

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	ED97679
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Charles County
v.)	1011-CR06620-01
)	
MICHAEL KAYSER,)	Honorable Ted House
)	
Appellant.)	Filed: April 16, 2013

Michael Kayser (Defendant) appeals the trial court’s judgment of conviction for sexual misconduct in the second degree. Defendant argues that the trial court abused its discretion in overruling his motion to suppress an out-of-court identification of Defendant and in admitting the identification at trial because the presence and statements of the 9-year-old victim’s mother during the photographic lineup rendered the identification procedure impermissibly suggestive.

AFFIRMED.

Division Five Holds: The presence of parents with their children during a photographic lineup does not render the identification procedure unduly suggestive in and of itself. In accordance with the test for suggestiveness, so long as the procedure ensures the identification remains one based on the witness’ recall of first-hand observations, rather than on any statements of or actions by third parties present, then the procedure is not unduly suggestive. Mother’s statement to P.S. to imagine the man she had seen without glasses during the lineup did not taint the lineup because it was unrelated to any specific photograph and Mother did not point at any specific photograph. Finally, Mother’s after-the-fact statement that Mother would have chosen the same picture did not have a suggestive effect on a lineup procedure that had already concluded.

Opinion by: Gary M. Gaertner, Jr., C.J.
Robert M. Clayton III, J., and Thomas C. Clark II, S. J., concur.

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