

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS—EASTERN DISTRICT**

STATE OF MISSOURI,	)	No. ED98808
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	1022-CR02785
	)	
DANIEL P. AUSTIN,	)	Honorable Thomas C. Grady
	)	
Defendant/Appellant.	)	FILED: September 3, 2013

Daniel P. Austin (Defendant) appeals from the judgment upon his convictions by a jury for one count of second-degree assault, in violation of Section 565.060, RSMo 2000<sup>1</sup>, one count of armed criminal action, in violation of Section 571.015, and one count of resisting arrest, in violation of Section 575.150, RSMo Supp. 2009. The trial court sentenced Defendant, as a persistent misdemeanor offender, to seven years' imprisonment on the assault count, seven years' imprisonment on the armed criminal action count, and four years' imprisonment on the resisting arrest count. The sentences for assault and armed criminal action were ordered to run concurrently to each other while the sentence for resisting arrest was ordered to run consecutively to other counts.

AFFIRMED.

Division Three Holds: (1) the trial court did not abuse its discretion in excluding evidence regarding the victim's possible positive results on drug tests occurring several weeks after the incident involving Defendant because such evidence was immaterial to the question of Defendant's guilt of the offenses charged, would have confused the issues before the jury, and did not prejudice Defendant given other overwhelming evidence of his guilt; and (2) the trial court did not plainly err in denying Defendant's motion *in limine* to exclude evidence of prior threats Defendant had made toward the victim because such evidence was logically and legally relevant to establish that Defendant had a motive to injure Victim, had the intent to injure Victim, and had made no mistake and had not had an accident when he hit Victim with his car, and the admission of this evidence did not prejudice Defendant given other overwhelming evidence of his guilt.

Opinion by: Mary K. Hoff, P.J.  
Kurt S. Odenwald, J., and Angela T. Quigless, J., Concur.

Attorney for Appellant: Matthew Huckleby  
Attorney for Respondent: Andrew C. Hooper

<b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b>
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<sup>1</sup> All statutory references are to RSMo 2000, unless otherwise indicated.