

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,) ED98812
)
Respondent,) Appeal from the Circuit Court
) of the City of St. Louis
v.) 1022-CR05980-01
)
D'ANDRE WHITLEY) Honorable Robert H. Dierker, Jr.
)
Appellant.) Filed: September 17, 2013

D'Andre Whitley (Appellant) appeals his convictions by jury of assault in the first degree, burglary, and two counts of armed criminal action. Appellant challenges the trial court's denial of Appellant's proffered instruction on the lesser-included offense of assault in the second degree, as well as the sufficiency of the evidence to support his conviction for burglary. Appellant also claims plain error in the trial court's denial of the State's motion to disqualify defense counsel due to a conflict of interest.

AFFIRMED.

Division Four Holds: The trial court was not required to give the lesser-included instruction because there was no evidence Appellant acted out of a sudden passion arising from adequate cause. The evidence that Appellant fired shots at the house and kicked open the locked door was sufficient to support the jury's conclusion that Appellant entered the house unlawfully, and thus sufficient to support his conviction of first-degree burglary. Appellant's final claim that his counsel was ineffective due to a conflict of interest is not cognizable on direct appeal, and no facial grounds exist to believe the trial court plainly erred in denying the State's motion to disqualify defense counsel.

Opinion by: Gary M. Gaertner, Jr., J.
Lisa S. Van Amburg, P.J., and Patricia L. Cohen, J., concur.

Attorney for Appellant: G. Michael Archer
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.