MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
JOSHUA AARON LEWIS, APPELLANT.

DOCKET NUMBER WD85845

DATE: JANUARY 30, 2024

Appeal From:

Boone County Circuit Court
The Honorable Kevin Crane, Judge

Appellate Judges:

Division Four: Gary D. Witt, Chief Judge, Presiding, Edward R. Ardini, Jr., Judge, and Janet Sutton, Judge

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Attorneys:

Justin Earl Davis, Jefferson City, MO, for respondent.

Katharine Patricia Curry, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI, RESPONDENT,
v.
JOSHUA AARON LEWIS, APPELLANT.

WD85845 Boone County

Before Division Four Judges: Gary D. Witt, Chief Judge, Presiding, Edward R. Ardini, Jr., Judge, and Janet Sutton, Judge

Joshua Lewis ("Lewis") appeals a judgment of the Circuit Court of Boone County, Missouri ("trial court"), convicting him, after a jury trial, of three counts of statutory sodomy in the first degree, Section 566.062, RSMo; two counts of child molestation in the second degree, Section 566.068, RSMo; and one count of abuse or neglect of a child, Section 568.060, RSMo. Lewis raises two points on appeal and argues: Point I, the trial court abused its discretion in admitting C.H.'s out-of-court statements to Investigator in violation of Lewis's rights to due process and a fair trial under the Sixth and Fourteenth Amendments; and Point II, the trial court plainly erred in admitting C.H.'s out-of-court statements to Officer in violation of Lewis's rights to due process and a fair trial under the Sixth and Fourteenth Amendments.

AFFIRMED.

Division Four holds:

The trial court did not abuse its discretion in admitting C.H.'s statements to Investigator. When looking at the totality of circumstances surrounding C.H.'s statements to Investigator, there were sufficient indicia of reliability to admit the statements under section 491.075, RSMo. An initial, unprompted disclosure of sexual and physical abuse was made in the letter C.H. wrote to her friends. Investigator then began asking cursory questions about who did it, where it happened, and if anybody else knew about it. This technique did not amount to suggestive questioning. C.H.'s statements to Investigator were consistent with her taped forensic interview and her in-court testimony. Although C.H. added details in subsequent conversations, this did not render her statements inconsistent. Further, there was no evidence to suggest C.H. had a motive to fabricate her story. Therefore, the statements were sufficiently reliable and the trial court did not abuse its discretion.

We decline plain error review on Lewis's second point on appeal. Lewis cannot show he was prejudiced because C.H. testified at length during the trial about the same

subject matter contained in her statements to Officer and she was cross-examined. Further, Officer's testimony was consistent with the testimonies of Investigator and C.H. Lewis's claim does not facially establish substantial grounds for believing that a miscarriage of justice or manifest injustice has resulted. Therefore, we decline to review the point under plain error.

Opinion by: Gary D. Witt, Judge January 30, 2024

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