

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
DANIEL A. IVEY**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD75850

DATE: April 1, 2014

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Appeal From:

Buchanan County Circuit Court  
The Honorable Daniel F. Kellogg, Judge

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Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

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Attorneys:

Daniel N. McPherson, Jefferson City, MO, for respondent.

Ruth Sanders, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**DANIEL A. IVEY,**

**APPELLANT.**

No. WD75850

Buchanan County

Before Division One: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

Daniel A. Ivey appeals his conviction for two counts of statutory sodomy in the first degree. Ivey contends that the trial court erred in allowing the admission at trial of out-of-court statements by his child victim without requiring her to testify. Ivey claims plain error because the testimony violated his Sixth Amendment confrontation clause rights and did not qualify for the "forfeiture by wrongdoing" exception, and because the victim did not qualify as "unavailable" under section 491.075.

**AFFIRMED**

1. The evidence presented at a section 491.075 pre-trial hearing supported a finding that the child victim was "unavailable" to testify at trial because test she would be emotionally or psychologically traumatized by testifying in the personal presence of Ivey.

2. The application of section 491.075 is limited to non-testimonial out-of-court statements made by a child victim in order to abide by the constitutional restraints of the Sixth Amendment confrontation clause.

3. Even if the trial court committed error by admitting testimonial hearsay without requiring the child victim to testify, Ivey cannot establish that either manifest injustice or a miscarriage of justice would occur if the error were not corrected. Non-hearsay evidence admitted at trial, and to which Ivey expresses no claim of error, was sufficient to convict Ivey.

4. Under the circumstances, we need not determine whether the forfeiture by wrongdoing doctrine would have applied to permit the admission of testimonial hearsay of the child victim.

Opinion by Cynthia L. Martin, Judge

April 1, 2014

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