MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

KENNETH L. WYKERT

APPELLANT.

DOCKET NUMBER WD84272

DATE: January 18, 2022

Appeal From:

Clinton County Circuit Court
The Honorable Ryan Wesley Horsman, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Nathan Jeremy Aquino, Jefferson City, MO, for respondent.

Christian Lehmberg, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
KENNETH L WYKERT, APPELLANT.

WD84272 Clinton County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

Kenneth Wykert ("Wykert") was charged with felony possession of a controlled substance, section 579.015, RSMo, and misdemeanor unlawful possession of drug paraphernalia, section 579.074, RSMo. Following a bench trial, the Circuit Court of Clinton County ("trial court") found Wykert guilty on both counts and sentenced him as a persistent offender to ten years' imprisonment on the felony offense and to a fine on the misdemeanor offense. Prior to trial, Wykert filed a motion to suppress, and the parties stipulated it could be taken with the case and ruled on after the trial court heard the evidence at the bench trial. On appeal, Wykert argues: (1) the trial court erred in admitting at trial statements and evidence obtained during the pat-down of Wykert because Officer Ward ("Officer Ward") lacked consent or reasonable suspicion to pat-down Wykert; and (2) the trial court erred in admitting statements and evidence obtained following Wykert's interview with Officer Ward in his patrol car because Wykert was subjected to custodial interrogation without first being warned of his *Miranda* rights.

AFFIRMED.

Division Three holds:

Appellate courts review the trial court's ruling on a motion to suppress in the light most favorable to the trial court's ruling and defer to the trial court's determinations of credibility. *State v. Schroeder*, 330 S.W.3d 468, 472 (Mo. banc 2011). Review is limited to determining if the ruling is supported by substantial evidence. *Id.* Here, Wykert does not argue that the evidence showed a lack of consent to the search. Rather, Wykert argues "the facts do not support the credibility of [Officer Ward's] testimony." Wykert's argument fails because on appeal we defer to the trial court's superior position to judge the credibility of the witnesses, and the trial court found Officer Ward "completely credible." The trial court's ruling was also supported by substantial evidence in that Officer Ward's testimony demonstrated Wykert consented to the pat-down, which revealed the incriminating evidence in his pocket.

Wykert was also not subjected to custodial interrogation. The trial court found Wykert spoke voluntarily with Officer Ward in the patrol car and was free to leave or refuse to answer questions at any time. Wykert was not restrained in any way and sat in the front seat of the vehicle

with the doors unlocked. Officer Ward spoke in a calm manner, and the interaction was brief. Wykert was separated from other people at the scene but only to provide him with a more suitable environment for conversation. Considering the totality of the circumstances, notably Wykert's assent to a voluntary discussion with Officer Ward, a reasonable person in Wykert's position would not have believed he was in custody.

Opinion by: Gary D. Witt, Judge January 18, 2022

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