

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,)	No. ED90975
)	
Respondent,)	
)	Appeal from the Circuit Court of
)	the City of St. Louis
)	
vs.)	Cause No. 22061-00989
)	
GREGORY PEEPLES,)	Honorable John J. Riley
)	
Appellant.)	Filed: May 26, 2009
)	

Gregory Peoples (hereinafter, “Appellant”) appeals from the trial court’s judgment after a jury convicted him of one count of attempted statutory rape in the first degree, Section 566.032 RSMo (2000),¹ one count of attempted statutory rape in the second degree, Section 566.034, five counts of statutory sodomy in the first degree, Section 566.062, seven counts of statutory sodomy in the second degree, Section 566.064, two counts of child molestation in the first degree, Section 566.067, four counts of child molestation in the second degree, Section 566.068, and two counts of attempted victim tampering, Section 575.020. Appellant was sentenced to concurrent sentences on the sexual offenses for a total of twenty-five years’ imprisonment, which run consecutively to concurrent seven year sentences for the attempted victim tampering convictions.

Appellant raises six points on appeal. In his first two points, Appellant challenges the sufficiency of the evidence to support his convictions on Count 8 for statutory sodomy in the first degree, and on Count 22 for statutory sodomy in the second degree. In his third point, Appellant argues the trial court abused its discretion in denying defense counsel the opportunity to argue two of the twenty-seven charges were dismissed due to the State’s failure to make a submissible case. In his fourth point, Appellant claims the trial court abused its discretion in failing to declare Section 491.075 unconstitutional and allowing the victim’s aunt to offer hearsay testimony that violated Appellant’s right to confrontation. In his fifth point, Appellant alleges the trial court abused its discretion in denying his amended motion for new trial in that he claims the State withheld favorable and admissible impeachment evidence. Finally, in his sixth point, Appellant claims the trial court plainly erred in imposing sentences which exceeded the maximum term of imprisonment allowable by law on Counts 16, attempted statutory rape in the first degree, and Counts 25 and 26, attempted victim tampering.

¹ All statutory references are to RSMo (2000) unless otherwise indicated.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division II Holds: (1) Appellant's touching the victim's vagina through her clothing constituted sexual contact, not deviate sexual intercourse; and therefore, the evidence was insufficient to sustain a conviction on Count 8, statutory sodomy in the first degree. However, the evidence was sufficient to convict Appellant for the lesser included offense of child molestation in the first degree. (2) There was sufficient evidence to sustain Appellant's conviction for statutory sodomy in the second degree as described in Count 22. (3) The trial court did not abuse its discretion in limiting defense counsel's closing argument in that defense counsel's proposed comments would have misstated the law and confused the jury. (4) Appellant's constitutional challenge to the validity of Section 491.075 was merely colorable and did not violate Appellant's right to confront the victim by admitting hearsay statements the victim made to her aunt with respect to the sexual abuse victim suffered. (5) Appellant failed to present facts to support his contention the State withheld favorable impeachment evidence with respect to the victim's alleged pregnancy at the time of trial. (6) The trial court plainly erred when it imposed a twenty-five year term of imprisonment with respect to Count 16, attempted statutory rape in the first degree. Appellant's sentences with respect to Counts 25 and 26 were proper.

Opinion by: George W. Draper III, J.

Roy L. Richter, P.J., and
Lawrence E. Mooney, J.,
concur

Attorney for Appellant: Gwenda R. Robinson
Attorney for Respondent: Shaun J. Mackelprang

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**