

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

PAUL BRUCE DUDLEY, JR.,

Appellant.

DOCKET NUMBER WD69970

Date: February 23, 2010

Appeal from:
Jackson County Circuit Court
The Honorable Wesley B. Powell, Judge

Appellate Judges:
Division One: Lisa White Hardwick, Presiding Judge, James M. Smart and Alok Ahuja, Judges

Attorneys:
S. Kate Webber, Esq., Kansas City, MO, for appellant.
Shaun J. Mackelprang, Esq., and Dora A. Fichter, Esq., Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

Respondent,

v.

PAUL BRUCE DUDLEY, JR.,

Appellant.

WD69970

JACKSON COUNTY

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart and Alok Ahuja, Judges

Paul Bruce Dudley, Jr., appeals his conviction after a jury trial of second-degree felony murder and unlawful use of a weapon. Dudley alleges he was subjected to double jeopardy when he was convicted of, and separately assessed punishment for, both felony murder and unlawful use of a weapon. Dudley also argues that he was denied his right to confront the witnesses against him when a Deputy Medical Examiner testified to her opinions as to the cause and circumstances of the victim's death based on the results of an autopsy performed by another, absent medical examiner.

AFFIRMED.

Division One holds:

The felony murder statute, section 565.021, explicitly permits punishment "in addition to" that of the underlying felony, unless the underlying felony is murder or manslaughter. Since Dudley's underlying felony of unlawful use of a weapon is neither murder nor manslaughter, he may be punished for both the felony murder and the unlawful use of a weapon without violating double jeopardy.

It is unnecessary to revisit the issue of whether a medical examiner other than the one who performed an autopsy may testify to the results of the autopsy, or to opinions which rely on the results of the autopsy, because even if the medical

examiner's testimony in this case violated Dudley's rights under the Confrontation Clause, any error in the admission of that evidence was harmless and cannot justify a new trial. Because Dudley did not dispute that the victim was killed by a gunshot, which he fired from a distance, he could not have been prejudiced when the medical examiner testified as to her opinion that the victim died of a gunshot wound to the head fired from a distance.

Dudley argues that he was prejudiced because the medical examiner who performed the autopsy did not testify and had he done so, he may have testified as to the angle of the bullet on cross-examination and that testimony may have supported Dudley's claim of self-defense. This argument fails, however, because speculation about possible testimony is insufficient to establish prejudice. Rather, the inquiry focuses on the testimony that was actually given at Dudley's trial. Here, the testifying medical examiner was unable to determine the angle at which the bullet that killed the victim was fired. Accordingly, we affirm Dudley's convictions.

Opinion by: Alok Ahuja, Judge

February 23, 2010

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.