

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,) No. ED96113
) Appeal from the Circuit Court of
vs.) St. Louis County
) Honorable Tommy W. DePriest, Jr.
SHAWN NUNLEY, Appellant.) Filed: November 29, 2011

Shawn Nunley (Defendant) appeals the judgment of conviction entered by the Circuit Court of St. Louis County after a jury found him guilty of second-degree assault and armed criminal action. Defendant claims the trial court erred in: (1) overruling his motion for judgment of acquittal because the evidence was insufficient for a finding that he acted recklessly when he shot the victim; and (2) failing to intervene *sua sponte* and admonish the prosecutor during his cross-examination of Defendant.

AFFIRMED.

Division Four Holds: The trial court did not err in overruling Defendant’s motion for judgment of acquittal because the evidence was sufficient to support a finding that he acted recklessly by handling a loaded gun during an altercation and pointing it at the victim. Nor did the trial court plainly err in failing to intervene *sua sponte* in the prosecutor’s cross-examination of Defendant. It is not improper for a prosecutor during cross-examination to “pit the testimony of the State’s witnesses against that of the defendant by way of relative comparison, as to which one was telling the truth.” State v. Garner, 226 S.W.2d 604, 609 (Mo. 1950).

Opinion by: Patricia L. Cohen, P.J.
Sherri B. Sullivan, J., and Robert M. Clayton III, J., concur.

Attorney for Appellant: Rosalynn Koch

Attorney for Respondent: Shaun J. Mackelprang

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