

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED91727
)	
vs.)	Appeal from the Circuit Court of
)	St. Louis County
STEPHEN J. DVORAK, Appellant.)	
)	Filed: June 30, 2009

OPINION SUMMARY

Stephen J. Dvorak (“Defendant”) appeals from the judgment of the Circuit Court of St. Louis County, following a jury trial, convicting him of possessing a loaded firearm while intoxicated in violation of Mo. Rev. Stat. § 571.030.1(5). Defendant claims that the trial court erred in: (1) admitting evidence that he refused to submit to a breathalyzer test because, (a) such evidence was inadmissible under Section 577.041 and, (b) the admission violated his right to due process under the Fourteenth Amendment of the United States Constitution; (2) refusing to grant his motion for mistrial based on the State’s comments during closing argument that he was “dangerous” and a “vigilante”; and (3) denying his motion for judgment of acquittal for insufficient evidence of intoxication.

AFFIRMED.

Division One Holds: The trial court did not err in: (1) admitting evidence of Defendant’s refusal to submit to a breathalyzer because: (a) the admissibility of said evidence was not governed by Section 577.041, and (b) the admission was not fundamentally unfair constituting a violation of Defendant’s Fourteenth Amendment due process rights; (2) refusing to grant a mistrial because Defendant failed to demonstrate that the prosecutor’s comments in closing argument had a “decisive effect” on the jury; and (3) denying Defendant’s motion for judgment of acquittal because officer testimony of Defendant’s intoxication was sufficient to sustain the jury’s guilty verdict.

Opinion by: Patricia L. Cohen, J. Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur.

Attorney for Appellant: Stephen B. Evans

Attorneys for Respondent: Shaun J. Mackelprang and James B. Farnsworth

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