MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,
RESPONDENT

vs.

DAMON D. MARLEY,
APPELLANT

DOCKET NUMBER WD82665

DATE: APRIL 21, 2020

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable George E. Wolf, III, Judge

Appellate Judges:

Division Three: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr. Judge and W. Douglas Thomson, Judge

---

Attorneys:

Justin A. Moody, for Respondent

Jeannie M. Willibey, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
DAMON D. MARLEY, APPELLANT.

WD82665 Jackson County

Before Division Three Judges: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

Damon Marley appeals his conviction of one count of domestic assault in the second degree in the Circuit Court of Jackson County following a jury trial. Marley raises four points of error on appeal. In Point I, he argues the State's evidence was insufficient to support a finding that the victim suffered a physical injury. In Point II, Marley alleges that the trial court plainly erred in submitting the verdict director to the jury, arguing that it omitted an essential element. In Point III, Marley again asserts that the trial court plainly erred in submitting the verdict director, arguing that the submission of one of the elements in the disjunctive resulted in manifest injustice. Finally, in Point IV, Marley contends that the trial court abused its discretion in denying his motion for mistrial after the victim stated during her trial testimony that Marley had "just got out," arguing that this was a prejudicial reference to Marley's past incarceration.

AFFIRMED.

Division Three holds:

I. Evidence of strangulation resulting in unconsciousness was sufficient to support a finding that victim suffered a physical injury.

II. The omission from the verdict director of the element addressing whether Marley knew or was aware of his relationship with the victim was not plain error because Marley's knowledge of his relationship with the victim was not contested at trial.

III. Use of the disjunctive in the verdict rather than the conjunctive as required in the Missouri Approved Instructions was error but did not result in manifest injustice or miscarriage of justice because it still required the jury to find that the victim was a "domestic victim," and Marley did not contest the fact that the victim was a "domestic victim."

IV. The trial court did not abuse its discretion in denying Marley's motion for mistrial after the victim stated in her trial testimony that he had "just got out" because the statement was

too vague to be considered a reference to prior crimes or bad acts, and, even if it did constitute such a reference, Marley failed to prove that he was prejudiced by the comment.

Opinion by: Edward R. Ardini, Jr., Judge Date: April 21, 2020

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