

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

ANTHONY DEWAYNE COLLINS,

Respondent,

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD75214

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 7, 2013

APPEAL FROM

The Circuit Court of Pettis County, Missouri
The Honorable Robert M. Liston, Judge

JUDGES

Division Two: Ahuja, P.J., and Mitchell, J., CONCURRING.
Witt, J., CONCURRING IN SEPARATE OPINION.

ATTORNEYS

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

ANTHONY DEWAYNE COLLINS,

Respondent,

v.

DIRECTOR OF REVENUE, STATE OF
MISSOURI,

Appellant.

OPINION FILED:
May 7, 2013

WD75214

Pettis County

Before Division Two Judges:

Alok Ahuja, Presiding Judge, and Karen King Mitchell
and Gary D. Witt, Judges

The Director of Revenue appeals the trial court's reinstatement of Anthony Collins's driver's license, following a prior administrative suspension for driving with an excessive blood alcohol content (BAC). Director argues that the trial court erred in finding Collins's BAC results inadmissible in that: (1) Collins failed to lodge a timely and specific objection to the foundation for admission of the BAC results; and (2) once the BAC results were in evidence, Director was entitled to a presumption of validity that Collins failed to rebut.

REVERSED AND REMANDED.

Division Two holds:

- (1) Although the trial court properly excluded evidence of Collins's BAC in the actual report, Collins never objected to the investigating officer's testimony regarding Collins's BAC; thus, Collins's BAC was in evidence for the trial court's consideration.
- (2) Once the BAC results were in evidence, it was within the trial court's discretion whether to credit the evidence or reject it in light of the fact that it was not obtained in compliance with the applicable regulations regarding the requisite 15-minute waiting period.

- (3) The Director is not entitled to any presumption of validity of BAC test results. It is entirely within the court's discretion whether to credit the results or reject them in light of the circumstances surrounding their obtainment.
- (4) Because the trial court here proceeded as if the BAC results were not in evidence, we must reverse its judgment and remand the case for the trial court's consideration of the weight to be given the results.

Majority Opinion by: Karen King Mitchell, Judge

May 7, 2013

Separate Concurring Opinion holds:

I concur in the result and analysis of the Majority opinion. I write separately to highlight: (1) the importance of the fifteen-minute observation period to the scientific integrity of the test result, (2) that Missouri's breathalyzer procedures fail to align with standards in the industry, (3) that a fact-finder might accordingly deem the results of a breathalyzer test not credible or not reliable, and (4) that it may be time for Missouri to change its protocol to comply with the majority of other states and the scientific standards in the industry.

Concurring Opinion by: Gary D. Witt, Judge

May 7, 2013

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