

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,) ED99942
)
Respondent,) Appeal from the Circuit Court
) of the City of St. Louis
v.) 1122-CR02010-01
)
ELEX L. MURPHY,) Honorable Thomas J. Frawley
)
Appellant.) Filed: September 30, 2014

Elex Murphy (Defendant) appeals the judgment entered upon his conviction after a jury found him guilty of murder in the second degree, assault in the first degree, and two counts of armed criminal action. Defendant raises the question of whether a hand or a fist can qualify as a “dangerous instrument” in support of a conviction for the unclassified felony of armed criminal action; the same question we consider in another case decided today, State v. Evans, ED100110. Defendant also argues the court clearly erred in denying his challenges to the State’s peremptory strikes of African-American venirepersons as racially motivated under Batson v. Kentucky, 476 U.S. 86 (1986).

AFFIRMED IN PART; REVERSED IN PART.

Division Three Holds: Because there was no evidence that Defendant used anything other than his fists in attacking the two victims, there was no evidence he utilized a “dangerous instrument” in the commission of the felonies, under the statutory definition in Section 556.061(9), RSMo. (Supp. 2013). Thus, the evidence was insufficient to support his convictions for armed criminal action, and we vacate those convictions. The trial court did not clearly err in its determination that the State’s proffered reasons for its peremptory strikes of two venirepersons were race-neutral and not pretextual. Thus, we affirm the trial court’s judgment in all other respects.

Opinion by: Gary M. Gaertner, Jr., J.
Kurt S. Odenwald, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: Andrew E. Zleit
Attorneys for Respondent: Chris Koster, Adam Rowley

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