

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

STATE OF MISSOURI,	)	No. ED101370
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	
	)	
DAVID BENNISH,	)	Honorable Jack Garvey
	)	
Respondent.	)	Filed: October 20, 2015

David Bennish (“Defendant”) appeals the judgment of the Circuit Court of the City of St. Louis convicting him of three counts of statutory sodomy in the second degree, in violation of section 566.064, RSMo (2000), one count of endangering the welfare of a child in the first degree, in violation of section 568.045, and one count of incest, in violation of section 568.020. Defendant asserts three points on appeal. In his first two points, Defendant contends the trial court plainly erred in excluding testimony from Frank and Betty Bennish regarding victim’s truthfulness. In Defendant’s third point, he argues the trial court erred in denying Defendant’s motions for acquittal at the close of the State’s evidence and at the close of all evidence. We affirm the judgment of the trial court.

Division Two holds:

(1) The trial court did not err in sustaining the State’s objection to Frank Bennish’s testimony regarding D.R.’s reputation for truthfulness as the witness was not qualified to testify as to victim’s reputation for truthfulness in the community or among people with whom victim associated.

(2) The trial court did not plainly err in excluding testimony from Betty Bennish regarding victim's specific acts of untruthfulness because personal knowledge of a victim's character for truthfulness and veracity is irrelevant and inadmissible.

(3) The record contained sufficient evidence to infer beyond a reasonable doubt the crime occurred in Missouri.

(4) The trial court did not err in denying Defendant's motions for judgment of acquittal at the close of the State's evidence and the close of all evidence.

Opinion by: Angela T. Quigless, J.

Philip M. Hess, P.J., Gary M. Gaertner, Jr., J., Concur.

Attorney for Appellant: Amy E. Lowe

Attorney for Respondent: Daniel N. McPherson

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