

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

STATE OF MISSOURI,)	No. ED102962
)	
Respondent,)	Appeal from the Circuit Court
)	of Montgomery County
vs.)	14AU-CR00460-02
)	
RICHARD JOHN WHIPPLE,)	Honorable Wesley C. Dalton
)	
Appellant.)	Filed: October 18, 2016

Richard John Whipple (“Defendant”) appeals the judgment entered upon a jury verdict convicting him of two counts of unlawful use of a weapon, one count of first-degree tampering with a motor vehicle, and three counts of third-degree assault. On appeal, Defendant argues the trial court erred in refusing to submit jury instructions relating to Defendant’s claim of self-defense. Defendant also asserts that the trial court erred in sentencing him as a prior offender, arguing that section 558.016 RSMo Supp. 2006,¹ Missouri’s prior offender statute, is unconstitutional.

REVERSED AND REMANDED.

Division One holds:

- (1) The trial court erred in refusing to instruct the jury on self-defense. Although we reject Defendant’s argument that he was entitled to a self-defense instruction solely because he had no duty to retreat on his property, we find that Defendant presented substantial evidence that he acted in self-defense or defense of others in brandishing and subsequently discharging his firearm.
- (2) Defendant’s claim that section 558.016 is unconstitutional because it allows sentencing as a prior offender based on a previous finding of guilt and suspended imposition of sentence is plainly without merit. Therefore, the trial court did not err in sentencing Defendant as a prior offender.

Opinion by: Robert M. Clayton III, P.J.
Mary K. Hoff, J., and Lisa P. Page, J., concur.

¹ All further statutory references to section 558.016 are to RSMo Supp. 2006, which incorporates legislative amendments through 2005 and is the latest version of the statute.

Attorney for Appellant: Andrew S. Garnett

Attorney for Respondent: Chris Koster, Christine K. Lesicko

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.