

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI  
ASSOCIATE DIVISION

**F I L E D**  
JUN 09 2011

SANDRA L. DOWD  
Clerk of the Circuit Court Platte County, MO

KEVIN M. STAN, )  
)  
Petitioner, )  
vs. )  
)  
DIRECTOR OR REVENUE OF THE )  
STATE OF MISSOURI )  
)  
Respondent. )

Case No.: 10AE-CV00277

Division III

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT

NOW ON THIS 17<sup>th</sup> day of May 2011, the above matter comes regularly on.

Petitioner appears in person and with counsel, J. Matthew Guilfoil. Respondent appears by its counsel, Jane A. Loughlin, Esq.

Whereupon, the parties announce ready and evidence is heard. The court then takes this matter under advisement for submission of briefs and/or relevant cases by May 31, 2011.

NOW ON THIS 9th day of June 2011, after hearing the evidence and arguments of counsel, after viewing the video of Petitioner's stop/arrest, after reviewing the material submitted post-trial by counsel for the parties, and after due consideration, the court enters the following findings of fact, conclusions of law and judgment.

1. Respondent's evidence consisted of the testimony of the arresting officer, Sgt. D. J. Hedrick of the Missouri State Highway Patrol; a certified copy of the Alcohol Influence Report with attachments (Respondent's Exhibit A); along with a certified copy of the maintenance report for the Datamaster breath testing machine and a certified copy

of the Certificate of Analysis from Guth Laboratories (both contained in Respondent's Exhibit B.) Respondent also offered into evidence Respondent's Exhibit C which was a Casenet printout from Petitioner's criminal case (including Petitioner's guilty plea to the DWI charge.) Petitioner objected to the admission of Exhibit C which was sustained by the court. Respondent's counsel made an offer of proof as to said exhibit. Petitioner's counsel cross-examined Sgt. Hedrick extensively.

Petitioner's evidence consisted of the testimony of Mr. Caleb Carter, a former Jackson County, Missouri Sheriff's Department Officer, and a DVD of Petitioner's stop/arrest from Sgt. Hedrick's patrol vehicle (Petitioner's Exhibit 1.) Petitioner also offered into evidence a chapter of a training manual dealing with HGN tests (Petitioner's Exhibit 2.) Respondent objected to the admission of Petitioner's Exhibit 2, which objection was sustained by the court. Respondent's counsel cross-examined Mr. Carter extensively.

2. The court notes initially that in these matters, Respondent has the burden of proving by a preponderance of the evidence that there was probable cause to arrest Petitioner for an alcohol-related traffic offense, and that Petitioner was driving a motor vehicle with a blood alcohol concentration of .08% or higher.

3. After the initial stop of the Petitioner, Sgt. Hedrick administered several standard field sobriety tests ("SFST's"). The court finds that the results of the horizontal gaze nystagmus ("HGN") test administered by Sgt. Hedrick (as reflected in Respondent's Exhibit A) were not reliable and were invalid in that based on the trooper's own testimony, the test was not performed properly. Sgt. Hedrick admitted that the HGN test results were "compromised" by his not following the proper procedures in administering

it. Sgt. Hedrick stated that because the HGN was “compromised,” he could not use the result to establish probable cause to arrest, but that it could be used “in the totality of the circumstances.” He further stated that a reasonably prudent law enforcement officer would not rely on the outcome of this test because it was “compromised.” On the one-leg stand test (“OLS”) Sgt. Hedrick testified that he looks for two “clues” as to impairment but found only one such clue when Petitioner performed that test. On the walk-and-turn test (“WAT”), Sgt. Hedrick admitted that he gave incorrect instructions to Petitioner but that Petitioner followed those instructions. The DVD indicates that Petitioner stood in the “starting position” for this test for an extended time without stumbling or falling. Sgt. Hedrick also testified that Petitioner had no trouble producing his driver’s license and his insurance card at the time of the initial stop. Respondent’s Exhibit A indicates that Petitioner’s speech was coherent and that he completed the alphabet correctly (the DVD indicates Petitioner said the entire alphabet two times without error.) Respondent’s Exhibit A also indicates that when the “Romberg” test was administered to Petitioner, Petitioner estimated 50 seconds as 30 seconds and Sgt. Hedrick concluded that Petitioner’s “internal clock” was slow. However, the DVD of the stop/arrest shows that Petitioner estimated 38 seconds as 30 seconds (not 50.)

4. Caleb Carter, called as an expert witness by Petitioner, testified that he had made hundreds of DWI arrests, that he had been an instructor regarding standard field sobriety tests since December 2006 and that he has trained over 900 law enforcement officers regarding DWI detection and the use of standard field sobriety tests. Regarding the HGN, Carter testified that Sgt. Hedrick gave the test in a non-standard manner, making the clues obtained from that test invalid; Carter further testified that

Petitioner passed the OLS test; and that on the WAT, Carter testified that Sgt. Hedrick made so many errors in the administration of the test, that the results could not be used at all to determine probable cause. On cross-examination, Carter admitted that the results of the SFST's are not the only factors to consider in determining probable cause to arrest. He also admitted that he teaches officers to consider everything they see and hear during a stop/detention to determine probable cause.

5. The court had the opportunity to view and observe the witnesses at trial and make determinations as to their credibility. The court finds that portions of each witness's testimony were credible while other portions were not.

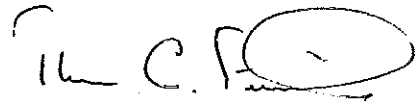
6. Considering the evidence as a whole, the court finds that the Respondent has failed to sustain her burden of proving by a preponderance of the credible evidence that there was probable cause to arrest Petitioner for an alcohol-related traffic offense.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the suspension/revocation of Petitioner's driving privileges be and is hereby set aside. Respondent is ordered to reinstate the driving privileges of Petitioner forthwith. Court costs are assessed against Petitioner for which let execution issue.

**IT IS SO ORDERED.**

6-9-11

Date



Thomas C. Fincham, Judge  
Division III  
Platte County Circuit Court