

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

VERONICA MULLIN,

Appellant,

v.

DIRECTOR OF REVENUE,

Respondent.

DOCKET NUMBER WD80866

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 7, 2018

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Michael W. Bradley, Judge

JUDGES

Special Division: Fischer, Sp. J., and Pfeiffer and Witt, JJ.

CONCURRING.

ATTORNEYS

Benjamin S. Faber, Columbia, MO, Attorney for Appellant.

Joshua D. Hawley, Attorney General, and Morgan L. Brewington, Appellate Counsel, Missouri
Department of Revenue, Jefferson City, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

VERONICA MULLIN, Appellant,
v.
DIRECTOR OF REVENUE, Respondent.

WD80866

Boone County

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

Ms. Veronica Mullin (“Mullin”) appeals from the judgment of the Circuit Court of Boone County, Missouri (“trial court”), upholding the Director of Revenue’s (“Director”) suspension of Mullin’s driver’s license under section 302.505.1 after her arrest for driving a motor vehicle while intoxicated (“DWI”). Mullin contends that law enforcement provided her with false and misleading information upon which to base her decision as to whether to submit to a chemical test of her breath in violation of her right to due process and in contravention of the Missouri Implied Consent Law, thereby rendering the breath test result inadmissible.

AFFIRMED.

Special Division holds:

1. If a driver refuses to submit to chemical analysis to determine blood alcohol content, that driver’s license is subject to revocation pursuant to section 577.041. The statute demands that a law enforcement officer provide an arrestee with information upon which the arrestee may make a voluntary, intentional, and informed decision as to whether or not to submit to the chemical test. If the warning either fails to inform the arrestee of all of the consequences of refusal or misleads the arrestee into believing that the consequences of refusal are different than the law actually provides, the warning fails because it prejudices the arrestee’s decisional process and renders the arrestee’s decision uninformed and non-consensual. The standard for reviewing the sufficiency of the “implied consent” warning is actual prejudice; that is, was the warning so deficient as actually to prejudice the arrestee’s decision-making process.

2. It is uncontroverted that the officers gave Mullin the opportunity to consult with an attorney and that one of the officers read the implied consent warning to Mullin twice, informing her of all the consequences of a refusal to submit a breath sample. The second officer responded to one of Mullin’s numerous questions concerning the consequences if she refused to submit to a chemical test of her breath by saying: “You will be charged with a state misdemeanor instead of a city infraction and your license will be immediately revoked for one year.” While the second officer did misspeak when he called a municipal DWI ordinance violation an “infraction” rather than a misdemeanor, he did not make promises to Mullin regarding punishment. The officer’s response did not mislead Mullin into believing that the consequences of refusal were different than

the law actually provides. He merely explained to her that in his experience, drivers who refused to take the breathalyzer test were charged with a state violation while drivers who provided a breath sample were charged with a municipal violation. Accordingly, the warning was sufficient for the purposes of due process.

Opinion by: Mark D. Pfeiffer, Judge

August 7, 2018

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