Missouri Court of Appeals
Southern District

In Division

STATE OF MISSOURI,

Respondent,

v.

RICKY LEE THURMAN,

Appellant.

Case Number SD38739

Filed: September 23, 2026

APPEAL FROM THE CIRCUIT COURT OF RIPLEY COUNTY

Honorable Michael M. Pritchett, Judge

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTION

A jury found Ricky Lee Thurman guilty of first-degree statutory sodomy and three counts of second-degree child molestation for acts he committed on A.C., who was between six and eight years of age at the times of the offenses. On appeal, he challenges the admission of certain testimony from a forensic interviewer and the sufficiency of the evidence to support one of the child molestation convictions.

We decline to review the admission of the forensic interviewer's testimony for plain error because Thurman has not made a facial showing of plain error. We vacate

Thurman's conviction and sentence for one count of child molestation because the evidence and reasonable inferences therefrom could not permit a reasonable juror to find all the essential elements of the offense beyond a reasonable doubt.

Point I: Admission of Forensic Interviewer Testimony

The State's evidence included the testimony of a forensic interviewer who interviewed A.C. about what happened to her. During cross-examination, the forensic interviewer referenced "source monitoring." On redirect, the investigator was asked the meaning of this term, and she briefly explained that the source of the information, whether it likely was something the child directly experienced or observed as opposed to something that may have been told to her, informed the forensic interviewer's follow up questions.

Thurman claims the court plainly erred in admitting the forensic interviewer's testimony about source monitoring because it impermissibly vouched for A.C.'s credibility. He admits this point has not been preserved and seeks plain error review under Rule 30.20.

Plain error review is discretionary. ***State v. Jones***, 725 S.W.3d 577, 584 (Mo. banc 2025) (citing Rule 30.20). "The plain error rule is to be used sparingly and may not be used to justify a review of every point that has not been otherwise preserved for appellate review." ***Id.*** (quoting ***State v. Brandolese***, 601 S.W.3d 519, 526 (Mo. banc 2020)).

> An appellate court will conduct review under Rule 30.20 "only when the appellant's request for plain error review establishes facially substantial grounds for believing that the trial court's error was evident, obvious, and clear and that manifest injustice or miscarriage of justice has resulted." Unless the appellant makes this facial showing, this Court will decline to review for plain error under Rule 30.20.

Id. at 583 (quoting ***State v. Jones***, 427 S.W.3d 191, 195-96 (Mo. banc 2014)).

Thurman has not made a facial showing of plain error. He characterizes the forensic interviewer's testimony as expert testimony and compares this case to cases involving expert testimony from medical doctors, but the interviewer was a fact witness neither proffered as nor found to be an expert witness. Furthermore, the record does not support Thurman's claim that the forensic interviewer's testimony bolstered or vouched for A.C.'s credibility. The forensic interviewer's testimony about source monitoring was a benign explanation of her questioning technique, not a comment on A.C.'s veracity. Contrary to Thurman's claim, the interviewer testified she would not know if what A.C. said was true.

Thurman has not facially established substantial grounds to believe that the circuit court committed evident, obvious, and clear error. ***Id.*** at 585. We decline plain error review and deny Point I.

Point II: Insufficient Evidence for Count III Child Molestation Conviction

Thurman next claims that the court erred in denying his motion for judgment of acquittal on Count III, child molestation in the second degree, because there was insufficient evidence he touched A.C.'s anus, a necessary element of the offense.

> The standard of review for sufficiency claims has oft been repeated and remains unchanged. In considering whether the evidence is sufficient to support the jury's verdict, we must look to the elements of the crime and consider each in turn. The Court does not act as a 'super juror' with veto powers, but gives great deference to the trier of fact. Nor does this Court weigh the evidence but rather accepts as true all evidence tending to prove guilt together with all reasonable inferences that support the verdict and ignores all contrary evidence and inferences. In conducting such a review, however, this Court may not supply missing evidence or give the State the benefit of unreasonable, speculative, or forced inferences. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

State v. Winter, 719 S.W.3d 738, 746 (Mo. banc 2025) (citation modified).

The elements of an offense are found *only* in the statute creating that offense. ***State v. Costa***, 737 S.W.3d 97, 102 (Mo.App. S.D. 2026). "A person commits the offense of child molestation in the second degree if he or she … [s]ubjects a child who is less than twelve years of age to sexual contact[.]" Section 566.068.1.[1] As relevant here, "sexual contact" means any touching of the anus of another person for the purpose of arousing or gratifying the sexual desire of any person. Section 566.010(6).

A.C. testified at trial that Thurman had moved his hands up and down on her "butt." A.C.'s mother testified that A.C. disclosed Thurman had touched her "bottom." During a forensic interview, a recording of which was admitted into evidence and played for the jury, A.C. disclosed Thurman pulled down her pants and underwear and his

[1] Statutory references are to RSMo. 2016 (eff. Jan. 1, 2017).

hands touched her on what she called her "butt," which she identified as the buttocks on an anatomical drawing. She denied that Thurman had put his fingers "in" her "butt."[2]

A "butt" or "buttocks" is "either of the rounded parts at the back of the hips; either half of the rump[,]" while an "anus" is, "the posterior opening of the alimentary canal." ***State v. Ray***, 407 S.W.3d 162, 167 (Mo.App. E.D. 2013) (quoting ***State v. Tolen***, 295 S.W.3d 883, 887 (Mo.App. E.D. 2009)). "Evidence that a defendant touched a victim's 'butt' or 'buttocks' is insufficient to show the defendant touched the victim's 'anus.'" ***Id.*** (quoting ***Tolen***, 295 S.W.3d at 887). Contact with the "butt" will not support an inference of penetration of the buttocks or contact with the anus without additional, specific, supporting testimony or evidence. ***Costa***, 737 S.W.3d at 103-04; ***Ray***, 407 S.W.3d at 167-68; ***Tolen***, 295 S.W.3d at 887-888. No such supporting testimony or evidence was present in this case, and A.C. denied Thurman's fingers went "in" her "butt."

We understand that a child witness's vocabulary and knowledge of anatomy may be limited. A.C.'s testimony indicates she knew and had names for basic body parts, and she knew the difference between "on" and "in." Regardless of a child witness's limitations, prosecution of criminal cases is not undertaken by children, but by adults

[2] In contrast, the statutory sodomy conviction, the evidentiary sufficiency for which is not contested on appeal, was supported in part by A.C.'s disclosure that the tip of Thurman's "private" went "up" her "butt" and "it kind of hurt a little bit."

who have been educated in the criminal law, criminal proceedings, and evidence. A child witness's limitations do not lower the State's evidentiary bar for a criminal conviction.

A.C.'s testimony that Thurman's fingers touched her on her "butt" is not testimony of contact with her anus and does not support a reasonable inference of such contact. Without testimony or a reasonable inference of contact with A.C.'s anus, the State failed to present evidence from which a reasonable juror could find Thurman guilty beyond a reasonable doubt as to Count III, second-degree child molestation. Point II is granted.

Conclusion

We vacate Thurman's conviction and sentence for second-degree child molestation on Count III of the amended information. We remand the case and direct the trial court to enter a judgment of acquittal on that count. The judgment and remaining convictions are affirmed in all other respects.

JACK A. L. GOODMAN, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

BECKY J. WEST, C.J. – CONCURS