In the
Missouri Court of Appeals
Western District

JOHNNY B. STANTON, **Appellant,** **v.** **DIRECTOR OF REVENUE,** **Respondent.**	**WD83551** **OPINION FILED:** **November 10, 2020**

Appeal from the Circuit Court of Clay County, Missouri
The Honorable Karen Lee Krauser, Judge

Before Division One:
Thomas N. Chapman, P.J., Mark D. Pfeiffer and W. Douglas Thomson, JJ.

Johnny Stanton appeals the judgment of the Circuit Court of Clay County sustaining the Director of Revenue's (Director's) revocation of his driver's license for refusal to submit to a chemical test of his blood. He raises two points on appeal. First, he contends that his refusal was not valid because the deputy who arrested him was not a "law enforcement officer" for purposes of sections 577.041 and 577.020 when he requested Stanton to submit to a chemical test in Clay County, outside his jurisdiction of Clinton County. Second, Stanton contends that

the trial court erred in finding there were reasonable grounds to believe that Stanton was driving a motor vehicle while in an intoxicated condition. The judgment is affirmed.

Background[1]

On March 23, 2019, at approximately 3:00 p.m., Deputy Tyler Farr of the Clinton County Sheriff's Office received a dispatch about a single-vehicle accident with injuries north of Holt, in Clinton County, Missouri. When the deputy arrived at the scene, he found a 1992 white Chevy Cavalier that appeared to have been traveling north and then had struck a tree on the west side of the road near the driveway entrance to 6961 SE Cannonball Road. Firefighters at the scene informed Deputy Farr that the driver of the vehicle was in an ambulance at the Holt Fire Department.

At the fire department, fire and EMT personnel informed the deputy that Stanton's mother had brought Stanton to the department, telling them that he had been in an accident. They further informed the deputy that Stanton had lacerations on his head, that they were going to transport him to Liberty Hospital to check for possible internal head injuries, and that they believed he had been drinking because of the smell of intoxicating beverage emitting from his person.

At 3:23 p.m., Deputy Farr contacted Stanton in the back of the ambulance. The deputy could smell a moderate odor of intoxicating beverage coming from him. He asked Stanton what had happened, and Stanton told him that he had been in a vehicle accident. He asked Stanton what caused him to wreck his vehicle, and Stanton told him that he had a sneezing fit causing

[1] The appellate court views the evidence in the light most favorable to the trial court's judgment. *Collier v. Dir. of Revenue*, 603 S.W.3d 714, 715 n.1 (Mo. App. W.D. 2020).

him to look away from the road and that he hit a spot on the gravel road causing his vehicle to "shoot" off the roadway. The deputy asked how fast he had been traveling, and Stanton stated approximately 30 miles per hour. Deputy Farr then asked Stanton if he had consumed any intoxicating beverages, and Stanton responded that he had had "a couple beers." When the deputy asked him to be more specific, Stanton said "about three beers." The deputy then asked when he had started drinking, and Stanton said "after he got off work, at approximately [3:00 p.m.]" Stanton also told the deputy that he stopped drinking "about four hours ago" and that he had been in the back of the ambulance "for a couple hours." Deputy Farr asked Stanton where he had consumed the alcohol, and Stanton said that he was drinking in his car. Stanton also told the deputy that he has a drinking problem and that he has been trying to get it under control. Finally, Stanton told the deputy that after he wrecked his car, he left the scene on foot and went to his parent's house at 6961 SE Cannonball Road and that they then took him to the Holt Fire Department.

Deputy Farr then performed the Horizontal Gaze Nystagmus on Stanton and observed all six clues of intoxication. The deputy also observed Stanton's eyes to be watery, bloodshot, and glassy. Stanton also showed Vertical Gaze Nystagmus (which Deputy Farr later acknowledged can be caused by brain trauma).

Due to Stanton's injuries, the deputy did not have Stanton perform any more field sobriety tests. At approximately 3:45 p.m, Stanton was transported to Liberty Hospital in Liberty, Missouri, in Clay County. Deputy Farr returned to the accident scene to finish processing it. He observed beer cans and beer boxes on the ground outside the vehicle. On the inside of the vehicle, he found three beer boxes—one on the front passenger seat and two in the back seat. He saw two crushed cans stuffed between the passenger seat and middle console. In

the Alcohol Influence Report, Deputy Farr estimated the time of the crash at 2:59 p.m. based on the "time of the call." For evidence of driving or vehicle operation by subject, the deputy checked the boxes, "Admission of subject," and "Other evidence of recent vehicle operation/crash (hood warm, steam emitting from vehicle(s), debris in the roadway, etc.)," and wrote, "Vehicle still at the scene, wrecked into a tree[,] Debris from vehicle located along the side of the road next to."

Deputy Farr then went to Liberty Hospital and contacted Stanton in the emergency room. The deputy observed that Stanton's eyes were watery, bloodshot, and glassy, his speech was slurred and confused, and his mood was "somewhat agitated." At approximately 4:35 p.m., he read the implied consent warning from the Alcohol Influence Report to Stanton, informing him that he was under arrest, requesting him to submit to a chemical test of his blood, and informing him that if he refused, his license would be revoked for one year and evidence of his refusal may be used against him. Stanton refused to give consent to the test. The deputy issued Stanton a revocation notice for his refusal to submit to the alcohol test. At 4:54 p.m., Stanton requested an attorney, and the deputy stopped all questioning. At approximately 5:02 p.m., Stanton was discharged from the hospital and placed into custody for driving while intoxicated and leaving the scene of an accident. Deputy Farr transported him to the Clinton County Jail.

Stanton filed a petition for review of the revocation. A bench trial was held, and the trial court sustained the revocation of Stanton's driving privilege. It found that Stanton was arrested, that there were reasonable grounds to believe Stanton was driving a motor vehicle in an intoxicated or drugged condition, and that Stanton refused to submit to the test requested by the arresting officer. Stanton appeals.

Standard of Review

Appellate review of a license revocation case is the same as the review of any other court-tried case. *Collier v. Dir. of Revenue*, 603 S.W.3d 714, 716 (Mo. App. W.D. 2020). The judgment of the trial court will be affirmed on appeal unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id.* The appellate court defers to the trial court's determination of credibility. *Id.* It accepts as true all evidence and inferences in favor of the prevailing party and disregards contrary evidence. *Id.*

Analysis

Stanton raises two points on appeal challenging the trial court's judgment upholding the revocation of his driver's license. First, he contends that his refusal was not valid because Deputy Farr was not a "law enforcement officer" for purposes of sections 577.041 and 577.020 when he requested Stanton to submit to a chemical test in Clay County, outside his jurisdiction of Clinton County. Second, Stanton contends that the trial court erred in finding there were reasonable grounds to believe that he was driving a motor vehicle while in an intoxicated condition.

Under Section 577.020.1,[2] a person operating a vehicle in Missouri is deemed to have impliedly consented to a chemical test to determine blood alcohol content if the person is arrested on probable cause to believe that he or she is driving while intoxicated. *State v. Reeter*, 582 S.W.3d 913, 916 (Mo. App. W.D. 2019). A person may withdraw the statutory implied consent and refuse testing. *Id.*; § 577.041.

[2] All statutory references are to RSMo 2016 as currently updated unless otherwise noted.

Section 302.574.3 provides for the Director's revocation of a person's driver's license for one year for refusal to submit to a chemical test. Section 302.574.4 gives the person the right to file a petition for review to contest the revocation in the circuit court. At the hearing, the court shall determine only:

(1) Whether the person was arrested or stopped;

(2) Whether the officer had:

(a) Reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated or drugged condition;…and

(3) Whether the person refused to submit to the test.

§ 302.574.4. "The Director bears the burden to establishing a prima facie case for license revocation by a preponderance of the evidence." *Howe v. Dir. of Revenue*, 575 S.W.3d 246, 250 (Mo. App. E.D. 2019). For the circuit court to sustain a license revocation for failure to submit to chemical testing, the Director must show: (1) the driver was arrested; (2) the officer had probable cause to believe the driver was driving while intoxicated; and (3) the driver refused to submit to a test. *Id.* (citing § 302.574.4). "The Director's failure to prove any one of the three elements requires reinstatement of the driver's license." *Id.* (citing § 302.574.5).

In his first point on appeal, Stanton contends:

> The trial court erred when it entered judgment sustaining the revocation of [Stanton's] license to drive for a refusal to submit to a chemical test of his blood because in light of the uncontested facts, the trial court misinterpreted statutory law, including MO.REV.STAT. §577.020, which requires that the test shall be administered at the direction of the law enforcement officer whenever the person has been stopped, detained, or arrested for any reason in that Deputy Farr was not a law enforcement officer at the time he requested Stanton to submit to a blood test and in that the validity of the refusal required compliance with the statutory requirements attendant to chemical testing.

Courts have consistently construed the third element of section 302.574.4—that a driver refused to submit to chemical testing—to require proof that the refusal was valid. *Goforth v. Dir. of Revenue*, 593 S.W.3d 124, 128 (Mo. App. W.D. 2020). "Validity of refusal requires compliance with the statutory requirements attendant to chemical testing." *Id.* For example, a refusal is not valid where an officer fails to give the implied consent warning required by section 577.041.2. *Id.* (citing *Howe*, 575 S.W.3d at 251-52). Additionally, a person is not deemed to have refused to submit to a chemical test when the person conditions a refusal on consulting an attorney but is not give a reasonable opportunity to do so as required by section 577.041.3. *Id.* (citing *Roesing v. Dir. of Revenue*, 573 S.W.3d 634, 637 (Mo. banc 2019)).

Stanton argues that his refusal to submit to chemical testing was not valid because Deputy Farr was not a "law enforcement officer" for purposes of sections 577.041 and 577.020 when he requested Stanton to submit to a chemical test in Clay County, outside his jurisdiction of Clinton County.

As used in Chapter 577, "'[l]aw enforcement officer' or 'arresting officer', includes the definition of law enforcement officer in section 556.061…." § 577.001(16). A "[l]aw enforcement officer" is defined in the criminal code as "any public servant having both the power and duty to make arrests for violations of the laws of this state…." § 556.061(32). Section 544.216, provides, in pertinent part:

> Except as otherwise provided in section 544.157 *[fresh pursuit]*, any sheriff or deputy sheriff…may arrest on view, and without a warrant, any person the officer sees violating…any ordinance or law of this state, including a misdemeanor or infraction, *over which such officer has jurisdiction*….

(Stanton's emphasis).

In *Kimber v. Dir. of Revenue*, 817 S.W.2d 627, 632 (Mo. App. W.D. 1991), this court found that an arrest by a fourth class city police officer outside the city was unlawful, but that the evidence relating to arrest and the subsequent breath test results were admissible in an action to suspend the driver's license pursuant to sections 302.500 to 320.540, because the exclusionary rule does not apply in civil proceedings. *See also Garriott v. Dir. of Revenue*, 130 S.W.3d 613, 615-16 (Mo. App. W.D. 2004) (exclusionary rule did not apply in license revocation case for refusal to submit to test, even if stop was illegal, the evidence obtained would not be inadmissible in the civil case).

In *Sterneker v. Director of Revenue*, 3 S.W.3d 808 (Mo. App. W.D. 1999), and *Jennings v. Director of Revenue*, 992 S.W.2d 249 (Mo. App. W.D. 1999), this court rejected an argument similar to that raised by Stanton in this appeal. In both cases, the circuit courts found that a municipal officer acting outside his jurisdiction was not a "law enforcement officer" under sections 302.500 et seq., and thus the Director had not met his burden to support a license suspension for operating a motor vehicle with a blood alcohol concentration in excess of the legal limit. *Sterneker*, 3 S.W.3d at 809; *Jennings*, 992 S.W.2d at 250-51. Specifically, the circuit courts found that the officer did not have fresh pursuit authority under section 544.157 and, therefore, was not a law enforcement officer but instead a private citizen with no right or privilege to stop and detain persons believed to have committed ordinance violations or traffic offenses. *Id.* This court found that the circuit courts erred in both cases. Specifically, it held in *Sterneker*, "Because this is not a criminal case, but an administrative law or civil case, the circuit court erred in imposing a criminal procedure statute, § 544.157 [fresh pursuit], on the strictures mandated by the General Assembly for a case involving a driving license." 3 S.W.3d at 810. *See also Jennings*, 992 S.W.2d at 251 ("Because this is not a criminal case, but an administrative

law case, none of the issues considered by the circuit court were applicable."). It explained that the only requirements set out by the General Assembly concerning the arresting officer were those in section 302.510—that the arresting officer be certified by the Department of Public Safety and be arresting for violation of a municipal ordinance. *Sterneker*, 3 S.W.3d at 810; *Jennings*, 992 S.W.2d at 251.[3] It reasoned that actions involving license revocations for driving with a BAC in excess of the legal limits do not implicate constitutional protections against unreasonable governmental searches and seizures. *Id.* Instead, such administrative actions are creatures of statute; the General Assembly is free to set the boundaries and procedures for them; and courts must follow the statutes, if adequate. *Sterneker*, 3 S.W.3d at 810-11; *Jennings*, 992 S.W.2d at 251-52. Finally, this court noted that if it added section 577.146 requirements to the requirements of section 302.510, it would be rewriting the statute. *Sterneker*, 3 S.W.3d at 811; *Jennings*, 992 S.W.2d at 252.

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[3] Sections 302.500 to 302.540 governs the revocation or suspension of a license for driving with a BAC in excess of the legal limits. Section 302.510 sets out the duties of the arresting officer in such cases. When *Sternecker* and *Jennings* were decided, it provided, in pertinent part:

> 1. Except as provided in subsection 3 of this section, a law enforcement officer who arrests any person…for violation of a…municipal ordinance prohibiting driving while intoxicated…or municipal alcohol related traffic offense, and in which the alcohol concentration in the person's blood, breath, or urine was ten-hundredths of one percent or more by weight…shall forward to the department [of revenue] a verified report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated any…municipal ordinance prohibiting driving while intoxicated…or municipal alcohol related traffic offense, a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court.
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> …
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> 3. A…municipal ordinance prohibiting driving while intoxicated or a…municipal alcohol related traffic offense may not be the basis for suspension or revocation of a driver's license pursuant to sections 302.500 to 302.540, unless the arresting law enforcement officer, other than an elected peace officer or official, has been certified by the director of public safety pursuant to the provisions of sections 590.100 to 590.180, RSMo.

§ 302.510, RSMo 1994.

Mason v. Dir. of Revenue, 321 S.W.3d 426, 428-29 (Mo. App. S.D. 2010), is even more directly on point, as it addresses similar arguments in the context of a refusal. In *Mason*, the trial court reinstated a driver's license that had been revoked for refusal to submit to a chemical test under section 577.041 finding that there was no lawful arrest, as the arresting officer was outside his jurisdiction without legal authority to make an arrest. *Id.* at 427. On appeal, the Director argued that section 577.041.4 (which then set out the same requirements to sustain a refusal revocation as currently set forth under section 302.574.4) did not require a lawful arrest as an element necessary to revoke for refusal; whereas Mason (the driver) asserted that there was no arrest because the officer who stopped him was outside his city and county limits and without legal authority to arrest. *Id.* at 428. The Southern District, relying on *Kimber*, determined that the trial court erred in concluding a lawful arrest was required in the refusal case. *Id.* at 428-29.

As in *Sterneker*, *Jennings*, and *Mason*, nothing in sections 302.574, 577.041, or 577.020 requires compliance with criminal procedural law regarding jurisdiction and fresh pursuit. Like cases under sections 302.500 to 302.540 (revocation or suspension of a license for driving with a BAC in excess of the legal limits), cases under section 302.574 are administrative law cases, not criminal cases, and the General Assembly is free to set the boundaries and procedures for them. In *Steneker* and *Jennings*, the municipal officers met the only requirements set out by the General Assembly concerning the arresting officer—they were certified by the department of public safety and they were arresting for violation of a municipal ordinance. *Sterneker*, 3 S.W.3d at 810; *Jennings*, 992 S.W.2d at 252. That both officers arrested the drivers outside their jurisdictions did not constitute barriers to the Director's revoking their drivers' licenses. *Id.*

As in *Mason*, it was not disputed that Deputy Farr was a law enforcement officer with the power and duty to arrest in Clinton County and that the offense occurred in Clinton County, but

that the arrest and refusal occurred outside of Clinton County (outside his jurisdiction). Like the officer in *Mason*, Deputy Farr met the only requirements imposed by the General Assembly regarding the law enforcement officer in a refusal case. Applicable to section 302.574, a "law enforcement officer" is "any public servant having both the power and duty to make arrests for violations of the laws of the state…." § 556.061(32). Such definition is worded generally and does not specifically reference jurisdiction or fresh pursuit. At the time of the Stanton's arrest, Deputy Farr was employed as a deputy sheriff in Clinton County and had the power and duty to make arrests for violations of the laws of this state. While Deputy Farr's arrest of Stanton outside of Clinton County may not have withstood Fourth Amendment scrutiny in a criminal case, it did not divest him of his status as a law enforcement officer, and did not prevent the Director from revoking Stanton's driver's license. *See Sterneker*, 3 S.W.3d at 810; *Jennings*, 992 S.W.2d at 252.

Stanton seems to acknowledge in his brief that the exclusionary rule is not applicable in civil license revocation cases. He attempts to distinguish *Mason* by arguing that he is not challenging the first element of section 302.574 (whether he was arrested) as the driver in *Mason* did but the third element – that he did not refuse because the request was invalid as it was made by a law enforcement officer outside of his jurisdiction. This argument, however, is a distinction without a difference. The issue is the same in *Mason* and the instant case: nothing in Section 302.574.3 requires that the law enforcement officer be in his jurisdiction when making the arrest or when requesting the test. Sections 302.574 and 577.04 requires that he be a law enforcement officer with authority to enforce the laws of this state (which is not disputed), that the arrest occur, that it be based upon reasonable grounds (probable cause), and that the driver refused to

take the test. The trial court did not misapply the law in sustaining the revocation of Stanton's driving privilege.

Point one is denied.

In his second point on appeal, Stanton contends that the trial court erred in finding there were reasonable grounds to believe that Stanton was driving a motor vehicle while in an intoxicated condition. He asserts that the Director failed to prove a temporal connection between his operation of the motor vehicle at the time of the accident and the time Deputy Farr observed his intoxication. Specifically, he argues that the time of the accident was unknown or speculative, that the time of consumption of alcohol was unknown or speculative, and that Stanton had access to intoxicating beverages in his vehicle and at the scene of the accident (after his operation of the vehicle).

In this point, Stanton challenges the second element of section 302.574.4—whether the arresting officer had reasonable grounds to believe that Stanton was driving a motor vehicle while in an intoxicated condition. "'Reasonable grounds'" in a refusal case 'is virtually synonymous with probable cause.'" *Ayler v. Dir. of Revenue*, 439 S.W.3d 250, 254 (Mo. App. W.D. 2014) (quoting *Hinnah v. Dir. of Revenue*, 77 S.W.3d 616, 620 (Mo. banc 2002)). "Probable cause to arrest exists when the arresting officer's knowledge of the particular facts and circumstances is sufficient to warrant a prudent person's belief that a suspect has committed an offense." *Hinnah*, 77 S.W.3d at 621 (internal quotes and citation omitted). "Probable cause must exist at the time of the arrest, such that the Director of Revenue may not rely on information an officer discovers subsequent to an arrest to establish probable cause." *Boggs v. Dir. of Revenue*, 564 S.W.3d 693, 698 (Mo. App. W.D. 2018) (internal quotes and citations omitted). The arresting officer does not need to observe the person actually driving or to know

of the person's condition at the time of driving to establish probable cause, and may rely on circumstantial evidence to logically infer that a person was driving while intoxicated. *Gallagher v. Dir. of Revenue*, 604 S.W.3d 372, 377 (Mo. App. E.D. 2020); *Stolle v. Dir. of Revenue*, 179 S.W.3d 470, 472 (Mo. App. E.D. 2005). "An officer may also rely on information provided by witnesses to establish probable cause to believe a person was driving in an intoxicated condition." *Gallagher*, 604 S.W.3d at 377.

The probable cause determination is reviewed *de novo* for abuse of discretion. *Boggs*, 564 S.W.3d at 699 (citing *White v. Dir. of Revenue*, 321 S.W.3d 298, 310 (Mo. banc 2010)). Thus, the appellate court gives deference to the trial court's determination of the historical facts (the facts that led to the stop, search, or arrest) and to the reasonable inferences drawn therefrom; but the ultimate assessment of whether the historical facts and inferences satisfy the legal standard for probable cause remains subject to *de novo* review. *Id.*

The circuit court in this case did not issue any findings of fact or conclusions of law. "All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached." Rule 73.01(c).

The Director presented sufficient evidence that Deputy Farr had reasonable grounds to believe Stanton was driving while intoxicated. At the crash scene, Deputy Farr found Stanton's vehicle, that appeared to have been driving north, crashed into a tree on the west side of the road near a driveway. The crash took place on a straight, dry, gravel road during the day. Given these facts, it was a fair inference that Stanton's driving was erratic, as he clearly crossed over and left the roadway and collided with a stationary object.

When the deputy contacted Stanton in the ambulance at the fire department at 3:23 p.m., Stanton admitted that he had been driving and that he had wrecked his vehicle. He also admitted

that he had drank three beers. He said that he had been drinking in his car and that he had a drinking problem. Stanton said that he had started drinking at 3:00 p.m. when he got off work, that he stopped drinking four hours ago, and that he had been in the back of the ambulance for a couple of hours. Stanton's contradictory statements regarding the time he was drinking showed either his confusion (an indication of impairment) or his deliberate intent to deceive the deputy about his drinking and driving.

Additionally, the deputy could smell a moderate odor of intoxicating beverage coming from Stanton.[4] The deputy also observed Stanton's eyes to be watery, bloodshot, and glassy. At the hospital, Deputy Farr further observed that Stanton's speech was slurred and confused. The odor of alcohol, slurred speech, and glassy, bloodshot eyes are indicia of intoxication. *Gallagher*, 604 S.W.3d at 376. Deputy Farr performed the Horizontal Gaze Nystagmus on Stanton in the ambulance at the fire department, and Stanton scored six points.

> The standard scoring system on the horizontal gaze nystagmus test gives one point for eye movement indicative of alcohol influence for each of the three tests for each eye. The highest possible score is six points, while a score of four or more points is an indication that a suspect is intoxicated.

Id. at 377 (internal quotes and citation omitted). All of this evidence, when viewed in the light most favor to the trial court's judgment, supported the trial court's finding that Deputy Farr had reasonable grounds to believe Stanton was driving while intoxicated.

Stanton argues that whether he was intoxicated when the deputy first observed him in the ambulance was irrelevant because the time of the accident was unknown or speculative. He also argues that he had access to alcohol after the accident and that the Director did not introduce any

[4] Fire and EMT personnel also told the deputy when he arrived at the fire station that they believed Stanton had been drinking because of the smell of intoxicating beverage emitting from his person.

evidence that he did not consume any alcohol after the accident. In the Alcohol Influence Report, admitted into evidence with no objection by Stanton, Deputy Farr estimated the time of the crash at 2:59 p.m. The deputy also testified at trial that, to the best of his knowledge, the accident occurred at 3:00 p.m. Since the trial court found in favor of the Director and did not make a specific finding of fact on this issue, the trial court must have found the deputy's report and testimony credible. Based on this evidence, the time between the accident and Deputy Farr's first contact with and observations of Stanton was approximately 23 minutes.

Furthermore, Stanton told Deputy Farr that after the crash, he left the scene and went to his parents' house and that they then took him to the fire station to be evaluated. Stanton did not indicate to the deputy that he remained at the accident scene where beer cans and boxes were found for any amount of time before walking to his parents' house. Neither he nor his mother indicated that he was drinking in the 23 minutes between the time of the crash and the deputy's first contact with Stanton. The failure of a driver to assert that his intoxication occurred after a vehicle crash may bolster the inference that the driver did not, in fact, consume alcohol after the crash. *Shanks v. Dir. of Revenue*, 534 S.W.3d 381, 389 (Mo. App. W.D. 2017) (citing *Howard v. McNeill*, 716 S.W.2d 912, 915 (Mo. App. E.D. 1986)). The trial court did not err in determining that the Director presented sufficient evidence that Deputy Farr had reasonable grounds to believe Stanton was driving while intoxicated.[5]

[5] *Cf. Boggs v. Dir. of Revenue*, 564 S.W.3d 693 (Mo. App. W.D. 2018) (trial court did not erroneously apply the law in finding that Director presented insufficient evidence to establish that probable cause existed to arrest driver involved in a one-car accident for driving while intoxicated, although driver was plainly intoxicated and tested for BAC above the legal limit four hours after the accident and stated that he had not consumed any alcohol after the accident, where Director introduced no evidence regarding driver's condition at time of accident other than the officer's inference that driver was intoxicated at time of accident based on his condition four hours later); *Domsch v. Dir. of Revenue*, 767 S.W.2d 121 (Mo. App. W.D. 1989) (trial court's determination that police officer did not have probable cause to believe that driver was intoxicated at time that he was involved in automobile accident was

Point two is denied.

The judgment of the trial court is affirmed.

/s/ *Thomas N. Chapman*
Thomas N. Chapman, Presiding Judge

All concur.

supported by substantial evidence where driver was arrested, while eating at a restaurant, one hour and forty minutes after accident had occurred at another location).