OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,	)	No. ED91669
	)	
vs.	)	Appeal from the Circuit Court
	)	of the City of St. Louis
TOMMIE L. JONES, Appellant.	)	Filed: October 27, 2009

Tommie Jones ("Defendant") appeals from the judgment upon his convictions for first-degree robbery, Section 569.020 RSMo 2000[1], armed criminal action, Section 571.015, and resisting arrest, Section 575.150. Defendant argues the trial court (1) erred in overruling his motion for judgment of acquittal at the close of all of the evidence because there was no evidence to support the allegation that he was a principal actor in committing the charges of first-degree robbery and armed criminal action, (2) plainly erred in submitting jury instruction numbers 11 and 12 because they failed to comply with MAI-CR3d 304.04 and were not supported by the evidence, and (3) plainly erred in removing the issue of punishment from the jury and sentencing Defendant as a prior felony offender under Section 558.016.

AFFIRMED AS MODIFIED.

Division Two Holds: The trial court did not err in overruling Defendant's motion for judgment of acquittal at the close of all of the evidence. The trial court did not plainly err in submitting jury instruction numbers 11 and 12. The trial court did not plainly err in removing the issue of punishment from the jury and sentencing Defendant as a prior felony offender under Section 558.016. Although the procedures for finding Defendant a prior offender set forth in Section 558.021 were not followed, this did not rise to the level of plain error. However, because there are other possible ramifications from being improperly classified as a prior offender, such as the possibility of it affecting future parole eligibility, we correct the judgment and sentence to remove the prior offender classification pursuant to Rule 30.23.

Opinion by: Robert G. Dowd, Jr., J.
Sherri B. Sullivan, P. J. and Patricia L. Cohen, J., concur.

Attorney for Appellant: Gwenda R. Robinson

Attorneys for Respondent: Chris Koster, Richard A. Starnes

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.

[1] All further statutory references are to RSMo 2000 unless otherwise indicated.