

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVE THOMAS ROBERSON II,

RESPONDENT,

v.

**TRISH VINCENT, DIRECTOR OF REVENUE FOR THE MISSOURI
DEPARTMENT OF REVENUE,**

APPELLANT.

**DOCKET NUMBER WD69581
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 23, 2009

**Appeal From:
MORGAN COUNTY CIRCUIT COURT
THE HONORABLE KEVIN PAUL SCHEHR, JUDGE**

**Appellate Judges:
DIVISION ONE: ALOK AHUJA, Presiding Judge, HAROLD L. LOWENSTEIN,
Judge, and THOMAS H. NEWTON, Chief Judge**

**Attorneys:
James A. Chenault, III, Esq., Jefferson City, MO, for appellant.**

Dustin G. Dunklee, Esq., Versailles, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION
SUMMARY**

COURT OF APPEALS -- WESTERN DISTRICT

DAVE THOMAS ROBERSON II,

RESPONDENT,

v.

**TRISH VINCENT, DIRECTOR OF REVENUE FOR THE MISSOURI
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WD69581

Morgan County

Before Division One Judges: Alok Ahuja, Presiding Judge, Harold L. Lowenstein, Judge, and Thomas H. Newton, Chief Judge

The Director of Revenue appeals the trial court's judgment setting aside the suspension of the driving privileges of Dave Roberson. The Director argues that the court improperly excluded evidence at trial, and the excluded evidence was necessary for the Director to establish a *prima facie* case under section 302.535.¹ At trial, the Director attempted to offer the results of a blood sample analysis and the testimony of the crime lab analyst regard those samples into evidence in order to prove that Roberson's blood alcohol content exceeded 0.08 %. Roberson objected to any testimony with

¹ All statutory references are to RSMo (2000) unless otherwise indicated.

respect the blood test results, arguing that the Director failed to show a non-alcoholic antiseptic was used in the blood draw attempts as required by section 577.029. The trial court sustained the objection and excluded any evidence related to the blood sample analysis.

Reversed and remanded.

Division One holds:

In excluding the blood sample analysis from evidence, the trial court erroneously applied the version of section 577.029 in effect on the date of Roberson's arrest, rather than the newly amended version in effect on the date of trial, section 577.029, RSMo, Supp. 2007. Procedural statutes and administrative rules apply retrospectively unless the enactment reveals contrary intent. *Blechle v. Director of Revenue*, 11 S.W.3d 655, 658 (Mo. App. 1999). Because the trial court erroneously applied the law in excluding evidence of the blood test results, the judgment of the trial court is reversed and the case is remanded.

Opinion by: Harold L. Lowenstein, Judge

June 23, 2009

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