

MISSOURI COURT OF APPEALS EASTERN DISTRICT  
OPINION SUMMARY

OMORUYI OBASOGIE,	)	No. ED100784
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
STATE OF MISSOURI,	)	Hon. Robert S. Cohen
	)	
Respondent.	)	FILED: December 2, 2014

Omoruyi Obasogie (“Movant”) appeals from the judgment of the motion court that denied his motion for post-conviction relief after an evidentiary hearing. Movant contends that he received ineffective assistance of appellate counsel because appellate counsel failed to raise a claim on direct appeal. Movant also avers that trial counsel was ineffective for failing to submit a lesser-included offense instruction for assault in the third degree, and for failing to investigate and call Anwar Randle as a witness.

AFFIRMED.

DIVISION ONE HOLDS:

(1) The motion court did not clearly err in finding that there was sufficient evidence to sustain a conviction for a count of armed criminal action based on a count of burglary in the first degree charged under section 569.160.1(3). It is sufficient if a defendant displays a weapon to implicitly intimidate or threaten someone to gain entry into a home. Accordingly, appellate counsel was not ineffective for failing to assert such a claim of insufficiency of the evidence on direct appeal.

(2) The motion court did not clearly err in its finding that trial counsel was not ineffective for failing to submit a lesser-included instruction for assault in the third degree where there was no basis for such an instruction. The motion court, which is in a superior position to judge the credibility of witnesses, found trial counsel to be credible and that the decision not to submit the lesser-included instruction to be reasonable trial strategy.

(3) The motion court did not clearly err in finding that trial counsel was not ineffective for failing to investigate and call Randle as a witness. Trial counsel, whom the motion court found to be credible, testified that Movant failed to provide him with Randle’s contact information despite trial counsel asking Movant for that information multiple times.

Opinion by: Clifford H. Ahrens, Judge  
Norton, J., concur.

Lawrence E. Mooney, P.J., and Glenn A.

Attorney for Appellant: Matthey Huckleby

Attorney for Respondent: Richard Anthony Starnes

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**