

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI      FILED  
ASSOCIATE CIRCUIT DIVISION AT INDEPENDENCE      DIVISION 28

19-Dec-2019 14:09

CIRCUIT COURT OF JACKSON COUNTY, MO

BY *Jenna King*

REBECCA D. ALLINDER,      )  
MO. LICENSE NO. T02-61-45027      )  
Petitioner,      )

v.      )

DIRECTOR OF REVENUE,      )  
Respondent.      )

Case No. 1816-CV32951  
Division 28

**FINDINGS OF FACT, CONCLUSIONS of LAW and JUDGMENT**

Respondent, the Director of Revenue, bore the burden of proving by a preponderance of the evidence that: (1) there was probable cause to arrest Petitioner for an alcohol-related traffic offense; and (2) Petitioner was driving a motor vehicle with a blood alcohol concentration of (BAC) of .08% or higher. See, § 302.505, RSMo Supp. 2013. The cause was submitted to the Court upon the certified copy of the Alcohol Influence Report, with attachments, along with:

The testimony of the arresting officer Kyle Lynch, Sergeant Travis Rhyne, and the testimony of Petitioner.

The Court makes the following findings and conclusions:

**Credibility**

The evidence adduced by the Director was credible.

The Court believes the testimony of Officer Rhyne that Petitioner provided one incomplete test and then provided a valid breath sample that completed the test. Petitioner testified that she provided two incomplete samples before providing a valid sample and the Court does not find that testimony credible.

**1. Probable Cause**

There was probable cause to arrest Petitioner for an alcohol-related traffic offense.

**2. BAC**

Petitioner was driving with a BAC of .08% or higher.

Petitioner argues that Director failed to establish an adequate foundation to admit the breath test

result by failing to demonstrate the test was conducted pursuant to the approved techniques and methods of Department of Health and Social Services as well as Section 19 C.S.R. Specifically, Section 19 C.S.R 25-30.060 establishes the operational checklist for the approved breath analyzers and states the operator of a breath analyzer machine must complete an operational checklist for each test at the time the test is given. 19C.S.R 25-30.060 speaks to only one 15-minute observation period and this general provision has been interpreted as not requiring an additional observation period between subsequent breath tests in order for the Director to establish the minimum foundational requirements for admission of the test results. O'Rourke v. Dir. of Revenue, 409 S.W.3d 443 (Mo. App. E. Dist. 2013).

**Judgment**

The suspension/revocation of Petitioner's driving privilege is sustained. Costs taxed to Petitioner.

IT IS SO ORDERED this 19th day of December 2019.

  
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Judge Jeffrey C. Keal