

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION ONE

TRACY E. GREER,	)	No. ED98913
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of City of St. Louis
vs.	)	
	)	Honorable John F. Garvey
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: August 20, 2013

Tracy Greer ("Movant"), appeals from the denial of his Rule 29.15 post-conviction relief motion without an evidentiary hearing. Movant argues that his claims of ineffective assistance of counsel entitle him to post-conviction relief.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART**

Division One Holds: Trial Counsel was not ineffective for failing to object to the State's closing rebuttal argument because the prosecutor's description of Movant as "Taliban looking" was proper retaliation and a legitimate inference from the testimony offered during the course of trial. Additionally, when considering the cumulative evidence of Movant's guilt, this Court finds the State's closing rebuttal argument was not prejudicial. However, Movant has pled facts that would, if proven, establish the sentencing court impermissibly considered Movant's exercise of his constitutional right to proceed to trial when imposing sentence. Movant is, therefore, entitled to an evidentiary hearing on his allegation that Trial Counsel was ineffective for failing to object to the sentencing court's perceived consideration of Movant's exercise of his right to proceed to trial.

Opinion by: Roy L. Richter, P.J.  
Clifford H. Ahrens, J., and Glenn A. Norton, J., concur.

Attorneys for Appellant: Samuel Buffaloe  
Attorneys for Respondent: Chris Koster, Daniel N. McPherson

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.  
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND  
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