

IN THE SUPREME COURT  
OF MISSOURI

JUSTIN AKINS,	)	
	)	
Appellant,	)	
	)	
vs.	)	SC90181
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

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APPELLANT'S SUBSTITUTE REPLY BRIEF

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## **ARGUMENT**

Respondent has argued that the Director could not have known when it received the Record of Conviction report from the Circuit Court of Jefferson County that all three of the charges to which the Defendant entered a plea of guilty and was sentenced, arose from a single act of driving while intoxicated and therefore, the Director was entitled to merely perform the ministerial act of reading the report and acting upon it. In so doing, the Director wants to disavow the very stipulation that its attorney entered into at the trial court acknowledging that all three counts to which the Appellant plead guilty arose from a single accident. This fact has never been in dispute.

Several key items should be emphasized.

1. The Director has indicated that it received three separate electronic reports from the Circuit Court each stating that Akins had been convicted of felony vehicular assault. There is nothing in the record on appeal to suggest that three separate electronic reports were sent to the Department of Revenue as opposed to it being part of one report sent by the Circuit Court and received by the Department of Revenue. These pages found in the Legal File at pages 13 through 15 are not certified by anyone and there is nothing in them to suggest that they were not one report.

2. The records received from the Circuit Court clearly list on all three pages,

the same Court Case Number, 07JE-CR0257301, the same arrest date, 07/20/06, and the same conviction date 02/11/08.

3. While the ticket/arrest numbers on these three pages are different, 999999997, 999999998, 999999999, it is obvious that these numbers have been arbitrarily assigned. It cannot be plausibly suggested by the Director that Uniform Traffic Tickets were actually issued with these numbers on them.

The Director has suggested that when these three pages with the words “Conviction Report” on the top were received, that the Director could not have known whether Akins drove while intoxicated once on July 20, 2006, or drove multiple times on that date, and therefore, it was acceptable to report them as three individual convictions.

All the Director would have to do however is to add another box on its form which is submitted by the Circuit Clerks around the State, requiring that the Courts indicate, in cases of multiple counts, whether it arose from a single incident. The Director already has places on it’s form for the Court to check whether the Defendant was represented by counsel and whether the Judge taking the plea was a lawyer; each of these requirements being necessary to determine how the conviction is reported. There is no reason why the director could not have an additional place to indicate that all of these incidents arose from a single accident and therefore, the individual did not drive on multiple occasions. In taking this stance, even the Director acknowledges the fallacy of his position.

All of the above quibbling by the Director regarding these facts does not address the real issue however and that is what did the legislature intend when it adopted Section 302.060 RSMo.

As this Court has noted in Collins v. Director of Revenue, 691 S.W.2d. 246 (Mo. 1985), “....[t]he cardinal rule of statutory construction requires the Court to ascertain the true intention of the legislature, giving reasonable interpretation in light of legislative objective, (citation omitted). In determining the legislature’s intention, the provisions of the entire legislative act must be construed together, and if reasonably possible, all of the provisions must be harmonized. (citations omitted) Collins at 251.

In applying this principle of determining the legislature’s intention from the entire legislative act, it is clear that the legislature intended with its enactment to impose increasingly more stringent disqualifications on those drivers who repeatedly drink and drive. Given that there is no dispute that Mr. Akins only drove while intoxicated on one occasion, it was not the intention of the legislature to impose a ten year denial of his driver’s license.

### **CONCLUSION**

For the foregoing reasons, the trial court's judgment Director should be reversed.

By: \_\_\_\_\_  
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## **CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify that:

1. This brief contains 905 words and 190 lines in compliance with Mo. S. Ct. R. 84.06(b), according to Microsoft Word 2003's word count feature;
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