

out why you're -- you're here." Norris said his sister owned the Sonic, which was true.

Deputy Letchworth described Norris as agitated, aggressive, sweating, hard to understand, but without odor of alcohol. Deputy Letchworth ran Norris's license for warrants, and finding none, asked to search the Hummer. Norris initially refused, but relented when Deputy Letchworth said he would call for a drug dog. Deputy Letchworth next asked to frisk Norris, who walked away saying, "No, you're not. You wanted to search my vehicle." After Deputy Letchworth stopped Norris and brought him back, Norris threw his coat down. Deputy Letchworth searched it and found a matchbox containing a straw and white powder that field-tested positive for methamphetamine.

Deputy Letchworth arrested Norris for drug possession and called for backup. When Officer Joe Chase arrived, Deputy Letchworth said he did not think Norris had been drinking, but he was "acting squirrely" and seemed to be under the influence of something. Officer Chase performed one field sobriety test¹ before Norris, having been read his Miranda² rights, asked to contact a lawyer. The officers stopped testing Norris and arrested him for DWI as well.

Deputy Letchworth took Norris to the station, and at 4:13 a.m., read him the Implied Consent Law.³ Norris did not request an attorney, and refused to submit to a chemical test. Deputy Letchworth warned Norris that his license would be revoked if he would not submit; again asked Norris to submit to a test; and again was

¹ A vertical gaze nystagmus test which Norris apparently failed.

² ***Miranda v. Arizona***, 384 U.S. 436 (1966).

³ See § 577.020. Statutory references are to RSMo 2000, as amended through 2005.

refused. The refusal was recorded as of 4:16 a.m. Deputy Letchworth thereafter sought to interview Norris, and again advised him of his Miranda rights, but Norris would not talk without an attorney.

Norris filed a petition to review his license revocation. The trial court reinstated the license, finding that Deputy Letchworth, in violation of § 577.041.1, did not give Norris 20 minutes to try to contact an attorney. The Director appeals.

Refusal to Take Chemical Test

Under the Implied Consent Law, a DWI arrestee is deemed to have consented to testing of his blood alcohol/drug content. § 577.020.1. Refusal to take the test results in a one-year license suspension. § 577.041.3. The officer's request must state the reasons for asking the driver to take the test, and that if the driver refuses, his license will be immediately revoked and evidence of his refusal may be used against him. § 577.041.1.

“If a person when requested to submit to” any such test “requests to speak to an attorney, the person shall be granted twenty minutes in which to attempt to contact an attorney.” *Id.* But in contrast to Miranda rights, police need not inform a driver of this statutory right to seek counsel. *See Paxton v. Director of Revenue*, 258 S.W.3d 68, 71 (Mo.App. 2008); *Schussler v. Fischer*, 196 S.W.3d 648, 652 (Mo.App. 2006).

In reinstating Norris's driving privileges in this case, the trial court cited Western District cases culminating in and exemplified by *Schussler*. However, the Eastern District later handed down *Paxton*, which declined to follow *Schussler*;

finding “its holding contrary to the express language of Section 577.041.1.” *Paxton*, 258 S.W.3d at 72.

In a separate en banc opinion today, this court also concluded that § 577.041.1 is clear, unambiguous, and implicated only when a driver asks to contact counsel in connection with a request for chemical testing. See *Sonja A. Williams v. Director of Revenue*, No. SD28910 (Mo.App., S.D., en banc, February 6, 2009). Under our holding and reasoning in *Williams*, we find, as in *Paxton*, that § 577.041.1 was satisfied in this case, and the trial court erred in ruling otherwise.

Reasonable Grounds to Suspect DWI

Yet this does not end the inquiry. Norris claims the Director failed to prove another requisite of her claim: Deputy Letchworth’s reasonable grounds to believe Norris was driving in an intoxicated or drugged condition. See § 577.041.4; *Guhr v. Director of Revenue*, 228 S.W.3d 581, 584 (Mo. banc 2007). This element was contested at trial. The parties debated it in closing argument. The Director’s counsel told the trial court it was the “real issue” in the case. The judgment does not address it, however, nor did the trial judge express any Opinion of record thereon.

We cannot resolve this issue on the basis that, since neither party requested written findings and conclusions, Rule 73.01(c) deems all fact issues to be resolved in conformity with the result. The judgment is solely based on an erroneous legal interpretation on the “refusal” element. The trial court made no express or implied credibility determination on the “reasonable grounds” element, but on this record, such determination is necessary to decide that contested issue in view of our ruling above. Thus, we remand for that purpose. See *Combs v. Director of Revenue*,

991 S.W.2d 690, 692-93 (Mo.App. 1999); *Weiser v. Director of Revenue*, 987 S.W.2d 496, 497 (Mo.App. 1999).

Conclusion

The judgment is reversed. The case is remanded for entry of a new judgment expressing the court's determination whether Deputy Letchworth had reasonable grounds to believe Norris was driving in an intoxicated or drugged condition,⁴ and otherwise in conformity with this opinion and applicable law.

Daniel E. Scott, Presiding Judge

BARNEY, J. – CONCURS

BATES, J. – CONCURS

DAVID SIMPSON, ATTORNEY FOR RESPONDENT

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⁴ The court is not required to take further evidence on this issue.