

Summary of SC90317, *Natalie R. Ross v. Director of Revenue*

Appeal from Platte County, Judge Daniel M. Czamanske

Argued and submitted Dec. 16, 2009; opinion issued Feb. 9, 2010

Attorneys: Ross was represented by Jeffrey S. Eastman of Keleher & Eastman of Gladstone, (816) 452-6030; and the director was represented by Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman challenges the revocation of her driver's license for refusing to submit to a breathalyzer test, alleging she was not "arrested" properly under the warrantless DWI statute. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment upholding the revocation of the woman's driver's license. Nothing in the warrantless DWI criminal statute compels its application to a civil revocation statute, and here, the woman's arrest for possession of drug paraphernalia as well as careless and imprudent driving provide the reasonable grounds to satisfy the revocation statute even before or without her subsequent DWI arrest. Judge Gary M. Gaertner – a judge on the Missouri Court of Appeals, Eastern District – sat by special designation for Judge Zel M. Fischer.

Facts: A police officer sent to investigate a report of a woman standing on the shoulder of an interstate did not see the woman immediately but followed fresh scrape marks on the roadway down an embankment and discovered a vehicle with extensive damage to its front end and driver's side. At approximately 2:15 a.m., the officer discovered Natalie Ross in the front passenger seat and a man lying across the rear seats. Neither was injured, but the officer noticed that Ross' eyes were watery and bloodshot and that her speech was impaired. The vehicle emitted a strong odor of intoxicants, and the officer saw in the driver's seat a marijuana pipe that contained the residue and odor of marijuana. Ross denied that she had been walking on the side of the interstate. She also denied driving the vehicle, instead identifying the driver as a friend she could not name. When Ross exited the vehicle, the officer saw she was missing a shoe. The officer found footprints in the snow from the roadway to the driver's side of the vehicle that appeared to have been made by high-heeled women's shoes, and he found Ross' missing shoe about halfway up the hillside. At approximately 2:20 a.m., the officer arrested Ross for possession of drug paraphernalia as well as careless and imprudent driving. Because of Ross' lack of shoes and the cold temperature, the officer chose not to administer field sobriety tests at the scene and, instead, drove her to a detention facility. At approximately 3:50 a.m., Ross was given – and failed – a series of field sobriety tests and was arrested for driving while intoxicated, to which she later pleaded guilty. The officer read Ross the implied consent law for chemical testing for blood alcohol content, pursuant to section 577.020, RSMo 2008, and she refused to submit to a breathalyzer. Based on her refusal to submit to the breathalyzer, the director of revenue sought to revoke Ross' driver's license pursuant to section 577.041, RSMo Supp. 2008. Ross sought judicial review in the circuit court, arguing her license could not be revoked because the officer did not arrest her for DWI within 90 minutes after she allegedly was driving, as

required by section 577.039, RSMo 2000. The trial court rejected her arguments and upheld the revocation of her driver's license. Ross appeals.

AFFIRMED.

Court en banc holds: The trial court did not err in finding that Ross was “arrested” in satisfaction of section 577.041.4(1). Although the warrantless DWI arrest statute, section 577.039, requires that such an arrest be made no more than 90 minutes after the person was driving, there is nothing in its plain language that compels application of its time limitation to the revocation statute, section 577.041. By its terms, section 577.039 applies to criminal violations for driving while intoxicated and driving with excessive blood-alcohol content. Civil license-revocation proceedings under section 577.041 are unrelated to the criminal provisions of the warrantless DWI arrest statute. The lawfulness of Ross’ DWI arrest under the provisions of section 577.039, therefore, had no impact on whether she was “arrested” in satisfaction of the revocation statute. Further, nothing in this Court’s opinion in *Reed v. Director of Revenue*, 184 S.W.3d 564 (Mo banc 2006) (holding that the requirements of section 577.039 apply to proceedings under section 577.037, RSMo, relating to the admissibility of chemical testing results into evidence), compels its application here. Further, nothing in section 577.041.4(1) of the revocation statute requires the court to find that a person was arrested for DWI, and the implied consent law applies to any driver arrested for any offense arising out of acts the arresting officer has reasonable grounds to believe were committed while the person was driving while intoxicated. Here, Ross was “arrested” in satisfaction of the revocation statute because she was under arrest for possession of drug paraphernalia as well as careless and imprudent driving.