# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**STATE OF MISSOURI**

**RESPONDENT,**

**v.**

**AUSTIN JOSEPH CAMPBELL**

**APPELLANT.**

---

DOCKET NUMBER WD82209

DATE: February 11, 2020

---

Appeal From:

Boone County Circuit Court
The Honorable Jeff Harris, Judge

---

Appellate Judges:

Special Division: Zel M. Fischer, Special Judge, Presiding, Cynthia L. Martin, Judge and Gary D. Witt, Judge

---

Attorneys:

Daniel N. McPherson, Jefferson City, MO, for respondent.

Elizabeth U. Carlyle, Kansas City, MO, for appellant.

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**STATE OF MISSOURI, RESPONDENT,**
**v.**
**AUSTIN JOSEPH CAMPBELL, APPELLANT.**

WD82209 Boone County

Before Special Division Judges: Zel M. Fischer, Special Judge, Presiding, Cynthia L. Martin, Judge, and Gary D. Witt, Judge

Austin Campbell appeals his conviction of rape in the first degree. Campbell challenges the sufficiency of the evidence to support his conviction; the trial court's restriction of his cross-examination of a witness and of his closing argument; the trial court's admission of evidence; and the trial court's failure to provide a curative instruction during the State's closing argument.

**AFFIRMED.**

**Special Division holds:**

(1) There was sufficient evidence for a reasonable juror to find beyond a reasonable doubt that Victim was incapacitated at the time Campbell had sexual intercourse with her.

(2) There was no error, plain or otherwise, in denying Campbell the right to cross-examine a witness regarding the witness's prior sexual conduct with the Victim.

(3) The trial court did not plainly err by permitting introduction of evidence of a specific instance of Campbell's sexual conduct.

(4) The trial court did not plainly err by permitting "matter of fact" witness testimony regarding the witness's decision to enter the Victim's dorm room on behalf of Campbell.

(5) The trial court did not err in permitting the State to argue in its rebuttal closing argument that to acquit Campbell the jurors "would really have to believe that [Victim] made all of this up, and there is no credible evidence for that."

(6) The trial court did not err by prohibiting Campbell from using a flip chart during closing argument when that flip chart would have elaborated on the definition of "beyond a

reasonable doubt" by placing the standard on a continuum amongst other standards selected by Campbell.

**Opinion by: Cynthia L. Martin, Judge** February 11, 2020

**********

This summary is UNOFFICIAL and should not be quoted or cited.