

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED92790
)	
vs.)	Appeal from the Circuit Court
)	of the City of St. Louis
TIMOTHY H. GARNETT, Appellant.)	Filed: December 8, 2009

Timothy H. Garnett (Defendant) appeals from the judgment upon his convictions of one count of domestic assault in the first degree, Section 565.072, RSMo 2000, two counts of domestic assault in the second degree, Section 565.073, RSMo 2000, and three counts of armed criminal action, Section 571.015, RSMo 2000, for which Defendant was sentenced to a total of forty years' imprisonment. On appeal, Defendant asserts the trial court erred (1) in overruling his motions for acquittal and motion for a new trial because there was only one act of assault and charging him with separate acts was in violation of his rights to be free from double jeopardy and (2) in denying his motion for mistrial after a State's witness attended to a sick juror because it caused undue sympathy or bolstered the witness's testimony.

AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART.

Division Six holds: Because second-degree domestic assault is a lesser included offense to first-degree domestic assault and there was not sufficient time between the cutting of the victim's throat and the cuts to her breast and leg for Defendant to formulate sufficient intent for separate crimes, Defendant's convictions for the two counts of second-degree domestic assault violated his right to be free from double jeopardy. As such, we reverse Defendant's convictions for second-degree assault and vacate the corresponding sentences. In addition, we reverse Defendant's convictions for the accompanying armed criminal action on Counts IV and VI and vacate the corresponding sentences. We find Defendant's claim that a State's witness attending to a sick juror caused undue sympathy or bolstered the witness's testimony is without merit. Therefore, we affirm Defendant's convictions and sentences for the domestic assault in the first degree count and the accompanying armed criminal action count.

Opinion by: Robert G. Dowd, Jr., Presiding Judge
Lawrence E. Mooney, J. and Glenn A. Norton, J., concur.

Attorney for Appellant: Susan Kister

Attorneys for Respondent: Chris Koster, Shaun J. Mackelprang, Richard A. Starnes

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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