MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

JOSHUA SMITH

APPELLANT.

DOCKET NUMBER WD83657

DATE: March 30, 2021

Appeal From:

Boone County Circuit Court
The Honorable Kevin M.J. Crane, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

Michel A. Trapasso, Jefferson City, MO, for respondent.

Nancy A. McKerrow, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
JOSHUA SMITH, APPELLANT.

WD83657 Boone County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, Gary D. Witt, Judge, and Anthony Rex Gabbert, Judge

Joshua Smith ("Mr. Smith") appeals from his conviction following a jury trial for one count of the Class B felony of possession of a controlled substance with intent to distribute, one count of the Class C felony of possession of more than thirty-five grams of marijuana, and three counts of the Class C felony of unlawful possession of a firearm by a felon. Mr. Smith was sentenced as a prior offender to five eight-year terms of imprisonment to be served concurrently. Mr. Smith argues on appeal that the circuit court erred in denying his Motion to Suppress Physical Evidence because Boone County's Sheriff's deputies unlawfully entered his mobile home without Mr. Smith's knowing and voluntary consent.

On April 1, 2016, Lieutenant Philip Smith ("Lieutenant Smith"), was dispatched to a "check subject" call because a man was walking through a mobile home community in the nude. Lieutenant Smith observed Mr. Smith standing nude in the doorway to his mobile home, and when Lieutenant Smith knocked on Mr. Smith's door, Mr. Smith, still nude, came outside onto his front deck spraying a bottle of deodorizer randomly into the air. Mr. Smith was covered in a clear fluid.

Lieutenant Smith requested that Mr. Smith step down from the deck onto the ground because Lieutenant Smith thought Mr. Smith was under the influence of a narcotic, and Lieutenant Smith did not want to fight with him on an elevated surface if Mr. Smith became violent. Mr. Smith stepped down from the deck, and Lieutenant Smith placed Mr. Smith in handcuffs for both men's safety. Lieutenant Smith could not place Mr. Smith in a patrol car because he was covered with the clear fluid, and Lieutenant Smith feared that Mr. Smith would injure himself or Lieutenant Smith if Mr. Smith became combative. Because it was cold outside and Mr. Smith was naked, Lieutenant Smith asked Mr. Smith if they could go inside, and Mr. Smith agreed. The two went into the mobile home together.

Once inside the mobile home, Lieutenant Smith noticed broken dishware and that a washing machine had been turned over. Lieutenant Smith conducted a "protective sweep" because he believed that another person might be injured in the mobile home or could potentially injure Lieutenant Smith and the other deputies who had responded to the call. During the

"protective sweep," Lieutenant Smith saw marijuana, heroin, guns, and cash in plain view. Lieutenant Smith obtained a search warrant, and Mr. Smith was taken to a local hospital.

After obtaining the search warrant, Lieutenant Smith re-entered the mobile home and seized marijuana, methamphetamine, heroin, PCP, a digital scale, plastic baggies commonly used to sell narcotics, three guns, and $2,598 in cash.

Mr. Smith filed a Motion to Suppress arguing that the initial search by Lieutenant Smith was unlawful in that Mr. Smith did not voluntarily and knowingly give consent to enter the mobile home, there were no exigent circumstances justifying the search of the mobile home, and the "protective sweep" was unnecessary. The circuit court denied the motion. On appeal, Mr. Smith asserts only that he lacked capacity to consent to the deputies' entry of the mobile home.

AFFIRMED.

Division Three holds:

The circuit court did not err in denying the Motion to Suppress Physical Evidence because the totality of the circumstances demonstrates Mr. Smith had capacity to consent to the deputies' entry of the mobile home in that Mr. Smith understood and complied with Lieutenant Smith's request to step down from the deck and raise his arms to be handcuffed. Furthermore, because it was cold outside and Mr. Smith was without clothes it was proper for the deputies to request they wait inside for the ambulance rather than the patrol car when Mr. Smith was covered in a clear fluid and Lieutenant Smith feared Mr. Smith may injure himself or others if Mr. Smith became violent.

Opinion by: Gary D. Witt, Judge March 30, 2021

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