

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

TIMOTHY K. GREEN, )  
MO. LICENSE NO. T01-12-26008 )  
Petitioner, )  
v. )  
DIRECTOR OF REVENUE, )  
Respondent. )

Case No. 1916-CV23755  
Division 28

FILED  
DIVISION 28  
10-Mar-2020 11:49  
CIRCUIT COURT OF JACKSON COUNTY, MO  
BY *[Signature]*

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 (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 (Respondent's Exhibit "A"), with attachments, Crash Report (Respondent's Exhibit "B"), Missouri Driving Record (Respondent's Exhibit "C") along with:

The testimony of Troy Calvin, Blue Springs Police Officer Sara Perdue, and the arresting officer, Sergeant Dave Schwalm with the Missouri State Highway Patrol.

The Court makes the following findings and conclusions:

**Credibility**

The evidence adduced by the Director was credible. The testimonies of the three witnesses were consistent. Each witness corroborated the testimony of the other witnesses.

**1. Probable Cause**

There was probable cause to arrest Petitioner for an alcohol-related offense. Operation of the vehicle, whether proper or improper, is a factor used to determine if probable cause to arrest is present Brown v. Director of Revenue 85 S.W.3d 1 (Mo. banc 2002). Mr. Calvin testified that Petitioner's truck drove crazy, then straight three times. Mr. Calvin testified that he first saw the truck on I-70 near the Independence Center and continued watching the truck until it crashed into the railing past MO-7 highway. During this time, Mr. Calvin testified the female passenger in the truck had her head out of the window calling for help. After the crash, the passenger ran back to Mr. Calvin and hugged him. Petitioner did not testify. Petitioner's statement to Sergeant Schwalm, contained in Exhibit "B", was that his girlfriend started punching him when he became distracted, causing him to run off of the road. The Court finds Petitioner's statement hard to believe when compared to the testimony of Mr. Calvin. It should be noted that I-70 has two exits

and several miles of roadway between the point where Petitioner's truck was first observed driving erratically and where Petitioner crashed his truck. Even if Petitioner's explanation was believable, a reasonable, prudent, and sober driver would have pulled over or exited from the highway. Officer Sara Perdue testified about her extensive training in DWI detection, including the fact that she trains other officers how to conduct Standardized Field Sobriety Tests (SFST). Officer Perdue indicated she was one of the first officers to arrive at the crash scene. She talked to Petitioner and observed that his speech was slurred. She noted his eyes were bloodshot and watery. Officer Perdue observed Petitioner stagger. Petitioner told officer Perdue he had been drinking at a bar. From this information, Officer Perdue concluded Petitioner was under the influence and shared her opinion with Sergeant Dave Schwalm when he arrived on the crash scene. Officer Perdue watched Sergeant Schwalm conduct the Horizontal Gaze Nystagmus test (HGN), and she testified he conducted the test properly. Sergeant Schwalm testified that the HGN test has 6 possible clues and that Petitioner exhibited all six clues which meant there was a high probability that Petitioner was over the legal limit of .08 BAC. Based on Petitioner's appearance, odor, eyes, and HGN test, Sergeant Schwalm testified he formed a strong opinion that Petitioner was intoxicated.

## **2. BAC**

Petitioner was driving with a BAC of .08% or higher. Sergeant Schwalm testified that he properly administered the breath test on Petitioner and that printout showed .128%.

## **Judgment**

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

IT IS SO ORDERED this 10<sup>th</sup> day of March, 2020.

  
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Judge Jeffrey C. Keal