

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

v.

BLAKE D. MCMILIAN,

APPELLANT.

DOCKET NUMBER WD68123

DATE: July 31, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE THOMAS C. CLARK HONORABLE, JUDGE

Appellate Judges:
Division One: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

Attorneys:
Laura G. Martin, Esq., Kansas City, MO, **for appellant.**

Chris Koster, Esq., and Evan J. Buchheim, Esq., Jefferson City, MO, **for respondent.**

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

STATE OF MISSOURI,

RESPONDENT,

V.

BLAKE D. MCMILIAN,

APPELLANT.

WD68123

Jackson County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

Appellant Blake McMilian was convicted of forcible rape and first-degree murder arising out of an incident in 1984. He appeals.

AFFIRMED.

Division One holds: With one exception, McMilian’s claims on appeal are resolved in an unpublished memorandum pursuant to Rule 30.25(b). One issue, McMilian’s Point IV, is resolved in a published opinion.

In 2004, McMilian was identified as a suspect by law enforcement when a DNA profile was developed from a vaginal swab taken from the victim in 1984, and that DNA profile matched a profile for McMilian contained in a “statewide DNA database.” A prosecution witness testified at trial to the manner in which McMilian was identified. McMilian argued below, and argues on appeal, that reference to the presence of his DNA profile in a statewide database constituted improper evidence of other, uncharged crimes, because jurors would presume that McMilian’s profile was present in the database due to his commission of other offenses.

We hold that, in the circumstances here, the mere fact that McMilian’s DNA profile was present in a statewide database did not constitute an improper reference to other, uncharged crimes. The evidence was necessary to explain the significant passage of time between the offense and McMilian’s identification; no mention was made of the reasons why his DNA profile was initially collected or added to the database; and the trial court required that the prosecution elicit testimony that the database includes DNA profiles of persons other than those arrested for, or convicted of, crimes.

Opinion by: Alok Ahuja, Judge

July 31, 2009

**THIS SUMMARY IS UNOFFICIAL AND
SHOULD NOT BE QUOTED OR CITED.**