MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Appellant

v.

LESLIE CHRISTY

Respondent

DOCKET NUMBER WD82831

DATE: February 18, 2020

Appeal From:

Circuit Court of Platte County, MO
The Honorable Dennis Carl Eckold, Judge

Appellate Judges:

Division Two
Cynthia L. Martin, P.J., Thomas H. Newton, and Gary D. Witt, JJ.

Attorneys:

Maxwell Pepper, Platte City, MO — Counsel for Appellant

Attorneys:

Richard Johnson, Kansas City, MO — Counsel for Respondent

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

STATE OF MISSOURI, Appellant, v.
LESLIE CHRISTY, Respondent

WD82831 **Platte County**

Before Division Two Judges: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, and Gary D. Witt, Judges.

Ms. Leslie Christy was arrested for DWI in October 2018. Her blood-alcohol content (BAC) was determined to be .07%, or below the legal limit. She was charged with driving while intoxicated (DWI), section 577.010. Ms. Christy's defense counsel subsequently filed a motion to dismiss pursuant to section 577.037.2, and a hearing was held. The court entered judgment finding there was no substantial evidence of intoxication from the physical observation of the state's witness, the dash-cam video or the admissions of Ms. Christy presented in evidence. The court dismissed the charge with prejudice against Ms. Christy.

AFFIRMED.

Division Two Holds:

The State claims the trial court clearly erred in dismissing the DWI charge against Ms. Christy before trial under section 577.037.2. In Ms. Christy's case, favorable evidence supported the dismissal. It was undisputed that Ms. Christy's BAC was less than .08%. The State's case depended solely on Deputy Beeler's testimony. Ms. Christy noted several instances where the paperwork Deputy Beeler completed did not support his testimony. Even assuming his testimony was credible in this case, the evidence can still support the dismissal when taken in the light most favorable to the dismissal. There was an odor of alcohol in the vehicle, but the passenger had been drinking. Ms. Christy's eyes were bloodshot and red, but she told Deputy Beeler she had a long day. Ms. Christy's balance was unsteady, but she was overweight, had problems with her knees, and was 61 years old. Ms. Christy used the dash-cam video to argue that the HGN test was not properly administered. Ms. Christy was not slurring, was not confused, was not incoherent, did not stutter, and did not mumble. She did not make any unusual actions. She cooperated with Deputy Beeler and followed his instructions. Given this evidence, and our standard of review, the trial court did not clearly err in finding that there was no substantial evidence of intoxication from the physical observation of the State's witness or the admissions of defendant to make a dismissal unwarranted.

We affirm.

Opinion by Thomas H. Newton, Judge February 18, 2020

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