

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

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ERIA DOSS,

Appellant.

DOCKET NUMBER WD73937

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 26, 2013

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Sandra C. Midkiff, Judge

JUDGES

Division Two: Mitchell, P.J., and Newton and Hardwick, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

Margaret M. Johnston, Assistant Public Defender
Columbia, MO

Attorney for Appellant.



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

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **March 26, 2013**
ERIA DOSS,)
)
Appellant.)

WD73937

Jackson County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and Thomas H. Newton and Lisa White Hardwick, Judges

Eria Doss was convicted, following a jury trial, of two counts of second-degree (felony) murder, section 565.021.1(2);¹ two counts of first-degree robbery, section 569.020.1; and four counts of armed criminal action, section 571.015, for which Doss was sentenced to an aggregate total sentence of two consecutive life terms. On appeal, Doss argues that the evidence was insufficient to support one count of first-degree robbery and challenges the admission of certain juvenile records at the penalty phase of his trial.

REVERSED IN PART AND REMANDED IN PART FOR RESENTENCING.

Division Two holds:

1. The evidence was insufficient to support Doss's conviction of first-degree robbery as it relates to victim Budreau. The State, having directed the jury to find Doss guilty if it found that he stole *either* a cell phone or a wallet from Budreau, had to present sufficient evidence to support each alternative, and because the State failed to present sufficient evidence that there were any wallets present at the scene to be stolen, Doss's conviction on this count must be vacated. Furthermore, because one count of

¹ All statutory references are to RSMo 2000, as updated through the 2008 Cum. Supp., unless otherwise noted.

armed criminal action was dependent upon this first-degree robbery conviction, it too must be vacated.

2. Although section 211.321.2(2) allows the presentation of felony-equivalent juvenile adjudications and related records in a penalty-phase proceeding, the records are still subject to the general limitations on penalty-phase evidence.
3. Here, the juvenile records presented did not demonstrate by a preponderance of the evidence that Doss engaged in the felony-equivalent conduct alleged within them. Thus, the trial court erred in admitting them into evidence.
4. Doss was prejudiced by the erroneous admission of his juvenile records, given that the State relied heavily on the records to refute Doss's argument that his punishment should be mitigated by his youth, and, after requesting only the juvenile records to review during deliberations, the jury returned a very harsh sentence in response to the role it perceived Doss to play in the crimes. Consequently, Doss is entitled to a new penalty-phase proceeding on the remaining convictions.

Opinion by: Karen King Mitchell, Presiding Judge

March 26, 2013

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