

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
BOBBY DONALD McCLURE**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD78385

DATE: March 1, 2016

Appeal From:

Howard County Circuit Court
The Honorable Scott A. Hayes, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Richard A. Starnes, Jefferson City, MO, for respondent.

Ellen H. Flottman, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

BOBBY DONALD McClURE,

APPELLANT.

No. WD78385

Howard County

Before Division One: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Appellant Bobby McClure was convicted following a jury trial in the Circuit Court of Howard County of statutory sodomy in the first degree, section 566.062.1, and child molestation in the first degree, section 566.067. McClure now appeals and argues the trial court abused its discretion in admitting State's Exhibit 7, a video-recording of an interview with the child victim ("T.S."), conducted by a child advocacy center, because the time, content, and circumstances of T.S.'s statement did not satisfy the indicia of reliability requirements of section 491.075.1.

WE AFFIRM

Division One holds:

(1) Because McClure failed to object at trial to the admission of the recorded interview with the child victim based on the alleged failure of the statements therein to satisfy the indicia of reliability requirements of section 491.075.1, the claim can only be reviewed for plain error.

(2) McClure's claim does not facially establish substantial grounds for believing that a miscarriage of justice or manifest injustice has resulted and we therefore decline plain error review. Because T.S. actually testified at trial and was available for cross-examination, even if the challenged statements were erroneously admitted under section 491.075, McClure was not prejudiced.

Opinion by Gary D. Witt, Judge

March 1, 2016

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