

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI, |) ED96612 |
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| Plaintiff/Respondent, |) Appeal from the Circuit Court |
| |) of St. Louis County |
| v. |) |
| |) |
| KEON A. THOMPSON, |) Honorable Colleen Dolan |
| |) |
| Defendant/Appellant. |) Filed: May 15, 2012 |

Keon A. Thompson (Appellant) appeals from the trial court’s judgment entered upon a jury verdict finding him guilty of first-degree burglary, Section 569.160¹; first-degree assault, Section 565.050; first-degree robbery, Section 569.020; and three counts of armed criminal action, Section 571.015.

AFFIRMED.

Division Three Holds: The trial court did not plainly err in failing to intervene *sua sponte* and declare a mistrial or issue a curative instruction when the State argued in closing that the jury had to decide the issue of whether Appellant acted in defense of his partner based only upon Victim’s testimony because Victim testified that Appellant intentionally shot him while Appellant maintained it was an accident. A shooting cannot be both accidental and justified, and the exception to the rule that defense of another is not applicable when the defendant testifies that a killing was an accident only applies if inconsistent justification evidence is offered by the state or by the defendant through the testimony of a third party. Additionally, trial judges act *sua sponte* only in exceptional circumstances, which were not present here.

The statutory claim-of-right defense set forth in Section 570.070 is by its terms therein applicable only to those persons charged with stealing under Section 570.030, and does not apply to a charge of first-degree robbery under Section 569.020.

Opinion by: Sherri B. Sullivan, J. Robert G. Dowd, Jr., P.J., and Mary K. Hoff, J., concur.

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| Attorney for Appellant: | Margaret M. Johnston |
| Attorney for Respondent State: | Shaun J. Mackelprang and Karen L. Kramer |

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| <p>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.</p> |
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¹ All statutory citations are to RSMo 2006, unless otherwise indicated.