

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JW BRUTON ROTHWELL

**v.
DIRECTOR OF REVENUE**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD76060

DATE: December 10, 2013

Appeal From:

Platte County Circuit Court
The Honorable Dennis C. Eckold, Judge

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

Attorneys:

JW Bruton Rothwell, Respondent Pro Se.

Rachel M. Jones, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JW BRUTON ROTHWELL,

RESPONDENT,

v.

DIRECTOR OF REVENUE,

APPELLANT.

No. WD76060

Platte County

Before Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

The Director of the Department of Revenue appeals the trial court's judgment setting aside the revocation of JW Bruton Rothwell's driver's license pursuant to section 577.041. The Director argues that Rothwell's initial refusal to submit to a breath test was not negated by his subsequent voluntary submission to a blood test.

Affirmed.

Division Four holds:

(1) Section 577.041 has been construed by our courts to provide that a driver's license cannot be administratively revoked if the driver *voluntarily submits* to chemical testing that yields a satisfactory measure of the driver's blood alcohol content. This construction is consistent with the statute's purpose of encouraging consent to chemical testing so the police are able to collect admissible evidence of intoxication. That purpose is served whether a driver consents to chemical testing initially, or following initial refusal. However, should a driver initially refuse to submit to chemical testing, the arresting officer *has the choice* of either permitting the driver to withdraw his refusal and submit to chemical testing or of letting the driver's initial refusal stand as grounds to administratively revoke the driver's license.

(2) Section 577.020.2 does not mandate submission to two different types of chemical tests regardless of the circumstances but instead implies consent to a second type of chemical test if initial voluntary submission to a different type of test fails to yield a satisfactory measure of intoxication.

Opinion by Cynthia L. Martin, Judge

December 10, 2013

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