

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

KHIRY DEVON SUMMERS.

Appellant

DOCKET NUMBER WD76911

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 16, 2014

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Four
Alok Ahuja, C.J. Presiding, Victor C. Howard, and James Edward Welsh, JJ.

Attorneys:

Damien DeLoyola, Kansas City, MO

Counsel for Appellant

Attorneys:

Daniel McPherson, Jefferson City, MO

Counsel for Respondent

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

**STATE OF MISSOURI, Respondent, v.
KHIRY DEVON SUMMERS, Appellant**

WD76911

Cole County

Before Division Four Judges: Ahuja, C.J. Presiding, Howard, and Welsh, JJ.

Khiry Summers was convicted by a jury of second-degree (felony) murder, first-degree robbery, and armed criminal action. The circuit court sentenced Summers to concurrent prison terms of twenty years each for felony murder and first-degree robbery and to a consecutive three-year sentence for armed criminal action. Summers appeals his robbery conviction, claiming that the State failed to present sufficient evidence that he "used force or the threat of force to effectuate a stealing." Because first-degree robbery was the underlying offense for his other two convictions, Summers claims that those convictions also must be vacated. Summers also argues that the circuit court erred in imposing a consecutive sentence for armed criminal action.

Affirmed in part; reversed and remanded in part.

Division Four holds:

The State presented sufficient evidence to establish that Summers "forcibly stole" marijuana from the victim, in that, "in the course of" the robbery, Summers demanded that the victim hand over the marijuana while threatening him with a deadly weapon (a handgun). The circuit court did not err in entering judgment of conviction for first-degree robbery. Summers raises no independent grounds upon which his other two convictions should be reversed. All three convictions are affirmed.

The circuit court plainly erred in imposing a consecutive sentence for armed criminal action under the mistaken belief that the applicable statute requires it. The sentence for armed criminal action is vacated, and the cause is remanded for the circuit court to exercise its discretion on whether that sentence should be imposed concurrently or consecutively. Summers' sentences for robbery and murder are affirmed.

Opinion by James Edward Welsh, Judge

December 16, 2014

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