

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

STEVEN WILLIAM SHOEMAKER

Appellant

DOCKET NUMBER WD76971

DATE: November 18, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Jack Richard Grate, Judge

Appellate Judges:

Division Three
Gary D. Witt, P.J., Joseph M. Ellis, and Thomas H. Newton, JJ.

Attorneys:

Jeffrey Eastman, Gladstone, MO

Counsel for Appellant

Attorneys:

Joseph Yasso, Independence, MO

Counsel for Respondent

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

STATE OF MISSOURI, Respondent, v.
STEVEN WILLIAM SHOEMAKER, Appellant

WD76971

Jackson County

Before Division Three Judges: Witt, P.J., Ellis, and Newton, JJ.

An officer stopped Shoemaker for speeding and smelled “the odor of an intoxicating beverage” coming from the vehicle. After Shoemaker failed to provide identification, the officer ran his name through police dispatch. A dispatcher told him that Shoemaker’s license had been suspended and that he had outstanding warrants. Shoemaker was arrested and placed in police detention; while there, he refused to perform standard field sobriety tests. However, he did submit to a breathalyzer test – seventy-three minutes after the arrest – and after the detective read him the Missouri Implied Consent Law. The breath sample resulted in a reading of .084. The officer then advised Shoemaker of his *Miranda* rights. Shoemaker agreed to an interview, and he admitted to driving the vehicle, but not to consuming alcohol. Shoemaker was charged by information with driving a motor vehicle with an excessive blood alcohol content (BAC) and driving while revoked (DWR).

After a bench trial, Shoemaker was convicted of the charges and sentenced to 30 days of imprisonment for driving with an excessive BAC and assessed a fine of \$300. It assessed an additional fine of \$300 for DWR. Shoemaker appeals.

AFFIRMED IN PART AND REVERSED IN PART.

Division Three Holds:

Shoemaker raises three points. In the first point, he challenges the sufficiency of the evidence for the driving with an excessive BAC conviction because the State failed to show that he was operating or driving a motor vehicle while possessing “an excessive blood alcohol content.” He claims that “there was no evidence” of the “blood alcohol concentration” *at the time* that he physically operated or drove a motor vehicle. It has long been recognized by this court that, after it is ingested, alcohol must be absorbed into the blood stream. In this case, the BAC result was only slightly over the legal limit of .08. When faced with a record of facts supporting conflicting inferences, however, we must presume that the trier of fact resolved any such conflicts in favor of the prosecution and must defer to that resolution. Therefore, it follows that we must presume that the trial court implicitly found that Shoemaker consumed a sufficient quantity of alcohol long enough before his arrest that the alcohol was in the process of being eliminated from his bloodstream, supporting a finding that his BAC was over .08 at the time he drove. Accordingly, point one is denied.

In the second point, Shoemaker challenges the sufficiency of the evidence for the DWR conviction because the State “failed to sustain its burden of proof” that he was operating or driving a motor vehicle with a revoked license. He claims that the State “failed to prove through competent admissible evidence the actual status of [his] Missouri driving privilege.” The State

contends that it may reasonably be inferred that Shoemaker was aware that his license had been revoked because he did not produce it to the detective when requested. The law provides that such an inference simply cannot stand on its own, absent additional evidentiary support, such as a driving record. The State failed to meet its burden because it provided no additional evidentiary support that Shoemaker had been notified of the suspension of his license or that he had any knowledge that it was suspended. Point two is granted.

In the third point, Shoemaker challenges the admissibility of information provided to Hargis from a police dispatcher about his driver's license status and the detective's associated testimony because it "consisted of a hearsay statement upon a hearsay statement" upon which the trial court "erroneously and prejudicially" relied as "purported evidence of [his] driver's license status at the time of the stop." An officer may rely on information from police dispatch; such third-party statements are generally admissible to establish probable cause, even though they are hearsay. Out-of-court statements that explain subsequent conduct are admissible as supplying relevant background and continuity. Hargis testified that he was informed by police dispatch that Shoemaker's license had been revoked and that he had existing warrants. This information, coupled with the odor of alcohol emanating from the vehicle and Shoemaker's refusal to produce a valid driver's license, supported the officer's finding of probable cause to detain him for further investigation. The statements from police dispatch provided relevant background to support suspicions that were already in existence. Thus, the trial court did not err in admitting the evidence. Point three is denied.

For the above reasons, we affirm the conviction of driving with an excessive BAC and reverse the conviction of DWR.

Opinion by Thomas H. Newton, Judge

November 18, 2014

* * * * *

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