

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SHANE ADAM CARTER

RESPONDENT,

**v.
DIRECTOR OF REVENUE,
STATE OF MISSOURI**

APPELLANT.

DOCKET NUMBER WD77518

DATE: February 17, 2015

Appeal From:

Clay County Circuit Court
The Honorable Louis Angles, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Jeffrey Scott Eastman, Gladstone, MO, for respondent.

Daniel N. McPherson, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SHANE ADAM CARTER,

RESPONDENT,

v.

**DIRECTOR OF REVENUE,
STATE OF MISSOURI,**

APPELLANT.

No. WD77518

Clay County

Before Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

The Director of Revenue appeals a trial court judgment setting aside the revocation of Shane Adam Carter's driving privileges. Director argues that the trial court erred in excluding the results of Carter's breath test for the stated reason that the breath testing device was not properly calibrated pursuant to a Department of Health and Senior Services regulation in effect at the time of Carter's arrest.

Affirmed.

Special Division holds:

The trial court did not err in excluding the results of Carter's breath test because the Director failed to show that the police properly certified the breath testing device used to test Carter against a National Institute of Standards and Technology thermometer or thermocouple in 2013, as required by Department of Health and Senior Services regulation 19 C.S.R. 25-30.051(4). Because the Director only provided evidence of certification in 2014, we affirm the trial court's decision setting aside the revocation of Carter's driving privileges.

Opinion by Cynthia L. Martin, Judge

February 17, 2015

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