

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JEROME CURRY,)	ED100403
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	12SL-CC02814
)	
STATE OF MISSOURI,)	Honorable Tom W. DePriest, Jr.
)	
Respondent.)	Filed: August 19, 2014

Jerome Curry (Movant) appeals from the motion court’s judgment denying his motion for post-conviction relief under Mo. R. Crim. P. 29.15 (2014) without an evidentiary hearing. He argues his motion adequately alleged his trial counsel was ineffective for failing to request that the trial court instruct the jury on the lesser-included offense of robbery in the second degree.

AFFIRMED.

Division Three Holds: Given the defense strategy of misidentification, not requesting an instruction on a lesser-included offense could have reasonably been a strategic choice by trial counsel. Movant failed to allege any facts rebutting the presumption that counsel’s decision not to request an instruction for second-degree robbery was not reasonable trial strategy. Thus, the motion court did not clearly err in denying Movant’s motion without an evidentiary hearing.

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

Attorney for Appellant: Andrew E. Zleit
Attorney for Respondent: Chris Koster and Shaun J. Mackelprang

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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