

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MATTHEW ROSCHE,

Respondent,

v.

MISSOURI DIRECTOR OF REVENUE,

Appellant.

DOCKET NUMBER WD84073

Date: July 6, 2021

Appeal from:

Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick and Thomas N. Chapman, Judges

Attorneys:

Annabelle D. Attias, Jefferson City for appellant.
Mark A. Campbell, Cameron for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MATTHEW ROSCHE, Respondent

v.

MISSOURI DIRECTOR OF REVENUE, Appellant.

WD84073

Buchanan County

Before Division Four: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick and Thomas N. Chapman, Judges

The Director of Revenue ("the Director") appeals from the judgment setting aside the suspension of Matthew Rosche's driving privilege. The Director contends the circuit court erred in finding that there was an insufficient foundation for the admission of Rosche's breath analyzer test result.

REVERSED.

Division Four holds:

(1) The circuit court erred in finding there was an insufficient foundation for the admission of Rosche's breath analyzer test result due to the "use of the wrong testing supplies for the instrument." The Director's evidence identifying "Intoximeters, Inc." as the supplier of the standard compressed ethanol-gas standard mixture used to maintain the breath analyzer instrument was sufficient to establish the mixture came from an approved supplier. It was not necessary to prove that Intoximeters, Inc. had a particular zip code in order to show that the company was an approved supplier.

(2) The circuit court erred in finding there was an insufficient foundation for the admission of Rosche's breath analyzer test result due to "radio interference." The Director laid a proper foundation for admission of the result, as he established that the officer who administered Rosche's breath analyzer test was a valid permit holder who administered the test on a Department-approved device and followed the Department's approved techniques and methods in doing so. Even if the court inferred that the officer's body microphone created some radio frequency interference during Rosche's test, that inference alone was not a sufficient basis upon which to exclude the test result in light of the clear evidence

that any such radio frequency interference did not compromise the accuracy of the breath analyzer test.

Opinion by: Lisa White Hardwick, Judge

July 6, 2021

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