Missouri Court of Appeals
Southern District

In Division

CLARENCE EDWARD PORTER, Movant-Appellant, v. STATE OF MISSOURI, Respondent-Respondent.	No. SD38865 Filed: January 27, 2026

APPEAL FROM THE CIRCUIT COURT OF CAMDEN COUNTY

Honorable Kenneth M. Hayden, Judge

AFFIRMED

Clarence Edward Porter ("Movant") appeals from the Circuit Court of Camden County's ("motion court's") denial of his Rule 29.15 Amended Motion to Vacate, Set Aside or Correct Judgment and Sentence ("Amended Motion") after a jury convicted him of domestic assault in the first degree.[1] In two points on appeal, Movant argues that he

[1] All rule references are to Missouri Court Rules (2018).

received ineffective assistance of counsel in that trial counsel failed to: (1) request that the trial court instruct the jury on the definition of the mental state of "knowingly[;]" and (2) object to the blood spatter testimony of Officer David Stark ("Officer"). Finding no clear error, we affirm the motion court's denial of Movant's Amended Motion.

Factual Background and Procedural History

The State charged Movant with the class A felony of domestic assault in the first degree for the beating of his wife ("Victim"), and a jury found him guilty as charged. The trial court found him to be a prior felony offender, and sentenced him to 30 years' imprisonment in the Department of Corrections. Movant appealed his conviction and this Court affirmed his conviction on direct appeal without a formal written opinion and issued its mandate on March 17, 2021.

On June 14, 2021, Movant timely filed his *pro se* Motion to Vacate, Set Aside or Correct the Judgment or Sentence. On June 29, 2021, post-conviction counsel entered her appearance for Movant and requested an extension of time to file an amended motion. The motion court granted that extension, and Movant timely filed his Amended Motion on September 13, 2021. In lieu of an evidentiary hearing, the motion court took the matter under advisement after the parties stipulated that the motion court would consider and take judicial notice of, *inter alia*, the deposition of trial counsel and the underlying criminal case. On December 18, 2024, the motion court entered its State's Proposed Findings of Facts, Conclusions of Law, Order, and Judgment ("Judgment") denying Movant's Amended Motion in full. Movant appeals.

Standard of Review

> A circuit court's judgment denying postconviction relief will be affirmed unless its findings and conclusions are clearly erroneous. Rule 29.15(k); *Meiners v. State*, 540 S.W.3d 832, 836 (Mo. banc 2018). Findings and conclusions are clearly erroneous only when "this Court is left with a definite and firm impression that a mistake has been made." *Mallow v. State*, 439 S.W.3d 764, 768 (Mo. banc 2014).

> ***McFadden v. State***, 619 S.W.3d 434, 445 (Mo. banc 2020). When reviewing the denial of post-conviction relief, we interpret the facts "in the light most favorable to the verdict." ***Davis v. State***, 653 S.W.3d 169, 171 (Mo. App. S.D. 2022) (quoting ***Staten v. State***, 624 S.W.3d 748, 750 (Mo. banc 2021)). We presume the motion court's findings and conclusions are correct. ***Id.***

McConnell v. State, 688 S.W.3d 666, 672-73 (Mo. App. S.D. 2024).

Both of Movant's claims on appeal assert he received ineffective assistance of counsel.

> To obtain post-conviction relief on the basis of ineffective assistance of counsel, a movant must demonstrate by a preponderance of the evidence: (1) counsel failed to exercise the customary skill and diligence a reasonably competent attorney would perform under similar circumstances; and (2) counsel's ineffective assistance prejudiced movant. ***Strickland v. Washington***, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); ***Anderson v. State***, 564 S.W.3d. 592, 600 (Mo. banc 2018). We retain a "strong presumption" that the assistance of trial counsel was competent in this review. ***Ryan v. State***, 660 S.W.3d 695, 698 (Mo. App. S.D. 2023).

Id. at 673.

Analysis

Point I

In Point I, Movant claims as follows:

> The motion court clearly erred in denying [Movant's] [Amended Motion] because [Movant] received ineffective assistance of counsel […], in that trial counsel failed to request that the trial court instruct the jury on the definition of the mental state of knowingly, even though such a definition was required to be given if requested, counsel's trial strategy was to convince the jury to convict [Movant] of a lesser offense with the mental state of recklessly, recklessly had been defined for the jury, and the jury requested a definition of knowingly during deliberations.

We disagree.

On this issue, the motion court found as follows:

> This Court finds it to be a reasonable trial strategy for the defense to argue that [Movant] could be found guilty of lesser included offenses and that counsel's omission of the definition of "knowingly" as a proposed instruction did not impact counsel's ability to advocate that position to the jury. Indeed, defense counsel provided the proposed definition of "recklessly" as an effort to lead the jury to that conclusion. This Court determines that this legal strategy is sound and counsel was not ineffective for not submitting a proposed instruction for "knowingly".

The motion court did not clearly err when it found that trial counsel's decision not to instruct the jury on the definition of "knowingly" was part of a reasonable trial strategy. Trial counsel testified that his trial strategy was not to contest whether Movant acted "knowingly," but rather to contest that Movant caused serious physical injury to Victim. In accordance with that trial strategy, trial counsel submitted jury instructions on the lesser-included offenses of assault in the second degree and assault in the third degree. "An objectively reasonable choice not to submit an available instruction does not constitute ineffective assistance of counsel." ***McNeal v. State***, 500 S.W.3d 841, (Mo. banc 2016) (quoting ***Love v. State***, 670 S.W.2d 499, 502 (Mo. banc 1984)).

Furthermore, Movant's only arguments as to why he suffered prejudice are that "[f]ailure to use an applicable Missouri Approved Instruction (MAI) is presumed

prejudicial[,]" and, therefore, "[t]rial counsel's error [] changed the outcome of [Movant's] trial." Contrary to Movant's assertion, trial counsel was not required to define "knowingly" in the jury instruction. *See* MAI-CR 3d 319.72, Notes on Use 10(a) (stating that "knowingly" "may be defined by the court on its own motion and must be defined on written request in proper form by the state or by the defendant[.]").[2] Given that the term knowingly was used here in its ordinary and commonly understood meaning, there is no reason to conclude that the outcome of Movant's trial would have been different had the term "knowingly" been defined. *See* ***Manwarren v. State***, 223 S.W.3d 899, 904 (Mo. App. S.D. 2007) ("[e]ven where it has been determined that failure to define a specific type of intent or mental state was erroneous, the error was found not to be reversible when the term was used [as here] in its ordinary and commonly understood meaning and did not confuse or mislead the jury.") Point I is denied.

Point II

Movant's Point II alleges:

> The motion court clearly erred in overruling [Movant's] [Amended Motion] because he was denied his right to effective assistance of counsel, […], in that counsel unreasonably failed to object to the blood spatter testimony of [Officer] on the grounds that [Officer] lacked the necessary expertise to testify to his conclusions, prejudicing [Movant], since [Officer's] blood spatter testimony bolstered that of the alleged victim, whose credibility was at issue.

[2] The only request to define "knowingly" in this case came from the jury after they had already begun deliberations. While trial counsel requested that the trial court tender the definition of "knowingly" to the jury in response to their request, the trial court denied that request on the basis that trial counsel had waived it when he failed to request it at the instruction conference.

Again, we disagree.

On this issue, the motion court found that Movant suffered no prejudice from trial counsel's failure to object to this testimony because the testimony was cumulative in that Victim had already identified photographs of blood on the outside of the vehicle as blood she spit outside of the window.

Again, the motion court's findings on this issue are not clearly erroneous. "A party cannot be prejudiced by the admission of allegedly inadmissible evidence if the challenged evidence is merely cumulative to other evidence admitted without objection." ***Ryno v. State***, 2025 WL 3484744, at *5 (Mo. App. S.D. Dec. 4, 2025) (quoting ***Sherrer v. Boston Sci. Corp.***, 609 S.W.3d 697, 714 (Mo. banc 2020)). When asked what a particular photo depicted at trial, Victim testified "[t]hat's where I had spit blood out the window." Victim agreed that the car was in motion when that happened. As the complained of evidence was properly before the trial court without objection, Movant suffered no prejudice in Officer repeating the same. Point II is denied, and the motion court's Judgment is affirmed.

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS