

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**RANDY BELCHER,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

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DOCKET NUMBER WD73545

**Date: February 7, 2012**

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Appeal from:  
Livingston County Circuit Court  
The Honorable Daren L. Adkins, Judge

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Appellate Judges:  
Division One: Victor C. Howard, Presiding Judge, Alok Ahuja and Karen King Mitchell, Judges

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Attorneys:  
Randy K. Belcher, Appellant Pro Se, Bowling Green, MO, for appellant.  
Jamie P. Rasmussen, Jefferson City, MO, for respondent.

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

**RANDY BELCHER**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

WD73545

Livingston County

On September 29, 1987, Appellant Randy Belcher lured a fourteen-year-old female into his mother's home near Rushville. Belcher threatened the victim with a stun gun and warned her not to try to escape. Belcher and his father then transported the victim to a motel room where Belcher forced her to have sex with him. Belcher subsequently left the room while his father raped the victim twice. The next morning, Belcher and his father forced the victim into the trunk of a car and drove her to the Missouri River. The Belchers pushed the victim into the river. Belcher and his father ultimately left; the victim swam down the river and obtained help.

The charges against Belcher were ultimately prosecuted in two different counties. After a jury trial in Greene County, Belcher was found guilty of kidnapping, assault in the first degree, and armed criminal action. The Southern District affirmed Belcher's Greene County convictions. Belcher pled guilty to the forcible rape charge at issue here in Livingston County, following the Greene County conviction.

Belcher thereafter filed motions for post-conviction DNA testing under § 547.035, RSMo, in both Greene and Livingston Counties. The Greene County court denied the motion Belcher filed there, and the Southern District affirmed, finding that there was no reasonable probability that DNA testing of items taken from the motel room where the rape occurred would have established Belcher's innocence of the kidnapping, assault and armed criminal action charges tried in Greene County. The Livingston County Circuit Court denied the DNA-testing motion Belcher filed there, concluding that identity was not an issue in Belcher's Livingston County rape prosecution, and that there was no reasonable probability of a different outcome if DNA testing had been conducted. Belcher appeals.

**AFFIRMED.**

Division One Holds:

Belcher's guilty plea, standing alone, does not foreclose him from seeking post-conviction DNA testing pursuant to § 547.035. Despite Belcher's guilty plea, we assume that "identity was an issue" in Belcher's rape prosecution up to the time of his guilty plea, as required by § 547.035.2(4), where Belcher contested his guilt in the Greene County prosecution (including by the presentation of alibi testimony), and initially entered a plea of not guilty in the Livingston County prosecution.

Even if the perpetrator's identity was at issue, Belcher's motion must still allege that "[a] reasonable probability exists that [he] would not have been convicted if exculpatory results had been obtained through the requested DNA testing." § 547.035.2(5). Belcher cannot satisfy this requirement. He is estopped by his Greene County conviction from challenging his guilt for the crimes of which he was convicted there (kidnapping and assault). Belcher is therefore foreclosed from arguing in support of his Livingston County DNA-testing motion that he had an alibi for the entire crime spree that included the rape. Further, even if Belcher had an alibi for the victim's initial abduction, this would not raise an issue as to his guilt of a rape which occurred several hours later, and at a different location.

Belcher's claim that DNA testing would implicate his father as the victim's rapist is also unavailing. The State's evidence was that Belcher and his father *both* raped the victim. DNA test results implicating Belcher's father would not have eliminated Belcher as a perpetrator, but would have been fully consistent with the State's case.

Belcher claims his due process rights were violated because the trial court did not permit him to file a reply to the State's show-cause response before denying his DNA-testing motion. However, Belcher was able to present his arguments to the court in his initial motion, and also had the opportunity to file post-judgment motions in the trial court. Belcher was also free to raise any arguments he could have raised in a reply in this Court on appeal, and has failed to identify any fact or argument he was prevented from presenting by the lack of a reply brief. His due process claim relating to the reply brief is meritless.

Belcher also argues that his due process rights were violated when the circuit court adopted, verbatim, the State's proposed findings of fact and conclusions of law. While this practice has been criticized in prior cases, it is permissible and does not violate a litigant's constitutional rights, unless the findings are not supported in the evidence, or the unsuccessful litigant presents independent evidence that the trial court failed to impartially consider his claims. The mere fact that the trial court adopted the State's proposed findings and conclusions did not violate Belcher's due process rights.

Before: Division One: Victor C. Howard, Presiding Judge, Alok Ahuja and Karen King Mitchell, Judges

Opinion by: Alok Ahuja, Judge

February 7, 2012

**THIS SUMMARY IS UNOFFICIAL AND  
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