

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
HEIDI P. BURNS**

APPELLANT,

RESPONDENT.

DOCKET NUMBER WD73127

DATE: April 12, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Keith Marquart, Judge

Appellate Judges:

Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Attorneys:

Kristina S. Zeit, St. Joseph, MO, for appellant.

George S. Miller and Samuel L. Scroggie, Maryville, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

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v.

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No. WD73127

Buchanan County

Before Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Heidi Burns was charged with driving while intoxicated--under the influence of "a drug or drugs." The State appeals from a pretrial order of the trial court granting Burns's motion to exclude the admission at trial of Burns's medical records including, but not limited to, any tests on Burns's blood or urine, where the only foundation for the admission of the records was expected to be a business records affidavit.

Appeal Dismissed.

(1) The State may appeal interlocutory orders or judgments, but only where permitted by statute.

(2) Section 547.200.1(3) permits the State to appeal from an order or judgment which has the substantive effect of suppressing evidence.

(3) The suppression of evidence refers to the exclusion of evidence which has been illegally obtained, and not to evidence which is inadmissible because of the application of a rule or principle of evidence.

(4) The trial court's pretrial exclusion of Burns's medical records was based on the application of a rule or principle of evidence--sufficient foundation--and not on the suppression of evidence which had been illegally obtained.

(5) The State has no right to seek an interlocutory appeal.

(6) Generally, a remedial writ is the proper route for the State to seek review of interlocutory orders in a criminal case in the absence of a statutory right to appeal.

Opinion by Cynthia L. Martin, Judge

April 12, 2011

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