

**Summary of SC92448, *Kevin Johnson Jr. v. State of Missouri***

Appeal from the St. Louis County circuit court; Judge Gloria Clark Reno  
Argued and submitted February 28, 2013; opinion issued July 16, 2013

**Attorneys:** Johnson was represented by Kent Denzel of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man convicted of murder appeals a judgment overruling his motion for post-conviction relief. In a decision written by Judge George W. Draper III and joined by four other judges, the Supreme Court of Missouri affirms the judgment. His counsel were not ineffective, the trial court did not err in its evidentiary rulings and the man failed to present facts supporting a conclusion that the presence of police officers in the courthouse could have influenced the outcome of his trial. In a separate opinion joined by one other judge, Judge Patricia Breckenridge concurs in part and dissents in part. To the extent she disagrees with the principal opinion, she would hold that the presence of numerous uniformed police officers in the courtroom and halls during trial may have created undue influence on the jury, affecting the presumption of innocence and the harshness of the sentence imposed.

**Facts:** Kevin Johnson was convicted of first-degree murder and was sentenced to death for the shooting death of a Kirkwood police officer. The conviction and sentence were affirmed on direct appeal. Johnson then sought post-conviction relief. Following an evidentiary hearing on five of his 14 claims of error, the court overruled the post-conviction motion in its entirety.

**AFFIRMED.**

**Court en banc holds:** (1) Johnson failed to show why his trial counsel were ineffective for failing to object to the striking (removal) of certain potential jurors from the jury pool or how such strikes prejudiced him or affected the result of the trial.

(2) Johnson's trial counsel were not ineffective for choosing not to pursue a diminished capacity defense strategy, for not preventing the testimony of specific witnesses, for failing to make nonmeritorious objections to the state's closing argument, and for not trying to introduce repetitive or cumulative evidence.

(3) The leg restraints Johnson was required to wear at trial were not visible, and he failed to present any facts demonstrating the jury ever knew he was restrained or that he was prejudiced by this shackling.

(4) Johnson fails to present any fact that would support the conclusion that the presence of police officers in the courtroom and courthouse hallways could have influenced the outcome of his trial.

(5) Johnson failed to demonstrate that the state violated *Brady v. Maryland*, 373 U.S. 83, 87 (1963), in failing to disclose information that one of the witnesses expected a benefit in exchange for his trial testimony and received a continuance of his probation violation.

(6) The trial court did not abuse its discretion in admitting into evidence a videotape demonstrating the shooting because it was a fair representation of evidence presented by the state.

(7) Johnson fails to identify or allege an impeachable statement by a specific state witnesses that would offer him a viable defense.

(8) Johnson failed to provide evidence that at least one juror actually fell asleep during arguments or that he was prejudiced by it.

(9) To the extent Johnson wished to challenge the constitutional validity of the death penalty, he should have done so during his direct appeal.

**Concurring and dissenting opinion by Judge Breckenridge:** The author disagrees that Johnson failed to plead sufficient facts to require an evidentiary hearing regarding his claim that his counsel should have objected to the numerous uniformed police officers in the courtroom and halls during trial. Johnson claims the presence of the officers conveyed a message asking the jury to remember the victim and to convict and punish Johnson harshly, without that message being subject to cross-examination. While the state may not have directed the officers to attend the proceeding, they nevertheless were wearing their uniforms, which is an unmistakable symbol of state authority. The presence of the uniformed officers may have created an outside influence on the jury, affecting the presumption of innocence and the harshness of the sentence imposed. The author agrees with the principal opinion as to the rest of Johnson's claims.