

Summary of SC91427, *State of Missouri v. Daniel M. Primm*

Appeal from the St. Louis circuit court, Judge Bryan L. Hettenbach

Argued and submitted May 4, 2011; opinion issued June 28, 2011, and modified on the Court's own motion August 30, 2011

Attorneys: Primm was represented by Jessica Hathaway of the public defender's office in St. Louis (314) 340-7662; and the state was represented by John W. Grantham of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his convictions for certain sexual offenses against his two teenaged grandnieces. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the trial court's judgment and remands for the trial court to correct its written order to be consistent with its oral pronouncement of sentence. The trial court did not abuse its discretion in admitting evidence that the man had committed certain uncharged crimes as these served to help establish a motive for the charged crimes and provided a more complete picture of the charged crimes. Further, there was sufficient evidence, taken together with its reasonable inferences, to prove that the man had sexual intercourse with one of the girls.

Facts: Daniel Primm was charged in the St. Louis circuit court with multiple counts of sexual offenses against two grandnieces, who were 14 and 15 years old at the time of the abuse. Of these, the state submitted to the jury 10 separate charges – four counts of second-degree statutory rape, three counts of second-degree statutory sodomy and three counts of second-degree child molestation. He was charged only with the acts that occurred within the city limits, although the girls alleged he committed other sexual offenses against them in Primm's home in St. Louis County. Before trial, the defense moved to exclude testimony about uncharged sex offenses that the girls alleged took place at Primm's home in the county as well as testimony that Primm gave the older girl marijuana after one of the offenses. The trial court overruled the motion, ruling that it would "not bar the [s]tate ... from presenting testimony of the entire coherent scheme, even if it slops over into certain events that may have occurred in another jurisdiction." The jury convicted Primm of all 10 charges, and the court sentenced Primm to a total of 20 years in prison. Primm appeals.

AFFIRMED AND REMANDED.

Court en banc holds: (1) The trial court did not abuse its discretion in admitting evidence that Primm had committed uncharged sex crimes against his grandnieces in St. Louis County and that he had given one of the girls marijuana. Numerous Missouri cases involving sexual crimes against a child have held that prior conduct by a defendant toward the victim is admissible if it tends to establish motive, as in satisfaction of the defendant's sexual desire for the victim. Accordingly, the admission of the younger girl's testimony about the first time Primm touched her inappropriately, which happened at his house in the county, was admitted properly. While some of the uncharged acts about which the older girl testified occurred shortly after the acts for

which Primm was charged, the same rationale applies, as additional sexual misconduct with a victim is probative of the defendant's sexual desire for that individual and, therefore, tends to establish a motive for the sexual offenses charged. Evidence that Primm gave the older girl marijuana as a gift after committing sexual acts against her to dissuade her from disclosing the abuse was used to explain why the girls did not report the sexual misconduct to the authorities immediately. It was admissible, therefore, to show the circumstances surrounding the offenses charged and to provide a more complete picture of the crime.

(2) There was sufficient evidence, taken together with the reasonable inferences therefrom, to prove that Primm had sexual intercourse with the younger girl in the moving truck, supporting his conviction for the second-degree statutory rape of that girl. The evidence is viewed in the light most favorable to the verdict, considering all favorable inferences and disregarding all contrary inferences. Section 566.010(4), RSMo, defines "sexual intercourse" in part as "any penetration, however slight, of the female sex organ by the male sex organ." Sexual intercourse may be proven by the uncorroborated testimony of the victim. There is no magic word necessary to describe penetration. Here, it is clear, when viewing the girl's testimony as a whole, that when she used the term "doing it," she was referring to sexual intercourse.

(3) The trial court erred in entering a judgment that is inconsistent with its oral pronouncement of sentence. The case is remanded to the trial court for the entry of an order correcting the written judgment.