

# OPINION SUMMARY

## MISSOURI COURT OF APPEALS EASTERN DISTRICT

### DIVISION FOUR

STATE OF MISSOURI, Respondent,	)	No. ED91994
	)	
	)	Appeal from the Circuit Court
v.	)	of the City of St. Louis
	)	
ROBERT EARL WILLIAMS, Appellant.	)	Filed: September 22, 2009

Robert Williams (Defendant) appeals from the trial court's judgment, following a jury trial, convicting him of one count of robbery in the second degree, in violation of Section 569.030, RSMo 2000. The trial court sentenced Defendant as a persistent offender to fifteen years of imprisonment in the Missouri Department of Corrections.

AFFIRMED.

Division Four holds: Although stealing from a person is a lesser-included offense of second-degree robbery, Defendant did not present any affirmative evidence with probative value that could form the basis of an acquittal of the greater offense *and* a conviction of the lesser offense. Givens, 917 S.W.2d 215, 218 (Mo. App. W.D. 1996). Where the evidence shows that the defendant is either guilty of the offense charged or guilty of no offense at all, there is no evidence to support the submission of a lesser-included offense. State v. Harris, 598 S.W.2d 200, 203 (Mo. App. S.D. 1980). A lesser-included instruction would serve no purpose where the defendant's defense was an alibi. State v. Neil, 869 S.W.2d 734, 739 (Mo. banc 1994). Here, Defendant's evidence, if believed, would have resulted in Defendant's acquittal of second-degree robbery; however, his alibi also would have led the jury to conclude that Defendant was guilty of no offense at all.

Opinion by: Kurt S. Odenwald, P.J.  
Kenneth M. Romines, C.J., and George W. Draper III, J., Concur.

Attorney for Appellant: Gwenda R. Robinson

Attorneys for Respondent: Chris Koster and Mary H. Moore

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