

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

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

EDWARD H. PENNINGTON, JR.,

Appellant.

DOCKET NUMBER WD78078

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 26, 2016

APPEAL FROM

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

JUDGES

Division Two: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Jefferson City, MO

Attorneys for Respondent,

Laura G. Martin, District Defender
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Attorney for Appellant.



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

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **July 26, 2016**
EDWARD H. PENNINGTON, JR.,)
)
Appellant.)

WD78078

Jackson County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

Edward H. Pennington, Jr., appeals, following a jury trial, his convictions of felony resisting arrest, § 575.150, and possession of a controlled substance, § 195.202, for which he was sentenced to concurrent two-year sentences. Pennington raises two claims on appeal; he argues that the trial court erred in both limiting his opening statement and admitting a State's exhibit without a proper chain of custody.

AFFIRMED.

Division Two holds:

1. The scope of opening statements is within the discretion of the trial court, and review is for abuse of discretion. Mere error does not warrant reversal; the error must be prejudicial.
2. The primary purpose of an opening statement is to inform the judge and jury of the general nature of the case, so they may appreciate the significance of the evidence as it is presented.
3. An error in limiting opening statement cannot be deemed prejudicial if, despite the limitation, the defense is still able to outline the facts supporting the defense theory and provide a context for the facts to be presented.

4. Pennington’s theory of defense was that, because of his PTSD, he was not thinking clearly when he fled; he was merely trying to avoid prison—the place where the incident occurred that led to the onset of his PTSD. Pennington’s opening statement advised the jury of the diminished capacity defense, Pennington’s mental health diagnoses (including PTSD), and his theory that those diagnoses affected his thinking at the time of the crimes. This was sufficient to provide the jury with a context in which to view the evidence to support the defense theory.
5. In order to admit exhibits and testimony regarding tests performed on those exhibits, the trial court must be satisfied as to the identity of the exhibits and that the exhibits were in the same condition when tested as when the exhibits were originally obtained.
6. This may be proven by evidence establishing a chain of custody, but proof of a chain of custody does not require proof of hand-to-hand custody of the evidence, nor proof that eliminates all possibility that the evidence has been disturbed.
7. The trial court may assume, absent a showing of bad faith, ill will or proof, that officials having custody of exhibits properly discharged their duties and that no tampering occurred.
8. Even if the lack of express evidence could imply a gap in the chain of custody, such a gap goes only to the weight of the evidence offered, not its admissibility.
9. Because Pennington has *not* alleged, either on appeal or below, that there was any bad faith, ill will, or proof of tampering, we will presume that standard procedure was followed and no tampering occurred.

Opinion by: Karen King Mitchell, Presiding Judge

July 26, 2016

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