

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
STEVEN ARTHUR RIOS**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD70581
DATE: June 29, 2010

Appeal From:

Boone County Circuit Court
The Honorable Sanford F. Conley IV, Judge

Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Attorneys:

Shaun J. Mackelprang and Daniel N. McPherson, Jefferson City, MO, for respondent.

Ellen H. Flottman, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

STEVEN ARTHUR RIOS,

APPELLANT.

No. WD70581

Boone County

Before Division One Judges: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Steven Rios appeals from the trial court's judgment finding him guilty of murder in the second degree and armed criminal action after a jury trial. Rios alleges that the trial court: (1) abused its discretion in denying a new trial based on juror separation; (2) abused its discretion in refusing to admit "use of force" reports; (3) plainly erred in permitting the testimony of the medical examiner on the cause or means of death; and (4) plainly erred in failing to declare a mistrial after a reference was made by a witness to a polygraph examination.

AFFIRMED.

Division One holds:

(1) The State presented testimony that the jurors remained together in the jury room under custody and surveillance. There was no contact with any juror by a third party, and no contact among jurors outside the jury deliberation room. The trial court did not abuse its discretion in finding that no juror separation occurred. Conversations among some but not all jurors within the confines of the jury deliberation room do not rise to the level of juror separation.

(2) The use of force reports duplicated evidence already admitted through cross-examination. The evidence in the excluded reports was cumulative. As such, the trial court did not abuse its discretion in sustaining the State's objection to admission of the reports.

(3) The medical examiner did not testify regarding an ultimate issue of an element of the offenses with which Rios was charged. Rios has not demonstrated any error associated with the medical examiner's testimony. We thus decline to exercise plain error review.

(4) Rios did not object to, or seek any relief from, a witnesses's inadvertent reference to a polygraph examination, opting instead to employ the strategy of converting the miscue into an opportunity to highlight Rios's cooperation with all requests made of him by the police. As such, Rios has waived plain error review.

Opinion by: Cynthia L. Martin, Judge

June 29, 2010

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