MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	**WD80260**
Respondent,	)	
v.	)	**OPINION FILED:**
	)	
MELINDA TILLITT,	)	**January 9, 2018**
	)	
Appellant.	)	

Appeal from the Circuit Court of Macon County, Missouri
Honorable Frederick Paul Tucker, Judge

Before Division Two:
Anthony Rex Gabbert, P.J., Thomas H. Newton, and Gary D. Witt, JJ.

Ms. Melinda Tillitt appeals from her conviction following a jury trial for five counts of first-degree statutory sodomy, § 566.062, and one count of first-degree child molestation, § 566.067.[1] The Macon County Circuit Court sentenced her to six consecutive fifteen-year terms of imprisonment for a total of ninety years. She challenges the trial court's decision to overrule her motion to suppress her purportedly involuntary statements to police and her objection to certain testimony of a forensic interviewer, and she seeks plain-error review of the trial court's sentence of consecutive terms of imprisonment under section 558.026. We affirm in part and reverse in part.

[1] Statutory references are to RSMo. (2000) as amended through June 2013.

Factual and Procedural Background

Ms. Tillitt was initially charged in May 2015 with four counts of first-degree statutory sodomy for deviate sexual intercourse involving one of her daughters, K.B.T. The information was later amended to add one count of first-degree statutory sodomy for deviate sexual intercourse and one count of first-degree child molestation for sexual contact involving another daughter, K.D.T. The girls had been removed from the home in August 2014 after their church pastor reported that they had been physically abused. K.B.T. did not disclose that Ms. Tillitt had sexually abused her until March 2015. Ms. Tillitt was arrested at her workplace on March 14, 2015, and taken to the police station. There, over the course of a recorded one-hour, twenty-minute interview, Ms. Tillitt ultimately made statements admitting some of the allegations as to K.B.T and indicated that "there might be some issues" with K.D.T. She then prepared a written statement admitting that she had sexually abused both daughters. Following arraignment in Shelby County, the case was transferred on a change of venue to Macon County.

Before trial, Ms. Tillitt filed a motion to suppress "evidence of statements taken from defendant by law enforcement agents" purportedly obtained in violation of her constitutional rights against self-incrimination, right to counsel, and due process. Without distinguishing between the audio recording and written statement, Ms. Tillitt claimed that (1) her police custody and interview were "inherently coercive," (2) "[t]he statement" did not accurately reflect her conversation with the interviewing officers, (3) the statement was obtained by threats and promises made before and during the interview, and (4) any alleged statements were "the result of an unlawful arrest." The trial court held a suppression hearing and denied the motion.

Thereafter, Ms. Tillitt filed several motions in limine including one to prohibit the State from adducing testimony or evidence from the girls' forensic interviewer, Ms. Faith Wemhoff, about "the process of disclosure among victims of sexual abuse, specifically concerning the reasons why a victim may not initially disclose." Another motion in limine sought to exclude a redacted, twenty-minute audio recording of Ms. Tillitt's police interview. She claimed that it was not a complete and accurate representation of the interview and that, if the State sought to introduce a recording of the interview, it should use the entire recording "or not introduce it at all." The trial court indicated before trial that the State was entitled to present the redacted version of the audio recording during its case in chief, while Ms. Tillitt could then present the entire recording in her defense.

K.D.T. and K.B.T. were 17 years old when they testified during trial. Because the family had moved often over the years, they were able to relate their ages and the specific sexual acts allegedly perpetrated by their mother to the homes in which they had lived. K.D.T. testified that her earliest memory of inappropriate touching was when she was about 5 or 6 years old and the family was living in a trailer home. Her mother touched K.D.T.'s chest and her vagina, putting her fingers inside of her. K.D.T. also testified that her mother joined her in the bathtub when the family lived on Walnut Street, when she was about 7, 8, or 9, and forced K.D.T. to touch her mother's vagina with her fingers and her mouth. During this incident, K.D.T. recalled that her mother touched K.D.T.'s vagina with her mouth and fingers and forced K.D.T.'s head under the water. K.D.T. testified about other similar touching and oral-contact incidents occurring in her mother's bedroom and in her bedroom and that her mother would put

her tongue in K.D.T's vagina and move it around inside. According to K.D.T., such abuse happened more times than she could count. And it happened when they lived in other homes.

K.B.T.'s earliest memory was about an incident that occurred when she was about 5 or 6 years old and her mother came into her bedroom and put her hand down K.B.T.'s pants and up her shirt to touch her vagina and breasts. K.B.T. also testified that her mother entered the bathroom while she was taking a bath, got into the tub with her and forced K.B.T. to lick her vagina and then licked K.B.T.'s vagina. K.B.T. testified that this happened more than once, and she also recalled similar touching and oral-contact incidents in her bedroom and her mother's bedroom when the family lived in other houses. K.B.T. also testified that her mother put her fingers inside K.B.T.'s vagina and had K.B.T. do the same to her. K.B.T. further testified that her mother touched her vagina inside and outside while they were in the living room in the presence of other people and K.B.T. and her mother were covered by a blanket. Ms. Tillitt also allegedly showed K.B.T. magazines with pictures of naked people and showed her sex toys and how to use them.

During trial, the State moved to admit the full one-hour, twenty-minute audio recording of Ms. Tillitt's police interview. Ms. Tillitt's counsel stated that the defense did not object to its admission.[2] The State also sought to admit the twenty-minute, redacted version of the police interview of Ms. Tillitt, and she renewed the objection made in her motion in limine, i.e., challenging its completeness and accuracy. The court overruled the objection and accorded Ms. Tillitt a continuing objection. The State

[2] Ms. Tillitt also played the full-length audio of the police interview for the jury while cross-examining the officer who had conducted it.

played the shorter version of the audio for the jury. While questioning the police officer who conducted the interview, the State asked about the written admission signed by Ms. Tillitt and moved to admit it. Ms. Tillitt then renewed her motion to suppress as to her "confession" on the ground that it violated her right not to incriminate herself and violated her right to a fair and impartial jury under the U.S. and Missouri constitutions. The court overruled the objection and admitted the written confession into evidence. Ms. Tillitt also objected to the testimony of the witness who had conducted the girls' forensic interviews; among other matters, the State had called Ms. Faith Wemhoff to testify generally about how children disclose sexual abuse, i.e., "the process of disclosure." Ms. Tillitt claimed that the admission of such testimony would violate her right to a fair trial and her rights under the U.S. and Missouri constitutions. The court overruled the objection. Ms. Wemhoff testified that children go through a process that is often delayed and takes place over time due to elements of secrecy, fear, guilt, shame, and embarrassment. Ms. Tillitt filed motions for acquittal at the close of the State's evidence and at the close of all the evidence, which the court overruled.

The jury deliberated for about two-and-one-half hours and returned a guilty verdict on all counts. The trial court denied Ms. Tillitt's motion for judgment of acquittal notwithstanding the jury's verdict or motion for new trial. Among other matters, she had claimed as error the court's overruling of her motions in limine regarding the admission of testimony about the process of disclosure and the redacted audio recording of her police interview. She had also challenged the court's overruling of her motion to suppress statements and its renewal at trial, and her renewed objections at trial to testimony about the process of disclosure and to the redacted audio recording.

At sentencing, the State requested the maximum sentence on all counts and stated that the minimum possible sentence would be forty-five years given that "the statutory sodomy first has to run consecutively with one another." The court then asked, "You're saying that no matter what sentence she gets it has to be consecutive." The prosecutor replied, "For the statutory sodomy first, those have to run consecutive." Ms. Tillitt's counsel agreed, stating, "That's 558.026. It is the consecutive concurrent statute and lists which offenses must be run consecutively. They are largely sex crimes and statutory sodomy first is on that list. They must be run consecutive to one another and anything else on that list." The court took a recess, and, before sentencing Ms. Tillitt, the court expressed its understanding of the statute as follows: "Thank you everyone. Please be seated. Okay, so I've been trying to understand the legislative reasoning for consecutive sentences. And once I sort of opened my mind to it it kind of makes sense." The court sentenced Ms. Tillitt to consecutive terms of imprisonment as indicated above, and this timely appeal followed.

Legal Analysis

In the first point, Ms. Tillitt argues that the trial court erred in overruling her motion to suppress statements and in admitting her statements to the police officers into evidence over her objection. She claims that the statements were taken in violation of her right to due process and her privilege against self-incrimination under the U.S. and Missouri constitutions, in that "the statements were involuntary under the totality of the circumstances, which included [Ms. Tillitt's] mental state and the officers'

actions."[3] She does not distinguish among the full audio recording of her interview, the shorter, redacted version, or the written admission she made following the interview, each of which the trial court admitted into evidence.

Because a ruling on a motion to suppress is interlocutory, a defendant must make "an objection at the time the evidence is offered for admission at trial" to preserve the issue of its admissibility for review. *State v. Barriner*, 210 S.W.3d 285, 296 (Mo. App. W.D. 2006). Where an objection is made at trial, the issue is properly preserved for our review, and we review the trial court's ruling on the objection made during trial and "not the denial of [the] motion to suppress." *Id.*

Admission of the Full Audio Recording

As to the full audio recording, Ms. Tillitt affirmatively stated at trial that she did not object to the State's request to admit this exhibit; she also published it to the jury when cross-examining the police officer who conducted the interview. We, therefore, find that she has waived any consideration of the court's admission of this evidence at trial, including plain-error review. *See State v. Johnson*, 284 S.W.3d 561, 582 (Mo.

[3] The motion to suppress, in addition to claiming that the statements were the result of an unlawful arrest, also claimed they were not voluntary in that:

1. The length and nature of the defendant's custody and the duration and nature of the defendant's interrogation and the conditions under which it was conducted, were inherently coercive as applied to a person of defendant's age, education, background, and physical and mental condition at the time such interrogation occurred.

2. The statement is not an accurate reflection and record of the conversation between defendant and the interrogating officials.

3. Defendant was subjected to mental and physical duress prior to and during the interrogation, and the statement obtained was the direct result of threats and promises made to defendant prior to and during the interrogation by the interrogating officials.

The only testimony about the police interview introduced during the suppression hearing was that of the officer who primarily conducted it, and his testimony was the only testimony about the interview that was available to the court when it ruled on Ms. Tillitt's objections at trial.

banc) ("An objection to the admission of evidence must be made to preserve the issue for appeal. . . . Plain error review does not apply when a party affirmatively states that it has no objection to evidence an opposing party is attempting to introduce.") (citation omitted), *cert. denied*, 558 U.S. 1054 (2009).

Admission of the Redacted Audio Recording

As to the redacted version of the audio recording, Ms. Tillitt challenged its admission during trial on the ground that it did not accurately reflect and record the conversation she had with police officers, which was the basis for her motion in limine. She did not argue to the trial court that her statements in the redacted recording were involuntary. She did raise this challenge indirectly in her post-trial motion and now on appeal by including a reference to her motion to suppress statements.[4] "Orderly procedure mandates that any assignment of error made on motion for a new trial and on appeal must be based upon an objection made and reasons assigned in the trial court." *State v. Weeks*, 603 S.W.2d 657, 661 (Mo. App. S.D. 1980) ("Trial courts should have an opportunity to rule alleged trial errors when they occur. The foregoing rule is equally applicable to claimed violations of constitutional rights which first surface in a defendant's motion for a new trial."). Because Ms. Tillitt did not object at trial to the admissibility of the shorter, redacted audio recording on the ground that "her statements were involuntary under the totality of the circumstances," particularly in light of the officers' actions and her mental state, our review, if any, of her involuntariness challenge to the admission of this evidence is for plain error only.

[4] Ms. Tillitt's motion to suppress statements sought to "suppress any evidence concerning any oral, written or recorded statements alleged to have been made to law enforcement officials or other witnesses in connection with this case, . . ."

Under Rule 30.20, we may, in our discretion, review "plain errors affecting substantial rights . . . when [we] find[] that manifest injustice or miscarriage of justice has resulted therefrom." Plain-error review begins with a threshold review to "determine whether or not the claimed error 'facially establishes substantial grounds for believing that "manifest injustice or miscarriage of justice has resulted."'" *State v. Williams*, 465 S.W.3d 516, 519 (Mo. App. W.D. 2015) (citation omitted). "If not, we should not exercise our discretion to conduct plain error review. If, however, we conclude that we have passed this threshold, we may proceed to review the claim under a two-step process. . . ." *Id.* The first step involves a decision as to "whether plain error has, in fact, occurred." *Id.* In the absence, however, of "evident, obvious, and clear error," we do not proceed further with our review. *Id.* If we find plain error, "we must continue to the second step to consider whether or not a miscarriage of justice or manifest injustice will occur if the error is left uncorrected." *Id.*

Ms. Tillitt cites the police officer's suppression-hearing testimony and her trial testimony to support her argument that any statement she made to the police was involuntary because she suffers from depression and anxiety, was afraid of the police officer, and was subject to hours of interrogation before the audio recording began.[5] During the suppression hearing, the officer who conducted most of the interview testified about the circumstances of Ms. Tillitt's arrest, including that it had occurred in the privacy of her employer's office, she was advised of and understood her rights,

[5] In *Barriner*, we stated that our review of a trial court's ruling allowing the admission of a defendant's confession over objection includes both the trial record and the record of the prior suppression hearing. *State v. Barriner*, 210 S.W.3d 285, 299 (Mo. App. W.D. 2006). In *Barriner*, the defendant contended that his confession was involuntary because he was under the influence of cocaine and the officer threatened him. *Id.* at 300-01. We observed that our inquiry as to a statement's voluntariness hinges not on the defendant's mental ability, but rather on whether the statement "was elicited by coercive police tactics." *Id.* at 300.

and she was not handcuffed until after she had been escorted to and placed in the police officer's vehicle. He waited a short time for the police chief, with whom Ms. Tillitt was familiar through the children's sports activities, to arrive at the station, so that she would be more comfortable and more likely to disclose, and then conducted the interview in his "laid back" style in an open office area with desks and chairs. Ms. Tillitt was not handcuffed and had a beverage with her that she had taken from her workplace; she was allowed as many breaks as she wished, including cigarette breaks. The interview took place over less than two hours, and the officer had just one moment when he was concerned about Ms. Tillitt's physical condition, because she stopped speaking, her eyes rolled back, and "[s]he began to breathe hard." This episode was brief, however, and preceded her admission that sexual abuse had occurred. The officer did not threaten or make any promises to her. When the interview concluded, the officer asked Ms. Tillitt to provide a written statement, and she did so; it included substantially the same admissions she had made during the interview. His testimony about the interview at trial was similar to his suppression-hearing testimony. Because the trial court ruled on the admissibility of the redacted audio recording before Ms. Tillitt testified about the circumstances surrounding the interview, we do not include her trial testimony in our analysis.[6]

Ms. Tillitt's claim of an involuntary confession could facially establish substantial grounds for believing that manifest injustice or a miscarriage of justice has resulted. *See State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 80-81 (Mo. banc 2015) ("[a] confession is like no other evidence because it is probably the most probative and

[6] Nor would her "physical or emotional condition alone, absent evidence of police coercion," be sufficient "to demonstrate that the confession was involuntary." *Barriner*, 210 S.W.3d at 300.

damaging evidence that can be admitted against [a defendant]. Moreover, a defendant is prejudiced by a coerced confession admitted into evidence, [p]recisely because confessions of guilt, whether coerced or feely given, may be truthful and potent evidence[.]" (citations omitted)). Thus, we analyze her claim to determine if the admission of the shorter, redacted audio recording was evident, obvious, and clear error.

In light of the officer's testimony and because the shorter, redacted audio recording did not include anything other than what Ms. Tillitt had already stated in the full audio recording, to which she made no objection, we do not find that the admission of this evidence constituted evident, obvious, and clear error. When the court ruled on the objection, it had no reason to know that Ms. Tillitt suffers from depression and anxiety and was afraid of the police officer.[7] It also had no basis for concluding that the interview took any longer than the police officer said it did. Ms. Tillitt was arrested at about 10 a.m. and read her Miranda rights. The police interview began at about 10:45 or 11:00 a.m. and concluded at about 1:00 p.m. Defense counsel sought to cast doubt over the officer's statement that no questioning took place before the recording began by referring to evidence that Ms. Tillitt was not taken to the county jail until 2:45 p.m. that day. But the officer remained steadfast about the interview timeline to which he had testified. The officer neither threatened Ms. Tillitt nor promised her anything. Although she had been emotional during the interview and the officer

[7] The trial court would have known, however, on the basis of the audio recording that it reviewed in camera at the time of the suppression hearing and the officer's testimony during trial, that Ms. Tillitt had informed the officer during the drive to the police station that she had been a child sexual-abuse victim.

expressed some concern about her physical condition before she admitted the sexual abuse, she was allowed to take breaks when needed and, at the conclusion of the interview, produced a voluntary statement that was neatly written and included the same admissions.[8] The trial court did not err in admitting the redacted audio recording.

Admission of the Written Statement

As to her written statement, Ms. Tillitt renewed her motion to suppress during trial and specifically objected to its admission as a Fifth Amendment self-incrimination violation, but did not argue the other, more specific grounds set forth in the motion, such as that the "interrogation" was "inherently coercive" or a due-process violation. The trial court asked counsel if this was "the extent of your record? Is that all your record?" Counsel responded, "Yes." Ms. Tillitt raised an involuntariness challenge indirectly by reference to her motion to suppress statements in her post-trial motion and on appeal. To the extent that Ms. Tillitt's renewal of her motion to suppress when she objected to the admission of her written statement was sufficient to incorporate each of grounds she raised therein as part of her argument, we address this issue on the merits and determine whether the trial court's ruling was supported by substantial evidence. *Barriner*, 210 S.W.3d at 299 (noting that while we do not overturn the trial court's ruling "absent manifest error," the voluntariness of the confession "must appear from the record with unmistakable clarity"). Ms. Tillitt was highly emotional during the police interview, but the officer calmly led her to her admissions, which are

[8] Even if we were to determine that plain error was shown, the victims' testimony alone was sufficient to establish the elements of the crimes charged beyond a reasonable doubt; thus Ms. Tillitt would be unable to establish miscarriage of justice or manifest injustice. As indicated above, their recollections were detailed and specific. In addition, K.D.T. testified that she felt ashamed at school when other students made jokes about the situation, and that she continued to experience nightmares and required medical treatment and counseling to help her cope with the abuse. K.B.T. testified that it had been difficult for her to talk to anyone about the sexual abuse because she was afraid to do so.

reflected in the written statement, by suggesting that she could break the cycle of sexual abuse in the family and everyone could get the help they needed if she confirmed what just one of the daughters at that point had disclosed. No threats or promises were recorded, and it is apparent that Ms. Tillitt trusted the police officer sufficiently or felt comfortable enough with him to reveal to him on the way to the police station that she had been a child sexual-abuse victim. The voluntariness of her written confession is supported by substantial evidence, and this appears from the record with unmistakable clarity. The trial court did not err in admitting Ms. Tillitt's written statement. This point is denied.

In the second point, Ms. Tillitt claims that the trial court abused its discretion in overruling her objection to the admission of Ms. Wemhoff's testimony about a child-abuse victim's process of disclosure. She contends that her due-process and fair-trial rights were denied "in that the testimony of [Ms.] Wemhoff was more prejudicial than probative, and it was improperly used to bolster [the victims'] credibility." Trial courts have broad discretion over the admissibility of evidence, and a trial court's "determination on these issues will not be reversed absent an abuse of discretion." *State v. Collins*, 962 S.W.2d 421, 424 (Mo. App. W.D. 1998). "Abuse of discretion only occurs if 'a ruling is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration.' If reasonable minds could differ on the propriety of the ruling, no abuse of discretion has occurred." *State v. Benedict*, 319 S.W.3d 483, 487 (Mo. App. S.D. 2010) (citations omitted).

Ms. Tillitt argues that almost no other evidence corroborated the victims' testimony, the process-of-disclosure evidence unnecessarily diverted the jury's

attention, and, because the jury could assess the victims' credibility, the State improperly bolstered the victims' testimony with this evidence. Ms. Wemhoff testified generally about the process of disclosure, stating that "disclosure is not just an all or nothing one-time event. It typically is a process that happens over, like over time. And it kind of happens along a continuum." She elaborated as follows:

> So as I've already mentioned the delayed disclosure is common and denial is common, so the continuum starts with no disclosure or denial of any abuse and goes from there to tentative or unconvincing disclosure where a child might be testing the water, getting a little bit of information. And then it ranges to full disclosure of events that a child has experienced. In addition to that in some cases children will recant and reaffirm their original statements.

At no point did Ms. Wemhoff testify that she believed the girls or that they, in particular, shared these characteristics.

In *State v. Churchill*, 98 S.W.3d 536, 539 (Mo. banc 2003), our supreme court distinguished between general and particularized expert testimony in sexual-abuse cases involving children. In this regard, it stated,

> General testimony describes a "generalization" of behaviors and other characteristics commonly found in those who have been the victims of sexual abuse. Particularized testimony is that testimony concerning a specific victim's credibility as to whether they have been abused. The trial court has broad discretion in admitting general testimony, but when particularized testimony is offered, it must be rejected because it usurps the decision-making function of the jury and, therefore, is inadmissible.

Id. We do not find that the trial court's ruling was against the logic of the circumstances and so unreasonable as to indicate a lack of careful consideration. The trial court invited argument on this issue both before and during trial and was familiar with the *Churchill* principle distinguishing between general and particular behavioral testimony in child sexual-abuse cases. Juries certainly assess witness credibility, but are unlikely

to know, in the absence of expert testimony, that child sexual-abuse victims disclose differently than adults. The trial court did not abuse its discretion in overruling Ms. Tillitt's objection to this testimony. This point is denied.

In the third and final point, Ms. Tillitt claims plain error in the trial court's decision to impose consecutive sentences for each of the six counts. She contends that its comments during sentencing about section 558.026 constituted "an incorrect statement of the law." She did not object to the court's purported misunderstanding of the law when the sentence was imposed, and, in fact, her counsel also believed that this section required consecutive sentences. We agree that the case must be returned to the trial court for resentencing.

In *Williams*, this Court stated that, as a matter of plain-error review, when "a court sentences a defendant based on a mistaken belief of the available range of punishment, it commits evident, obvious, and clear error, and such error results in manifest injustice if left uncorrected." *Williams*, 465 S.W.3d at 519. The current version of section 558.026 took effect August 28, 2013. The final alleged offense here occurred in June 2013. Under section 1.160(2), "a defendant will be sentenced according to the law in effect at the time the offense was committed unless a lesser punishment is required by a change in the law *creating* the offense itself." *State v. Johnson*, 150 S.W.3d 132, 138 (Mo. App. E.D. 2004). The version of section 558.026 that was in effect when the offenses underlying Ms. Tillitt's convictions occurred was the same as the version that the Missouri Supreme Court specifically found ambiguous in *Williams v. State*, 800 S.W.2d 739 (Mo. banc 1990), *superseded by statute as stated*

in State v. Contreras-Cornejo, 526 S.W.3d 146, 153 (Mo. App. W.D. 2017). The versions of section 558.026.1, as amended in 1983 and 1995, stated,

> Multiple sentences of imprisonment shall run concurrently unless the court specifies that they shall run consecutively; except that, in the case of multiple sentences of imprisonment imposed for the felony of rape, forcible rape, sodomy, forcible sodomy or an attempt to commit any of the aforesaid and for other offenses committed during or at the same time as that rape, forcible rape, sodomy, forcible sodomy or an attempt to commit any of the aforesaid, the sentences of imprisonment imposed for the other offenses may run concurrently, but the sentence of imprisonment imposed for the felony of rape, forcible rape, sodomy, forcible sodomy or an attempt to commit any of the aforesaid shall run consecutively to the other sentences.

According to our supreme court, "[t]he statute establishes two kinds of offenses for sentencing purposes—the listed offenses and 'other offenses.' It states clearly what the court must do if the defendant is convicted of an offense in each class." *Id.* at 740. Because the statute "does not, however, say in explicit language what must be done if there are multiple convictions of those offenses listed," the court determined that it was ambiguous and the ambiguity must be resolved "in favor of according the trial court maximum discretion." *Id.*

Here, the court, the prosecutor, and defense counsel all agreed and stated on the record that the sentences for multiple convictions of first-degree statutory sodomy were required under the law to run consecutively. The trial court imposed fifteen years of imprisonment on each of the six counts, which was within the statutory ranges, but

believed that it was compelled by statute to impose those terms consecutively.[9] As the supreme court determined in *Williams*, because "[w]e cannot say that the judge might not have pronounced a less severe sentence if he thought he had discretion to do so," we must remand for resentencing. *Id.* at 741. *See also Williams*, 465 S.W.3d at 520 ("'A sentence passed on the basis of a materially false foundation lacks due process of law . . . [t]his is so even if it is likely the court will return the same sentence.'" (citations omitted)). This point is granted.

Conclusion

Because the trial court did not err in admitting evidence relating to Ms. Tillitt's police interview or in admitting the forensic interviewer's generalized statements about the process of disclosure, we affirm her conviction for five counts of first-degree statutory sodomy and one count of first-degree child molestation. The trial court plainly erred, however, in believing that it had no discretion and was required to impose consecutive sentences for her convictions of these crimes. Accordingly, we reverse and remand solely for resentencing.

/s/ Thomas H. Newton
Thomas H. Newton, Judge

Anthony Rex Gabbert, P.J., and Gary D. Witt, JJ. concur.

[9] Three of the counts involved conduct that allegedly occurred when K.B.T. was younger than age 12; they carried a potential sentence of life imprisonment or a term of not less than ten years. § 566.062.2. The fourth count involved conduct that allegedly occurred when K.B.T. was younger than age 14; it carried a potential sentence of life imprisonment or a term of not less than five years. § 566.062.2. The fifth count involved conduct that allegedly occurred when K.D.T. was younger than age 12; it carried a potential sentence of life imprisonment or a term of not less than ten years. § 566.062.2. The sixth count, first-degree child molestation, involved conduct that allegedly occurred when K.D.T. was younger than age 14; it carried a potential sentence of five to fifteen years. § 558.011.1(2).