# OPINION SUMMARY

## MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI, Respondent, | ) | No. ED98655 |
| | ) | |
| vs. | ) | Appeal from the Circuit Court |
| | ) | of St. Louis County |
| MARQUICIO JOHNSON, Appellant. | ) | Filed: June 28, 2013 |

Defendant appeals from the judgment following his conviction of one count of murder in the second degree, two counts of abuse of a child, and one count of endangering the welfare of a child in the first degree. Defendant argues the trial court erred in (1) allowing Dr. Mary Case to testify about the use of beta amyloid precursor protein ("BAPP") staining in diagnosing traumatic axonal injury and diffuse axonal injury; (2) overruling Defendant's motion for acquittal on the charge of endangerment of a child because the State did not offer sufficient evidence to support the charge; and (3) finding Defendant to be a persistent offender, Section 558.016.3, because the State failed to prove Defendant's four prior felonies were "committed at different times."

AFFIRMED AS MODIFIED.

Division Three holds: The trial court did not err in allowing Dr. Mary Case to testify because BAPP staining is generally accepted in the scientific community and the journal article offered by Defendant did not cast any doubt on that general acceptance. The trial court also did not err in overruling Defendant's motion for acquittal because evidence that Defendant waited thirty minutes after the victim fell unconscious before calling 911 was sufficient to show Defendant created a substantial risk to the life, health, or body of the victim and therefore sufficient to support the charge of endangerment of a child.

The trial court did err in finding Defendant to be a persistent offender because the State failed to prove beyond a reasonable doubt that Defendant's four prior felonies occurred "at different times" as required by Section 558.016.3. The judgment and sentence are corrected by removing the finding that Defendant is a persistent offender. As modified, the judgment is affirmed.

Opinion by: Robert G. Dowd, Jr., P. J.
Roy L. Richter, J. and Angela T. Quigless, J., concur.

Attorney for Appellant: Craig A. Johnston
Attorney for Respondent: Daniel N. McPherson

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