

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

ALICIA L. McKAY,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

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**DOCKET NUMBER WD74458**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** August 7, 2012

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**APPEAL FROM**

The Circuit Court of Clay County, Missouri  
The Honorable Donald T. Norris, Judge

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**APPELLATE JUDGES**

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

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**ATTORNEYS**

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Attorneys for Appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

ALICIA L. McKAY, )  
)  
Respondent, )  
v. ) **OPINION FILED:**  
) **August 7, 2012**  
DIRECTOR OF REVENUE, )  
)  
Appellant. )

WD74458

Clay County

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

The Director of the Department of Revenue (“Director”) appeals the judgment of the Circuit Court of Clay County, Missouri, setting aside the revocation of Alicia Lynn McKay’s (“McKay”) driver’s license. The Director argues that McKay’s initial refusal to submit to a *breath* test combined with her subsequent voluntary and warrantless submission to *blood* testing as requested by law enforcement still constitutes a refusal as contemplated by section 577.041.

**AFFIRMED.**

**Special Division holds:**

Where McKay’s blood alcohol content was objectively determined through consensual, warrantless chemical testing—even if McKay initially refused the test—the purpose of the statutory scheme is fulfilled because the police have collected admissible evidence regarding McKay’s level of intoxication. It is inconsistent for McKay to both (1) be tested, without refusing the chemical test requested by the officer and without a search warrant ordering the chemical test, and (2) have her license revoked for refusal to submit to a chemical test.

**Opinion by: Mark D. Pfeiffer, Judge**

August 7, 2012

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.