

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
TIMOTHY T. McCLENDON**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD77521

DATE: December 15, 2015

Appeal From:

Jackson County Circuit Court
The Honorable J. Dale Youngs, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

Karen L. Kramer, Jefferson City, MO, for respondent.

Laura G. Martin, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

TIMOTHY T. McCLENDON,

APPELLANT.

No. WD77521

Jackson County

Before Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellant Timothy McClendon was convicted after a jury trial in Jackson County Circuit Court of murder in the first degree, Section 565.020, and armed criminal action, Section 571.015. The charges arose out of gun fire at a car wash that resulted in the death of José Jenkins. McClendon was sentenced to life without parole and thirty years of imprisonment with the sentences to run consecutively. McClendon raises three points on appeal.

In Point One, McClendon argues the trial court erred in overruling his motion to suppress a third statement he made to police because detectives used an unconstitutional "two-step" interrogation technique for the purpose of undermining his rights under *Miranda*. In Point Two, McClendon argues the trial court erred and abused its discretion by failing to declare a mistrial after the State made what McClendon alleges were inappropriate statements during closing argument. Third, McClendon argues the trial court erred by failing to *sua sponte* prevent the State from arguing during closing argument that there was a history between McClendon and the victim because the evidence was inadmissible evidence of uncharged bad acts and included facts that were not in evidence.

WE AFFIRM

Division Three holds:

(1) The trial court did not err when overruled McClendon's motion to suppress his third statement to police because the record showed police did not use an inappropriate "two-stage" interrogation technique. There was no evidence in the record that the police deliberately withheld *Miranda* warnings as part of a strategy to elicit information first and *mirandize* later. The record also showed that, given the circumstances of McClendon's questioning, there was no violation of McClendon's *Miranda* rights with respect to his third statement.

(2) The trial court did not err when it refused to declare a mistrial after the State made in closing argument what McClendon argues constituted improper propensity evidence. The trial court instructed the jury to disregard the statement. We must assume that the jury followed the

court's instruction. Given the court's curative instruction, we cannot say the trial court abused its discretion in refusing to declare a mistrial.

(3) The trial court did not plainly err in failing to, *sua sponte*, prevent the State from arguing in closing argument that there must have been a history between McClendon and Jenkins given the circumstance of the shooting. The only facts commented upon by the State were facts in evidence and the State's argument was a proper response to McClendon's closing argument that he had acted in self-defense and had no reason to want to kill Jenkins. The State was permitted to argue the reasonable inference from the facts in evidence that the crime was not a random act of violence and there must have been a history between to the two individuals.

Opinion by Gary D. Witt, Judge

December 15, 2015

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