

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

CARL EMERSON LESIEUR,

Appellant.

DOCKET NUMBER WD73361

Date: February 28, 2012

Appeal from:
Boone County Circuit Court
The Honorable Gary M. Oxenhandler, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, C.J., Presiding, Joseph M. Ellis and Alok Ahuja, Judges

Attorneys:
Craig A. Johnson, Columbia, MO, for appellant.
Shaun J. Mackelprang and Evan J. Buchheim, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

CARL EMERSON LESIEUR,

Respondent,

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WD73361

Boone County

Appellant Carl LeSieur was charged with two counts of second-degree statutory rape involving a single female victim who was then fifteen years old. The information alleged that the first offense occurred between May 1, 2007, and August 7, 2007, and the second between August 8, 2007, and August 31, 2008.

The evidence at trial established that LeSieur engaged in two acts of sexual intercourse with the victim during the first charged time period, at LeSieur's family home at 415 Carver in Fulton. The evidence also established that two additional instances of sexual intercourse occurred during the second charged time period, after LeSieur's family had relocated to 715 Gaylord, also in Fulton. The first two incidents, which occurred at the 415 Carver address, were distinguishable because in one incident LeSieur's daughter held the victim's hand and comforted her during the act; in the second incident at 415 Carver, LeSieur's daughter remained outside the home on the front porch, acting as a lookout. The two incidents at the 415 Carver address, and the two incidents at the 715 Gaylord address, were all distinguishable based on the items or actions LeSieur offered the victim and his daughter in exchange for sex.

The two verdict directors at LeSieur's trial only required the jury to find that LeSieur had engaged in sexual intercourse with the victim during the charged time period; the verdict directors did not distinguish between the two acts of sexual intercourse which fell within each charged time period. The jury found LeSieur guilty of both counts. The court sentenced him to seven years on each count, to be served consecutively to each other and to the other sentences he was then serving. This appeal follows.

AFFIRMED.

Division Four holds:

LeSieur claims the trial court plainly erred by submitting verdict directors that did not identify the specific incident of statutory rape on which each count was based, thereby violating

his right to a unanimous jury verdict, and exposing him to potential double jeopardy in a future prosecution.

This is a “multiple acts” case, in which the State presented evidence of multiple separate acts which could justify conviction of LeSieur on each count of statutory rape. In such a case, to preserve the defendant’s right to a unanimous jury verdict, either (1) the state must elect the particular criminal act on which it will rely to support the charge, or (2) the verdict director must specifically describe the separate criminal acts presented to the jury, and the jury must be instructed that it must agree unanimously that at least one of those acts occurred. *State v. Celis-Garcia*, 344 S.W.3d 150, 157 (Mo. banc 2011)

The verdict directors in this case failed to differentiate between the various acts in a way that ensured that, on each count, the jury unanimously convicted LeSieur based on his commission of the same act. While the various acts could not be distinguished based on *location* (both acts falling within Count I occurred on a basement couch at 415 Carver, while both acts within Count II occurred in the same bedroom at 715 Gaylord), or based on the *time* when the acts occurred, *Celis-Garcia* requires that specific acts be distinguished based on “other distinguishing characteristics” where necessary. 344 S.W.3d at 158. Here, such other distinguishing characteristics existed, and it was plain error not to distinguish between the various acts, and instruct the jury that they must agree on a specific one.

Nevertheless, LeSieur has failed to establish a manifest injustice justifying relief for plain error. Unlike in *Celis-Garcia*, LeSieur did not defend against the charges by attacking any specific details of the separate incidents of statutory rape recounted by the victim and his daughter. Instead, LeSieur argued generally that the Victim had fabricated *all* of the allegations, and that the allegations as a whole were implausible. Where LeSieur failed to mount an incident-specific defense, but instead presented a unitary defense to all alleged acts of sexual misconduct, it is unlikely that individual jurors convicted him based on different acts. In these circumstances, no manifest injustice occurred.

LeSieur also argues that the vagaries in the verdict directors will potentially expose him to double jeopardy in a future prosecution, because of the uncertainty as to exactly which acts were the subject of the present prosecution. An examination of the record of this case would identify the four acts of sexual intercourse for which LeSieur was tried, however; he will not be subject to prosecution for those offenses in the future.

Before: Division Four: Lisa White Hardwick, C.J., Presiding, Joseph M. Ellis and Alok Ahuja, Judges

Opinion by: Alok Ahuja, Judge

February 28, 2012

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