

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| D'MARCUS WILLIAMSON, |) | No. ED98759 |
| |) | |
| Appellant, |) | |
| |) | Appeal from the Circuit Court |
| vs. |) | of the City of St. Louis |
| |) | |
| STATE OF MISSOURI, |) | Honorable Rex Burlison |
| |) | |
| Respondent. |) | FILED: June 18, 2013 |

D'Marcus Williamson (Movant) appeals from the judgment of the Circuit Court of the City of St. Louis denying, without an evidentiary hearing, his Rule 29.15 motion for post-conviction relief. Movant contends that his trial counsel was ineffective for failing to request a jury instruction on the lesser-included offense of second-degree robbery.

AFFIRMED.

DIVISION ONE HOLDS: The trial court did not err. The theory of Movant's defense was actual innocence. Counsel has no duty to request an instruction that would undermine the entire theory of the case presented at trial. Moreover, there was no evidentiary basis for the lesser instruction. Two eyewitnesses testified that a gun was used to steal the vehicle. Movant claimed misidentification. Nothing in the record suggests a version of events in which the offense was committed without a weapon, so there is no reasonable probability that the instruction would have affected the outcome of the trial

Opinion by: Clifford H. Ahrens, P.J., Sherri B. Sullivan, J., and Glenn A. Norton,
J., concur.

Attorney for Appellant: Gwenda Renee Robinson

Attorney for Respondent: Shaun J. Mackelprang

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| 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. |
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