MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: C.A.R.A.,

Appellant,

v.

JACKSON COUNTY JUVENILE OFFICE,

Respondent.

DOCKET NUMBER WD83967

Date: July 6, 2021

Appeal from:
Jackson County Circuit Court
The Honorable Jalilah Otto, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, P.J., and Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:
Craig A. Johnston, Columbia for appellant
Tyler C. Smith, Kansas City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: C.A.R.A., Appellant,
v.
JACKSON COUNTY JUVENILE OFFICE, Respondent.

WD83967 Jackson County

Before: Division Two: Mark D. Pfeiffer, P.J., and Alok Ahuja and Karen King Mitchell, JJ.

The Circuit Court of Jackson County entered a judgment finding that C.A.R.A., a juvenile, committed acts which would constitute first-degree statutory sodomy if committed by an adult. C.A.R.A. committed the offense by inserting his finger into the vagina of a five-year-old girl in April 2019, when he was one month short of his thirteenth birthday. At C.A.R.A.'s adjudication hearing, the circuit court permitted the Juvenile Officer's witness to testify by two-way videoconferencing technology, over C.A.R.A.'s objections. At the conclusion of the hearing, the circuit court sustained the allegation of first-degree statutory sodomy. Following a further disposition hearing, the court ordered C.A.R.A. to be committed to the custody of the Director of Family Court Services for residential placement.

C.A.R.A. appeals.

CASE ORDERED TRANSFERRED TO MISSOURI SUPREME COURT PURSUANT TO RULE 83.02

Opinion Holds:

In his first Point, C.A.R.A. argues that the evidence was insufficient to establish that he committed acts which would constitute first-degree statutory sodomy, because the evidence was insufficient to establish that his act of inserting his finger into the Victim's vagina was "done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim." § 566.062.1, RSMo. C.A.R.A. argues that, because of his youth, the nature of the acts he committed is insufficient, standing alone, to prove that he acted from a sexual motivation. But even if that were true, the evidence was sufficient to prove beyond a reasonable doubt that C.A.R.A. acted "for the purpose of terrorizing the victim." The evidence indicated that C.A.R.A. abused the victim on multiple occasions, even after she told him she did not like it, and after she had asked him to stop. The evidence also indicated that C.A.R.A. continued his behavior even after a

babysitter and the babysitter's mother told him to stop. This was sufficient to prove that C.A.R.A. acted with a purpose of terrorizing the victim.

In his second and third Points, C.A.R.A. argues that his right to confront adverse witnesses under the Missouri and federal Constitutions was violated when the circuit court permitted the Juvenile Officer's witnesses to testify remotely, using two-way videoconferencing technology. We agree. In order to permit remote testimony in a proceeding subject to the Confrontation Clause, a trial court must find that remote testimony "is necessary to further an important public policy," *Maryland v. Craig*, 497 U.S. 836, 850 (1990), or that "exceptional circumstances" exist. *United States v. Gigante*, 166 F.3d 75, 81 (2d Cir. 1999). The circuit court in this case failed to make findings satisfying either standard. The circuit court justified its use of the WebEx two-way videoconferencing technology by noting that, due to the COVID-19 pandemic, "the [Missouri] Supreme Court has permitted the use of Webex in all types of hearings at this time in the State of Missouri." Even if the Supreme Court had *authorized* the use of two-way videoconferencing technology, however, such authorization does not establish that the use of videoconferencing was *necessary* to further an important public policy in this case, or that *exceptional circumstances* required the use of remote testimony. Generalized concerns about the COVID-19 pandemic may not trump an individual's constitutional right to confront adverse witnesses in a juvenile detention proceeding, unless the court makes specific findings that the circumstances prevailing at the time of a particular hearing, and the efficacy of available precautionary measures, require that the juvenile and his accusers be kept in separate physical locations.

We transfer this appeal to the Missouri Supreme Court under Rule 83.02, due to the general interest and importance of the issues presented. How to reconcile the unique circumstances of the COVID-19 pandemic with an accused's confrontation rights is a novel question on which a uniform State-wide resolution is necessary. There are likely multiple cases in which similar issues may arise. Separate from the pandemic, the legality of using two-way videoconferencing technology in proceedings to which the Confrontation Clause applies presents an important and recurring issue on which guidance from the Missouri Supreme Court would be helpful.

Opinion by: Alok Ahuja, Judge **July 6, 2021**

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