

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

MATTHEW W. SMITH.

Appellant

DOCKET NUMBER WD75322

DATE: DECEMBER 3, 2013

Appeal From:

Circuit Court of Andrew County, MO
The Honorable Warren L. McElwain, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, Anthony Rex Gabbert, J.J.

Attorneys:

Jennifer Rodewald, Jefferson City, MO,

Counsel for Respondent,

Attorneys:

Amy Marie Bartholow, Columbia, MO

Counsel for Appellant

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

**STATE OF MISSOURI, Respondent, v.
MATTHEW W. SMITH, Appellant**

WD75322

Andrew County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, J.J., Anthony Rex Gabbert, J.J.

Matthew W. Smith appeals the circuit court’s judgment finding him guilty of possession of child pornography. Smith argues that the court abused its discretion (1) in overruling his objection during the State’s closing argument because the State misstated the law regarding pornography; and (2) when it considered Smith’s failure to admit his guilt in the presentence investigation and at sentencing in determining his sentence. Smith further argues that the court plainly erred (1) in permitting the State to introduce into evidence testimony from a detective stating that he pulled twenty-one images of “child pornography” off of Smith’s hard drive; and (2) in giving the jury Instruction 18 and supplementing that instruction with additional comments.

AFFIRMED.

Division One holds:

Even if the court erred in overruling Smith’s objection to the State’s misstatement of the law in the State’s closing argument, the error was not prejudicial. Further, the court did not clearly err by failing to sua sponte reject McGuire’s testimony, which classified the twenty-one images as child pornography, as Smith has failed to prove that the testimony invaded the province of the jury. Additionally, the court did not clearly err in giving jury Instruction 18 with additional comments as Smith has failed to prove prejudice. Lastly, the court did not abuse its discretion when it noted Smith’s failure to take responsibility for his actions when it determined his sentence. The record reflects that this was not the determinative factor the court used in imposing Smith’s sentence.

Opinion by Anthony Rex Gabbert, Judge

Date: 12/03/13

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