

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI, |) | No. ED98425 |
| |) | |
| Respondent, |) | Appeal from the Circuit Court |
| |) | of St. Louis County |
| vs. |) | |
| |) | Honorable Joseph Walsh III |
| DEVARICK THOMPSON, |) | |
| |) | |
| Appellant. |) | FILED: June 25, 2013 |

Appellant Devarick Thompson (Thompson) appeals from the judgment entered upon a jury verdict of first-degree murder, Section 565.020,¹ and armed criminal action, Section 571.015. On appeal, in five separate points, Thompson argues that the trial court committed instructional error, erroneously admitted evidence, and incorrectly failed to grant two separate motions for mistrial.

AFFIRMED.

Division Four holds: At trial, Thompson specifically agreed to actions taken by the trial court that he now appeals in his first, second, fourth, and fifth points on appeal. In affirmatively consenting to the trial court's actions at trial, Thompson waived any appellate review of the same judgments. Regarding his third point on appeal, which was not waived, we find that the trial court did not plainly err in failing to grant a mistrial in response to State's allegedly improper comment during closing argument because there is no indication in the record that the statement has a decisive impact on the jury's decision that Thompson did not act in self-defense at the time in question. Accordingly, the judgment of the trial court is affirmed.

Opinion by: Kurt S. Odenwald, J., Lawrence E. Mooney, P.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellant: Ellen H. Flottman

Attorney for Respondent: Chris Koster and Jennifer A. Rodewald

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.

¹ All statutory references are to RSMo. Cum. Supp. (2010).