MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MARK C. BRANDOLESE, Appellant,
v.
STATE OF MISSOURI, Respondent.

DOCKET NUMBER WD86710

DATE: May 27, 2025

Appeal From:

Pettis County Circuit Court
The Honorable Robert Koffman, Judge

Appellate Judges:

Division Two: Janet Sutton, P.J., and Alok Ahuja and Mark D. Pfeiffer, JJ.

Attorneys:

Mark A Grothoff, Columbia, for Appellant,

Evan Buchheim, Jefferson City, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

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v.
STATE OF MISSOURI, Respondent.

WD86710 Pettis County

Before Division Two Judges: Janet Sutton, P.J., and Alok Ahuja and Mark D. Pfeiffer, JJ.

Following a jury trial in the Circuit Court of Pettis County, Mark Brandolese was convicted of second-degree domestic assault and armed criminal action, based on his assault against his roommate in Sedalia in March 2016. Brandolese was sentenced to concurrent terms of fifteen years' imprisonment for second-degree domestic assault, and ten years for armed criminal action.

After Brandolese's convictions were affirmed on direct appeal, he filed a motion for postconviction relief, claiming that both his trial and appellate counsel provided ineffective assistance. The circuit court denied relief following an evidentiary hearing. Brandolese appeals.

AFFIRMED.

Division Two holds:

During jury selection at Brandolese's trial, Venireperson No. 16 indicated that her brother was an assistant prosecutor in the Pettis County Prosecutor's Office. Venireperson No. 16's brother had actually participated in a minor fashion in Brandolese's prosecution prior to his indictment. Defense counsel did not ask any follow-up questions of Venireperson No. 16. Brandolese now argues that his defense counsel was ineffective for failing to further examine Venireperson No. 16 to establish a basis to strike her for cause; for failing to argue that she was disqualified from serving on his jury by § 494.470.1, RSMo; and for failing to peremptorily strike Venireperson No. 16. Brandolese raised a similar claim in his direct appeal. The Missouri Supreme Court held that Brandolese could not establish plain error or a constitutional violation based on Venireperson No. 16's service on his jury, without some evidence that she was actually biased against him. Brandolese's postconviction relief claims fail for similar reasons: he cannot establish that he was prejudiced by trial counsel's failure to exclude Venireperson No. 16 from his jury, without ***some*** showing that Venireperson No. 16 was actually

biased. The simple fact that Venireperson No. 16 was related to an assistant prosecutor is insufficient, standing alone, to establish actual bias.

Brandolese claims that his appellate counsel was ineffective for failing to argue on appeal that the circuit court erroneously excluded from evidence an exculpatory statement Brandolese made to a police officer. Brandolese argues that admission of the exculpatory statement was required under the "rule of completeness." This issue was unpreserved during trial, and would have been reviewable solely for plain error. The circuit court did not clearly err in rejecting this claim. The rule of completeness was inapplicable: the State did not elicit testimony from the relevant police officer concerning Brandolese's statements which the exculpatory statement would have "completed."

Opinion by: Alok Ahuja, Judge May 27, 2025

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