

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-1638

United States of America,

Appellee,

v.

Kenneth L. Frazier,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: September 20, 2010

Filed: September 29, 2010

Before BYE, BEAM, and SMITH, Circuit Judges.

PER CURIAM.

Kenneth L. Frazier entered a conditional plea of guilty to the offense of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He reserved the right to appeal the denial of a motion to suppress evidence of firearms found in a search of his residence during the execution of an arrest warrant. Frazier filed this appeal after the district court¹ sentenced him to a thirty-month term of imprisonment.

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

A magistrate judge² conducted an evidentiary hearing on Frazier's motion to suppress and concluded Frazier gave voluntary verbal consent to a police officer, during the execution of the arrest warrant, to enter Frazier's home and retrieve two shotguns from a closet. In doing so, the magistrate judge resolved a factual dispute between the officer's version of events and Frazier's version of events. The magistrate judge rejected Frazier's claim that he never gave consent, finding his testimony was not credible. The district court then adopted the magistrate judge's recommendation and denied the motion to suppress.

We review the district court's factual findings in support of its denial of the motion to suppress for clear error, and its legal conclusions de novo. United States v. Johnson, 601 F.3d 869, 872 (8th Cir. 2010). Frazier contends the district court erred by finding Frazier gave verbal consent and by discrediting Frazier's testimony. Simply put, the error Frazier alleges turns upon a credibility finding. Credibility determinations are "virtually unreviewable on appeal." United States v. Sinclair, 474 F.3d 1148, 1149 (8th Cir. 2010) (quoting United States v. Heath, 58 F.3d 1271, 1275 (8th Cir. 1995)). Having carefully reviewed the record, we find no basis for concluding the district court clearly erred.

Accordingly, we affirm.

²The Honorable John T. Maughmer, United States Magistrate Judge for the Western District of Missouri.