

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

DENNIS L. GRAY

Appellant

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DOCKET NUMBER WD76754

DATE: October 28, 2014

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Appeal From:

Circuit Court of Gentry County, MO  
The Honorable Corey Keith Herron, Judge

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Appellate Judges:

Division Three  
Gary D. Witt, P.J., Joseph M. Ellis, and Thomas H. Newton, JJ.

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Attorneys:

Samuel Scroggie, Maryville, MO

Counsel for Appellant

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Attorneys:

Daniel McPherson, 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.  
DENNIS L. GRAY, Appellant

**WD76754**

**Gentry County**

Before Division Three Judges: Witt, P.J., Ellis, and Newton, JJ.

Gray drove a school bus during the school year. The school year ended in May. In June, Gray went to the home of one of his students. As her mother was getting ready for work, the student spoke with Gray in the doorway. Gray and the student hugged during their good-bye, at which point he touched the student's breasts. The mother went to work, and Gray returned to the home. During this visit, Gray suddenly grabbed the student and kissed her. The student told Gray that she had no romantic feelings for him, and he left. Later, Gray was arrested and charged by indictment with having sexual contact with a student (class D felony). Gray challenged the validity of the indictment, but the court found it valid.

At trial, the student testified that Gray touched her breasts with his finger and that she did not consent to the touching. Gray's former manager testified that the bus company had a contract with the student's school district to provide transportation for its students. He also testified that the bus company did not employ Gray in June at the time of the incident. Gray moved for a judgment of acquittal for insufficient evidence, claiming that the State failed to prove a required element of the offense—current employment with the bus company—because he was no longer an employee at the time of the incident. The motion was denied. The jury returned a guilty verdict. Gray appeals.

**REVERSED AND REMANDED.**

**Division Three holds:**

In the first point, Gray challenges the validity of the indictment. He claims that the indictment was defective because it failed to allege that his touching of the student's breasts was done for the purpose of arousing or gratifying his sexual desire. A defective indictment is only invalid if the defect prejudices the defendant. Here, the State charged that Gray had sexual contact with the student for touching her breast, and "sexual contact" is statutorily defined as certain touching done for the purpose of arousing or gratifying a person's sexual desire. The indictment thus provided notice of the criminal nature and a factual foundation of the crime charged. Consequently, Gray cannot show prejudice. Gray's first point is denied.

In the second point, Gray challenges the sufficiency of the evidence. He claims that the evidence was insufficient to convict him of the crime charged because it was shown that he was not an employee of the bus company at the time of the offense. Section 566.086.1, in relevant part, states that "[a] person commits the crime of sexual contact with a student if he or she has sexual contact with a student of the public school and is: . . . [a] person employed by an entity that contracts with the public school district to provide services." The State claims that the facts showed that Gray was laid off at the time, and thus, the bus company employed him in June.

The law disagrees with the State. A laid-off person is temporarily unemployed. Under the law, the evidence shows that Gray was not “employed by” the bus company at the time of the incident. Thus, the motion for judgment of acquittal should have been granted. Gray’s second point is granted.

We therefore reverse the conviction of sexual contact with a student. Notwithstanding, exercising our discretion, we may enter a conviction on a lesser-included offense. We remand the case to the trial court to enter a conviction of first-degree sexual misconduct (class A misdemeanor), a lesser-included offense, and to sentence him accordingly.

Opinion by Thomas H. Newton, Judge

October 28, 2014

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