

MISSOURI COURT OF APPEALS EASTERN DIVISION
OPINION SUMMARY

STATE OF MISSOURI,)	No. ED101944
)	
Respondent,)	Appeal from the Circuit Court of
)	Warren County
vs.)	
)	
JAMES W. LEWIS,)	Hon. Wesley Dalton
)	
Appellant.)	FILED: April 28, 2015

James Lewis appeals the trial court's judgment and sentence after a jury convicted him of second-degree robbery and resisting arrest. Lewis asserts that the trial court erred by: (1) denying his motion for acquittal, because the evidence was insufficient to establish physical force, an element of robbery, and (2) failing to declare a mistrial or give a curative instruction after the State revealed in closing arguments that Lewis's outstanding warrants were traffic-related. Finally, the State requests correction, *nunc pro tunc*, of the trial court's written judgment insofar as it omitted the court's factual finding that Lewis was not only a prior offender but also a persistent offender.

AFFIRMED AND REMANDED WITH INSTRUCTIONS.

DIVISION ONE HOLDS:

- (1) Lewis bumped the victim in the shoulder from behind, there was a slight struggle, and Lewis yanked the victim's purse out of her hand. Viewing these facts in the light most favorable to the verdict and giving deference to the fact-finder, there was sufficient evidence from which the jury could find that Lewis used enough force to prevent or overcome the victim's resistance as contemplated in §569.010(1).
- (2) The State's closing argument specifically responded to counsel's suggestion that Lewis fled only because of his outstanding warrants and not the robbery. Moreover, there is no reasonable probability that the outcome of the trial would have been different if only the jury hadn't known of the precise nature of Lewis's warrants. In other words, there was no prejudice.
- (3) On remand, the trial court is instructed to enter an amended judgment *nunc pro tunc* to reflect that Lewis is a prior and persistent offender.

Opinion by: Clifford H. Ahrens, Judge Lawrence E. Mooney, P.J., concurs. Lisa Van Amburg, J., dissents.

Attorney for Appellant: Margaret Mueller Johnston

Attorney for Respondent: Karen Louise Kramer

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