

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

TODD FONVILLE,

Appellant.

DOCKET NUMBER WD75699

Date: June 10, 2014

Appeal from:
Jackson County Circuit Court
The Honorable Wesley B. Powell, Judge

Appellate Judges:
Division Four: James E. Welsh, Chief Judge Presiding, Victor C. Howard, Lisa White
Hardwick, Judges

Attorneys:
Richard A. Starnes, Jefferson City, MO, for appellant.
Frederick Ernst, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

TODD FONVILLE,

Respondent,

Appellant.

WD75699

Jackson County

Before Division Four: James E. Welsh, Chief Judge Presiding, Victor C. Howard, Lisa White Hardwick, Judges

Todd Fonville appeals from his convictions for first-degree murder, second-degree murder, two counts of armed criminal action, leaving the scene of a motor vehicle accident, and knowingly burning. He contends the circuit court erred in giving the jury a non-approved instruction on partial verdicts instead of the hammer instruction after the jury informed the court that it had reached a verdict on some counts but was deadlocked on others. Fonville argues that the instruction adversely affected the jury and coerced it to reach a verdict on all counts.

AFFIRMED.

Division Four holds:

The circuit court did not err in instructing on partial verdicts. The instruction was not a non-approved hammer instruction used in lieu of MAI-CR3d 312.10, as it was not an encouragement to return a verdict on deadlocked counts but, instead, served an entirely different purpose of explaining that the jury could return a partial verdict on

counts on which it had already unanimously agreed and continue deliberating on the others. Because there was no applicable approved instruction on partial verdicts and the court's instruction was simple, brief, free from argument, consistent with the law, and not coercive, the court did not abuse its discretion in giving it to the jury.

Opinion by: Lisa White Hardwick, Judge

June10, 2014

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