

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

KENNETH LEONARD O’ROURKE,)	No. ED98949
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	
)	
DIRECTOR OF REVENUE,)	Honorable Barbara W. Wallace
)	
Appellant.)	Filed: June 25, 2013

The Director of Revenue (Director) appeals the judgment of the trial court reinstating the driving privileges of Kenneth Leonard O’Rourke (O’Rourke).

On appeal, Director argues the trial court erred in reinstating O’Rourke’s driving privileges because (1) the court erroneously declared and applied the law in considering argument and evidence challenging the accuracy of the breath test result when the result was obtained in accordance with the Department of Health and Senior Services’ (DHSS) rules and regulations and (2) the judgment was against the weight of the evidence and was not supported by substantial evidence because O’Rourke did not produce evidence rebutting a statutory presumption that he was driving with a blood alcohol content over the legal limit once the breath test result was admitted into evidence.

AFFIRMED.

Division One Holds: The trial court’s judgment did not erroneously declare or apply the law, was not against the weight of the evidence, and is supported by substantial evidence because Sections 302.535 and 577.037 RSMo 2006 do not create a presumption that Director’s evidence establishing a *prima facie* case is true or shift the burden to the driver to produce evidence to rebut such presumption. Because O’Rourke contested the Director’s evidence, specifically the accuracy and validity of the breath test result, the trial court was free to disbelieve any, all or none of the evidence presented.

Opinion by: Sherri B. Sullivan, J. Clifford H. Ahrens, P.J., and Glenn A. Norton, J., concur.

Attorney for Appellant: Rachel M. Jones
Attorney for Respondent: Robert S. Adler

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