

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent/Cross-) No. ED99044
Appellant,) Appeal from the Circuit Court of
) the City of St. Louis
vs.)
) Honorable Julian Bush
ELVIS SMITH, Appellant.) Filed: April 29, 2014

Elvis Smith (Defendant) appeals the judgment of conviction entered by the Circuit Court of the City of St. Louis after a jury found him guilty of murder in the first degree and armed criminal action. Defendant claims that: (1) the trial court erred in refusing to submit his self-defense instruction on murder and assault; and (2) the trial court's written judgment contains a clerical mistake that Defendant pleaded guilty to murder and armed criminal action. The State cross-appeals, asserting that the trial court erred in granting Defendant's motion for judgment of acquittal on assault and armed criminal action in connection with the assault.

AFFIRMED AND REMANDED FOR CORRECTION OF JUDGMENT *NUNC PRO TUNC*.

Division Four Holds: The trial court did not err in refusing to submit Defendant's self-defense instruction because the evidence did not establish that Defendant needed to use deadly force to protect himself against immediate danger of serious bodily injury or death. Nor did the trial court err in granting Defendant's motion for judgment of acquittal on assault and armed criminal action relating to the assault because convictions for murder and assault violated double jeopardy principles in that, as charged by the State, assault was a lesser-included offense of murder. We remand to the trial court for correction of the clerical mistake in Defendant's judgment *nunc pro tunc* to reflect that Defendant's convictions resulted from trial rather than plea.

Opinion by: Patricia L. Cohen, J.
Lisa S. Van Amburg, P.J., and Philip M. Hess, J., concur.

Attorney for Appellant: Gwenda R. Robinson

Attorney for Respondent/Cross-Appellant: Gregory L. Barnes

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.