

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

RYAN MCPHAIL,) ED101307
)
 Appellant,) Appeal from the Circuit Court
) of St. Louis County
 v.) 13SL-AC32564
)
 DIRECTOR OF REVENUE,) Honorable Dale W. Hood
)
 Respondent.) Filed: December 16, 2014

Ryan McPhail (Appellant) appeals the trial court’s judgment sustaining the revocation of Appellant’s driver’s license. Appellant argues that the judgment is unsupported by substantial evidence in that the Director of Revenue (Director) did not prove Appellant voluntarily and unequivocally refused to submit to the test.

REVERSED AND REMANDED.

Division Three Holds: The Director relied solely on an Alcohol Influence Report (AIR) and the AIR’s narrative of Police Officer Jeffrey DeVorss (Officer DeVorss) as its only evidence in meeting its burden to show Appellant refused to submit to a breath test. The narrative lacks detail regarding whether Officer DeVorss asked Appellant again to take the breath test after having twenty minutes to contact his attorney, as required by statute. The Director did not call Officer DeVorss to testify, and this Court cannot supply missing clarification or detail on the element of refusal for the Director where the Director bears the burden of proof. Thus, the trial court’s judgment is unsupported by substantial evidence.

Opinion by: Gary M. Gaertner, Jr., J.
Kurt S. Odenwald, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: John W. Peel
Attorney for Respondent: Rachel M. Jones

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