OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,	)	No. ED100189
	)	Appeal from the Circuit Court
vs.	)	of the City of St. Louis
	)	
MELVIN HUFFMAN, Appellant.	)	Filed: June 17, 2014

Melvin Huffman appeals from his conviction on one count of statutory sodomy in the first degree for touching H.B.'s vagina. Huffman asserts plain error in the trial court's refusal to give a child molestation instruction and its failure to *sua sponte* declare a mistrial during the State's closing argument and during the State's cross-examination of a defense witness.

AFFIRMED.

Division Two holds: The jury was properly instructed on statutory sodomy occurring between May and September of 2002, and there was sufficient evidence that the offense occurred during that time period. There was not sufficient evidence that the crime occurred before August of 2000, when this type of hand-to-vagina contact would have constituted only child molestation. Thus, there was no error in failing to instruct on that lesser offense. There was no plain error in the trial court's failure to intervene when the State made an isolated comment as to who else was in the bed with the victim at the time of the touching. Likewise, there was no plain error in the trial court's failure to intervene when the State asked and then withdrew a question, which was then never answered.

Opinion by: Robert G. Dowd, Jr., J
Lawrence E. Mooney, P.J. and Sherri B. Sullivan, J., concur.

Attorney for Appellant: Amy E. Lowe

Attorney for Respondent: Karen L. Kramer

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