

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED91955
)	
vs.)	Appeal from the Franklin County
)	Circuit Court
KEVIN E. CARSON, Appellant.)	Filed: May 25, 2010

The defendant appeals the judgment of conviction entered by the Circuit Court of Franklin County for the class-D felony of driving while intoxicated (“DWI”). Citing *Turner v. State*, 245 S.W.3d 826 (Mo. banc 2008), the defendant challenges the use of his 1994 municipal-court conviction for driving with excessive blood-alcohol content (“BAC”) to enhance the penalty he faces for DWI.

JUDGMENT REVERSED AND CAUSE REMANDED FOR RESENTENCING

DIVISION THREE HOLDS: We hold that the defendant’s 1994 municipal-court BAC cannot be treated as a prior conviction in order to enhance his punishment pursuant to section 577.023.16 RSMo. (Supp. 2005). Without consideration of the municipal BAC offense, the defendant does not qualify either as a prior or as a persistent offender. We further hold that the defendant is entitled to a jury-recommended sentence on remand.

Opinion by: Lawrence E. Mooney, J. Glenn A. Norton, P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Frank K. Carlson

Attorney for Respondent: Chris Koster, Shaun Mackelprang, and John W. Grantham

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.