

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

STATE OF MISSOURI,)	No. ED101948
)	
Respondent,)	Appeal from the Circuit Court of
)	the City of St. Louis
vs.)	1322-CR00082-01
)	
KENNETH PAYNE,)	Honorable John F. Garvey Jr.
)	
Appellant.)	Filed: March 1, 2016

Kenneth Payne was found guilty by a jury in the Circuit Court of the City of St. Louis of one count of first-degree murder, one count of first-degree assault, and two counts of armed criminal action arising out of the January 2013 shooting of two shopkeepers in St. Louis. Payne appeals asserting two points of error: (1) that the trial court plainly erred in refusing to instruct the jury on the lesser included offense of voluntary manslaughter, and (2) that the trial court plainly erred in failing to sua sponte recuse itself because the court allegedly participated in pretrial plea negotiations and prejudged Payne's guilt.

AFFIRMED.

Division III Holds:

- 1) The trial court did not plainly err in refusing Payne's requested voluntary manslaughter instruction because the jury convicted Payne of first-degree murder after being instructed on both first-degree murder and second-degree murder, and the second-degree murder instruction "tested" for the presence of the same element of first-degree murder, deliberation, that the omitted lesser included offense would have challenged.
- 2) The trial court did not plainly err in failing to recuse itself because Payne fails to show that the court had a disqualifying bias or prejudice, or that its failure to recuse constituted a manifest injustice.

Opinion by: James M. Dowd, J.

Robert M. Clayton III, P.J., Lawrence E. Mooney, J. concur

Attorney for Appellant: Amy E. Lowe

Attorney for Respondent: Shaun J. Mackelprang

<p>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.</p>
