

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

ALPHONSO WILLIAM HAMILTON.

Appellant

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DOCKET NUMBER WD70790

DATE: December 14, 2010

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Appeal From:

Circuit Court of Boone County, MO  
The Honorable Clifford Eugene Hamilton, Jr., Judge

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Appellate Judges:

Division Two  
Karen King Mitchell, P.J., James Edward Welsh, and Mark D. Pfeiffer, JJ.

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Attorneys:

Alexa I. Pearson, Columbia, MO

Counsel for Appellant,

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Attorneys:

Chris Koster, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.  
ALPHONSO WILLIAM HAMILTON, Appellant**

WD70790

Boone County

Before Division Two Judges: Karen King Mitchell, P.J., James Edward Welsh, and Mark D. Pfeiffer, JJ.

Alphonso William Hamilton appeals the circuit court's judgment convicting him of domestic assault in the third degree, resisting arrest, and assaulting a law enforcement officer. He claims that the circuit court erred in enhancing his domestic assault conviction from a class A misdemeanor to a class D felony because he did not have the requisite number of prior convictions for enhancement. He also claims that the circuit court plainly erred in not ordering a mistrial *sua sponte* when the State, during its closing argument, commented upon his failure to produce witnesses.

**AFFIRMED.**

**Division Two holds:**

(1) The circuit court did not err in enhancing Hamilton's third-degree domestic assault conviction from a class A misdemeanor to a class D felony. Nothing in section 565.074.3, RSMo 2000, the enhancement provision, excludes the case that is presently before the court from consideration when determining whether the defendant has pleaded guilty or been found guilty of third-degree domestic assault "more than two times." Because the present conviction was Hamilton's third commission of the offense, the circuit court properly enhanced his conviction to a class D felony and sentenced him accordingly.

(2) The circuit court did not plainly err in not ordering a mistrial *sua sponte* after the State commented on Hamilton's failure to produce witnesses. The evidence against Hamilton was overwhelming, and Hamilton did not prove that the State's isolated comment had a decisive effect on the jury's verdict.

**Opinion by: James Edward Welsh, Judge**

December 14, 2010

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