

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**JOSEPH B. SPROFERA,
APPELLANT**

DOCKET NUMBER WD73213

DATE: APRIL 10, 2012

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Justine Del Muro, Sp.J.

Attorneys:

Dora Fichter, for Respondent

S. Kate Weber, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, RESPONDENT

v.

JOSEPH B. SPROFERA, APPELLANT

WD73213

Clay County, Missouri

Before Division Four Judges: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Justine Del Muro, Sp.J.

Joseph Sprofera appeals from his conviction of one count of statutory rape in the second degree, § 566.034, related to intercourse with his adopted daughter.

AFFIRMED.

Division Four holds:

(1) The trial court did not abuse its discretion in allowing B.S. to testify that Appellant began touching her breasts and her vagina over her clothes starting when she was in pre-school and that his sexual fondling of her continued over the years until they ultimately had sexual intercourse. Appellant's progressive pattern of sexually groping B.S. was certainly relevant to determining whether he eventually had intercourse with her. Appellant's sexual conduct toward B.S. demonstrated his sexual desire for her and served to present a complete picture of the events.

(2) The trial court did not abuse its discretion in refusing to strike testimony from B.S. that she had seen Appellant push her mother against a wall and break a mirror on one occasion because such evidence could be probative in explaining the victim's fear of Appellant and her delay in reporting the sexual abuse.

(3) The trial court did not abuse its discretion in allowing an arresting officer to testify that Appellant was agitated and used profanity as he was transported to jail. Appellant's claim related to testimony about his general agitated state was not preserved for appellate review and was cumulative to testimony of another officer. The testimony related to Appellant's statements afforded a narrative of the events surrounding Appellant's arrest and reflected statements voluntarily made by Appellant while in custody.

(4) The prosecution's questioning Appellant on cross-examination about whether he recalled previously "standing in a courtroom and calling a prosecutor a cunt" was wholly irrelevant and Appellant's objection thereto should have been sustained. However, the record does not reflect that the admission of this testimony was so prejudicial that it deprived Appellant of a fair trial.

Opinion by Joseph M. Ellis, Judge

Date: April 10, 2012

DISSENTING OPINION BY SP. JUDGE DEL MURO:

The Dissent would hold:

(1) The testimony from B.S. that Appellant started touching her in preschool does not establish motive or intent for sexual intercourse that occurred ten years later. The prejudicial effect of this evidence outweighed any probative value it may have.

(2) The testimony from B.S. that she saw Appellant push her mother against a wall was not used to establish why B.S. delayed reporting Appellant's sexual abuse and was simply used as bad character evidence. B.S. had explained her own reasons for delay.

(3) Evidence of the arresting officer who testified that Appellant was agitated and used profanity, had no probative value, as it occurred after Appellant was arrested; the prejudicial effect of this evidence is apparent.

(4) The trial court abused its discretion in allowing testimony that Appellant had previously called a prosecutor a "cunt" because such testimony was irrelevant, immaterial and so clearly prejudicial to Appellant.

(5) Viewing all of the improper character evidence as a whole, the steady stream of irrelevant, inflammatory uncharged bad conduct, when Appellant had not injected his character, washed away in prejudice any chance Appellant had of receiving a fair trial and resulted in a miscarriage of justice. Accordingly, Appellant should be granted a new trial.

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