

**Summary of SC90400, *Adam Ford White v. Director of Revenue***

Appeal from the Henry County circuit court, Judge Wayne Patrick Strothmann  
Argued and submitted Dec. 16, 2009; opinion issued Aug. 3, 2010

**Attorneys:** The director was represented by Matthew L. Dameron of the attorney general's office in Jefferson City, (573) 751-3321, and White was represented by James E. Switzer of James E. Switzer LLC in Clinton, (660) 885-6828.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The director of revenue appeals a circuit court's judgment reinstating the driver's license of a man arrested on probable cause of driving while intoxicated. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the circuit court's judgment. The legislature placed the burden of proof and the burden of production of evidence on the director and provided that trials de novo (anew) shall be conducted pursuant to Missouri's rules of civil procedure. The circuit court was free to disbelieve the director's evidence and, therefore, the circuit court's judgment was not against the weight of the evidence and did not erroneously declare or misapply the law. The Court overrules a number of prior opinions issued by it and the court of appeals that differ from today's holding. Chief Justice William Ray Price Jr., in a concurring opinion, notes he would not overrule this Court's precedents.

**Facts:** In September 2007, a highway patrol sergeant stopped Adam White after observing White failing to signal when turning. During the stop, the sergeant administered a series of field sobriety tests and then arrested White for driving while intoxicated. The sergeant then transported White to the Henry County jail, where the sergeant administered a breath test that showed White's blood alcohol content was above the legal limit. The director of revenue subsequently suspended White's driver's license pursuant to section 302.505, RSMo Supp. 2009. White sought judicial review in the circuit court, which held a trial on the facts, found in favor of White without issuing any findings of fact or conclusions of law, and ordered White's driver's license reinstated. The director appeals.

**AFFIRMED.**

**Court en banc holds:** (1) Section 302.535, RSMo Supp. 2009, governs judicial review of an administrative suspension or revocation of a person's driver's license, pursuant to section 302.505, when the person is arrested on probable cause to believe the person was driving with a blood alcohol content of 0.08 percent or more. The statute permits the person to request a trial de novo (in which the reviewing court considers the evidence anew), places the burden of proof on the state and requires the trial to be conducted according to Missouri's rules of civil procedure. In certain prior cases, this Court and the court of appeals ruled contrary to the legislature's assignment of the burden of proof and the burden of producing evidence in section 302.535 as well as its direction that the rules of civil procedure govern trials de novo. *See, e.g., Berry v. Director of Revenue*, 885 S.W.2d 326, 328 (Mo. banc 1994); *Reinert v. Director of Revenue*, 894 S.W.2d 162, 164 (Mo. banc 1995); *Brown v. Director of Revenue*, 85 S.W.3d 1, 7 (Mo. banc

2002); *Verdoorn v. Director of Revenue*, 119 S.W.3d 543, 546 (Mo. banc 2003); *Coyle v. Director of Revenue*, 181 S.W.3d 62, 65 (Mo. banc 2005); *York v. Director of Revenue*, 186 S.W.3d 267, 269-80 (Mo. banc 2006); and *Guhr v. Director of Revenue*, 228 S.W.3d 581, 585 (Mo. banc 2007). To the extent these cases or any other prior case applied section 302.535 to create a presumption of the validity of the director's evidence, to place a burden on the driver to produce evidence that controverts or contradicts the director's evidence for the trial court to disbelieve the evidence of a contested issue, or to require written findings absent a request by a party, the cases are overruled. It only is when evidence is uncontested that no deference is given the trial court's findings. In a court-tried case, evidence is uncontested when the issue before the court involves only stipulated facts and does not involve resolution by the trial court of contested testimony. A party may contest evidence by presenting contradictory or contrary evidence or by cross-examination. When evidence is contested, this Court defers to the trial court's determination of credibility. The trier of fact is free to believe or disbelieve the uncontradicted or uncontroverted evidence presented by the party bearing the burden of proof. If the trier of fact does not believe such evidence, it properly can find for the other party. On appeal, the appellate court confines itself to determining whether the trial court's judgment is against the probative value of the evidence, not the quantity of evidence, or whether the trial court erroneously declared or misapplied the law.

(2) Here, the trial court's judgment was not against the weight of the evidence. Appellate courts must defer to the trial court's ability to weigh the credibility of the witness when reviewing anew whether the officer had probable cause that the driver was intoxicated. Here, the director did not request written findings, and, pursuant to Rule 73.01(c), the evidence on the contested issue of probable cause is viewed in the light most favorable to the judgment. Although White did not testify or introduce exhibits, and he stipulated to the results of the blood alcohol test taken at the jail, he contested the factual and legal determination of probable cause. His cross-examination of the sergeant pointed out inconsistencies in the officer's testimony that called into his question his recollection of the events as well as his credibility and, as a result, undermined his testimony on direct examination and his statements in his written report. The trial court was free to believe the sergeant was mistaken or exaggerated his testimony regarding the indicia of intoxication used as a basis for the probable cause determination. The trial court viewed the officer's demeanor when testifying, and that alone could have persuaded the court that the sergeant's testimony was not credible. The record supports the trial court's conclusion that the sergeant lacked probable cause to arrest White for violating an alcohol-related offense.

(3) The trial court did not misapply the law. Whether probable cause exists always depends on the particular facts of a case. This Court defers to the trial court's view of the evidence and will not second-guess the trial court on the contested facts. Although cases exist in which the trial court found the arresting officer had probable cause on similar facts, the trial court was free to conclude there was no probable cause based on its determination of the credibility of the director's evidence.

**Concurring opinion by Chief Justice Price:** The author agrees the record provides a basis for the trial court to disbelieve the director's evidence and, therefore, agrees with the result reached by the principal opinion. He would not overrule this Court's precedence, however, in doing so.