

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED90806
)	
vs.)	Appeal from the Circuit Court of
)	Washington County
)	
JEFFREY THURMAN, Appellant.)	Filed: December 23, 2008

Jeffrey Thurman (Defendant) appeals from the trial court's judgment, following a jury trial, convicting him of first-degree child molestation, in violation of Section 566.067, RSMo 2000,¹ and first-degree statutory sodomy, in violation of Section 566.062. The trial court sentenced Defendant to 15 years of imprisonment for the first-degree child molestation charge and 50 years of imprisonment for the first-degree statutory sodomy charge, to run consecutively.

AFFIRMED.

Division One holds: In addition to the incident upon which the charged offense was based, evidence regarding Defendant's other sexual acts, offered by the victim and her mother, was offered for the purpose of establishing Defendant's motive that he had a sexual desire for Victim and intended to act on it. The trial court did not abuse its discretion in admitting evidence offered for such purpose.

The trial court's admission during the sentencing phase of the trial of evidence of a prior dropped rape charge against Defendant, and testimony that Defendant also touched his wife's oldest daughter in addition to the victim was facial error because the evidence was not authorized "history and character" evidence. However, the evidence was not outcome determinative such that Defendant would have received a lesser sentence than that given, and therefore, no manifest injustice or miscarriage of justice occurred.

Opinion by: Kurt S. Odenwald, P.J. Glenn A. Norton, J. and Patricia L. Cohen, J., Concur.

Attorney for Appellant: Irene Karns

Attorneys for Respondent: Jeremiah W. (Jay) Nixon and Daniel N. McPherson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.

¹ All subsequent statutory citations are to RSMo 2000, unless otherwise indicated.