

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**RAY JOHNSON, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.**

DOCKET NUMBER WD85293

DATE: August 8, 2023

Appeal From:

Jackson County Circuit Court
The Honorable Patrick William Campbell, Judge

Appellate Judges:

Division Four: Gary D. Witt, Chief Judge, Presiding, Lisa White Hardwick, Judge, W.
Douglas Thomson, Judge

Attorneys:

Rosemary Ellen Percival, Kansas City, MO, for appellant.

Nathan Jeremy Aquino, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

RAY JOHNSON, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD85293

Jackson County

Before Division Four: Gary D. Witt, Chief Judge, Presiding, Lisa White Hardwick,
Judge, W. Douglas Thomson, Judge

Johnson appeals the Motion Court's denial of his motion pursuant to Rule 29.15 following an evidentiary hearing. Johnson raises two points on appeal. Point I argues that Trial Counsel was ineffective for failing to object to a portion of the State's closing argument at trial, and Point II argues that Trial Counsel was ineffective in failing to call a fact witness at trial.

AFFIRMED.

Division Four holds:

Trial Counsel was not ineffective in failure to object to the portion of the State's closing argument that the jury did not need to consider the lesser included offenses unless they first found that Johnson was not guilty of first-degree murder. Even though the acquittal first-argument was improper, the argument was not prejudicial as the defense strategy was an all-or-nothing not guilty defense and did not want to focus the jury on the lesser-included offenses.

Trial Counsel was not ineffective in failing to call the fact witness, as that witness's testimony would not have provided unqualified support for the defense and may have potentially been detrimental to Johnson's trial strategy.

Opinion by: Gary D. Witt, Judge

August 8, 2023

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