MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: D.G.E.,

Appellant,

v.

JUVENILE OFFICER,

Respondent.

DOCKET NUMBER WD82856 Consolidated with WD82857

Date: April 21, 2020

Appeal from:

Morgan County Circuit Court
The Honorable Matthew P. Hamner, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Alok Ahuja and Cynthia L. Martin, Judges

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Attorneys:
Craig A. Johnston, Columbia for appellant.
Robert J. Seek, Eldon for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: D.G.E., Appellant,
v.
JUVENILE OFFICER, Respondent.

WD82856 (Consolidated with WD82857) Morgan County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Alok Ahuja and Cynthia L. Martin, Judges

D.G.E. appeals the juvenile court's judgment finding him delinquent. He contends the court erred in finding that he committed an act that, if committed by an adult, would have constituted first-degree sexual misconduct in violation of Section 566.093.1(1), RSMo 2016. D.G.E further argues that the court erred in determining that he had violated his probation by exposing his genitals under circumstances in which he knew such conduct was likely to cause affront or alarm. Lastly, he asserts that he was denied a fundamentally fair hearing and effective assistance of counsel in that his counsel failed to object to several hearsay statements and improper opinion testimony from a lay witness.

REVERSED.

The Majority Opinion holds:

The evidence presented by the Juvenile Officer is insufficient to support a finding beyond a reasonable doubt that D.G.E. committed first-degree sexual misconduct because the Juvenile Officer failed to prove that D.G.E. exposed his genitals to the complaining witness. While evidence was adduced demonstrating the basis for the complaining witness's belief that D.G.E. sent her an image of his penis, Section 566.093.1(1) requires proof that D.G.E. exposed his genitals, not that the witness merely believed he did. The juvenile court was presented with evidence that supported two potential versions of D.G.E.'s participation in the offense – one in which he sent an image of his penis and one in which he sent an image of a penis. To infer that D.G.E. participatory acts violated Section 566.093.1(1), however, required a healthy dose of speculation, supposition, and conjecture, which is inconsistent with the concept of guilt beyond a reasonable doubt.

Judge Ahuja Dissenting Opinion states:

Judge Ahuja dissents. In his view, the circuit court as fact-finder could reasonably interpret the victim's testimony as establishing that the picture D.G.E. sent was a depiction of his own penis. While the victim's testimony may have been somewhat imprecise and potentially open to different interpretations, it was for the fact-finder, not this Court, to choose which interpretation to place on her testimony.

Majority Opinion by: Lisa White Hardwick, Judge **April 21, 2020**
Dissenting Opinion by: Alok Ahuja, Judge

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.