

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CHRISTOPHER J. SPELLS,
APPELLANT**

vs.

**STATE OF MISSOURI,
RESPONDENT**

WD69293

DATE: FEBRUARY 17, 2009

Appeal from:
LAFAYETTE COUNTY CIRCUIT COURT
THE HONORABLE DENNIS A. ROLF, JUDGE

Appellate Judges:
Division Two: Hardwick, P.J., Howard and Dandurand, JJ.

Attorneys:
Ruth Sanders, Esq., Kansas City, MO., for Appellant

Shaun J. Mackelprang, Esq., Jefferson City, MO., for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

CHRISTOPHER J. SPELLS,
v.
STATE OF MISSOURI,

Appellant
Respondent

WD69293

Lafayette County, Missouri

Before Division Two Judges: Hardwick, P.J., Howard and Dandurand, JJ.

Following the discovery of two bottles of iodine in Christopher Spells's vehicle, the State charged him with manufacturing or producing methamphetamine, but submitted the case to the jury under the theory that Spells attempted to manufacture or produce methamphetamine. After the jury found him guilty, Spells filed a Rule 29.15 motion alleging that his trial counsel was ineffective for failing to object to the State's verdict director on the basis that it varied from the State's information. He also alleged that his appellate counsel was ineffective for failing to raise the issue on appeal. The trial court denied Spells's motion without an evidentiary hearing. Spells appeals.

AFFIRMED

Division Two holds:

The legislature's inclusion of attempt language in section 195.222 did not make the attempt to manufacture or produce methamphetamine and the actual manufacture and production of methamphetamine two alternate and equal forms of trafficking drugs but, rather, merely served to ensure that attempt would carry the same punishment as the completed crime. Therefore, the crime of attempting to manufacture or produce methamphetamine is a lesser-included offense of the crime of manufacturing or producing methamphetamine, and the State's jury instruction was properly submitted. Because any objection to or argument against the submission of the jury instruction would have been non-meritorious, Spells failed to allege facts that would entitle him to relief on his Rule 29.15 motion alleging ineffective assistance of trial and appellate counsel.

Opinion by: Victor Howard, Judge

February 17, 2009

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