

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

THOMAS A. MCDANIEL,)	No. ED100204
)	
Appellant,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	10JE-CC00706
)	
STATE OF MISSOURI,)	Honorable Gary P. Kramer
)	
Respondent.)	Filed: December 23, 2014

Thomas A. McDaniel (“Movant”) appeals the judgment denying his Rule 29.15¹ motion for post-conviction relief following an evidentiary hearing.

AFFIRMED.

Division Four holds:

- (1) Movant has not met his burden of demonstrating that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to timely disclose portions of transcripts of Michele Mechlin’s interviews with Victim at the Children’s Advocacy Center (“CAC”) and portions of additional records relating to Ms. Mechlin’s evaluation of Victim. No *Brady* violation has occurred with respect to the portions of the transcripts relied upon by Movant because they were available to Movant at the time of trial from another source, Exhibit A, and therefore Movant knew about Victim’s pertinent statements to Ms. Mechlin at the time of trial. Additionally, Movant has not met his burden of demonstrating that the portions of the additional records relating to Ms. Mechlin’s evaluation of Victim are material under *Brady*. Therefore, the motion court did not clearly err in denying Movant’s claim of prosecutorial misconduct pursuant to *Brady*.
- (2) It was reasonable for Movant’s trial counsel to decide not to further investigate the existence of recordings of Victim’s interviews with Ms. Mechlin at the CAC after being told by the State and CAC that no recordings existed. Therefore, the motion court did not clear err in denying Movant’s claim that trial counsel was ineffective for failing to adequately investigate the existence of recordings.
- (3) The motion court did not clearly err in denying Movant’s claim that trial counsel was ineffective for failing to call an expert witness, because it was not ineffective

¹ All references to Rules are to Missouri Supreme Court Rules (2014).

assistance of counsel for Movant's attorney to pursue one reasonable trial strategy to the exclusion of another reasonable trial strategy.

- (4) The motion court did not clearly err in denying Movant's claim that trial counsel was ineffective for failing to adequately prepare Movant's son Drew² to testify, because Movant has not demonstrated that counsel's performance did not conform to the degree of skill and diligence of a reasonably competent attorney.
- (5) The motion court did not clearly err in denying Movant's claim that trial counsel was ineffective for failing to call Movant's son Jason as a witness, because counsel believed Jason would not be a credible witness and decided not to call him to testify as a matter of trial strategy.
- (6) The motion court did not clearly err in denying Movant's claim that trial counsel was ineffective for failing to preserve tape-recorded evidence of a threatening message left on Movant's answering machine on March 7, 2006 by Victim's parents. Because testimony at the evidentiary hearing reflects that no tape-recorded message from March 7, 2006 existed, Movant has failed to prove his claim that trial counsel was ineffective for failing to preserve such a recording by a preponderance of the evidence as is required by Rule 29.15(i).
- (7) The motion court did not clearly err in failing to find cumulative error with respect to Movant's ineffective assistance of counsel claims raised in points two through six. Having determined that none of Movant's points amount to reversible error, there can be no reversible error attributable to their cumulative effect.

Opinion by: Robert M. Clayton III, J.
Patricia L. Cohen, P.J. and Roy L. Richter, J., concur.

Attorney for Appellant: Richard H. Sindel

Attorneys for Respondent: Chris Koster and Jennifer A. Rodewald

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.

² Because Movant's relatives share the same last name, we will refer to them by their relationship to Movant and/or by their first names.