

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, RESPONENT,

v.

BRYAN DAVID HILTIBIDAL, APPELLANT.

DOCKET NUMBER WD69620

DATE: August 18, 2009

Appeal From:
MONITEAU COUNTY CIRCUIT COURT
THE HONORABLE DONALD LLOYD BARNES, JUDGE

Appellate Judges:
Division Two: Thomas H. Newton, C.J., P.J., James M. Smart, Jr., Mark D. Pfeiffer, JJ.

Attorneys:
Margaret M. Johnston, Columbia, MO, **for appellant.**

Shaun J. Mackelprang and Jayne T. Woods, Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, RESPONENT

v.

BRYAN DAVID HILTIBIDAL, APPELLANT

WD69620

MONITEAU COUNTY CIRCUIT COURT

Bryan Hiltibidal and his girlfriend, Katherine Smith, got into a physical altercation. Hiltibidal was charged with second-degree domestic assault for recklessly causing serious physical injury to Smith by hitting and kicking her at a time when they resided together. At trial, Hiltibidal and Smith told differing versions of what occurred the evening of the altercation. The jury found Hiltibidal guilty. Hiltibidal appeals.

REVERSED AND REMANDED.

Division Two holds:

The evidence favorable to Hiltibidal required submission of a self-defense instruction because, if believed, it demonstrated that Hiltibidal was in an immediate danger of serious bodily injury justifying the use of potentially deadly force and that Hiltibidal was unable to avoid harming Smith in the course of defending himself.

The trial court's plain error in failing to submit a self-defense instruction to the jury resulted in manifest injustice because Missouri courts have repeatedly found manifest injustice or miscarriage of justice in the failure to instruct, or properly instruct, on self-defense and because the prosecution's closing argument likely confused the jury as to whether self-defense could be considered.

Opinion by: James M. Smart, Jr., Judge

August 18, 2009

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