. *See Williams*, 548 S.W.3d at 290 ("[T]he defense's attack upon the credibility of the state's witnesses, including [the] [v]ictim, enhanced the probative value of [Defendant's] prior crime evidence."). Sister and Mother's testimony also was necessary given the unique evidentiary challenges of cases alleging child sexual abuse, particularly in cases like this one, where there is no DNA or physical evidence. *Watson*, 697 S.W.3d at 55. Mother and Sister's testimony had probative value.

There was no prejudice in admitting Sister and Mother's testimony

A circuit court may weigh multiple factors to determine the prejudicial effect of propensity evidence, including "whether the jury could infer the defendant was punished for his past criminal acts, how the State goes about proving the prior act at trial, whether the charged crime is overshadowed by evidence of the prior act, and the manner in which the State uses the prior act at trial." *State v. Shepard*, 662 S.W.3d 761, 770-71 (Mo. App. 2023). This list of factors is not exhaustive; each case must be analyzed individually. *Id.*

Gremminger argues Sister and Mother's testimony had an overwhelming prejudicial effect because the descriptions of sexual abuse were "inescapably inflammatory" and "emotionally charged." "Live testimony regarding prior bad acts is

not *per se* unfairly prejudicial, but when it is graphic ..., overly detailed, and not dispassionate the danger of unfair prejudice increases." *Shepard*, 662 S.W.3d at 771 (internal quotation omitted). Gremminger fails to identify any testimony that was graphic, overly detailed, or emotional.

Gremminger also relies on *State v. Prince*, 534 S.W.3d 813 (Mo. banc 2017), arguing the State should have been limited to the investigating officer's testimony. The prosecutors in *Prince*, for reasons of their own trial strategy, limited their testimonial propensity evidence to a single officer. That does not mean that all future prosecutions must be similarly limited.

Here, additional propensity witnesses were necessary to defend against credibility attacks and address the unique prosecution of a case without eye witnesses or DNA evidence. Sister and Mother's testimony represents less than ten pages of a transcript in excess of 700 pages. The record reflects that the jury was correctly instructed as to propensity evidence and the State used the evidence as fairly contemplated by Article 1, section 18(c). Gremminger fails to demonstrate that the danger of unfair prejudice of Sister and Mother's testimony outweighed its probative value. There was no abuse of discretion in admitting their testimony.

There was no rational basis to submit lesser included offense instructions

Gremminger raises three points on appeal, claiming the circuit court erred in refusing to instruct the jury on lesser included offenses for first-degree statutory sodomy and first-degree statutory rape. Gremminger argues there was a rational basis to submit

the lesser included offenses because the jury had a right to disbelieve the uncontroverted evidence of the victims' ages.

Additional relevant facts

Gremminger was charged in Count I with statutory sodomy in the first-degree, in Count II with statutory sodomy in the first-degree, and in Count III with statutory rape in the first-degree. At the instructions conference, he offered instructions for second-degree statutory sodomy as lesser-included offenses for Counts I and II. He offered an instruction for second-degree statutory rape as a lesser-included offense of Count III.

The operative difference between first-degree statutory sodomy and second-degree statutory sodomy is the age element. At the time of these offenses, first-degree statutory sodomy was defined as having "deviate sexual intercourse with another person who is less than fourteen years of age." Section 566.062.1, RSMo 2016.[1] If the victim is less than twelve years of age, "the authorized term of imprisonment is life imprisonment or a term of years not less than ten years[.]" Section 566.062.2(1). In contrast, Gremminger's instruction for statutory sodomy in the second-degree required the jury to find that at the time of the offense the victims were less than seventeen years of age and the defendant was over twenty-one years of age. The same age differences apply to statutory rape in the first-degree and statutory rape in the second-degree. Sections 566.032 and 566.034.

The circuit court rejected Gremminger's lesser included offense instructions, finding no rational basis to give the instructions.

[1] All statutory references are to RSMo 2016, unless otherwise indicated.

Standard of Review

Appellate courts review *de novo* the circuit court's refusal to give a "proffered lesser[-]included offense instruction." *State v. Cole*, 705 S.W.3d 737, 739 (Mo. App. 2025). "In order for an appellate court to reverse a criminal case based on a claim of instructional error, a defendant must demonstrate the [circuit] court committed instructional error and that the error was so prejudicial that it deprived him of a fair trial." *Id*. at 740. The appellate court "will affirm the [circuit] court's refusal to give a proffered instruction 'if the [circuit] court was correct for any reason.'" *Id*. (quoting *State v. Fowler*, 690 S.W.3d 205, 210 (Mo. App. 2024)).

There was no rational basis to submit lesser included instructions

The test for whether a circuit court should give a requested instruction is set forth in section 556.046.2, RSMo Supp. 2022, which provides the circuit court "shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the person of the offense charged and convicting him or her of the included offense." Further, "[t]he court shall be obligated to instruct the jury with respect to a particular included offense only if the instruction is requested and there is a rational basis in the evidence for acquitting the person of the immediately higher included offense and convicting the person of that particular included offense." Section 556.046.3.

If an "offense has degrees, the lower degree is by statute a lesser-included offense of the higher." *State v. Hedges*, 649 S.W.3d 93, 105 (Mo. App. 2022). In this case, sodomy in the second-degree is a lesser-included offense of first-degree statutory sodomy because it is specifically denominated by the statute as a lesser degree of the charged

offense. *See* sections 566.062 and 566.064. The same is true for first-degree statutory rape and second-degree statutory rape. *See* sections 566.032 and 566.034.

All three victims' ages satisfied the age elements in the charged offenses. The birth certificates for Daughter 1 and Daughter 2 were admitted into evidence. Daughter 1 was born in July of 2012 and was eleven years old at the time of trial. Daughter 2 was born in November of 2013 and was ten years old at the time of trial. Stepdaughter testified she was born in September 2014 and was nine years old at the time of trial.

Despite the uncontroverted evidence of the victims' age, Gremminger claims he was entitled to the lesser included instructions because the jury had an absolute right to disbelieve the uncontroverted evidence regarding the victims' age and conclude based their own observations the victims were much older. Gremminger relies on *State v. Farr*, 611 S.W.3d 878 (Mo. App. 2020), and *State v. Jackson*, 433 S.W.3d 390 (Mo. banc 2014), to support this argument. *Jackson* wrestled with a previous version of section 556.046 which required only a "basis" in evidence for the submission of a lesser included offense. *Jackson* and *Farr* both recognized that the previous version of section 556.046 was so relaxed that circuit courts applying the statute were obligated to give included offense instructions even when "the evidence is so strong and the inferences are so obvious that giving a lesser included offense instruction seems almost to beg for jury nullification or compromise verdicts." *Jackson*, 433 S.W.3d at 400.

In 2022, the Missouri legislature amended section 556.046 and added the word "rational" to "basis" each time the statute used "basis." The statute now reads there must be "a rational basis in the evidence for acquitting the person of the immediately higher

included offense and convicting the person of that particular included offense." Section 556.046.3. Previously, the section required only a "basis in the evidence." *C.f.* section 556.046, RSMo 2016.

"[W]hen the legislature amends a statute, [this Court] presume[s] the legislature intended to change the existing law." *St. Louis-Jefferson Solid Waste Mgmt. Dist. v. Dep't of Nat. Res.*, 678 S.W.3d 152, 158 (Mo. App. 2023) (quoting *State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 357 (Mo. banc 2021)). "[T]he legislature will not be charged with having done a meaningless act." *Kelly v. Marvin's Midtown Chiropractic, LLC*, 351 S.W.3d 833, 836-37 (Mo. App. 2011) (quoting *State v. Swoboda*, 658 S.W.2d 24, 26 (Mo. banc 1983)).

By amending the language on which *Jackson* was expressly premised, the legislature intended to change the law. Otherwise, the legislature's amendment to require a "rational basis" to acquit of the charged offense instead of just a "basis" would be a useless act.

The amendment to section 556.046 indicates that something more than just the mere possibility that a jury can disbelieve the evidence is necessary to obligate the submission of a lesser included offense. The legislature's insertion of the word "rational" in section 556.046 necessarily requires the circuit court to determine whether there is a rational basis in the evidence to support an instruction. The circuit court can instruct on a lesser included offense only when "there is a *rational* basis in the evidence for acquitting the person of the immediately higher included offense[.]" Section 556.046.2 and .3 (emphasis added).

There was no evidence that any of the victims might have been older. Therefore, there was no "rational basis" for the jury to acquit Gremminger of the charged offenses and convict him of the lesser offenses based on a finding that the victims were actually older than the maximum age set forth by the statutes. Any disbelief of that uncontroverted evidence would be unreasonable and could not supply the "rational basis" necessary to compel submission of a lesser included offense instruction. The circuit court did not err in rejecting the lesser included instructions.

CONCLUSION

The judgment is affirmed.



CORY L. ATKINS, SPECIAL JUDGE

John P. Torbitzky, Chief Judge,
Zel M. Fischer, Special Judge; concur.