

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

STATE OF MISSOURI,)	No. ED96039
)	
Respondent,)	Appeal from the Circuit Court of
)	Lincoln County
vs.)	
)	
CURTISS L. MOORE,)	Hon. David H. Ash
)	
Appellant.)	FILED: May 29, 2012

Curtiss Moore (Defendant) appeals from the judgment of the trial court entered after a jury convicted him of first-degree child molestation involving his then 6 year-old granddaughter. Defendant asserts that the trial court erred by: (1) excluding the victim's father and grandmother from the courtroom because, as members of the victim's family, they had a right to be present, and their absence resulted in a violation of Defendant's right to a public trial; (2) allowing the State to adduce evidence of prior sexual contact between Defendant and the victim, in that it was inadmissible propensity evidence; (3) failing to remove Juror 11 because she saw an acquaintance, the victim's school counselor, outside the courtroom; and (4) excluding the testimony of a defense witness as a discovery sanction.

AFFIRMED.

DIVISION ONE HOLDS: (1) A defendant cannot assert another's right to be present in the courtroom as a basis for his own prejudice. The exclusion of two defense witnesses, along with all other witnesses, is not synonymous with closure of the trial to the public. The record confirms that the trial was indeed public. (2) Evidence of prior sexual conduct by a defendant toward a child victim is admissible to establish motive, specifically the satisfaction of the defendant's sexual desire for the victim. Here, the State was required to prove Defendant's purpose of sexual gratification as an element of its case, so the evidence was admissible to prove this purpose. (3) The exchange between Juror 11 and the victim's school counselor was brief, and there was no discussion of the case. When it was brought to the court's attention, defense counsel had "no issue" with it. The court did not abuse its discretion in failing to remove this juror. (4) Defense counsel failed to disclose this witness during pre-trial discovery despite a formal request and a court order to compel. Counsel had no reasonable justification for his failure, the State suffered harm in the form of unfair surprise, and the testimony was not essential to Defendant's case. It was within the court's discretion to exclude the witness as a discovery sanction.

Opinion by: Clifford H. Ahrens, Presiding Judge Roy L. Richter, J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Richard H. Sindel
Attorney for Respondent: Chris Koster

**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.**