

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

GARVESTER BRACKEN,)	No. ED101059
)	
Movant/Appellant,)	Appeal from the City of St. Louis
)	Circuit Court
vs.)	
)	Honorable Bryan L. Hettenbach
STATE OF MISSOURI,)	
)	Filed: February 3, 2015
Respondent.)	

Garvester Bracken (Movant) appeals the motion court’s judgment denying his Rule 29.15 motion for post-conviction relief without an evidentiary hearing following his convictions for attempted deviate sexual assault, forcible rape, and two counts of second-degree domestic assault. Movant contends that the motion court erred in denying post-conviction relief because his trial counsel was ineffective for: (1) failing to object and request a mistrial when the State elicited cross-examination testimony that Movant was abusive towards his former spouse; and (2) failing to challenge his domestic assault convictions on the basis of double jeopardy.

AFFIRMED.

Division II Holds:

- (1) The motion court did not clearly err in denying Movant’s claim that his trial counsel was ineffective for failing to object and request a mistrial regarding cross-examination testimony that Movant was abusive towards his former spouse because (a) Movant failed to overcome the presumption that the decision was part of trial strategy; (b) the defense utilized the challenged testimony during closing argument to bolster their own witness’s credibility; and (c) Movant failed to show that the outcome would have been different had counsel requested a mistrial.
- (2) The motion court did not clearly err in denying Movant’s claim that his trial counsel was ineffective for failing to challenge his domestic assault convictions on the basis of a double jeopardy violation because (a) this claim was not raised before the trial court or on direct appeal and is therefore not cognizable in a post-conviction proceeding; and (b) there was no double jeopardy violation because the evidence established that two separate incidents of “choking” occurred to support both convictions.

Opinion by: Philip M. Hess, J.
Sherri B. Sullivan, P.J. and Mary K. Hoff, J. concur.

Attorney for Appellant: Maleaner R. Harvey

Attorney for Respondent: Gregory L. Barnes

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