

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MARVIN C. HENDRIX**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD74126

DATE: June 26, 2012

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Appeal From:

Benton County Circuit Court  
The Honorable John W. Sims, Judge

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Appellate Judges:

Division Four: Lisa White Hardwick, Chief Judge, Presiding, James E. Welsh, Judge and  
Cynthia L. Martin, Judge

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Attorneys:

Mark A. Grothoff, Columbia, MO, for appellant.

Karen L. Kramer, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MARVIN C. HENDRIX,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD74126

Benton County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, James E. Welsh, Judge and Cynthia L. Martin, Judge

A jury convicted Marvin Hendrix ("Hendrix") of one count of assault in the first degree and one count of armed criminal action. Hendrix filed a Rule 29.15 motion, which the motion court overruled after an evidentiary hearing. Hendrix claims that the motion court clearly erred because he received ineffective assistance of counsel in that his trial counsel failed to investigate and present evidence of his degenerative joint disease in support of his self-defense claim and his trial counsel failed to request lesser-included jury instructions for assault in the second degree and assault in the third degree.

**AFFIRM.**

**Division Four holds:**

(1) Evidence of Hendrix's degenerative joint disease was not relevant to his self-defense claim. To establish a successful self-defense claim, the defendant must reasonably believe force was necessary to defend himself or herself from what the defendant reasonably believes to be the use or imminent use of unlawful force. The reasonableness of the defendant's beliefs is determined using an objective test: what a reasonable person would have believed and how a reasonable person would have acted. Because the test is objective, the defendant's proclivities or propensities are irrelevant to the self-defense analysis. Trial counsel is not ineffective for failing to investigate and present irrelevant evidence, as it would be inadmissible.

(2) Hendrix's trial counsel made an objectively reasonable choice not to request the lesser-included jury instructions for assault in the second degree and assault in the third degree. Trial counsel elected to forgo instructions on lesser-included offenses in hopes of obtaining an acquittal on the basis of self-defense. Despite the jury ultimately finding Hendrix guilty of assault in the first degree, the decision to pursue an "all-or-nothing defense" was reasonable. Even if the decision were not reasonable, Hendrix did not demonstrate that, had the jury been instructed as to assault in the second degree and assault in the third degree, it would have found Hendrix guilty of one of those crimes rather than of assault in the first degree. After hearing the evidence at Hendrix's trial, the jury concluded that Hendrix was guilty of assault in the first degree. The court presumes that the jury acted according to the instructions it was given, so Hendrix is unable to establish prejudice.

Opinion by Cynthia L. Martin, Judge

June 26, 2012

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