

Summary of SC92260, *Norman C. Doughty v. Director of Revenue*, consolidated with SC92261, *David T. Doughty v. Director of Revenue*

Appeals from the Vernon County circuit court, Judge Neal Robert Quitno
Argued and submitted Sept. 5, 2012; opinion issued Jan. 8, 2013

Attorneys: In both cases, the Doughtys were represented by R. Todd Wilhelmus of Caskey Hopkins & Wilhelmus in Butler, (660) 679-4161; and the director was represented by John W. Grantham of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The director of revenue administratively revoked the driving privileges of two men who refused to submit to breathalyzer tests after being arrested for driving while intoxicated. The men appeal the trial court's admission of the director's records because the arresting officers were not present during the trial to be cross-examined. In a 6-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the trial court's judgments. The statute allowing the records to be admitted did not violate the men's due process rights. They had the right to subpoena the arresting officers to testify in their trials, but by failing to do so, they declined to exercise their rights.

Facts: Norman Doughty and his son David Doughty attended a wedding in April 2011 in Nevada, Missouri. In the early morning hours after the wedding, the Doughtys were arrested for driving while intoxicated during separate traffic stops by different police officers in different parts of town. Both performed poorly on field sobriety tests. Preliminary breath tests showed the father's blood-alcohol content to be 0.12 percent and the son's to be 0.179 percent, both over the legal limit. After being transported to the police station, the father agreed to take a breathalyzer test but then refused to provide sufficient breath to perform the test, while the son refused the test outright. As authorized by section 577.041(1), RSMo, the arresting officers served the men with notices from the director of revenue revoking their driving privileges for one year. In May 2011, each Doughty filed a petition for review in the circuit court, challenging the director's administrative revocation of his license for refusal to take a breathalyzer test. During their separate trials, the director's sole evidence was the director's certified records, including the police report, the alcohol influence report and the driving records. In each trial, Doughty objected to the admission of the records, arguing they contained hearsay and arguing their admission violated his constitutional rights to due process and to confront and cross-examine witnesses against him. In the father's trial, the director advised the court that the arresting officer had been invited to attend but was not present. In the son's trial, the director noted that Doughty could have petitioned the arresting officer to appear, and Doughty told the court he had not subpoenaed the officer but was objecting only to the records being admitted into evidence without cross-examination. In each trial, the court tentatively admitted the records, subject to Doughty's submission of legal authority to the contrary. Each Doughty testified in his defense, and the testimony varied from the information in the arresting officer's report. Nevertheless, the trial court relied on the reports to uphold the revocation of their licenses. Each Doughty appeals. Because their appeals contain identical questions of law, this Court reviews them together.

AFFIRMED.

Court en banc holds: (1) Section 302.312.1, RSMo, which provides for the admission in court of department of revenue records, does not violate due process. In creating this special statutory exemption to the evidentiary rules, the legislature intended to eliminate the need for testimony to identify and authenticate the records and provide foundation as well as to eliminate best evidence and hearsay challenges. Under the coextensive due process protections of both the state and federal constitutions, each Doughty had the right to confront and cross-examine witnesses against him in the trial on his petition for review of the administrative revocation of his driver's license. The statute did not deny them these rights; the Doughtys had the right to subpoena witnesses to appear at the trials. If they desired to confront and cross-examine the arresting officers, they had the ability to subpoena the arresting officers to appear at the trials, but they failed to do so, declining to exercise their rights.