

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

JUSTIN J. LOWE,

Appellant.

DOCKET NUMBER WD70744

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 7, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable C. David Darnold, Senior Judge

APPELLATE JUDGES

Division One: Karen King Mitchell, Presiding Judge, Lisa White
Hardwick, Chief Judge, and Cynthia L. Martin, Judge

ATTORNEYS

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Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.)
)
JUSTIN J. LOWE,)
)
Appellant.)

WD70744

Jackson County

Before Division One Judges: Karen King Mitchell, Presiding Judge, Lisa White Hardwick, Chief Judge, and Cynthia L. Martin, Judge

Justin J. Lowe appeals a judgment of the trial court, following a jury trial, convicting Lowe of voluntary manslaughter following the death of Lowe’s grandfather (“Grandfather”). Lowe was also convicted of robbery in the first degree and two counts of armed criminal action. For his single point on appeal, Lowe claims that the trial court erred in refusing to offer an instruction for involuntary manslaughter, in addition to the instruction for voluntary manslaughter.

AFFIRMED.

Division One holds:

In this case, no rational juror could have found that, when Lowe repeatedly hit Grandfather over the head with a hammer, either: (1) Lowe did not know that Grandfather was practically certain to die; or (2) Lowe did not intend to cause Grandfather serious bodily harm. The jury would have to have so found to acquit Lowe of voluntary manslaughter, requiring the trial court to give the lesser included instruction for involuntary manslaughter. Although Lowe’s mother did testify that Lowe had a learning disability and had had trouble in school, there was no evidence connecting mother’s testimony and Lowe’s allegedly resultant lack of requisite mental state to support a conviction for voluntary manslaughter in this case. Without a basis for a finding that Lowe’s learning disability diminished his capacity so that he could not form the requisite mental state, the facts of this case as presented to the jury do not support a conclusion

that Lowe did not act knowingly to cause Grandfather's death, or with the purpose of causing Grandfather serious injury, which resulted in his death.

Opinion by: Karen King Mitchell, Judge

September 7, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.