MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

STATE OF MISSOURI,	)	No. ED107682
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Christopher E. McGraugh
WALTER NICKELS, JR.,	)	
	)	
Appellant.	)	FILED: March 24, 2020

Walter Nickels, Jr. ("Nickels") appeals from the trial court's judgment following jury convictions for assault in the second degree, resisting arrest, and armed criminal action. Nickels raises four points on appeal. In Points One and Two, Nickels contends the trial court erred in denying his motion for new trial because the trial court had the authority to hear his ineffective-assistance-of-counsel claim under Rule 29.12(b) and should have granted his motion due to trial counsel's failure to request misdemeanor assault as a lesser-included instruction for felony assault. In Point Three, Nickels maintains the trial court plainly erred in accepting inconsistent verdicts of not guilty of armed criminal action in connection with second-degree assault but guilty of second-degree assault. In Point Four, Nickels challenges the sufficiency of the evidence for his conviction on resisting arrest.

AFFIRMED.

DIVISION TWO HOLDS: Because Nickels's ineffective-assistance claim was untimely and he did not request plain-error review under Rule 29.12(b), the trial court did not in denying the claim as untimely under the mandatory time limitations for claims in a motion for new trial err in Points One and Two. Because Nickels's conviction on assault in the second degree in Count I was supported by substantial evidence and not dependent on a conviction for armed criminal action in Count II, Nickels did not demonstrate manifest injustice for plain-error review of Point Three. By affirmatively admitting his guilt for resisting arrest in his opening and closing arguments at trial, Nickels waived his challenge to the sufficiency of the evidence for the charge of resisting arrest in Point Four. Accordingly, we affirm the judgment of the trial court.

Opinion by: Kurt S. Odenwald, Judge
Philip M. Hess, P.J., and Lisa P. Page, J., concur.

Attorney for Appellant: Steven Kratky

Attorney for Respondent: Nathan J. Aquino

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.