MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,
RESPONDENT

vs.

DAVID PAINE,
APPELLANT

DOCKET NUMBER WD83500

DATE: SEPTEMBER 21, 2021

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Edward R. Ardini, Jr., Judge and W. Douglas Thomson, Judge

---

Attorneys:

Robert J. Bartholomew, for Respondent

Christian Lehmberg, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
DAVID PAINE, APPELLANT.

WD83500 Jackson County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

David Paine appeals from his conviction of the class E felony of unlawful use of a weapon. In his sole point on appeal, Paine argues that the trial court plainly erred in not *sua sponte* excluding evidence of Paine's activities just prior to the incident charged.

AFFIRMED.

Division Three holds:

Paine waived plain error review of his claim as to both the testimony elicited and the exhibits offered and admitted at trial. First, Paine waived plain error review of his claim as it relates to the elicited testimony because Paine's counsel told the jury in his opening statement that the evidence would include the very information of which Paine now complains. Second, Paine waived plain error review of his claim as it relates to the admitted exhibits because Paine's counsel affirmatively stated "no objection" in response to the State offering said exhibits.

Opinion by: W. Douglas Thomson, Judge Date: September 21, 2021

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