

## Supreme Court reverses man's license revocation

By: Jessica Shumaker ◉ April 30, 2019

A split Missouri Supreme Court has ruled that privacy is inherent to the right to speak to an attorney in the context of drivers suspected of driving while intoxicated, a matter of first impression in Missouri.

On Tuesday, the court ruled 4-3 to reverse and remand a judgment upholding the one-year license revocation of Jereme Roesing, a man who was arrested in Lee's Summit in May 2016 on suspicion of driving while intoxicated and then lost his license after the Missouri director of revenue determined that he refused to submit to a chemical breath test.

The majority of the court ruled that because law enforcement deprived Roesing of his right to confer with an attorney in private, and the director failed to show that Roesing was not prejudiced, his refusal to consent to a chemical test was not voluntary and unequivocal.

Judge Mary R. Russell wrote the majority opinion. She was joined by Judges George W. Draper III, Patricia Breckenridge and Laura Denvir Stith.

Judge W. Brent Powell wrote the dissenting opinion. He was joined by Chief Justice Zel M. Fischer and Judge Paul C. Wilson.

After the director of revenue determined that Roesing refused to submit to a chemical breath test, Roesing filed a petition for review. At trial, he asserted his statutory right to counsel was violated because the arresting officer did not allow him to speak with his attorney in private.

The officer testified that he stood three to four feet away from Roesing during the call and could hear the conversation with his attorney.

The trial court sided with the director and issued a judgment upholding the revocation of Roesing's license, which Roesing appealed to the Supreme Court.

Roesing argued he was not given a reasonable opportunity to talk with his attorney to make an informed decision about whether to submit to a chemical test because law enforcement listened to and recorded his conversation with his attorney.

He asserted he had a right to speak with his attorney privately under Section 577.041.1 of the Missouri Revised Statutes.

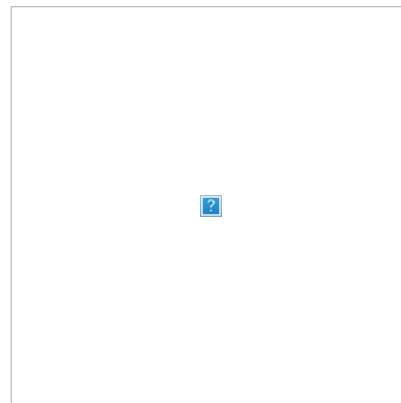
The director, however, argued that the law only contains the right to attempt to contact an attorney and doesn't guarantee an opportunity to speak with an attorney, let alone the right to a private conversation.

Russell wrote that the director's interpretation contradicts the purpose of the statute "by hampering the driver's ability to have meaningful contact with an attorney for advice in making an informed decision of whether to submit to a chemical test."

She said additionally, the legislature could not have logically intended the statute would require "nothing more than allowing a driver 20 minutes to attempt to contact an attorney."

"For a driver to have meaningful contact with an attorney, the conversation must be private," she wrote.

In his dissent, Powell argued that he would find the statute confers no right to privately consult with an attorney,



The Missouri Supreme Court building in Jefferson City. Photo By: KAREN ELSHOUT

only the right to 20 minutes in which one could attempt to speak to an attorney.

“The principal opinion encroaches on the general assembly’s legislative authority by reading a right to private consultation into 577.041.1 that the plain text of the statute does not confer,” he wrote.

Powell additionally said the Supreme Court has never recognized a constitutional right to counsel in license revocation cases, and neither has the legislature created a statutory right.

“Rather, the legislature created, and Missouri precedent recognizes, only the statutory right to ‘twenty minutes in which to attempt to contact an attorney’ pursuant to 577.041.1,” he wrote.

William C. Kenney of the Bill Kenney Law Firm in Kansas City represented Roesing, while Deputy Solicitor General Zachary M. Bluestone represented the director. Neither side could immediately be reached for comment.

The case is *Roesing v. Director of Revenue*, SC97165.