

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,) ED100110
)
 Respondent,) Appeal from the Circuit Court
) of Lincoln County
 v.) 12L6-CR00003-01
)
 NICHOLAS A. EVANS,) Honorable Chris K. Mennemeyer
)
 Appellant.) Filed: September 30, 2014

Nicholas Evans (Defendant) appeals the judgment entered upon his conviction after a jury found him guilty of assault in the first degree and armed criminal action. This case, along with another case handed down today State v. Murphy, ED99942, presents the question of whether a hand or a fist can qualify as a “dangerous instrument” in support of a conviction for the unclassified felony of armed criminal action. Defendant also argues that the trial court abused its discretion in allowing the State to present a prejudicial photograph (Exhibit 19) to the jury.

AFFIRMED IN PART; REVERSED IN PART.

Division Three Holds: The trial court's admission of Exhibit 19 was error, in that the photograph was more prejudicial than probative; yet such error was not reversible in light of the overwhelming evidence of Defendant's guilt for the count of assault in the first degree. Regarding Defendant’s conviction for armed criminal action, we conclude that the plain language of the statutory definition does not contemplate a hand or fist as a “dangerous instrument.” Thus, there was insufficient evidence to support Defendant’s conviction for armed criminal action. Accordingly, we vacate Defendant's conviction for armed criminal action and corresponding sentence. In all other respects, the judgment entered by the trial court is affirmed.

Opinion by: Gary M. Gaertner, Jr., J.
Kurt S. Odenwald, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: Samuel Buffaloe
Attorneys for Respondent: Chris Koster, Karen L. Kramer

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