

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

COMPLETE TITLE OF CASE

AUNDRA WOODS,

Respondent,

v.

STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD76297

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 9, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Justine E. Del Muro, Judge

JUDGES

Division II: Howard, P.J., Ahuja, C.J., and Pfeiffer, J.

CONCURRING.

ATTORNEYS

Byron Woehlecke
Kansas City, MO

Attorney for Respondent,

Chris Koster, Attorney General
Andrew C. Hooper, Assistant Attorney General
Jefferson City, MO

Attorneys for Appellant.



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

AUNDRA WOODS,)
)
Respondent,)
v.) **OPINION FILED:**
) **December 9, 2014**
STATE OF MISSOURI,)
)
Appellant.)

WD76297

Jackson County

Before Division II Judges: Victor C. Howard, Presiding Judge, Alok Ahuja, Chief Judge, and Mark D. Pfeiffer, Judge

The State appeals the grant of Aundra Woods’s Rule 29.15 motion based on ineffective assistance of counsel. The State argues that the motion court clearly erred in finding Woods’s trial counsel ineffective on two grounds: (1) for consenting to the introduction of RSID test results—presumptive tests about the presence of saliva—and for failing to object to the State’s improper characterization of the results of this test in closing argument; and (2) for failing to comply with Rule 25.05 by not turning over notes from an investigator at the public defender’s office resulting in the trial court’s refusal to allow the investigator to testify, and for failing to make an offer of proof as to the investigator’s testimony so as not to preserve the issue on direct appeal.

REVERSED.

Division II holds:

(1) Scientific tests, including RSID tests results, do not have to be conclusive to be admissible. Presumptive test results are relevant and admissible if the scientific testimony at trial accurately describes the evidentiary limitations of presumptive testing, describing such test results as “possible” not “conclusive.”

Here, the State did not offer proof of presumptive testing for saliva as conclusive proof of the presence of saliva. Rather, the State presented substantial evidence about presumptive RSID

testing and its limitation to only demonstrating the possible presence of saliva (as well as other possible contributing substances) and expressly limited its argument to the jury accordingly.

Defense counsel was not ineffective in not objecting to the admission of this evidence or to the State's closing argument concerning this evidence where the evidence was properly admitted and argued. Furthermore, the record reflects that defense counsel ably cross-examined all of the State's witnesses and made a compelling argument that utilized the results of the RSID presumptive testing.

(2) The failure to impeach a witness will not constitute ineffective assistance of counsel unless such action would have provided a viable defense or changed the outcome of the trial.

Here, the record indicates that the non-testifying witness would have been cumulative impeachment evidence to G.C.'s testimony, which belied some inconsistencies in her account of her encounter with Woods. Defense counsel testified that the information that she elicited through G.C. "wasn't different necessarily than what would have been elicited through Miss Jamison." Woods even called Jamison as a witness at his evidentiary hearing, providing the opportunity to elucidate the details of any additional impeachment evidence. Jamison stated *only* that she had been prepared to testify as to "conflicting information." Woods did not even ask Jamison at the evidentiary hearing what her testimony would have been about G.C.'s statements nor were Jamison's notes proffered at the hearing. Even on appeal, Woods concedes that "it is unknown what, specifically, Ms. Jamison would have testified to if called as a witness."

It was Woods's burden, not the State's burden, to prove by a preponderance of the evidence that defense counsel was ineffective. The lack of evidence concerning the testimony Jamison could have offered at trial cuts against Woods, who bore the burden of proof, not against the State.

Additionally, given the paucity of undeveloped facts at the evidentiary hearing, we fail to discern how the proposed impeachment testimony creates a reasonable probability that the trial's outcome would have been different so as to establish prejudice or how an offer of proof could have resulted in a reversal.

Opinion by: Mark D. Pfeiffer, Judge

December 9, 2014

* * * * *

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