

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

RICHARD A. ZAHNER,

Respondent,

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI,

Appellant.

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**DOCKET NUMBER WD72801**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 13, 2011

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**APPEAL FROM**

The Circuit Court of Miller County, Missouri  
The Honorable Kenneth L. Oswald, Judge

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**JUDGES**

Division Four: Hardwick, C.J., Pfeiffer, J., and Funk, Sp.J.

CONCURRING.

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**ATTORNEYS**

David A. Yarger  
Versailles, MO

Attorney for Respondent,

Chris Koster, Attorney General  
James B. Farnsworth and Jamie Pamela Rasmussen, Assistant Attorneys General  
Jefferson City, MO

Attorneys for Appellant.

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

**RICHARD A. ZAHNER,** )  
 )  
 ) **Respondent,** )  
 )  
 **v.** )  
 ) **DIRECTOR OF REVENUE, STATE OF** )  
 **MISSOURI,** )  
 )  
 ) **Appellant.** )

**OPINION FILED:**  
**September 13, 2011**

**WD72801**

**Miller County**

**Before Division Four Judges:** Lisa White Hardwick, Chief Judge, Presiding,  
Mark D. Pfeiffer, Judge, and Brad Funk, Special Judge

Richard Zahner was pulled over for driving under the influence and was taken to the police station for breath alcohol testing. Zahner never took the test. The Director of Revenue revoked Zahner’s license, and Zahner appealed to the trial court. At the evidentiary hearing before the trial court, the arresting officer testified Zahner refused to take the breath alcohol test. Conversely, Zahner claimed he never refused to submit to a breath alcohol test and, further, the officer never read Zahner the implied consent warning. The arresting officer claimed that a video recording of Zahner’s booking at the police station would clear things up. The trial court requested a copy of the video, but the tape had been destroyed in the interim. The trial court reversed the Director’s revocation of Zahner’s license. The Director appeals.

**AFFIRMED.**

**Division Four holds:**

The Director claims the trial court erred by applying the spoliation doctrine to this case because of the destruction of the police videotape. We disagree. Here, the trial court did not apply the spoliation doctrine and direct a verdict for Zahner. Instead, it carefully considered the weight of the conflicting evidence and the credibility of the witnesses when making its decision. In doing so, the trial court found Zahner’s evidence more credible. Because the trial court did not apply the spoliation doctrine, the Director’s argument fails.

**Opinion by: Mark D. Pfeiffer, Judge**

September 13, 2011

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.