OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

EDWARD D. LUSK,	)	No. ED109987
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	Cape Girardeau County
vs.	)	
	)	Honorable Benjamin F. Lewis
STATE OF MISSOURI,	)	
	)	
Respondent.	)	Filed: November 8, 2022

Edward D. Lusk ("Movant") pled guilty to property damage in the first degree, arson in the second degree, and six counts of burglary in the second degree. After an evidentiary hearing, the motion court denied his Rule 24.035 motion for post-conviction relief.[1] He appeals the motion court's judgment and raises three Points. In Point I, Movant argues the motion court clearly erred because his plea counsel ("Plea Counsel") failed to advise him of a defense for the arson in the second-degree count (Count XVIII) by which Movant could have proceeded to trial and submitted lesser-included offense instructions for reckless or negligent burning. In Point II, Movant argues the motion court clearly erred because Plea Counsel failed to advise him of an alternative perpetrator defense on the burglary in the second-degree count involving the Battles Communication location (Count XX). In Point III, Movant argues the motion court clearly erred because Plea Counsel failed to object at sentencing to the prosecutor arguing facts about an incident to which Movant was not pleading guilty and was outside the record.

AFFIRMED.

DIVISION IV HOLDS: Because Movant failed to show he was prejudiced by Plea Counsel allegedly not advising him of the lesser included offenses of reckless or negligent burning, we deny Point I. Because Movant failed to prove Plea Counsel did not advise him of the alternative perpetrator defense, we deny Point II. Because Movant failed to show he was prejudiced by Plea Counsel's failure to object to the prosecutor's statements, we deny Point III.

Opinion by: Philip M. Hess, J.
Kelly C. Broniec, P.J. and James M. Dowd, J. concur.

Attorney for Appellant: Maleaner R. Harvey

Attorney for Respondent: Karen L. Kramer

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.

[1] All Rule citations are to the Missouri Supreme Court Rules (2017), unless otherwise indicated.