

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**TAQWA THOMPSON,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD75688

DATE: MARCH 25, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable David M. Byrn, Judge

Appellate Judges:

Division Three: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard , Judge and Thomas H. Newton, Judge

Attorneys:

S. Kate Webber, for Appellant

Shaun Mackelprang, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TAQWA THOMPSON, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD75688

Jackson County, Missouri

Before Division Three: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge and Thomas H. Newton, Judge

Taqwa Thompson appeals the judgment of the motion court denying his Rule 29.15 motion for postconviction relief following an evidentiary hearing. Thompson sought to vacate his convictions for second-degree murder and armed criminal action and concurrent sentences of twenty years and five years imprisonment, respectively. He claims that the motion court clearly erred in denying his motion because he received ineffective assistance of counsel when counsel failed to request an instruction for a lesser included offense, failed to strike a venireperson, and failed to adequately cross-examine or impeach the chief medical examiner. The judgment is affirmed.

AFFIRMED.

Division Three Holds:

(1) Where requesting a voluntary manslaughter instruction would have been inconsistent with the defense theory that Thompson had accidentally shot the victim in self-defense, believing that the gun was not loaded, counsel was not ineffective in failing to request the instruction.

(2) Where a dispute about the transcript arose after Thompson raised counsel effectiveness for failure to strike a venireperson who stated that she could not be fair and impartial and the motion court heard evidence concerning the venireperson's response and expressly found that the transcript was incorrect and that the venireperson had indicated that she could be fair and impartial, the motion court complied with Rule 30.04(g), and this court is bound to accept the motion court's determination. Because the venireperson was not biased, defense counsel was not ineffective in failing to strike her.

(3) Where the record shows that defense counsel elicited evidence from the chief medical examiner that could have potentially undermined her opinion regarding how far the gun was from the victim's body when he was shot including evidence that she was not present for and did not perform the autopsy and never saw the victim's body or gunshot wound and that the doctor who did perform the autopsy provided a different opinion, Thompson did not meet his burden of showing that additional or different cross-examination or impeachment would have changed the outcome of the trial.

Opinion by: Victor C. Howard, Judge

Date: March 25, 2014

This summary is *UNOFFICIAL* and should not be quoted or cited.