

No. ED97218

In the
Missouri Court of Appeals
Eastern District

FILED
JAN 10 2012

LAURA ROY
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

JAMES MARCUS HILL,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

92288

FILED

JAN 23 2012

CLERK, SUPREME COURT

Appeal from Montgomery County Circuit Court
Twelfth Judicial Circuit
The Honorable Wesley C. Dalton, Judge

APPELLANT'S BRIEF

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SCANNED

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....2

JURISDICTIONAL STATEMENT.....3

STATEMENT OF FACTS.....4

POINTS RELIED ON.....7

ARGUMENT.....9

**Point I – Trial court’s finding that portion of reinstatement statute is
unconstitutionally vague is, in reality, an improper collateral attack on Hill’s
prior conviction for possession of drug paraphernalia9**

**Point II – Claimed constitutional violation was not timely or properly
raised before the trial court 15**

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 20

APPENDIX 21

TABLE OF AUTHORITIES

Cases

Akins v. Dir. of Revenue, 303 S.W.3d 563 (Mo. banc 2010)..... 7, 11

Callier v. Dir. of Revenue, 780 S.W.2d 639 (Mo. banc 1989)..... 8, 15, 16, 18

Crump v. Dir. of Revenue, 948 S.W.2d 434 (Mo. App. S.D. 1997)..... 7, 13, 14

Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968) 16

Kayser v. Dir. of Revenue, 22 S.W.3d 240 (Mo. App. E.D. 2000)..... 7, 12, 13

Mayfield v. Dir. of Revenue, 335 S.W.3d 572 (Mo. App. E.D. 2011) *passim*

State ex rel. Tompras v. Bd. of Elections Comm’rs, 136 S.W.3d 65 (Mo. banc 2004)..... 8, 16

State v. Newlon, 216 S.W.3d 180 (Mo. App. E.D. 2007) 3

State ex rel. Leonardi v. Sherry, 137 S.W.3d 462 (Mo. banc 2004) 16-17

State v. Rader, 334 S.W.3d 467 (Mo. App. S.D. 2010)..... 8, 17

Warren v. Paragon Techs. Group, Inc., 950 S.W.2d 844 (Mo. banc 1997)
..... 8, 16, 17

Statutes, Constitution, and Court Rules

Section 195.233, RSMo 2000..... 4, 7

Section 302.060, RSMo Cum. Supp. 2009..... 3, 7, 11

Mo. Const. art. V, § 3..... 3

Supreme Court Rule 55.01..... 8, 17

JURISDICTIONAL STATEMENT

This appeal is from the Montgomery County Circuit Court's final judgment reinstating Respondent's driving privileges after administrative revocation by Appellant. The trial court's judgment was based on a finding that section 302.060.1(9), RSMo Cum. Supp. 2009, is unconstitutionally vague. The Missouri Supreme Court has exclusive jurisdiction over real and substantial challenges to the validity of Missouri statutes. Mo. Const. art. V, § 3. But if a constitutional claim is merely colorable, the Court of Appeals may address the challenge. *State v. Newlon*, 216 S.W.3d 180, 185 (Mo. App. E.D. 2007). Because the constitutional challenge to section 302.060.1(9), RSMo is in reality a collateral attack on a prior criminal conviction and because the claim was not raised at the earliest opportunity before the circuit court, that claim is merely colorable and may be considered by this Court.

STATEMENT OF FACTS

James Marcus Hill's driver's license was revoked by the Director of Revenue, along with a denial of driving privileges for a period of ten years beginning on October 28, 2000. (L.F. 3, 6). Hill filed a petition for reinstatement of driving privileges in the Circuit Court of Montgomery County on April 15, 2011. (L.F. 1, 3). The petition alleged that Hill had not been convicted of any offense related to alcohol, controlled substances, or drugs during the preceding ten years. (L.F. 4). Attached to the petition as Exhibit B was a copy of a Request for Criminal Record Check submitted to the Missouri State Highway Patrol and file-stamped on September 21, 2010, as well as a printout of Hill's criminal history record as of that same date. (L.F. 11-15). The criminal history record showed that Hill had been convicted in the Circuit Court of Boone County on June 3, 2005, of the class A misdemeanor of possession of drug paraphernalia in violation of section 195.233, RSMo 2000. (L.F. 15).

The Director filed an Answer noting Hill's 2005 conviction for possession of drug paraphernalia. (L.F. 18). The Answer further noted that section 302.060.1(9), RSMo requires the court to find that a petitioner seeking reinstatement must not have a drug conviction in the ten years prior to application before his driving privileges can be reinstated. (L.F. 18-19).

The Answer alleged that Hill was not eligible for reinstatement because of his 2005 conviction for possession of drug paraphernalia. (L.F. 19). Hill did not file any pleadings in response to the Director's Answer. (L.F. 2).

A hearing on the petition was held on July 20, 2011. (L.F. 2; Tr. 1, 3). The Director did not appear at the hearing. (Tr. 3; L.F. 24). Hill was the only witness. (Tr. 2). He admitted that he had been convicted within the past ten years in Boone County for possession of drug paraphernalia. (Tr. 5). Hill said that the conviction resulted from his possession of a "smokeless pipe hitter" purchased at a store in Columbia. (Tr. 5-6). Hill testified that the store where he made the purchase also had items for sale that were legal to possess and smoke. (Tr. 6).

Hill's counsel argued to the court that the item Hill was convicted of possessing was not a smoking device and was legally sold in a retail establishment. (Tr. 10). Counsel then said that the item could also be used to smoke items sold legally at that same establishment. (Tr. 10). Counsel argued that there was no evidence that the item Hill was cited for possessing was directly connected with or related to drugs. (Tr. 10). Counsel then raised for the first time a constitutional claim against the reinstatement statute:

And in addition, I would suggest to the Court that the specific statute of 302.060.1(9) would be unconstitutional if the Court

extends that beyond something that is specifically related to drugs, such as a crack pipe. There's not any rational relationship between legal cigars, legal signatures (sic) or wooden box or this other item that Mr. Hill testified to that he had or a corn cob pipe. All of those can be conceivably used to ingest illegal drugs. They can also be used to ingest perfectly legal substances that are sold on a retail basis throughout the State of Missouri.

And so I would suggest to the Court there's no rational relationship between the two and that the statute if it's extended would be unconstitutionally vague to be enforced on that basis.

(Tr. 11-12). The court stated that it tended to agree with counsel's argument that some items that could be used to ingest illegal substances could also be used to ingest legal substances. (Tr. 12-13). The court stated its intention to grant the petition to reinstate driving privileges. (Tr. 13).

The court signed and filed a written Judgment and Order on August 5, 2011. (L.F. 2, 24-27). The court reinstated Hill's driving privileges, finding

“that the phraseology utilized in said Section 302.060.1(9), to wit: ‘If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years. . . .’ is unconstitutionally vague.” (L.F. 27). The Director timely filed a Notice of Appeal. (L.F. 2, 20-21).

POINTS RELIED ON

I.

The trial court erroneously declared and applied the law in reinstating Hill's driving privileges because the court's judgment is, in reality, an improper collateral attack on Hill's prior conviction for possession of drug paraphernalia, in that the court made no specific findings demonstrating how the actual language of section 302.060.1(9), RSMo was unconstitutionally vague and the court's comments at trial show that it based the judgment on whether the particular item that Hill was convicted of possessing should have qualified as drug paraphernalia under section 195.233, RSMo.

Kayser v. Dir. of Revenue, 22 S.W.3d 240 (Mo. App. E.D. 2000)

Mayfield v. Dir. of Revenue, 335 S.W.3d 572 (Mo. App. E.D. 2011)

Crump v. Dir. of Revenue, 948 S.W.2d 434 (Mo. App. S.D. 1997)

Akins v. Dir. of Revenue, 303 S.W.3d 563 (Mo. banc 2010)

Section 195.233, RSMo 2000

Section 302.060, RSMo Cum. Supp. 2009

II.

The trial court erred in reinstating Hill's driving privileges on the basis that section 302.060.1(9), RSMo is unconstitutional because that claim was not properly before the trial court, in that Hill did not raise the claim at the earliest opportunity, but instead raised it for the first time as an alternative theory in his closing argument and thereby failed to put the Director on notice that she would have to defend against a claimed constitutional violation in the trial court.

Callier v. Dept. of Revenue, 780 S.W.2d 639 (Mo. banc 1989)

State ex rel. Tompras v. Bd. of Elections Comm'rs, 136 S.W.3d 65 (Mo. banc 2004)

Warren v. Paragon Techs. Group, Inc., 950 S.W.2d 844 (Mo. banc 1997)

State v. Rader, 334 S.W.3d 467 (Mo. App. S.D. 2010)

Supreme Court Rule 55.01

ARGUMENT

I.

The trial court erroneously declared and applied the law in reinstating Hill's driving privileges because the court's judgment is, in reality, an improper collateral attack on Hill's prior conviction for possession of drug paraphernalia, in that the court made no specific findings demonstrating how the actual language of section 302.060.1(9), RSMo was unconstitutionally vague and the court's comments at trial show that it based the judgment on whether the particular item that Hill was convicted of possessing should have qualified as drug paraphernalia under section 195.233, RSMo.

The trial court misapplied the law when it reinstated Hill's driving privileges. The court declared as unconstitutionally vague section 302.060.1(9), RSMo's prohibition on reinstatement for persons who have been convicted within the previous ten years of an offense related to alcohol, controlled substances, or drugs. But that finding was not based on the language of the statute, but instead centered on the alleged facts underlying Hill's 2005 conviction for possession of drug paraphernalia. The court thus impermissibly engaged in a collateral attack on that underlying conviction and issued a ruling contrary to a prior opinion of this Court, which found that

the criminal statute under which Hill had been convicted did constitute an offense related to controlled substances and drugs.

A. Standard of Review.

The trial court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Mayfield v. Dir. of Revenue*, 335 S.W.3d 572, 573 (Mo. App. E.D. 2011). The interpretation of statutes is a legal question that this Court reviews *de novo*. *Id.*

B. Analysis.

The statutory provision challenged by Hill places the following restriction on when courts can grant a petition to reinstate driving privileges:

If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010 to 302.540.

§ 302.060.1(9), RSMo Cum. Supp. 2009. The court, without elaboration, found the following language from that provision to be unconstitutionally vague: “If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years” (L.F. 27).

Under the language deemed unconstitutionally vague by the trial court, a petitioner is not eligible for reinstatement of their driving privileges if they have: (1) a conviction; (2) for an offense related to alcohol, controlled substances or drugs; (3) during the preceding ten years. The court did not explain how any of those terms are vague. The Missouri Supreme Court has construed the term “conviction” as used in section 302.060.1(9), RSMo as being a judicial determination that the defendant is guilty of an offense or crime. *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010). And this Court has recently concluded that convictions for the unlawful use of drug paraphernalia under section 195.233, RSMo, are related to controlled substances and drugs, and thus preclude reinstatement of driving privileges under section 302.060.1(9), RSMo. *Mayfield*, 335 S.W.3d at 575.

Hill’s criminal history record, attached to his petition for reinstatement as Exhibit B, shows that he had been adjudicated guilty in 2005 of the class A misdemeanor of possession of drug paraphernalia in violation of section

195.233, RSMo. (L.F. 15). Hill admitted at the hearing on his petition that he had been convicted of that offense within the last ten years. (Tr. 5).

Hill's arguments at the hearing and the court's response to those arguments demonstrate that both he and the court improperly focused on whether the item that he was allegedly convicted of possessing was related to drugs, and not on the relevant question of whether the offense for which he was convicted was one that related to drugs. The validity of prior criminal convictions cannot be collaterally attacked in actions involving suspended or revoked driver's license cases. *Kayser v. Dir. of Revenue*, 22 S.W.3d 240, 243 (Mo. App. E.D. 2000). In driver's license denial cases under section 302.060.1(9), RSMo, and by extension to reinstatement cases under that same subsection, it is the fact of the prior conviction that invokes the mandate of the statute and not the validity of those convictions for collateral criminal law purposes. *Id.*

But the discussion at the hearing went directly to the validity of the paraphernalia conviction. Hill argued that the item he was convicted of possessing was legally sold and could be used to smoke legal substances. (Tr. 10). He attempted to distinguish *Mayfield* on the basis that the petitioner in that case had been convicted of possessing a crack pipe that was directly

connected to drugs or controlled substances.¹ (Tr. 10). Hill argued that extending section 302.060.1(9), RSMo to items that can be used to ingest legal substances would be unconstitutional. (Tr. 11). The court, in stating its intention to grant the petition for reinstatement, noted that some items, like corn cob pipes, could be used for smoking both legal and illegal substances and that the item's status as drug paraphernalia would depend on how it was used. (Tr. 12-13).

The trial court clearly erred when it looked beyond the plain language requirements of section 302.060.1(9), RSMo and considered the alleged facts underlying the prior criminal conviction. The fact of the paraphernalia conviction was undisputed at the hearing. (Tr. 5). There is nothing in the record to suggest that it was ever challenged by appeal or any other timely remedy to avoid the judgment of conviction. The conviction thus remains intact as a *prima facie* adjudication and was not subject to attack in the reinstatement proceeding. *Id.*; *Crump v. Dir. of Revenue*, 948 S.W.2d 434,

¹ Contrary to Hill's argument, the *Mayfield* decision was based on a statutory interpretation of the phrase "offense related to controlled substances or drugs," and not on the nature of the paraphernalia underlying the petitioner's conviction. *See Mayfield*, 335 S.W.3d at 573-75.

435 (Mo. App. S.D. 1997). The trial court misapplied the law when it relied on the validity of the underlying conviction for possession of drug paraphernalia to find unconstitutional the standards for reinstating a previously revoked driver's license. *Crump*, 948 S.W.2d at 435. The judgment of the trial court should be reversed and the cause remanded for entry of a judgment denying the reinstatement of Hill's driving privileges.

II.

The trial court erred in reinstating Hill's driving privileges on the basis that section 302.060.1(9), RSMo is unconstitutional because that claim was not properly before the trial court, in that Hill did not raise the claim at the earliest opportunity, but instead raised it for the first time as an alternative theory in his closing argument and thereby failed to put the Director on notice that she would have to defend against a claimed constitutional violation in the trial court.

The trial court's judgment declaring section 302.060.1(9), RSMo unconstitutionally vague and reinstating Hill's driving privileges should be reversed because Hill's constitutional claim was not raised at the earliest opportunity and was thus not properly before the court.

A. Standard of Review.

The trial court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Mayfield*, 335 S.W.3d at 573.

B. Analysis.

A declaration of the invalidity of a statute on the basis of a constitutional claim that has not been properly raised is erroneous and requires reversal. *Callier v. Dir. of Revenue*, 780 S.W.2d 639, 641 (Mo. banc

1989). A constitutional issue is raised only when presented in accordance with rules of long standing. *Id.* Those rules require that the constitutional question be raised at the first opportunity by specifically identifying the provision claimed to be violated, identifying facts showing such violations, and preserving the question at each stage of review. *Id.*; *State ex rel.*

Tompras v. Bd. of Elections Comm'rs, 136 S.W.3d 65, 66 (Mo. banc 2004).

The reason for that requirement is to prevent surprise to the opposing party and to permit the trial court an opportunity to fairly identify and rule on the issues. *Tompras*, 136 S.W.3d at 66.

The first opportunity that Hill had to raise his constitutional claim was in his petition for reinstatement. But rather than raise the issue, he made a false assertion that he had not been convicted of an offense relating to controlled substances or drugs within the previous ten years. (L.F. 4, 15).

Hill had another opportunity to raise his constitutional claim when the Director filed her answer alleging that Hill did have a conviction within the previous ten years for a drug-related offense, and that he was therefore

ineligible for reinstatement. (L.F. 18-19). “[A] reply should be filed when a plaintiff desires to avoid or affirmatively attack new and affirmative matter alleged in the answer.” *Warren v. Paragon Techs. Group, Inc.*, 950 S.W.2d 844, 845 (Mo. banc 1997) (quoting *Jaycox v. Brune*, 434 S.W.2d 539, 547 (Mo. 1968), *overruled on other grounds by State ex rel. Leonardi v. Sherry*, 137

S.W.3d 462, 474 (Mo. banc 2004)). *See also*, Supreme Court Rule 55.01

(requiring the pleading of an affirmative avoidance to any matter alleged in a preceding pleading). That pleading rule serves the same purpose as the rule requiring that constitutional claims be raised at the earliest opportunity – to give notice to the opposing party so that he or she may be prepared on that issue. *Warren*, 950 S.W.2d at 846.

Instead of filing a reply, Hill first raised his constitutional argument in the middle of his closing argument, and did so in a manner suggesting that it was an afterthought to his principle argument that the facts underlying his drug paraphernalia conviction distinguished his case from *Mayfield*. (Tr. 11-12). “An attack on the constitutionality of a statute is a matter of such dignity and importance that the issues should be fully developed at trial and not as an afterthought on appeal.” *State v. Rader*, 334 S.W.3d 467, 469 (Mo. App. S.D. 2010). The same is true of a constitutional attack raised for the first time in a closing argument.

Because Hill raised the issue so late in the proceedings, the Director never received notice that she would have to defend against a constitutional claim. Due to that lack of notice, the question of Hill’s eligibility for reinstatement appeared to be a cut-and-dried matter that did not require her attendance at the reinstatement hearing. Had the Director known that a constitutional challenge would be asserted against the statutory

reinstatement requirements, she likely would have elected to attend the hearing in order to present argument and authorities in opposition to that claim.

Because the constitutional claim was not properly before the trial court, it erred in declaring section 302.060.1(9), RSMo invalid and that judgment should be reversed. *Callier*, 780 S.W.2d at 641.

CONCLUSION

In view of the foregoing, Appellant submits that the judgment of the trial court should be reversed and remanded with directions to the circuit court to enter a judgment denying the reinstatement of Hill's driving privileges.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06 and ED Rule 360, and contains 2,995 words as calculated pursuant to the requirements of Supreme Court Rule 84.06 and ED Rule 360, as determined by Microsoft Word 2007 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 9th day of January, 2012, to:

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APPENDIX

JUDGMENT AND ORDER A1-A4

SECTION 195.233 RSMo 2000..... A5

SECTION 302.060, RSMo CUM. SUPP. 2009..... A6-A7

SUPREME COURT RULE 55.01 A8

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSOURI

JAMES MARCUS HILL,
SSN: XXX-XX-8375 ,

Petitioner,

vs.

DIRECTOR OF REVENUE FOR THE
STATE OF MISSOURI,

Respondent.

CASE NO. 11A A-AC00091

JUDGMENT AND ORDER

Now on this 20th day of July, 2011, comes on for hearing the Petition filed herein seeking reinstatement of Petitioner's driving privilege pursuant to Section 302.060.1(9) R.S.Mo., following a ten-year denial of Petitioner's driving privilege.

Petitioner appears in person and by counsel, Paul J. Stingley. Respondent, although having been given notice of this hearing, appears not. Respondent has filed an Answer herein.

All parties present announce ready. Cause heard. Petitioner adduces evidence and rests. Argument from Petitioner. Evidence closed.

The Court, having been duly informed and upon the evidence adduced, does hereby FIND, ORDER AND ADJUDGE AS FOLLOWS:

1. ~~Petitioner has heretofore been convicted of driving while intoxicated more than twice.~~
2. Petitioner's last conviction for violating any law or ordinance relating to driving while intoxicated occurred in this Court on or about September 7, 2000, for events occurring on or about June 10, 2000.
3. As a result of Petitioner's convictions, the Missouri Department of Revenue revoked Petitioner's Missouri driving privilege and issued a denial of such privileges for a period of ten years

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commencing on October 28, 2000.

4. Ten years have expired since the date of conviction of the last offense of driving while intoxicated and ten years have expired since the commencement of the Department of Revenue's ten-year denial.

5. The Court has reviewed and taken judicial notice of Petitioner's Missouri driving record and a copy of Petitioner's Missouri State Highway Patrol Criminal Record Check, each of which were attached to the Petition filed herein.

6. Petitioner is not a person who is under the age of eighteen who operates a vehicle in the transportation of persons or property as classified in §302.015 (§302.060 (1));

7. Petitioner is not a person who is under the age of sixteen years (§302.060 (2));

8. More than one year has expired since Petitioner's revocation (§302.060(3));

9. Petitioner is not an habitual drunkard (§302.060 (4));

10. Petitioner is not addicted to the use of narcotics (§302.060 (4));

11. Petitioner is not a person who has previously been adjudged to be incapacitated who at the time of the filing of this Petition has not been restored to partial capacity (§302.060 (5));

12. Petitioner is not a person who, when required to take an examination, has failed to pass such examination (§302.060 (6));

13. ~~Petitioner does not have any unsatisfied judgment against him, as defined in Chapter 303 RSMo. (§302.060 (7));~~

14. Petitioner has not been convicted within one year prior hereto for violating the laws of the State of Missouri relating to failure to stop after an accident and disclose him identity (§302.060 (8));

15. Petitioner has not been convicted within one year prior hereto for violating the laws

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of the State of Missouri relating to driving a motor vehicle without the owner's consent (§302.060 (8)).

16. Petitioner is not ineligible under §302.063 because the Petitioner is not an illegal alien, but rather is a United States Citizen who is lawfully present in this Country.

17. Petitioner has not been denied a license because of a suspension, revocation or conviction in another State.

18. Petitioner does not have a suspension under the Non-Resident Violator Compact due to failure to respond to another State's citation.

19. Petitioner has not previously obtained a license through court action pursuant to Section 302.060.1(9).

20. Petitioner is qualified under Sections 302.010 to 302.540 R.S.Mo. for reinstatement.

21. Petitioner's habits and conduct show Petitioner to no longer pose a threat to the public safety of this state.

22. Petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years. In so finding, the Court has reviewed Section 302.060.1(9) R.S.Mo., which states, in pertinent part, as follows:

1. The director shall not issue any license and shall immediately deny any driving privilege:

....

(9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise

qualified pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;

23. The Court is further mindful of the recent appellate decision of Mayfield v. Director of Revenue, State of Missouri, 335 S.W.3d 572 (Mo. App. E.D. 2011) (ED94865).

24. The Court finds that the phraseology utilized in said Section 302.060.1(9), to wit: "If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years....", is unconstitutionally vague.

25. Petitioner is adjudged to be entitled to reinstatement of his driving privileges upon compliance with all other requirements mandated by law, i.e., payment of fees, re-testing and successful completion thereof, and the like.

26. The Court hereby Orders that Petitioner's driving privilege in the state of Missouri be reinstated pursuant to Section 302.060(9) R.S.Mo., subject to all reinstatement requirements, application for licensure, and successful completion of driver testing.



Wesley C. Dalton
Judge

Dated: 8-5-11

STATE OF MISSOURI
COUNTY OF MONTGOMERY
CERTIFIED TO BE A TRUE AND CORRECT COPY
OF THE ORIGINAL IN MY CUSTODY.
Judgment & order
GIVEN UNDER MY HAND AND SEAL OF OFFICE
DATE Aug 8 AD, 20 11
CIRCUIT CLERK
Robyn Schmidt CLERK
By: Deborah Kuehl DEPUTY

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Missouri Revised Statutes

Chapter 195 Drug Regulations Section 195.233

August 28, 2011

Unlawful use of drug paraphernalia, penalty.

195.233. 1. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425.

2. A person who violates this section is guilty of a class A misdemeanor, unless the person uses, or possesses with intent to use, the paraphernalia in combination with each other to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues in which case the violation of this section is a class D felony.

(L. 1989 S.B. 215 & 58, A.L. 1998 H.B. 1147, et al.)

Missouri Revised Statutes

Chapter 302 **Drivers' and Commercial Drivers' Licenses** **Section 302.060**

August 28, 2011

License not to be issued to whom, exceptions--reinstatement requirements.

302.060. 1. The director shall not issue any license and shall immediately deny any driving privilege:

- (1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;
- (2) To any person who is under the age of sixteen years, except as hereinafter provided;
- (3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;
- (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;
- (5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;
- (6) To any person who, when required by this law to take an examination, has failed to pass such examination;
- (7) To any person who has an unsatisfied judgment against such person, as defined in chapter 303, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, has been established;
- (8) To any person whose application shows that the person has been convicted within one year prior to such application of violating the laws of this state relating to failure to stop after an accident and to disclose the person's identity or driving a motor vehicle without the owner's consent;
- (9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving

while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;

(10) To any person who has been convicted twice within a five-year period of violating state law, or a county or municipal ordinance, of driving while intoxicated, or any other intoxication-related traffic offense as defined in subdivision (4) of subsection 1 of section 577.023, or who has been convicted of the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition. The director shall not issue a license to such person for five years from the date such person was convicted or pled guilty for involuntary manslaughter while operating a motor vehicle in an intoxicated condition or for driving while intoxicated or any other intoxication-related traffic offense as defined in subdivision (4) of subsection 1 of section 577.023 for the second time;

(11) To any person who is otherwise disqualified pursuant to the provisions of sections 302.010 to 302.780, chapter 303, or section 544.046;

(12) To any person who is under the age of eighteen years, if such person's parents or legal guardians file a certified document with the department of revenue stating that the director shall not issue such person a driver's license. Each document filed by the person's parents or legal guardians shall be made upon a form furnished by the director and shall include identifying information of the person for whom the parents or legal guardians are denying the driver's license. The document shall also contain identifying information of the person's parents or legal guardians. The document shall be certified by the parents or legal guardians to be true and correct. This provision shall not apply to any person who is legally emancipated. The parents or legal guardians may later file an additional document with the department of revenue which reinstates the person's ability to receive a driver's license.

2. Any person whose license is reinstated under the provisions of subdivisions (9) and (10) of subsection 1 of this section shall be required to file proof with the director of revenue that any motor vehicle operated by the person is equipped with a functioning, certified ignition interlock device as a required condition of reinstatement. The ignition interlock device shall further be required to be maintained on all motor vehicles operated by the person for a period of not less than six months immediately following the date of reinstatement. If the person fails to maintain such proof with the director, the license shall be suspended for the remainder of the six-month period or until proof as required by this section is filed with the director. Upon the completion of the six-month period, the license shall be shown as reinstated, if the person is otherwise eligible.

(RSMo 1939 § 8446, A.L. 1951 p. 678, A.L. 1961 p. 487, A.L. 1982 S.B. 513, A.L. 1983 S.B. 44 & 45, A.L. 1984 H.B. 1575 Revision, A.L. 1987 S.B. 230, A.L. 1989 1st Ex. Sess. H.B. 3, A.L. 1991 S.B. 125 & 341, A.L. 1996 H.B. 1169 & 1271 merged with S.B. 722, A.L. 1999 S.B. 19, A.L. 2005 S.B. 37, et al., A.L. 2008 S.B. 930 & 947, A.L. 2009 H.B. 62)

A7

Your Missouri Courts

THE JUDICIAL BRANCH OF STATE GOVERNMENT

Clerk Handbooks

Supreme Court Rules	
<p>Rule 55 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Pleadings and Motions Pleading Required</p>	<p>55.01 January 19, 1973 July 1, 2010</p>

55.01. Pleading Required

There shall be a petition and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party petition, if a person who was not an original party is summoned under the provisions of Rule 52.11; and there shall be a third-party answer, if a third-party petition is served. A defense consisting of an affirmative avoidance to any matter alleged in a preceding pleading must be pleaded. No other pleading shall be required except as ordered by the court.

(Adopted Jan. 19, 1973, eff. Sept. 1, 1973, eff. July 1, 2010.)

COMMITTEE NOTE - 1974

This is substantially the same as prior Rule 55.01 with the addition of the second sentence to conform to > Jaycox v. Brune 434 S.W.2d 539 (Mo.1968).

Compare: Rule 7(a) of the Federal Rules of Civil Procedure.

A8

F 25

CRIMINAL DIVISION

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