

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
JONATHAN ANDREW  
BRIGHTMAN**

**RESPONDENT,**

**APPELLANT.**

---

DOCKET NUMBER WD74299

DATE: October 2, 2012

---

Appeal From:

Boone County Circuit Court  
The Honorable Gary M. Oxenhandler, Judge

---

Appellate Judges:

Special Division: Zel Fischer, Special Judge, Presiding, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

---

Attorneys:

Brent M. Nelson, Columbia, MO, for respondent.

Robert S. Adler, St. Louis, MO, for appellant.

---

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

v.

JONATHAN ANDREW BRIGHTMAN,

APPELLANT.

No. WD74299

Boone County

Before Special Division: Zel Fischer, Special Judge, Presiding, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

Jonathon Brightman appeals his jury conviction of driving while intoxicated.

**REVERSED AND REMANDED.**

**Special Division holds:** The trial court did not abuse its discretion in (1) finding that there was probable cause for Brightman's arrest, (2) refusing to apply collateral estoppel from an administrative hearing which found there was no probable cause for his arrest, and (3) giving a standard MAI-CR instruction to the jury instead of a not in MAI instruction proffered by Brightman. There was further no reversible error in assessing jury costs to Brightman because he failed to preserve the issue for appeal by paying the costs without objection, and no plain error was committed in admitting Brightman's statements made to police after he was arrested.

However, it *was* an abuse of discretion to allow the prosecution to present, over objection, a misstatement of the law in closing argument, wherein the State argued that it was not required to prove the defendant was "drunk," the effect of which was to lower the State's burden of proof. We hold the error and prejudice were compounded when Brightman was not allowed to argue the appropriate standard in his closing argument, thus giving the jury vague and conflicting definitions of the elements of the offense. Conviction is reversed and the cause remanded for a new trial.

Opinion by Gary D. Witt, Judge

October 2, 2012

\*\*\*\*\*

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