

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
APPELLANT
vs.**

**ANTHONY R. MIGNONE,
RESPONDENT**

DOCKET NUMBER WD75654

DATE: OCTOBER 22, 2013

Appeal from:

The Circuit Court of Platte County, Missouri
The Honorable Dennis C. Eckold, Judge

Appellate Judges:

Special Division: Zel Fischer, Special Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

Attorneys:

Alyssa M. Mayer, for Appellant

Jeffrey S. Eastman, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, APPELLANT

v.

ANTHONY ROBERT MIGNONE, RESPONDENT

WD75654

Platte County, Missouri

Before Special Division: Zel Fischer, Special Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

The State appeals the judgment of the motion court dismissing with prejudice the charge against Anthony Mignone for driving while intoxicated in violation of section 577.010, RSMo. The motion court's dismissal was based on section 577.037.5, RSMo, which requires dismissal with prejudice of a driving while intoxicated charge where the defendant has had a properly administered chemical breath analysis resulting in a blood alcohol content reading of less than eight hundredths of a percent and none of three evidentiary exceptions are met. The State contends that trial court erred in dismissing the charge for lack of substantial evidence because "substantial evidence" is a legal standard and was met by the evidence presented by the State at the hearing on the motion to dismiss. The State also claims the trial court erred in dismissing the charge on the grounds that the State did not present evidence that the breath sample was unreliable due to a lapse of time, because the statute only requires the State to produce some evidence that the breath test was unreliable due to a lapse of time, which it did through testimony of a witness and breath test evidence. The judgment is affirmed.

AFFIRMED

Special Division holds:

Section 577.037.5 places the burden on the State to cause the court to find a dismissal of a charge of driving while intoxicated unwarranted. It also requires the court to weigh evidence and evaluate witness credibility in order to make such finding. The defendant is not required to produce any evidence and the court is not required to accept as true all evidence submitted by the State. In the instant case, there was favorable evidence supporting dismissal, and the State did not present evidence regarding the reliability of the breath tests based on their timing, including the scientific significance of the differing results.

Opinion by: Victor C. Howard, Judge

Date: October 22, 2013

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