OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,	)	No. ED107976
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
v.	)	
	)	
DELVIN BROWN,	)	Honorable Jason M. Sengheiser
	)	
Defendant/Appellant.	)	Filed: August 25, 2020

Delvin Brown (Appellant) appeals from the judgment of the trial court entered after a jury found him guilty of two counts of statutory sodomy in the first degree and one count of possession of a controlled substance, namely methamphetamine. On appeal, Appellant makes two claims of error. First, Appellant claims the trial court abused its discretion by limiting his ability to *voir dire* the venire panel regarding their opinions of masturbation and pornography. At trial, the victim, T.B., Appellant's biological daughter, testified Appellant directed her to bring him a towel, which he used to clean up his seminal fluid after sodomizing her. Appellant defended himself at trial by claiming the seminal fluid was present on the towel because he used it to clean up after masturbating while watching pornography. Appellant claims the trial court's error caused him to be unable to identify jurors who would be prejudiced against him for masturbating and viewing pornography.

Appellant's second claim is the trial court plainly erred by proffering a jury instruction that might allow him to be found guilty non-unanimously. At trial, the prosecuting attorney (prosecutor) sought to prove the statutory sodomy charges through evidence of two instances of sexual abuse witnessed by N.B., T.B.'s older sister. However, other evidence presented at trial showed Appellant had sexually abused T.B. on numerous occasions. Appellant claims a manifest injustice or miscarriage of justice occurred as a result of the jurors receiving an instruction that would allow them to find Appellant guilty on the basis of different instances of sexual abuse.

AFFIRMED.

Division Two Holds: Appellant's first point is without merit because the trial court did allow Appellant adequate leeway to question the prospective jurors on their views about masturbation. Appellant fails to demonstrate any prejudice resulted from the trial court exercising its discretion to limit his discussion of the related topic of pornography during *voir dire*. Appellant's second point fails because Appellant fails to show a manifest injustice or miscarriage of justice occurred. While the verdict director for Count III, statutory sodomy in the first degree, may have hypothetically allowed jurors to find Appellant guilty based on different acts of sexual abuse, Appellant cannot demonstrate any prejudice as a result because the prosecutor was clear throughout the trial that the charged offense was based on an instance of sexual abuse witnessed

by N.B. during the summer of 2017, and because the nature of Appellant's defense – a flat denial of all accusations – was not affected by the complained-of instruction.

Opinion by: Sherri B. Sullivan, J. Robin Ransom, P.J., and Lisa P. Page, J., concur.

Attorney for Appellant: Maleaner R. Harvey
Attorney for Respondent: Garrick F. D. Aplin

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