MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BENJAMIN A. COLLIER

APPELLANT,

v.

DIRECTOR OF REVENUE

RESPONDENT.

DOCKET NUMBER WD83072

DATE: June 23, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Kyndra J. Stockdale, Judge

Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

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Attorneys:

Samuel L. Scroggie, Maryville, MO, for appellant.

Eric W. McDonnell, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BENJAMIN A. COLLIER, APPELLANT,
v.
DIRECTOR OF REVENUE, RESPONDENT.

WD83072 Jackson County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Alok Ahuja, Judge, and Gary D. Witt, Judge

Benjamin Collier ("Collier") appeals the judgment of the Circuit Court of Jackson County sustaining the revocation of his driving privilege pursuant to section 302.574. Collier raises one point on appeal alleging that there was insufficient evidence to establish that Collier refused to submit to a chemical test because he requested to speak to an attorney and the officer improperly deemed that a refusal.

AFFIRMED.

Division Two holds:

(1) Circuit court was free to disbelieve Collier's testimony that he asked to speak with an attorney prior to submitting to a chemical test and, instead, find the officer's narrative credible regarding the circumstances of the refusal. To the extent Collier wished to cross-examine the officer, it was incumbent on Collier to subpoena the officer to appear.

(2) Director of Revenue met its burden of production by admitting administrative records which included the Alcohol Incident Report and the officer's narrative into evidence pursuant to section 302.312.1. While the statute addresses the "admissibility" of the records not the "credibility" of the records, the circuit court did not err in finding this evidence credible and therefore sufficient evidence to support the judgment that Collier refused to submit to a breath analysis test.

Opinion by: Gary D. Witt, Judge June 23, 2020

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