MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BRAD LINDSEY, Appellant,
v.
STATE OF MISSOURI, Respondent.

DOCKET NUMBER WD86653

DATE: November 26, 2024

Appeal From:

The Circuit Court of Jackson County, Missouri
The Honorable Jalilah Otto, Judge

Appellate Judges:

Before Division Three: Mark D. Pfeiffer, Presiding Judge,
Gary D. Witt and Thomas N. Chapman, Judges

Attorneys:

Erica Serrone, Assistant Public Defender, Kansas City, MO, Attorney for Appellant.

Andrew Bailey, Attorney General, Julia E. Rives, Assistant Attorney General,
Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Mr. Brad Lindsey ("Lindsey") appeals from the judgment entered by the Circuit Court of Jackson County, Missouri ("motion court"), following an evidentiary hearing denying Lindsey's Rule 29.15 post-conviction relief motion. We affirm.

On the night of May 14, 2016, Lindsey and Victim were at the home of D.L. There, Victim tried to purchase marijuana from Lindsey, sparking an argument over its price. D.L. asked Lindsey and Victim to leave. They refused, and their argument escalated into a physical altercation, which ended when Lindsey pulled out a revolver and fatally shot Victim, who was unarmed.

After the shooting, Lindsey fled the house with the gun, his cell phone, and Victim's cellphone. He proceeded to get rid of the evidence but later confessed his disposal to police. Lindsey also confessed that he was intoxicated on the night of the homicide and that he fired a gun at Victim multiple times.

The State tried Lindsey for murder in the first degree (Count I), armed criminal action (Count II), unlawful use of a weapon for firing a handgun while intoxicated (Count III), and tampering with physical evidence (Count IV). At trial, Lindsey testified that he was guilty of the tampering and unlawful use charges. However, he asserted self-defense against the murder charge.

As to Count I, the jury was instructed on first-degree murder and each of its lesser included offenses, including involuntary manslaughter. The jury was also instructed on self-defense with regard to Count I. As to Count III, the jury was instructed pursuant to Instruction 14 on unlawful use. Instruction 14 did not include a separately numbered paragraph for self-defense, and Lindsey's trial counsel did not object to the instruction.

Lindsey timely filed a Rule 29.15 motion and raised three claims of ineffective assistance of counsel, including that trial counsel provided ineffective assistance by

failing to object to the trial court instructing the jury on Count III without submitting a self-defense instruction.

The motion court held an evidentiary hearing, and Lindsey presented the testimony of his trial counsel. Thereafter, the motion court issued a judgment denying Lindsey's claim. The motion court concluded that trial counsel was not constitutionally deficient in his performance as Lindsey's trial counsel and, particularly, that he had no duty to request a self-defense instruction on the verdict directing instruction relating to unlawful use of a weapon because doing so would have undermined his reasonable trial strategy.

AFFIRMED.

Division Three holds:

1. When a defendant knowingly and voluntarily submits to a strategy proposed by counsel, he cannot later complain about the competency of counsel. Trial counsel testified that he implemented a strategy of having Lindsey concede to the lesser felony charges of tampering with physical evidence and unlawful use of a weapon (in part, because Lindsey had already confessed to law enforcement about the factual basis supporting his guilt for those crimes) to gain credibility with the jury and focus the jury's attention on his self-defense claim for first degree murder; that trial counsel discussed this strategy in depth with Lindsey; and that Lindsey agreed to and actively participated in this strategy before and during trial. Having knowingly and voluntarily submitted to trial counsel's strategy, Lindsey cannot now complain about that strategy.

2. It was not *per se* unreasonable for trial counsel to argue self-defense on a single count but not on the remaining counts where such instruction was available. An available self-defense instruction is not required if the defense fails to inject evidence of self-defense. Lindsey did not inject evidence of self-defense on Count III but instead admitted guilt on that count. Accordingly, trial counsel was not required to submit a self-defense instruction on Count III.

3. Lindsey's argument requiring an "all-or-nothing" trial strategy is inconsistent with the *Strickland* standard, which does not require that counsel pursue one trial strategy to the exclusion of another. Rather, *Strickland* contemplates that counsel will rely on judgment and experience to determine whether the unique facts of the case favor pursuing an "all-or-nothing" defense or offering the jury the option of convicting on lesser charges.

4. Trial counsel makes an objectively reasonable choice not to submit an available instruction when the instruction would be inconsistent with the defense's theory at trial. Lindsey and trial counsel pursued a hybrid defense at trial—conceding guilt to the jury on the lesser felonies while pursuing a theory of self-defense on the first-degree

murder charge. Trial counsel testified that these concessions were consistent with confessions Lindsey had already made to police and that, in trial counsel's view, it would have been "counterproductive" to argue self-defense on a count where Lindsey had already conceded guilt. Though trial counsel expressed some regret at not requesting a self-defense instruction in hindsight, his decision not to object to Instruction 14 was reasonable at the time because objecting would have undermined the strategy of conceding guilt on that count. Although the trial strategy here proved unsuccessful, its failure alone does not render it unreasonable. Lindsey has not established that his trial counsel's performance was deficient.

Opinion by: Mark D. Pfeiffer, Judge November 26, 2024

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