

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**DIVISION TWO**

STATE OF MISSOURI,	)	No. ED100972
	)	
Respondent,	)	
	)	Appeal from the City of St. Louis
vs.	)	Circuit Court
	)	
IVAN DOMINGUEZ-RODRIGUEZ,	)	Honorable Rex M. Burlison
	)	
Appellant.	)	Filed: May 19, 2015

**Opinion Summary**

Ivan Dominguez-Rodriguez (Defendant) appeals the judgment and sentence of the trial court, entered after a jury trial, convicting him of first-degree assault, armed criminal action, and first-degree burglary. On appeal, Defendant argues that the trial court plainly erred in submitting Instruction No. 9 for armed criminal action; clearly erred in overruling his *Batson* objections; and abused its discretion by permitting the prosecutor to argue in closing argument that Defendant was “hiding behind” his Spanish interpreter.

AFFIRMED.

Division Two Holds:

- (1) The trial court did not plainly err in submitting Instruction No. 9 for armed criminal action. MAI-CR 3d 332.02 is consistent with substantive law, including *State v. Evans*, 455 S.W.3d 452 (Mo. App. E.D. 2014), because a reasonable juror, giving the term “dangerous instrument” its common-sense meaning, would not interpret the definition of “dangerous instrument” to include hands or fists. Jurors are presumed to follow the instructions provided, and Defendant failed to rebut that presumption. Therefore, the trial court did not plainly err in submitting Instruction No. 9.
- (2) The trial court did not clearly err in overruling Defendant’s *Batson* objections. After Defendant objected, the State provided race-neutral reasons for striking two African American females. The burden then shifted to the Defendant to prove that the State’s proffered reasons for the strikes were pretext for racial discrimination. As to both venirepersons, Defendant failed to meet this burden. In both cases, Defendant did not show that there were similarly situated white venirepersons, or any other reason that either strike was based on racial animus. Given the totality of the circumstances, the trial court did not err in accepting the State’s race-neutral explanations for striking the venirepersons.

- (3) The trial court did not abuse its discretion by overruling Defendant's objection to the prosecutor's closing argument. The State's comments in closing argument were designed to attack Defendant's credibility, not to inflame the passions or prejudices of the jury. Accordingly, the State's closing argument was proper and the trial court did not abuse its discretion.

Opinion by: Philip M. Hess, J.  
Sherri B. Sullivan, P.J. and Mary K. Hoff, J. concur.

Attorney for Appellant: Jessica Hathaway

Attorney for Respondent: Karen L. Kramer

**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.**