

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

LEMUEL G. WILLIAMS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

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**DOCKET NUMBER WD78412**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** May 31, 2016

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**APPEAL FROM**

The Circuit Court of Clay County, Missouri  
The Honorable Shane T. Alexander, Judge

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**JUDGES**

Division IV: Ahuja, C.J., and Welsh and Pfeiffer, JJ.

CONCURRING.

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**ATTORNEYS**

Jeannette L. Wolpink, Appellate Defender  
Kansas City, MO

Attorney for Appellant,

Chris Koster, Attorney General  
Rachel Flaster, Assistant Attorney General  
Jefferson City, MO

Attorneys for Respondent.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

LEMUEL G. WILLIAMS, )  
)  
Appellant, )  
v. ) **OPINION FILED:**  
) **May 31, 2016**  
STATE OF MISSOURI, )  
)  
Respondent. )

**WD78412**

**Clay County**

**Before Division IV Judges:** Alok Ahuja, Chief Judge, Presiding, and James Edward Welsh and Mark D. Pfeiffer, Judges

A jury found Lemuel G. Williams guilty of first-degree robbery under a theory of accomplice liability as the getaway driver. Williams appeals from the Judgment of the Circuit Court of Clay County, Missouri (“motion court”), denying his Rule 29.15 amended motion for post-conviction relief, based on ineffective assistance of trial counsel, after an evidentiary hearing. He alleged that trial counsel was ineffective for failing to call the robber as a witness and for failing to object to the verdict director for first-degree robbery on the grounds that it did not conform to MAI-CR3d 304.04. Specifically, Williams argues that the instruction incorrectly used the language “acted together with or aided” in the fifth paragraph instead of the phrase “aided or encouraged” as required by Notes on Use 5(a) for MAI-CR3d 304.04.

**AFFIRMED.**

**Division IV holds:**

The motion court did not clearly err in concluding that Williams failed to satisfy either the performance prong or the prejudice prong of the *Strickland* test.

Trial counsel interviewed the robber and determined that he had no information beneficial to Williams. The record supports the motion court’s determination that it was not unreasonable trial strategy for trial counsel to choose not to call a witness who had admitted to his probation officer that he did not remember the robbery because he was “very high on PCP”

and did not believe he and Williams had planned the robbery because he and Williams “were high and needed money for PCP.”

Although trial counsel’s performance was constitutionally deficient because he failed to object to a jury instruction that did not fully comply with the mandates of the approved instructions, the motion court did not clearly err in concluding that Williams suffered no prejudice. The prosecutor’s use during closing argument of the phrase “acted with” instead of “aided” did not serve to mislead or confuse the jury because the prosecutor was not arguing the technical distinction between the two phrases. While Instruction No. 6 did contain the wrong phrase in the fifth paragraph, the immediately preceding Instruction No. 5 contained the correct “aids or encourages” phrase, and a question the trial court received from the jury indicated that the jury focused on the correct language contained in Instruction No. 5. Reading Instructions 5 and 6 together, the jury was not misled or confused by the incorrect phrase in Instruction No. 6.

**Opinion by: Mark D. Pfeiffer, Judge**

May 31, 2016

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