MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ADAM M. TARWATER

APPELLANT-RESPONDENT,

v.

DIRECTOR OF REVENUE

RESPONDENT-APPELLANT.

DOCKET NUMBER WD84007 Consolidated with WD84008

DATE: October 5, 2021

Appeal From:

Clay County Circuit Court
The Honorable Louis Angles, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Karen King Mitchell, Judge and Gary D. Witt, Judge

---

Attorneys:

Bruce B. Brown, Kearney, MO and Timothy D. Tipton, Excelsior Springs, MO, for appellant-respondent.

Annabelle D. Attias, Jefferson City, MO, for respondent-appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ADAM M. TARWATER, APPELLANT-RESPONDENT,
v.
DIRECTOR OF REVENUE, RESPONDENT-APPELLANT.

WD84007 Consolidated with WD84008 Clay County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Karen King Mitchell, Judge, and Gary D. Witt, Judge

The Director of Revenue appeals the trial court's judgment setting aside the revocation of Adam M. Tarwater's driver's license pursuant to section 577.041, RSMo. The Director argues that the trial court erred in finding that Tarwater did not refuse to take a breath test. Tarwater cross-appeals, arguing that the trial court erred in finding that there were reasonable grounds to believe he was driving a motor vehicle while in an intoxicated or drugged condition.

REVERSED AND REMANDED WITH INSTRUCTIONS TO ENTER A JUDGMENT SUSTAINING THE REVOCATION.

Division Four holds:

(1) The video evidence unequivocally establishes that Tarwater was physically able to vocalize his refusal to submit to a breath test, and indeed did so, establishing as a matter of law that he had the physical ability to refuse to submit and that he exercised that physical ability of his own volition. Whether Tarwater's vocalized refusal to submit was knowing or remembered is legally irrelevant.

(2) The trial court did not abuse its discretion in concluding that the trooper had reasonable grounds to believe that Tarwater was driving while intoxicated.

Opinion by: Cynthia L. Martin, Judge October 5, 2021

****

This summary is UNOFFICIAL and should not be quoted or cited.