

**MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY**

STATE OF MISSOURI,)	No. ED97052
)	
Respondent,)	Appeal from the Circuit Court of
)	the City of St. Louis
vs.)	
)	
DEMARCO MCCRADY,)	Hon. Robin R. Vannoy
)	
Appellant.)	FILED: March 20, 2012

DeMarco McCrady (Defendant) appeals from the judgment of the trial court entered after a jury convicted him of one count of unlawful use of a weapon, four counts of first-degree assault, five counts of armed criminal action, and one count of resisting arrest. Defendant contends that the trial court erred in sentencing him to 20 years on count I (unlawful use of a weapon) because, under §571.030.8(1), first-time offenses are classified as a class B felony, for which the maximum punishment is 15 years. Defendant also contends that the court erred in denying his motion for judgment of acquittal as to counts V through X (assault and ACA as to three bystanders) because the State failed to present sufficient evidence for a reasonable jury to infer that he was aware of their presence.

AFFIRMED.

DIVISION ONE HOLDS: (I) Although sub-division (1) of §571.030.8 classifies first-time offenses as a class B felony, sub-division (4) provides that *any* violation resulting in injury or death is elevated to a class A felony. Sub-division (4) supersedes its counterparts whenever an offense causes injury or death. Because the offense resulted in injury, sub-division (4) controls notwithstanding Defendant's first-time status, so class A sentencing was proper. (II) Viewed in the light most favorable to the verdict, there is sufficient evidence on the record for a jury to reasonably infer that Defendant was aware of the victims' presence in his line of fire, as they were in plain sight in close proximity to the intended target.

Opinion by: Clifford H. Ahrens, P.J.
Gaertner, Jr., J., concur.

Roy L. Richter, J., and Gary M.

Attorney for Appellant: Roxanna A. Mason

Attorney for Respondent: Chris Koster

<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>
