

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ST. LOUIS,)
) No. 323, 2001
 Defendant Below,)
 Appellant,) Court Below: Superior Court
) of the State of Delaware
 v.) in and for Sussex County
)
 STATE OF DELAWARE,) Cr. A. No. S00-09-541 and 542
) Cr. ID No.: 0009015005
 Plaintiff Below,)
 Appellee.)

Submitted: March 12, 2002
Decided: May 24, 2002

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices

ORDER

This 24th day of May 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

1) On May 1, 2001, a Superior Court jury found defendant-appellant, James St. Louis guilty of First Degree Rape and Continuous Sexual Abuse of a Child. A Superior Court judge sentenced St. Louis to forty years at Level V incarceration, suspended after twenty-two years. This is St. Louis' direct appeal.

2) In this appeal, St. Louis contends that he faced the same charge twice in violation of his constitutional rights. Specifically, St. Louis argues that the trial judge erred by failing to instruct the jury to disregard evidence concerning the charge of Rape when considering the charge of Continuous Sexual Abuse of a

Child. St. Louis failed to raise this issue at trial, therefore, we review for plain error.

3) The Fifth Amendment of the United States Constitution provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” In *Blockburger v. United States*, the United States Supreme Court established what has become known as the “Blockburger” test, holding that “where the same act or transaction constitutes a violation of the two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not.”¹ The United States Supreme Court has also noted that the Blockburger test “focuses on the statutory elements of the offense. If each requires proof of a fact that the other does not, the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.”²

4) As St. Louis acknowledges, First Degree Rape³ and Continuous Sexual Abuse of a Child⁴ each have distinct elements and are clearly separate offenses for double jeopardy purposes. He concedes, therefore, that this fact satisfies the Blockburger test. Nevertheless, St. Louis’ argument focuses on the fact that the evidence presented to establish First Degree Rape was highly

¹ 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932).

² *Iannelli v. U.S.*, 420 U.S. 770, 786 n.17, 95 S. Ct. 1284, 1294, 43 L. Ed.2d 616 (1975).

³ See Del. Code Ann. tit. 11 § 773 (2001).

⁴ See Del. Code Ann. tit. 11 § 778 (2001).

prejudicial and that the jury should have been instructed to disregard that evidence when considering the evidence presented to establish Continuous Sexual Abuse of a Child. The distinction St. Louis urges would be virtually impossible, as much of the evidence presented related to both crimes. The trial judge gave clear, correct instructions on the elements of each distinct offense and the overlap in the evidence used to establish both crimes neither offended St. Louis constitutional rights nor did the instructions as given tend to confuse the jury.

5) Appellant has not demonstrated that the trial court's instructions unconstitutionally placed him in jeopardy of being tried twice for the same offense. Nor has he demonstrated any viable reason for the trial judge to instruct the jury *sua sponte* to disregard evidence concerning the charge of Rape when considering the charge of Continuous Sexual Abuse of a Child.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Superior Court be, and hereby is, **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Justice