

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

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Respondent,

v.

DALE S. OLTEN, JR.,

Appellant.

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**DOCKET NUMBER WD71482**  
Consolidated with WD71483)

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** November 23, 2010

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Richard G. Callahan, Judge

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**APPELLATE JUDGES**

Division Two: James Edward Welsh, Presiding Judge, and Mark D. Pfeiffer  
and Karen King Mitchell, Judges

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**ATTORNEYS**

Chris Koster, Attorney General  
Jamie Pamela Rasmussen, Assistant Attorney General  
Jefferson City, MO

Attorneys for Respondent,

Margaret M. Johnston, Assistant State Public Defender  
Columbia, MO

Attorney for Appellant.

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

STATE OF MISSOURI, )  
)  
Respondent, )  
v. )  
)  
DALE S. OLTEN, JR., )  
)  
Appellant. )

WD71482 (Consolidated with WD71483)

Cole County

Before Division Two Judges: James Edward Welsh, Presiding Judge, and  
Mark D. Pfeiffer and Karen King Mitchell, Judges

Dale Olten, Jr., appeals his conviction of burglary in the first degree. Olten contends that the State failed to prove beyond a reasonable doubt that he was “armed with a deadly weapon” as required by section 569.160 because: (1) mere possession of a firearm stolen during a burglary cannot constitute “armed” within the statute’s meaning; and (2) there is insufficient evidence to prove he carried any weapons from the burglarized home.

**AFFIRMED.**

**Division Two holds:**

We find that “armed with a deadly weapon” as used in section 569.160 includes possession of a firearm stolen during a burglary. This construction of the plain language of section 569.160 is consistent with Missouri case law and the legislative purpose behind the first-degree burglary statute – to increase the penalty for someone who puts an innocent in harm’s way during a burglary. Furthermore, a co-defendant’s testimony at Olten’s trial created a reasonable inference that Olten carried the stolen weapons to the car; thus, it was neither unreasonable nor speculative for the jury to find that Olten was armed with a deadly weapon during his flight from the burglary.

**Opinion by: Mark D. Pfeiffer, Judge**

November 23, 2010

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