In the Missouri Court of Appeals
Eastern District

DIVISION TWO

STATE OF MISSOURI,	)	ED113125
	)	
Respondent,	)	
	)	
v.	)	
	)	
KENNETH DAUB,	)	
	)	
Appellant.	)	Filed: January 13, 2026

Appeal from the Circuit Court of Jefferson County
The Honorable Joseph A. Rathert, Judge

Introduction

Kenneth P. Daub ("Daub") appeals his conviction of one count of statutory sodomy in the first degree. Daub asserts two points on appeal. In Point One, Daub argues the trial court abused its discretion in excluding testimony from one of her foster parents ("E.M.") that Victim lied about staying overnight at a "female sexual partner's" house. In Point Two, Daub contends the trial court abused its discretion in excluding testimony from a family friend and foster parent ("G.M.") that Victim lied about viewing pornography on the family computer. Daub argues the exclusion of the witnesses' testimony violated his rights to due process, a fair trial, and to present a complete defense

because he was entitled to cross-examine the witnesses about specific instances pertaining to Victim's character for truthfulness and veracity.

We hold the trial court did not abuse its discretion in excluding E.M. and G.M.'s proffered testimony because their testimony was not admissible character evidence.

Therefore, the trial court's judgment is affirmed.

Factual Background

Victim was born in January of 2007 and is Daub's biological daughter. When she was around six or seven years old, Victim met Daub for the first time. Shortly thereafter, Daub began sexually abusing her. Victim told her mother about the abuse, but her mother did not believe her.

In 2019, Victim was removed from her mother's custody, for unrelated reasons, by the Missouri Children's Division ("MCD"). She subsequently went to live with G.M. While living with G.M., Daub continued to abuse Victim. After living with G.M. for about a year, Victim moved in with her brother and E.M.,[1] and the abuse stopped. In October of 2020, Victim told E.M. about Daub's abuse. E.M. contacted Victim's MCD caseworker and reported Victim's claims of abuse.

Shortly thereafter, an investigator with the MCD interviewed Victim regarding her claims of abuse. After meeting with the investigator, Victim was scheduled for a forensic

[1] During the period in which Victim lived with E.M. and her brother, E.M. was dating Victim's brother. However, at the time of trial, E.M. and Victim's brother were no longer together.

interview with the Child Advocacy Center, in which she gave a detailed account of the sexual abuse.

Following the investigation, Daub was charged with one count of statutory sodomy in the first degree. Prior to trial, the State filed a *motion in limine* to exclude character evidence of Victim.[2] The trial court sustained the motion.

A jury trial was held in August of 2024. E.M., G.M., and Victim testified at trial. Daub also testified in his own defense. Outside the hearing of the jury, Daub made offers of proof for the admission of E.M. and G.M.'s testimony of specific instances of Victim's "lying" to each witness on different occasions. After both offers of proof, the trial court upheld its ruling on the State's *motion in limine* and excluded the proffered testimony.

The jury found Daub guilty of first-degree statutory sodomy. The trial court sentenced Daub as a prior offender to twenty years' imprisonment.

This appeal follows.

Standard of Review

"A trial court has broad discretion in choosing to admit or deny evidence." *State v. Scott*, 676 S.W.3d 336, 340 (Mo. App. E.D. 2023). This Court reviews the trial court's decision to admit or exclude evidence at trial for abuse of discretion. *State v. Perkins*, 656 S.W.3d 285, 294 (Mo. App. E.D. 2022). A trial court abuses its discretion when its ruling is "clearly against the logic of the circumstance then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of

[2] This Court notes the State's *motion in limine* is not a part of the legal file, but the parties do not dispute the motion was filed to exclude character evidence of Victim.

careful, deliberate consideration." *State v. Allen*, 597 S.W.3d 420, 427 (Mo. App. E.D. 2020) (quoting *State v. Wood*, 580 S.W.3d 566, 574 (Mo. banc 2019)).

Discussion

For ease of analysis, we discuss Points One and Two together. In Point One, Daub argues the trial court erred in excluding the testimony of E.M. that Victim lied to E.M. about spending the night at a "female sexual partner's" house. In Point Two, Daub contends the trial court erred in excluding the testimony of G.M. that Victim lied about viewing pornography on the family computer. Daub argues his cross-examination of the witnesses about specific instances of Victim's conduct, which spoke to her character for truthfulness and veracity, was warranted since the witnesses had effectively testified to Victim's general reputation for truthfulness. This Court holds the witnesses were not qualified to provide character testimony because Daub failed to show they were familiar with Victim's general reputation in the community.[3]

"A person is qualified to testify as to another witness's reputation for truthfulness and veracity if it is shown that the person is familiar with 'the general reputation of the witness in the neighborhood or among the people with whom the witness associates….'" *State v. Smith*, 314 S.W.3d 802, 810 (Mo. App. E.D. 2010) (citation omitted). A witness

[3] Daub's argument section comingles caselaw on character and impeachment evidence, but his argument only focuses on character evidence. This Court will not address Daub's argument relating to impeachment of Victim because, while he included pertinent caselaw, he failed to develop an argument. This Court "will not speculate as to the parameters of [Daub's] arguments on appeal because doing so would improperly cast the court in the role of his advocate." *Porter v. Santander Consumer USA, Inc.*, 590 S.W.3d 356, 358 (Mo. App. E.D. 2019).

who provides character testimony "must have had an opportunity to observe continuously and with some frequency the person whose reputation he describes; and the witness must have knowledge of how others in the community view the individual." *State v. Bennish*, 479 S.W.3d 678, 682 (Mo. App. E.D. 2015) (citation omitted). Character witnesses typically may only offer testimony "regarding general reputation in the community and *not* testimony of specific acts." *Id.* at 683 (emphasis added).

In the present case, Daub made testimonial offers of proof to establish a foundation for the admission of E.M. and G.M.'s testimony. Specifically, Daub sought to admit testimony from each witness about specific incidents in which Victim had "lied" to them. Daub elicited testimony from E.M. that, on one occasion, Victim told her she was having a sleepover with a friend, who E.M. later believed to be Victim's "romantic interest." The following exchange occurred during the offer of proof:

Defense Counsel:	[W]hen you were fostering [Victim], you learned that she lied to you about an overnight stay with a female partner?
E.M.:	Correct.
Defense Counsel:	She represented to you that she was spending the night with a friend?
E.M.:	Correct.
Defense Counsel:	And in fact, you found out that this person was actually one of [Victim's] romantic interests?
E.M.:	Yes.
Defense Counsel:	You found that out because you saw a photo of [Victim] kissing this friend posted to social media?
E.M.:	Correct.

As to G.M., Daub sought to elicit testimony Victim had been untruthful when G.M. questioned her about whether she had accessed pornography on the family computer. The following exchange occurred regarding the incident:

Defense Counsel:	You confronted [Victim] about what you found on the computer?
G.M:	Yes.
Defense Counsel:	But she never admitted to it?
G.M.:	No.
Defense Counsel:	She wasn't honest with you about the pornography?
G.M.:	She just said, What? I would say, [Victim], [Victim], really? [Victim]. And she hung up on me. So I called right back. And I said, Really, [Victim]? Really? And she hung up again. And then I called her right back a little while later. And I said, [Victim], really? And she hung up. It never went no further.
Defense Counsel:	Okay. And based on the -- the tenor of that conversation, you were pretty sure she knew what you meant?
G.M.:	Yes.

The offers of proof make clear neither E.M. nor G.M. were qualified to testify as to Victim's reputation because they were not familiar with how other individuals in the community perceived Victim's character for truthfulness. *See Bennish*, 479 S.W.3d at 682. In particular, neither witness was directly asked about or offered any testimony regarding Victim's general reputation among her peers or in the community. Instead, E.M. and G.M.'s testimony was based on their *personal* experiences with Victim. Thus, the proffered testimony of the witnesses' personal experiences relating to Victim's character for truthfulness and veracity was inadmissible. *See id.* at 684 (holding the trial

court properly excluded witness's testimony because defendant did not present evidence to demonstrate witness was qualified to testify as to victim's reputation for truthfulness); *see also Smith*, 314 S.W.3d at 810–11 (holding the trial court properly excluded witness's testimony regarding victim's reputation for truthfulness because it was based on his "personal experience").

Daub's argument also fails because the offers of proof do not support his claim Victim made untruthful statements to the witnesses. An offer of proof must be specific, definite, and demonstrate the relevancy of the offered testimony. *State v. Murphy*, 534 S.W.3d 408, 415 (Mo. App. E.D. 2017). To do so, "[o]ffers of proof must show what the evidence will be, the purpose and object of the evidence, and each fact essential to establishing admissibility." *State v. Michaud*, 600 S.W.3d 757, 762 (Mo. banc 2019) (quoting *State v. Hunt*, 451 S.W.3d 251, 263 (Mo. banc 2014)).

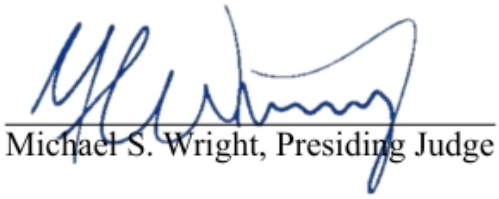
According to E.M.'s testimony, Victim said she was spending the night with a female friend. There is no dispute Victim did exactly as she said: she went to a sleepover at a friend's house. At most, the proffered testimony shows Victim may not have been clear about the nature of her relationship with her friend. Nonetheless, the offer of proof failed to demonstrate Victim lied to E.M. regarding her whereabouts and with whom she was having a sleepover. It is also not readily apparent to this Court how Victim's alleged failure to specify her relationship to her friend is indicative of whether she told the truth about Daub's sexual abuse. It is only Daub's characterization of the testimony that makes Victim out to be untruthful.

G.M.'s proffered testimony equally does not support Daub's contention the testimony was "admissible to reasonably show the jury [Victim] was not possessed of a character for truthfulness and veracity." Victim's response to G.M.'s inquiry into whether she had accessed pornography on their shared computer was: "What?" This response is not a denial which later proved to be false. Thus, Daub failed to demonstrate Victim lied to G.M. about whether she accessed pornography on the computer. Again, no other evidence beyond Daub's mischaracterization of the testimony supports Daub's contention Victim made *any* untruthful statements to G.M.

Accordingly, the trial court's ruling excluding E.M. and G.M.'s testimony was not clearly against the logic of the circumstances. Points One and Two are denied.

Conclusion

For the foregoing reasons, the trial court did not abuse its discretion in excluding the proposed testimony from E.M. and G.M. The trial court's judgment is affirmed.



Michael S. Wright, Presiding Judge

Philip M. Hess, Judge and
James M. Dowd, Judge concur.