

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
DEREK T. HUBBARD**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD78000

DATE: May 3, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable Justine E. Del Muro, Judge

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Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

Karen L. Kramer, Jefferson City, MO, for respondent.

Laura G. Martin, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**DEREK T. HUBBARD,**

**APPELLANT.**

No. WD78000

Jackson County

Before Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Appellant Derek T. Hubbard ("Hubbard") was convicted after a jury trial in the Circuit Court of Jackson County of murder in the first degree, section 565.020, two counts of murder in the second degree, section 565.021, and three counts of armed criminal action, section 571.015. Hubbard now brings two points on appeal. In Point One, Hubbard argues the trial court erred in overruling his additional motion for a competency examination. In Point Two, Hubbard argues the court erred in overruling his objection during voir dire regarding statements made by both the State and the court that Hubbard had a choice whether or not to be present during trial.

**WE AFFIRM**

**Division Three holds:**

(1) The trial court did not err in overruling Hubbard's motion for a competency examination. There was substantial evidence to support the court's determination that Hubbard was competent to stand trial because (1) the only mental evaluation provided to the court found that Hubbard was competent to stand trial; (2) the court found that Hubbard's behavior before the court was not evidence of mental illness but was intentional and for the purpose of delaying trial; and (3) it was reasonable for the court to infer that the multiple additional mental evaluations secured by the defense but not provided to the court did not find Hubbard incompetent to stand trial.

(2) Hubbard's claim of error regarding statements made during voir dire was not preserved for appellate review and may only be reviewed for plain error. The Court finds Hubbard has failed to facially establish substantial grounds for believing that a manifest injustice or miscarriage of justice has occurred. First, the statements that Hubbard did have a choice to be present at trial were not improper as the court had given Hubbard multiple opportunities to conform his behavior to the standard required in court. In spite of these opportunities, two prior jury trials had resulted in mistrials due to Hubbard's outbursts before the jury. Second, even if the statements were improper, Hubbard cannot establish he was prejudiced because the jury was questioned about and properly instructed that no inference of any kind could be drawn from

Hubbard's failure to appear at trial. Finding no exceptional circumstance, the Court assumes the jury obeyed the court's directions and followed its instructions.

Opinion by Gary D. Witt, Judge

May 3, 2016

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