

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

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Respondent,

v.

SIDNEY L. CLARK III,

Appellant.

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**DOCKET NUMBER WD78732**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** August 16, 2016

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Jack R. Grate, Judge

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**JUDGES**

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

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**ATTORNEYS**

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Gregory L. Barnes, Assistant Attorney General  
Jefferson City, MO

Attorneys for Respondent,

Jeannie Willibey, Assistant Appellate Defender  
Kansas City, 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:**  
) **August 16, 2016**  
SIDNEY L. CLARK III, )  
)  
Appellant. )

WD78732

Jackson County

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

Mr. Sidney L. Clark III (“Clark”) was convicted of the class C felony of driving while intoxicated (“DWI”) as an aggravated offender and of operating a motor vehicle without a valid license following a bench trial in the Circuit Court of Jackson County, Missouri (“trial court”). Clark appeals, challenging the admission and the sufficiency of the evidence to support his DWI conviction as an aggravated offender.

Clark does not contest his prior DWI conviction from Sweet Springs as a prior intoxication-related offense, nor does he contest that the State properly adduced evidence and proved that Clark’s criminal history included two DWI convictions from Grandview and Parkville.

Rather, Clark asserts that: (1) the *officers’* statements in the respective Alcohol Influence Reports (AIR) about the factual basis for the Grandview and Parkville DWI convictions constitute inadmissible hearsay and (2) violate Clark’s Confrontation Clause rights; and (3) without the *officers’* testimonial hearsay observations contained within the Grandview AIR and Parkville AIR, there was insufficient admissible evidence in the record to support Clark’s enhanced DWI conviction. The crux of Clark’s third argument is that because the Grandview and Parkville municipal ordinances criminalize broader conduct than section 577.010.1, and because the State presented no competent evidence of the facts underlying Clark’s DWI convictions in Grandview and Parkville, the State failed to present sufficient evidence that those

convictions could qualify as intoxication-related offenses for sentence enhancement under section 577.023.

**AFFIRMED.**

**Special Division holds:**

1. To the extent the challenged documents contained hearsay, section 302.312 generally provides an exception to the hearsay rule for certified records of the Department of Revenue and authorizes the evidentiary use of Department of Revenue records. That said, this hearsay exception does not address Clark’s Confrontation Clause objection as to the substance of alleged testimonial hearsay within the Department of Revenue records.

2. We need not decide whether the trial court improperly admitted evidence from the Grandview AIR and Parkville AIR that may have contained testimonial hearsay by the *officers* reporting their personal observations because the reports also included *Clark’s* non-hearsay admissions—admissions that provided substantial evidence to support the trial court’s judgment.

3. In the Grandview AIR, Clark admitted that he had been “driving” before being pulled over by the officer and after he had been drinking “mixed drinks.” In the Parkville AIR, Clark admitted that he had been “operating” his vehicle after drinking “seven beers and one scotch on the rocks.” The unlawful *operation* or *driving* of a vehicle comports with the statutory definition of “driving” as contemplated and defined in section 577.001.2. Accordingly, the State’s evidence was sufficient to prove that Clark had three prior intoxication-related offenses and was an aggravated offender under section 577.023.1(1).

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

August 16, 2016

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