

**IN THE TWENTY-FIRST JUDICIAL CIRCUIT COURT  
ST. LOUIS COUNTY  
STATE OF MISSOURI**

<b>STATE OF MISSOURI,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No.: 10SL-CR00347</b>
	)	
<b>v.</b>	)	<b>Division: 17</b>
	)	
<b>THOMAS L. PATTERSON,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

This cause came before the court on Defendant’s Motion to Dismiss. The parties filed briefs with respect to whether Defendant can be charged as a persistent offender pursuant to §577.023.1(5)(a) RSMo which became effective on July 9, 2009. The amended statute defines a “persistent offender” as a “person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses.” 577.023.1(5)(a) RSMo. The statute further defines “intoxication-related traffic offense” as “driving under the influence of alcohol or drugs *in violation of state law or a county or municipal ordinance.*” §577.023.1(4) RSMo. (Emphasis added). Section 577.023.16 RSMo. expressly states that “a plea of guilty or a finding of guilt followed by incarceration, a fine, *suspended imposition of sentence*, suspended execution of sentence, *probation or parole, or any combination thereof* in any intoxication-related traffic offense *in a state, county, or municipal court* or any combination thereof, *shall be treated as a prior plea of guilty or finding of guilt for purposes of this section.*” §577.023.16 RSMo. (Emphasis added).

In the case at bar, Defendant was charged with driving while intoxicated as a Persistent Offender, a Class D felony, pursuant to §577.023 for an alleged violation that occurred on

**January 17, 2010.** The charging document was filed on or about **May 27, 2010.** Consequently, both the offense and the charges filed by the State occurred after the **July 9, 2009** effective date of the changes to §577.023.16 RSMo. In addition, the charging document alleged that defendant had 2 prior “intoxication-related traffic offenses;” consisting of a Suspended Imposition of Sentence for DWI in the City of Creve Coeur Municipal Court in 2004 and a Suspended Imposition of Sentence for DWI in the City of Town & Country Municipal Court in 2007.

Defendant argues that the 2 SIS dispositions in municipal court do not qualify as “prior intoxication-related traffic offenses” because they were entered prior to the **July 9, 2009** effective date of the changes to §577.023.16 RSMo. and, therefore, cannot be used for enhancement purposes so as to permit Defendant to be charged with a Class D felony. Defendant claims that the retroactive application of §577.023.16 RSMo. to the predicate DWI municipal SIS dispositions constitutes a prohibited *ex post facto* application of a criminal statute to the Defendant. Nevertheless, the Missouri Supreme Court in *State v. Acton*, 665 S.W.2d 618 (Mo. Banc1984) held it was not a violation of the constitutional protection against *ex post facto* laws to subject a driver to enhanced punishment pursuant to §577.023 RSMo (1983) utilizing prior DWI offenses to which defendant pled in 1975 and 1979 because the new statute did not punish the driver for the prior convictions, but rather punished the defendant for the most recent offense committed after the enactment of the new statute on the basis of his “demonstrated propensity for driving while intoxicated.” *Id.* at 619. (Citation omitted)..

Defendant also relies on the decision in *Turner v. State*, 245 S.W.3d 826 (Mo. 2008) as authority for his contention that §577.010 RSMo. cannot be used to enhance his sentence as a persistent offender. Defendant’s reliance in this regard, however, is misplaced. In *Tuner*, the court determined that the 2000 amended version of the statute §§ 577.023.1 and 2(a) were in

conflict with section §577.023.14, in that the latter did not permit a municipal plea of guilty followed by a suspended imposition of sentence to be used to enhance punishment. *Id.* at 828. The *Turner* court concluded that conflict in the statutory provisions created an ambiguity that must be resolved in favor of the defendant such that “the use of prior municipal offenses resulting in an SIS cannot be used to enhance punishment.” *Id.* at 829. Likewise, in *State v. Carson*, 317 S.W.3d 136 (Mo.App. E.D. 2010), the court held that the defendant’s 1994 municipal-court BAC conviction could not be treated as a prior conviction in order to enhance his punishment because the 2005 amended version of §577.023.16 RSMo. (Supp. 2005) made no mention of a municipal-court BAC conviction. *Id.* at 139.

In the case at bar, however, the 2009 amended version of §577.023.16 RSMo. clearly and unambiguously provides that “a plea of guilty or a finding of guilt followed by ... *suspended imposition of sentence*... in a state, county, *or municipal court* ...*shall be treated as a prior plea of guilty or finding of guilt for purposes of this section.*” 577.023.16 RSMo. Consequently, the statutory defects recognized by the courts in *Turner* and *Carson* are not present in 2009 version of the statute. Accordingly, Defendant’s Motion to Dismiss is denied in all respects.

IT IS SO ORDERED & ADJUDGED.

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JUDGE JOSEPH L. WALSH, III  
DIVISION 17 , CIRCUIT COURT OF ST. LOUIS COUNTY

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DATE

cc: All counsel of record