

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

DEMARCO McCRADY,)	No. ED101174
)	
Movant/Appellant,)	
)	Appeal from the City of St. Louis
vs.)	Circuit Court
)	
STATE OF MISSOURI,)	Honorable Robin R. Vannoy
)	
Respondent.)	Filed: March 17, 2015

Demarco McCrady (Movant) appeals the denial of his Rule 29.15 motion for post-conviction relief following an evidentiary hearing. Movant claims the motion court clearly erred in denying his motion because his trial counsel was ineffective for (1) failing to make an objection based on an alleged violation of the Fifth Amendment privilege against self-incrimination; and (2) failing to request a lesser-included offense instruction for second-degree assault.

AFFIRMED.

Division II Holds:

- 1) The motion court did not clearly err in finding that trial counsel was not ineffective for failing to object and challenge the trial court's ruling requiring a State's witness to testify because the Fifth Amendment privilege against self-incrimination is personal to the witness and Movant had no basis on which to complain.

- 2) The motion court did not clearly err in finding that trial counsel was not ineffective for failing to request a lesser-included offense instruction for second-degree assault because the decision not to request the instruction was reasonable trial strategy and counsel had no duty to request an instruction that would undermine the defense theory at trial.

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

Attorney for Appellant: Matthew W. Huckeby

Attorney for Respondent: Shaun J. Mackelprang

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.
--