

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIALLO C. DAVIDSON, Appellant,)	No. ED93050
)	Appeal from the Circuit Court of
vs.)	the City of St. Louis
)	
STATE OF MISSOURI, Respondent.)	Filed: April 20, 2010

OPINION SUMMARY

Diallo Davidson (Movant) appeals from the judgment of the Circuit Court of the City of St. Louis denying his Rule 29.15¹ motion. Movant first asserts that the motion court clearly erred in denying his claim, after a hearing, that trial counsel was ineffective for failing to object to Movant wearing shackles during the trial without the trial court finding that Movant was a security threat. Additionally, Movant asserts that the motion court clearly erred in denying him an evidentiary hearing on his claims that trial counsel was ineffective for failing to: impeach a key State witness with documentary evidence; object to or file a motion to suppress a State witness's identification of Movant based on a photograph of Movant published in a newspaper and failing to object to the admission of the newspaper itself; and allow Movant to testify at trial.

AFFIRMED

Division Two Holds: The motion court did not clearly err in denying Movant's claim, after a hearing, that trial counsel was ineffective for failing to object to Movant wearing shackles during trial because the evidence showed that the shackles were not visible to the jury and, thus, Movant failed to prove that trial counsel's failure to object resulted in the requisite prejudice. The motion court also did not clearly err in denying Movant a hearing on his remaining claims because: (1) Movant's claim that trial counsel failed to impeach a key witness is refuted by the record showing that trial counsel impeached the witness, and, moreover, any further impeachment would not have provided Movant a viable defense; (2) Movant's claim that trial counsel failed to object to Movant's identification in a newspaper is refuted by the record showing that trial counsel filed a motion in limine seeking to exclude the identification, objected at trial to the identification and admission of the newspaper, and included the allegation of error in Movant's motion for new trial, and moreover, any objection would not have been meritorious; and (3) Movant's claim that trial court refused to allow him to testify is refuted by Movant's colloquy with the trial court, which showed that the trial court informed Movant of his rights and Movant acquiesced in counsel's decision not to call him as a witness.

Opinion by: Patricia L. Cohen, J. Sherri B. Sullivan, P.J., and Robert G. Dowd, Jr., concur.

¹ All rule references are to Mo. Sup. Ct. R. (2009), unless otherwise indicated.

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