

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

STATE OF MISSOURI,)	No. ED99427
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court of
)	St. Charles County
vs.)	
)	Honorable Jon A. Cunningham
CLAUDE DALE BROOKS,)	
)	
Defendant/Appellant.)	Filed: February 18, 2014

Defendant Claude D. Brooks was convicted in the Circuit Court of St. Charles County of robbery in the second degree, section 569.030, R.S.Mo. (2000).

VACATED AND REMANDED.

DIVISION FOUR HOLDS: We vacate Brooks's conviction for robbery in the second degree, because a reasonable trier of fact could not have found that Brooks threatened the immediate use of physical force, section 569.010, R.S.Mo. (2000). We enter a conviction for stealing, section 570.030, pursuant to *State v. O'Brien*, 857 S.W.2d 212, 220 (Mo. banc 1993). We remand this matter to the trial court for re-sentencing consistent with this opinion. *See State v. Whalen*, 49 S.W.3d 181, 189 (Mo. banc 2001).

Opinion by: Lisa S. Van Amburg, J.
Patricia L. Cohen, Judge, concurs
Gary M. Gaertner, Jr., Judge, dissents in separate opinion.

Attorney for Appellant: Samuel Buffaloe
Attorney for Respondent: Robert Bartholomew, Jr.

**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.**