IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

SHAYNE LANCE GARRETSON,

Appellant.

DOCKET NUMBER WD82404

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 24, 2020

APPEAL FROM

The Circuit Court of Moniteau County, Missouri
The Honorable Matthew P. Hamner, Judge

JUDGES

Division One: Chapman, P.J., and Pfeiffer and Gabbert, JJ. CONCURRING.

ATTORNEYS

Eric S. Schmitt, Attorney General, and Justin Moody, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

Chris Rasmussen, Tuscumbia, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
SHAYNE LANCE GARRETSON, Appellant.

WD82404 **Moniteau County**

Before Division One Judges: Thomas N. Chapman, Presiding Judge, and Mark D. Pfeiffer and Anthony Rex Gabbert, Judges

Mr. Shayne Garretson ("Garretson") appeals from the judgment entered by the Circuit Court of Moniteau County, Missouri ("trial court"), following a jury trial in which he was found guilty of one count of statutory rape, four counts of statutory sodomy, and five counts of incest. Garretson seeks plain error review of unpreserved evidentiary and opening statement claims of error on appeal.

AFFIRMED.

Division One holds:

1. The State's opening statement, taken with the reasonable inferences drawn therefrom, was sufficient to apprise Garretson of the charges against him. Garretson was informed of the evidence the victims and other witnesses would be giving at trial, the physical evidence supporting the allegations, and the location of the alleged offenses.

2. In examining the five factors to determine the prejudicial effect of an uninvited reference to other crimes, it is clear that the trial court did not err, plainly or otherwise, in not declaring a mistrial *sua sponte*. First, one of the victims voluntarily shared the prior bad acts information in response to an open-ended question by the forensic interviewer. Second, the reference was brief and isolated, and there is nothing in the record to suggest that the prosecutor emphasized the statement. Third, the remark indicated that the victim did not succumb to her grandfather's proffer. Fourth, defense counsel did not request a mistrial. And fifth, there is no reason to believe that this isolated reference played a decisive role in the jury's verdict. Rather, it was the overwhelming evidence of Garretson's sexual abuse as testified to by the two victims and as corroborated by physical evidence. Moreover, Garretson was not prejudiced because the evidence was cumulative. The same evidence came into evidence without objection during defense counsel's cross-examination of the other victim earlier in the trial.

3. The prosecutor's passing reference to a "propensity hearing" during his cross-examination of Garretson was at best a vague reference to misconduct. Vague and indefinite references to misconduct do not warrant a mistrial unless the reference is clear evidence of the

defendant's involvement in another crime. A passing reference to a "propensity hearing" in a question to a witness is also not evidence of prior bad acts. Furthermore, Garretson's answer did not address the State's mention of a propensity hearing.

4. Garretson's brother-in-law's testimony, during prosecutor's direct examination, that Garretson told him "there's a demon in me," was a non-hearsay admission, by which he deflected blame to appear less culpable, that manifested a consciousness of guilt.

5. Because none of Garretson's claims facially establish substantial grounds that manifest injustice or miscarriage of justice has resulted, we decline to exercise our discretion to review the claimed errors under Rule 30.20.

Opinion by: Mark D. Pfeiffer, Judge March 24, 2020

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