

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JERRY A. HOLLON,
RESPONDENT**

vs.

**DIRECTOR OF REVENUE, STATE OF MISSOURI,
APPELLANT**

WD68507

DATE: DECEMBER 9, 2008

Appeal from:
CALDWELL COUNTY CIRCUIT COURT
THE HONORABLE RICHARD B. ELLIOTT, JUDGE

Appellate Judges:
Division Three: Ellis, P.J., Holliger and Dandurand, JJ.

Attorneys:
Theodore A. Bruce, Esq., Jefferson City, MO., for Appellant

Jonathan M. Guilfoil, Esq., Kansas City, MO, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

JERRY A. HOLLON,

Respondent

v.

**DIRECTOR OF REVENUE,
STATE OF MISSOURI,**

Appellant

No. WD 68507

Caldwell County, Missouri

Before Division Three Judges: Ellis, P.J., Holliger and Dandurand, JJ.

The Director of Revenue for the State of Missouri appeals from a judgment entered in the Circuit Court of Caldwell County ordering the Director to reinstate the driving privileges of Jerry Hollon. The Director had revoked Hollon's driving privileges pursuant to § 577.041 for refusing to submit to a chemical test of his blood alcohol level following his arrest for driving while intoxicated.

REVERSED.

Division Three holds:

- (1) Where Hollon conceded that he was speeding, told the officer that he had consumed a couple of drinks, had alcohol on his breath, that his eyes were glassy and watery, the arresting officer had sufficient reason to suspect Hollon may have been driving while intoxicated and was justified in deciding to administer a portable breath test as authorized by § 577.021.
- (2) The trial court's finding that the arresting officer "actually had reason to believe or know that [Hollon] had consumed alcoholic beverages within 15 minutes of the test, and should have known the PBT would not have any reliability under the circumstances" is not supported by the record. The videotape of the stop reflects that Hollon told the officer that he last had a drink in Laclede, which was 42 miles from where the stop occurred, that Hollon indicated that it had been more than 10 minutes since he had a drink, and the officer administered the test six minutes later.
- (3) While it may well have been prudent to wait and observe Hollon for a longer period before administering the test, absent evidence that the officer should have believed the results were invalid, a trained and prudent officer could and would reasonably rely on the results of the portable breath test administered to Hollon in determining whether reasonable grounds existed for an arrest.

(4) When the portable breath test results are considered in conjunction with the alcohol on Hollon's breath, his admission that he had been drinking, and his glassy and watery eyes, a cautious, trained, and prudent officer would believe he had reasonable grounds to arrest Hollon. The circuit court erred in finding to the contrary.

Opinion by Ellis, J.

December 9, 2008

This summary is UNOFFICIAL and should not be quoted or cited.