

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

JAMES D. BALDWIN,

APPELLANT.

DOCKET NUMBER WD69250
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 21, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE BRIAN CURTIS WIMES, JUDGE

Appellate Judges:
DIVISION THREE: HAROLD L. LOWENSTEIN, Presiding Judge, JOSEPH M.
ELLIS and LISA WHITE HARDWICK, Judges

Attorneys:
Laura G. Martin, Esq., Kansas City, MO, **for appellant.**

Shaun J. Mackelprang, Esq., and Richard A. Starnes, Esq., Jefferson City,
MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

v.

JAMES D. BALDWIN,

APPELLANT.

WD69250

Jackson County

Before Division Three Judges: Harold L. Lowenstein, Presiding Judge, Joseph M. Ellis and Lisa White Hardwick, Judges.

James Baldwin appeals his convictions for forcible rape, forcible sodomy, and two counts of second-degree assault. He contends the circuit court erred in: (1) convicting him of two separate counts of second-degree assault in violation of the double jeopardy clause; (2) overruling his motion for judgment of acquittal because the evidence was insufficient to prove second-degree assault; (3) overruling his motion to suppress DNA evidence because the request for consent to search occurred after Baldwin requested an attorney.

AFFIRMED IN PART AND REVERSED IN PART.

Division Three holds:

(1) The Count I and Count II convictions for second-degree assault arise from a single assault and do not constitute separate offenses. The Count

Il conviction, therefore, violates the double jeopardy clause and must be reversed and vacated.

- (2) The nature of the attack -- in which Baldwin jumped on top of the victim with a box cutter, sliced open her shirt, and cut her breast and abdomen - - was sufficient to prove that Baldwin knowingly caused injury with the use of a dangerous instrument. Based on the totality of the evidence, the court did not err in denying the judgment of acquittal on the Count I offense of second-degree assault. Point denied.
- (3) Baldwin voluntarily consented to provide a DNA sample after his *Miranda* warning was given. Because the request for the DNA testing was not part of the interrogation process and Baldwin's response was neither incriminating nor testimonial, the court did not err in denying the motion to suppress the DNA evidence. Point denied.

Opinion by: Lisa White Hardwick, Judge

July 21, 2009

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