

MISSOURI COURT OF APPEALS EASTERN DIVISION
OPINION SUMMARY

STATE OF MISSOURI)	No. ED99137
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	
ANWAR RANDLE)	Hon. Robert S. Cohen
)	
Appellant.)	FILED: October 7, 2014

Anwar Randle (“Defendant”) appeals from the judgment of the trial court entered after a jury convicted him of trespass in the first degree, assault in the second degree, and one count of armed criminal action. Defendant contends that the trial court erred by refusing to submit his proffered jury instruction on the lesser-included offense of assault in the third degree. Defendant also asserts that the trial court plainly erred in excluding relevant evidence that the victim had a reputation for violence and also by holding the instruction conference without his presence when he did not waive his appearance.

AFFIRMED.

DIVISION ONE HOLDS: 1. The trial court did not err in refusing to submit Defendant’s proffered instruction on the lesser-included offense of assault in the third degree where there was no evidence to support an inference that Defendant recklessly caused physical injury to the victim by shattering a bottle on his head, and therefore there was no basis to convict Defendant of the lesser-included offense. 2. The trial court did not plainly err in excluding Defendant’s purported evidence about victim’s reputation for violence where the alleged testimony was not relevant. The ostensible testimony only would have shown that victim likes to drink, uses drugs, and owns guns, none of which would have shown that victim had a reputation for violence. 3. Defendant suffered no manifest injustice by not appearing at the instruction conference. Neither Defendant nor his trial counsel requested his presence at the conference, the trial court did not actively exclude him, and Defendant did not show how his presence would have altered the outcome of the trial.

Opinion by: Clifford H. Ahrens, J.
E. Mooney, P. J., dissents in separate opinion.

Glenn A. Norton, J., concurs and Lawrence

Attorney for Appellant: Srikant Chigurupati

Attorney for Respondent: Shaun J. Mackelprang

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.