

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT**

vs.

**GARY LELAND COLEMAN,
APPELLANT**

DOCKET NUMBER WD76520

DATE: SEPTEMBER 30, 2014

Appeal from:

The Circuit Court of Callaway County, Missouri
The Honorable Kevin Crane, Judge

Appellate Judges:

Division One: Joseph M. Ellis, P.J., Karen King Mitchell and Anthony Rex Gabbert, JJ.

Attorneys:

Robert J. Bartholomew, for Respondent

Amy M. Bartholow, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, RESPONDENT

v.

GARY LELAND COLEMAN, APPELLANT

WD76520

Callaway County, Missouri

Before Division One Judges: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Anthony Rex Gabbert, J.

Gary Coleman appeals from his conviction of one count of second degree robbery, § 569.030, challenging the sufficiency of the evidence to support his conviction. The evidence at trial reflected the following. On October 6, 2012, Coleman walked into a branch office of Bank Star One in New Bloomfield, Missouri, wearing sunglasses. He walked straight up to teller Marla Rothove, rested his forearm on the counter, leaned slightly forward, handed Rothove a plastic grocery sack, and said, "I need you to do me a favor. Put the money in this bag." He spoke in a low, serious tone. Rothove took the bag, opened her drawer, and put \$1,472.00 in the bag. While this was going on, the assistant branch manager, Sharon Holland, approached. When she was a few feet from Rothove, Coleman told her, "Ma'am, stop where you are and don't move any farther." Holland complied with those instructions. Rothove handed Coleman the bag of money, and he ran out of the bank. The entire encounter lasted approximately forty-five seconds. In his sole point on appeal, Coleman contends that the evidence was insufficient to establish that he used physical force or threatened anyone with the immediate use of physical force

CONVICTION VACATED; CONVICTION ENTERED ON LESSER-INCLUDED OFFENSE; REMANDED FOR RE-SENTENCING.

Division One holds:

(1) The crime of stealing is transformed into the greater offense of robbery in the second degree where there is evidence establishing beyond a reasonable doubt that the defendant used physical force or threatened someone with the immediate use of physical force for the purpose of preventing or overcoming resistance to the taking of the property or compelling someone to deliver up the property.

(2) To support a conviction for second-degree robbery based upon the threatened use of physical force, there must be evidence of some affirmative conduct on the part of the defendant, beyond the mere act of stealing, which

communicates that he will “immediately” employ “physical force” if the victim fails to deliver up the property or otherwise resists his taking of the property.

(3) Coleman’s verbal statements did not communicate that he was prepared to use force, and Coleman’s actions and nonverbal communication did not add enough to the situation for a trier of fact to infer beyond a reasonable doubt that he threatened Rothove and/or Holland with the immediate use of physical force. Coleman’s conviction for second degree robbery is, therefore, not supported by sufficient evidence and must be vacated.

(4) Because the evidence was clearly sufficient for the trial court to have found all of the elements of the lesser included offense of stealing under section 570.030, and the trial court was required to have found all of those elements to have entered its conviction for robbery, we enter a conviction for that offense and remand the cause to the trial court for re-sentencing consistent with this opinion.

Opinion by: **Joseph M. Ellis, Judge**

Date: September 30, 2014

Dissenting Opinion by Judge Karen King Mitchell:

The majority concludes that the evidence presented was not sufficient for a rational trier of fact to find beyond a reasonable doubt that Coleman committed the crime of second-degree robbery. But because I believe the majority misinterprets the statutory elements and fails to consider relevant facts that, when coupled with our deferential standard of review, demonstrate that there was sufficient evidence that Coleman knowingly engaged in conduct that threatened the immediate use of physical force, I respectfully dissent.

The dissent would hold:

1. Under section 562.021.2, no mental state is required for the conduct element of second-degree robbery (the use or threatened immediate use of physical force upon a person) because section 569.010 prescribes a mental state for only the result element (obtaining property against another’s will).
2. Thus, if a defendant engages in conduct that he knows or should know could be perceived as threatening, it is irrelevant whether he intentionally communicates a threat.
3. Factors that are relevant to this inquiry include: the location of the alleged robbery (here, a bank) and any objectively reasonable fear felt by the victims.

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