

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

RONALD W. DURHAM.

Appellant

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DOCKET NUMBER WD70075 & WD70076

DATE: November 24, 2009

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Appeal From:

Circuit Court of Randolph County, MO  
The Honorable Scott Alan Hayes, Judge

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Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard, and James Edward Welsh, JJ.

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Attorneys:

Kent Denzel, Columbia, MO

Counsel for Appellant,

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Attorneys:

Shaun J. Mackelprang, Jefferson City, MO

Counsel for Respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.  
RONALD W. DURHAM, Appellant**

**WD70075 & WD70076**

**Randolph County**

Before Division Two Judges: Ellis, P.J., Howard, and Welsh, JJ.

Ronald W. Durham appeals the circuit court's judgments convicting him of two counts of statutory rape in the first degree, two counts of use of a child in a sexual performance, two counts of child molestation in the first degree, one count of statutory sodomy in the first degree, and one count of incest. On appeal, he claims that the amended information was insufficient to charge him with statutory rape in the first degree and that the evidence was insufficient to submit the two statutory rape charges to the jury. In the alternative, he contends that the circuit court erred in refusing his proffered jury instructions for the statutory rape in the first degree charges. Durham also alleges that the court erred in overruling his objection to the prosecutor's peremptory strike of an African-American venireperson.

**AFFIRMED.**

**Division Two holds:**

(1) The charges and evidence were sufficient to convict Durham of two counts of statutory rape in the first degree. The intent of Missouri's Criminal Code is that section 562.041.1(2), RSMo 2000, cover two different bases for liability for conduct of another: (1) causing an innocent or irresponsible person to commit the conduct, and (2) accessorial liability by aiding and abetting. The amended information charged, and the record established, that Durham caused his twelve-year-old daughter and ten-year-old son, both innocent actors, to have sexual intercourse with each other in violation of section 566.032.1, RSMo 2000, the first-degree statutory rape statute. The essential elements of the offenses were charged and proven.

(2) The court did not err in accepting the State's, instead of Durham's, proposed jury instructions on the statutory rape in the first degree counts. The State's instructions were a modified version of MAI-CR3d 320.03, the statutory rape in the first degree instruction. They required the jury to find the elements necessary to convict Durham of statutory rape in the first degree for causing his children to have sexual intercourse. The instructions were simple, brief, impartial, and free from argument. Durham's proposed instructions tracked MAI-CR3d 304.04, which is the format for situations where the defendant is an aider or abettor. The Notes on Use following MAI-CR3d 304.04 specifically state that this format covers only those situations where the defendant is to be held responsible for another person's conduct *and* the other person is also guilty of the offense. Durham's children were not also guilty of statutory rape in the first degree, so the court properly refused Durham's proposed instructions.

(3) The circuit court did not err in overruling Durham's *Batson* challenge without first examining the venire panel's criminal records. The State was permitted to use the venireperson's criminal record--information that was outside the record--as the basis for a peremptory strike. The burden to produce and provide information showing that there were similarly-situated white jurors that the prosecutor did not strike was Durham's, not the State's or the circuit court's. Durham failed to meet this burden.

**Opinion by: James Edward Welsh, Judge**

November 24, 2009

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