

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	No. ED101043
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	
)	
ANDREW JOHNSON,)	Honorable John J. Riley
)	
Defendant/Appellant.)	Filed: March 10, 2015

Andrew Johnson (Appellant) appeals from the trial court’s judgment convicting him of first-degree assault, armed criminal action, and unlawful use of a weapon. On appeal, Appellant argues the trial court erred in (1) entering judgment and sentence against him because the jury’s verdict was against the weight of the evidence; (2) requiring Appellant to submit a redacted version of an exhibit to the jury in place of the complete exhibit; and (3) denying Appellant’s request to present evidence as to Missouri Revised Statutes Sections 574.010 and 565.130, governing peace disturbance and unlawful imprisonment respectively, in that the evidence was admissible to show the victim might have violated the law and was the initial aggressor in their encounter.

AFFIRMED and REMANDED.

Division Five Holds: The trial court did not err in entering judgment and sentence against Appellant, as the State presented sufficient evidence to support a reasonable inference that Appellant intentionally fired a gun at the victim for the purpose of attempting to kill or cause serious physical injury to the victim. The trial court did not err in submitting a redacted exhibit to the jury because Appellant acquiesced to the creation and submission of the redacted exhibit to the jury, thereby waiving the issue for appeal; those portions of the exhibit that were redacted were not relevant, and Appellant has failed to demonstrate that submitting the redacted exhibit in place of the complete exhibit affected the outcome of the trial. The trial court did not err in denying Appellant’s request to read to the jury the proposed criminal statutes because the statutes were irrelevant, the reading of the statutes by counsel would have usurped the power of the court to instruct the jury on the law, and Appellant has failed to demonstrate that their exclusion affected the outcome of the trial.

While not raised as a point on appeal, the trial court’s written judgment and sentence on Appellant’s conviction for first-degree assault providing for a 3-year prison term, suspended execution of sentence, does not conform to the court’s oral pronouncement of a 10-year prison term, suspended execution of sentence. This was a failure to accurately memorialize the decision of the trial court as announced in open court and is a clerical mistake, which may be corrected by a *nunc pro tunc* order. We order the trial court to correct the written judgment so that it conforms with the court’s oral pronouncement of sentence.

The judgment of conviction and sentence are affirmed. The cause is remanded for correction of the judgment *nunc pro tunc* to conform to the trial court’s oral pronouncement of sentence.

Opinion by: Sherri B. Sullivan, J. Angela T. Quigless, C.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: John R. Fenley

Attorneys for Respondent: Daniel N. McPherson

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.