

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

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Respondent,

v.

MARVIN D. BESENDORFER,

Appellant.

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**DOCKET NUMBER WD76818**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 2, 2014

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**APPEAL FROM**

The Circuit Court of Bates County, Missouri  
The Honorable James K. Journey, Judge

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**JUDGES**

Division I: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

Chris Koster, Attorney General  
Evan J. Buchheim, Assistant Attorney General  
Jefferson City, MO

Attorneys for Respondent,

Kent Denzel, Assistant Public Defender  
Columbia, MO

Attorney for Appellant.

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

STATE OF MISSOURI, )  
)  
) **Respondent,** )  
v. ) **OPINION FILED:**  
) **September 2, 2014**  
MARVIN D. BESENDORFER, )  
)  
) **Appellant.** )

**WD76818**

**Bates County**

**Before Division I Judges:** Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and Karen King Mitchell, Judges

Marvin D. Besendorfer appeals his conviction for driving while intoxicated (“DWI”) following a bench trial in the Circuit Court of Bates County, Missouri. Besendorfer challenges the sufficiency of the evidence to support his conviction.

Besendorfer argues that the State failed to prove that he was “operating” the truck when it was stuck in the snow with the engine running. He claims that the evidence did not show that he caused the truck to function as a vehicle in that there was no evidence that he placed the truck in motion.

**AFFIRMED.**

**Division I holds:**

“Operation” of a motor vehicle does not require motion. Besendorfer admitted that he was the only person in the truck when the trooper found him asleep and intoxicated in the truck. He admitted that the truck slid off the road the same evening the trooper found him asleep in the truck and not long after he claims to have sent his girlfriend off into the extreme cold and snow to walk three to five miles away to retrieve another vehicle to pick him up (even though he claims to have feared calling anyone else to pick the two of them up because he did not want anyone driving in the dangerous conditions). Besendorfer admitted that the truck’s engine was running, the radio was on when the trooper found him, and he may have started the engine. He

admitted that he manipulated the temperature to the heater in the truck. He also admitted that his feet were positioned near the gas and brake pedals as he was sleeping in the cab of the truck.

Even though Besendorfer and his girlfriend claimed that Besendorfer's girlfriend had been the driver of the truck, the trooper observed no footprints coming from the truck or on the roadside that would have corroborated that a person walked away from the truck after it slid off the roadway and into the ditch.

The State presented sufficient direct and circumstantial evidence for a reasonable trier of fact to find beyond a reasonable doubt that Besendorfer had "operated" his vehicle while in an intoxicated condition. Accordingly, the trial court did not err in overruling Besendorfer's motion for judgment of acquittal and in finding him guilty of "operating" a motor vehicle while intoxicated in violation of section 577.010.

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

September 2, 2014

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