IN THE SUPREME COURT OF MISSOURI

NO. SC97165

JEREME ROESING,

***Appellant*,**

vs.

DIRECTOR OF REVENUE,
STATE OF MISSOURI,

***Respondent*.**

On Appeal from the Circuit Court of Jackson County, Missouri
Honorable Robert Trout, Associate Circuit Judge

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

Appellant Jereme Roesing appeals the Judgment of the Circuit Court of Jackson County, Missouri, Associate Circuit Division, wherein the trial court sustained the Director of Revenue's one-year revocation of his driving privileges pursuant to RSMo § 577.041 (2016). (LF_015, 18).

Appellant timely filed his Notice of Appeal to the Missouri Court of Appeals for the Western District. (LF_019-21). Following briefing and argument, the Western District issued its opinion on March 13, 2018 (the "Opinion"), affirming the trial court's dismissal of this action. *Roesing v. Director of Revenue*, No. WD80585, 2018 Mo. App. LEXIS 238 (Mo. App. W.D. Mar. 13, 2018). The Opinion was authored by Judge Cynthia L. Martin, with Judge James E. Welsh concurring and Judge Gary D. Witt dissenting in a separate opinion.

Appellant filed his Motion for Rehearing and Rehearing *En Banc* and his Application for Transfer to the Missouri Supreme Court on March 28, 2018. Those motions were denied on May 1, 2018. Appellant filed his Application for Transfer in this Court on May 16, 2018, with said Application being sustained on September 25, 2018. Accordingly, this Court has jurisdiction pursuant to Article V, Section 10 of the Missouri Constitution and Supreme Court Rules 83.04 and 83.09.

STATEMENT OF FACTS

On or about May 1, 2016, Appellant Jereme Roesing was arrested in Lee's Summit, Missouri on suspicion of driving while intoxicated. (LF_005, 15; Appx.[1] A1). Officer Jordan Clapp of the Lee's Summit Police Department transported Appellant to detention and read him Implied Consent. (Tr. 27: 18-25, 28: 1-3). Prior to deciding whether to consent to a chemical test of his breath, Appellant requested to speak to his attorney, and Clapp allowed him to use his cellular phone. (Tr. 28: 4-9). A little more than a minute into the phone call, Appellant told Clapp that his attorney wanted to speak with him (Clapp), and handed him the phone. (LF_009-10; Appx. A2-A3; Tr. 30: 16-24, 31: 2-10). Appellant's attorney requested to speak to Appellant in private, but Clapp told Appellant's attorney that every room in detention was video- and audio- recorded, and he refused to give Appellant any privacy. (Tr. 31: 18-25, 32: 1-4, 22-25, 33: 1-13). A little less than a minute and a half later, Clapp handed the phone back to Appellant. (LF_011; Appx. A4; Tr. 31: 11-17).

For the duration of Appellant's phone call with his attorney, Clapp stood approximately three or four feet from Appellant, but closer to three feet. (Tr. 32: 8-12). Two of the screenshots from the detention video depict Clapp looking over at Appellant while he was talking to his attorney, Clapp testified that he could hear everything that Appellant said to his attorney, and everything Appellant said to his attorney was video- and audio- recorded. (Tr. 32: 13-18).

[1] "Appx" refers to the Appendix to Appellant's Substitute Brief.

The Missouri Director of Revenue ("Director") determined that Appellant had refused to submit to a chemical test and revoked his license for one year. (LF_005, 15; Appx. A1). On May 2, 2016, Appellant filed his Petition for Review in the Circuit Court of Jackson County, Associate Circuit Division, and his case was tried before the Honorable Judge Robert Trout on March 2, 2017. (LF_005-6, 15; Appx. 1). Officers Jason Reddell and Jordan Clapp of the Lee's Summit Police Department testified on behalf of the Director. (LF_008, 15; Appx. A1).

Clapp testified that there was a room in the back of detention where Appellant could have spoken to his attorney and gotten counsel from his attorney that was not videotaped and audio recorded, and where a police officer was not standing three feet away listening to Appellant's conversation with his attorney, but it was standard procedure for Lee's Summit police officers to stand three feet away from detainees while they speak to their attorneys. (Tr. 32: 22-25, 33: 1-8). Clapp testified that if Appellant's attorney had been present at the station, Clapp would not have let him speak to his attorney in private because Appellant had not been processed by the detention officers, which is required by policy before additional phone calls are made and before detainees are allowed any "extra privileges". (Tr. 33: 9-13).

At trial, Appellant asserted that his right to counsel was violated because he was not allowed to speak with his attorney in private. (Tr. 32: 4-5, 36: 11-19). Appellant asserted that, in providing drivers with the statutory right to counsel, the legislature could not have intended for attorney-client phone calls to be video- and audio-recorded with a police officer standing three feet away listening to every word the driver says to their

attorney. (Tr. 36: 11-19). The trial court found that the Director had met his burden of proving that Appellant refused to submit to the breathalyzer and issued its Judgment sustaining the revocation of Appellant's driving privileges. (LF_015; Appx. A1). Appellant timely filed his notice of appeal, on March 18, 2017. (LF_016-21).

POINTS RELIED ON

I. The Trial Court Erred In Sustaining The Revocation Of Appellant's Driving Privileges, Because Appellant Was Deprived Of His Statutory Right To Counsel, In That Officer Clapp Refused To Allow Appellant To Speak With His Attorney In Private, Officer Clapp Listened To Every Word That Appellant Said To His Attorney, And Appellant's Attorney-Client Phone Call Was Video- And Audio-Recorded.

Clardy v. Director of Revenue, 896 S.W.2d 53 (Mo. App. W.D. 1995)

Spradling v. Deimeke, 528 S.W.2d 759 (Mo. 1975)

State ex rel. Healea v. Tucker, 545 S.W.3d 348 (Mo. banc 2018)

State ex rel. Peabody Coal Co. v. Clark, 863 S.W.2d 604 (Mo. banc 1993)

RSMo § 577.041 (2016)

RSMo § 600.048

STANDARD OF REVIEW

When the evidence in a case is uncontested so that the only issue is the legal effect of the evidence, there is no need to defer to the trial court's judgment. *Hinnah v. Director of Revenue*, 77 S.W.3d 616, 620 (Mo. banc 2002) (*citing Hampton v. Director of Revenue*, 22 S.W.3d 217, 220 (Mo. App. W.D. 2000). When the issue is a question of law, the Court of Appeals conducts a *de novo* review. *White v. Director of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010) (*citing City of St. Joseph v. Vill. of Country Club*, 163 S.W.3d 905, 907 (Mo. banc 2005)). Legal questions of statutory interpretation are also reviewed under a *de novo* standard. *Akins v. Director of Revenue*, 303 S.W.3d 563, 564 (Mo. banc 2010) (*citing Junior College Dist. of St. Louis v. City of St. Louis*, 149 S.W.3d 442, 446 (Mo. banc 2004)).

Because the Director's evidence in this case is uncontested, and because the sole issue on appeal is a question of law involving the interpretation of a statute, the standard of review is *de novo*.

ARGUMENTS

I. THE TRIAL COURT ERRED IN SUSTAINING THE REVOCATION OF APPELLANT'S DRIVING PRIVILEGES, BECAUSE APPELLANT WAS DEPRIVED OF HIS STATUTORY RIGHT TO COUNSEL, IN THAT OFFICER CLAPP REFUSED TO ALLOW APPELLANT TO SPEAK WITH HIS ATTORNEY IN PRIVATE, OFFICER CLAPP LISTENED TO EVERY WORD THAT APPELLANT SAID TO HIS ATTORNEY, AND APPELLANT'S ATTORNEY-CLIENT PHONE CALL WAS VIDEO- AND AUDIO-RECORDED.

A. A driver must be allowed twenty minutes to consult with counsel for the purposes of making an informed decision about whether to submit to a chemical test.

In pertinent part, in a post-revocation hearing, the trial court must determine "whether or not the person refused to submit to the test." *Hinnah v. Director of Revenue*, 77 S.W.3d 616, 620 (Mo. banc 2002) (*quoting* RSMo § 577.041.4). The burden of proof is on the Director. *Id*. (*citing Rain v. Director of Revenue*, 46 S.W.3d 584, 587 (Mo. App. 2001)). If the court determines that the driver did not refuse, or that the driver's refusal was uninformed or non-consensual, "the court shall order the director to reinstate the license or permit to drive." *Id*. (*quoting* RSMo § 577.041.5).

This Court has held that "[t]he purpose of section 577.041.1 is to provide the driver with **a reasonable opportunity to contact an attorney to make an informed decision** as to whether to submit to a chemical test." *Norris v. Director of Revenue*, 304

S.W.3d 724, 726-27 (Mo. banc 2010) (emphasis added) (*citing Kotar v. Director of Revenue*, 169 S.W.3d 921, 921, 925 (Mo. App. 2005)).

B. *Any person* (including a driver) who is being held under suspicion of a crime (including driving while intoxicated) is entitled to talk *privately* with his or her lawyer, and arresting authorities do not have the right to prevent the person from doing so.

Missouri case law has long held that a driver "does not have a *constitutional* right to consult with an attorney prior to deciding whether or not to submit to a breathalyzer test …" *State v. Ikerman*, 698 S.W.2d 902, 907 (Mo. App. E.D. 1985) (emphasis in original) (*citing Spradling v. Deimeke*, 528 S.W.2d 759, 764 (Mo. 1975)). "However, [a driver] **does have the right to consult with counsel** or others on his behalf, and **the arresting authorities do not have the right to prevent him from doing so."** *State v. Ikerman*, 698 S.W.2d 902, 907 (Mo. App. E.D. 1985) (emphasis added) (*citing Spradling v. Deimeke*, 528 S.W.2d 759, 764 (Mo. 1975)).

In addition to the statutory right to counsel provided by section 577.041, section 600.048.3 explicitly requires law enforcement to provide detainees with a private room to speak privately with his or her attorney. This Court recognized as much in *State ex rel. Healea v. Tucker*, 545 S.W.3d 348 (Mo. banc 2018), a criminal case involving nearly identical facts to those at issue here. Healea was arrested for his alleged involvement in an injury accident and transported to the Columbia Police Department ("CPD"). *Id.* at 350. He requested to speak to his attorney in private, and was allowed to use his cell phone, however, the CPD secretly video- and audio-recorded Healea's attorney-client

phone call, burned it to a DVD, and distributed it to the prosecution for use in the criminal case against him. *Id*. In addition to noting that Healea's constitutional rights had been violated,[2] this Court expressly held as follows:

> The police department also violated section 600.048.3, RSMo Supp. 2013, which requires law enforcement officials in charge of jails, sheriffs' offices, or detention facilities "to make a room or place available therein where any person held in custody under a charge or suspicion of a crime will be able to talk *privately* with his or her lawyer."

Healea, 545 S.W.3d at 352 n. 2 (emphasis in original) (*quoting* RSMo § 600.048.3).

Like *Healea*, law enforcement prevented Appellant from speaking to his attorney in private. For the duration of Appellant's attorney-client phone call, Officer Clapp stood three to four feet away and listened to every word Appellant said to his attorney. Appellant's attorney-client phone call was video- and audio-recorded, burned to a DVD, and distributed to the prosecuting attorney's office for use in the criminal case against Appellant.[3] Under this Court's decision in *Healea*, Appellant was deprived of his right

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[2] The State conceded that the CPD's recording violated Healea's Sixth Amendment right to counsel and that no portion of the conversation should be used at trial. *Id*. at 351-52 & n. 1.

[3] Officers Reddell and Clapp reviewed portions of the dashcam videos and of the detention room video at trial, and screenshots from the detention room video are in the

"'to talk *privately* with his … lawyer[,]'" and the trial court erred in holding otherwise. *Healea*, 545 S.W.3d at 352 n. 2 (emphasis in original) (*quoting* RSMo § 600.048.3).

C. Appellant was deprived of the right to speak to his attorney, in private, in violation of sections 577.041.1 and 600.048.3, RSMo.

In addition to being afforded the right to privacy under section 600.048.3, Appellant submits that privacy is inherent in section 577.041's right to counsel provision. "'When interpreting a statute, the primary goal is to give effect to legislative intent as reflected in the plain language of the statute.'" *Stiers v. Director of Revenue*, 477 S.W.3d 611, 615 (Mo. banc 2016) (*quoting State v. Moore*, 303 S.W.3d 515, 520 (Mo. banc 2010)). "In doing so, a court considers the words used in the statute in their plain and ordinary meaning." *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.*, 248 S.W.3d 101, 106 (Mo. App. W.D. 2008). Additionally, the Court presumes

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record on appeal as Appellant's trial exhibits 101-106 (LF_009), with the color exhibits being filed separately as exhibits on March 2, 2017. Given that the Director does not produce police dashcam videos and detention room videos to petitioners in civil license revocation proceedings, Appellant submits that the Court can take judicial notice of the fact that they were obtained through discovery in his criminal case. *See* Appellant's Opening Brief at 15 fn. 3; *see also* State's Formal Response to Defendant's Request for Discovery at 1, ¶ 1, *State v. Roesing*, No. 1616-CR02490 (Cir. Ct. of Jackson Cty., Mo. Dec. 28, 2016) ("the State has previously disclosed five (5) digital video discs and/or audio recordings … includ[ing] copies of the booking videos and dash cam videos.").

that the legislature did not intend for a statute to create an absurd result. *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 938-39 (Mo. App. W.D. 1993) ("statutory construction should avoid unreasonable or unjust results.").

In pertinent part, RSMo § 577.041.1[4] provides as follows:

> If a person when requested to submit to any test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be granted twenty minutes in which to attempt to contact an attorney.

See Appx. A8. A driver only has the right to "contact an attorney" after he or she has been arrested and requested to submit to a chemical test to determine the alcohol content of his or her blood. Evidence of the taking, or the refusal to take, the requested chemical test, can (and undoubtedly will) be used as evidence of intoxication in any and all subsequent civil *and* criminal charges that may be brought against the driver. Without question, any attorney-client consultation under such circumstances will involve discussions of all potential civil and criminal consequences of the driver's decision. It makes no sense that the legislature intended that drivers, who have been arrested and requested to provide potentially highly incriminating evidence that will be used in the prosecution of civil and criminal cases—should be forced to communicate with their

[4] All statutory references are to the version of the Revised Statutes of Missouri in effect at the time of Appellant's arrest unless otherwise indicated. (*See* Appx. A8-A12). Sections of Chapter 577 referred to in this brief were materially amended effective January 1, 2017.

attorney in the presence of a police officer, or in the presence of a video- and/or audio-recording device. The only reasonable interpretation of section 577.041.1 is that the legislature intended for the 20-minute attorney-client consultation to be private.

Another important consideration is that the legislature is "presume[d to be] aware of the existing law." *Frye v. Levy*, 440 S.W.3d 405, 420 (Mo. banc 2014) (*citing Turner v. School Dist. Of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010)). As discussed in Section I(B), *supra*, Missouri law expressly requires law enforcement to "make a room or place available … where any person held in custody under charge or suspicion of a crime will be able to talk privately with his or her lawyer, …" RSMo § 600.048.3; *see also Healea*, 545 S.W.3d at 352 n. 2. Operating under the presumption that the legislature was aware of the existence section 600.048.3 when it enacted section 577.041.1[5], as we must, it was not necessary for the legislature to expressly include the word "privacy" in section 577.041.1—because *any* person (including a driver) who has been arrested and is being held under suspicion of a crime already has the statutory right to *privately* consult with counsel. In order to deprive such persons of the statutory right already conferred on them in section 600.048.3, the legislature would have had to expressly eliminate the right to privacy when it enacted 577.041.1—which it certainly did not do.

Section 577.041's right to counsel provision is meant to ensure that drivers are able to make an "*informed decision* about exercising [their] rights." *Akers v. Director of*

[5] *See* Appx. A11, which provides that section 577.041 was first enacted in 1982, and A12, which provides that section 600.048 was first enacted in 1969.

Revenue, 193 S.W.3d 325, 328 (Mo. App. W.D. 2006) (emphasis added) (*citing Brown v. Director of Revenue*, 34 S.W.3d 166 (Mo. App. W.D. 2000)); *see also Norris*, *supra*. The legislature chose to confer this right on drivers because a license revocation proceeding "carries with it immense repercussions for a petitioner." *McPhail v. Director of Revenue*, 450 S.W.3d 842, 847 (Mo. App. E.D. 2014). When a driver qualifies his refusal on speaking to an attorney, "the consent implied by law is temporarily withdrawn for the twenty-minute abatement period to permit the driver to consult counsel …" *Riley v. Director of Revenue*, 378 S.W.3d 432, 438 (Mo. App. W.D. 2012).

If law enforcement interferes with or prevents a driver from consulting with his or her attorney, *i.e.*, from making an "informed decision about exercising [his or her] rights", the driver's refusal is rendered uninformed and non-consensual. *Akers*, 193 S.W.3d at 328; *see also Teson v. Director of Revenue*, 937 S.W.2d 195, 197 (Mo. banc 1996) ("Uninformed decisions are non-consensual."). If the court determines that the driver's refusal was uninformed or non-consensual, "the court shall order the director to reinstate the license or permit to drive." *Hinnah v. Director of Revenue,* 77 S.W.3d 616, 620 (Mo. banc 2002) (*quoting* RSMo § 577.041.5).

In order to make an informed decision, the driver must candidly disclose factual information to his or her attorney, so the attorney has knowledge of the facts prior to advising the driver of the application of the law to the particular facts of the driver's case. *See e.g., State v. Holland*, 147 Ariz. 453, 456 (Ariz. 1985) ("[I]t is impossible to foresee what advice would have been given defendant had he been able to confer *privately* with counsel.") (emphasis added). In *Holland*, the Arizona Supreme Court considered various

questions that the defense attorney was unable to ask the defendant because the officer refused to give them privacy.[6] The defense attorney attested that, without this information, he was unable to adequately advise his client. *Id*. at 455.

> When an arrestee consults with counsel, he must be allowed to do so in a meaningful way. A consultation would be meaningless if relevant information could not be communicated without being overheard. *There is a right to privacy inherent in the right to consult with counsel*.

Bickler v. North Dakota State Hwy. Comm'r, 423 N.W.2d 146, 147 (N.D. 1988) (emphasis added).[7]

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[6] (1) How much have you had to drink? (2) What type of alcohol? (3) How big were the drinks? (4) How much alcohol was in them? (5) When was your last drink? (6) Over what period of time were the drinks? (7) When did you last eat? (8) What did you eat? (9) Do you believe you are under the influence of alcohol now? (10) Do you believe you were under the influence of alcohol while you were driving? (11) Do you believe the alcohol affected your ability to drive?

[7] *See also State v. Spencer*, 750 P.2d 147, 155 (Or. banc 1988) ("'[T]he right to an attorney during the investigative state is at least as important as the right to counsel during the trial itself.'") (citation omitted); *People v. Moffitt*, 50 Misc. 3d 803, 804, 19 N.Y.S.3d 713 (N.Y. Crim. Ct. 2015) (If the right to consult with an attorney prior to deciding "whether to submit to a breath test to determine blood alcohol content … is to

> The Missouri Supreme Court "has spoken clearly of the sanctity of the attorney-client privilege. **The relationship and the continued existence of the giving of legal advice by persons accurately and effectively trained in the law is of greater societal value … than the admissibility of a given piece of evidence in a particular lawsuit.** Contrary to the implied assertions of the evidence authorities, the heavens will not fall if all relevant and competent evidence cannot be admitted.["]

State ex rel. Behrendt v. Neill, 337 S.W.3d 727, 729 (Mo. App. E.D. 2011) (emphasis added) (*quoting State ex rel. Peabody Coal Co. v. Clark*, 863 S.W.2d 604, 607 (Mo. banc 1993)).

> **"Confidentiality is essential if attorney-client relationships are to be fostered and effective."** *Id.* (*citing State ex rel. Great American Ins. Co. v. Smith*, 574 S.W.2d 379, 383-84 (Mo. banc 1978)). …

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have any meaning, the communication between the defendant and his or her attorney must be private."); *State v. Greenwood*, 27 P.3d 151, 153-54 (Or. App. 2001) ("'the court presumed that the taping of the conversation – after an express request for privacy – chilled the defendant's ability to consult with counsel.'") (citation omitted); *Farrell v. Municipality of Anchorage*, 682 P.2d 1128, 1130 (Ak. App. 1984) ("the statutory right to contact and consult counsel requires reasonable efforts to assure that confidential communications will not be overheard, …").

> Accordingly, we seek to protect a client from any infringement upon her privilege to any extent within reason.

Id. (emphasis added).[8]

Respondent does not contend that Clapp had an "extraordinary" interest in refusing to allow Appellant to speak to his attorney in private, only that Clapp offered "a legitimate explanation" for listening to the entirety of Appellant's attorney-client phone call, and for video- and audio-recording Appellant's attorney-client phone call, burning it to a DVD, and distributing it to the prosecuting attorney for use in the criminal case against him. *See* Respondent's Court of Appeals Brief at 10-11. However, as this Court has made clear – even in civil settings – "the attorney-client privilege … *is absolute in all but the most extraordinary* situations[.]" *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 366 n.3 (Mo. banc 2004) (emphasis added). Regardless of how much law enforcement might want to secure evidence for use in a criminal prosecution, or a civil license revocation proceeding, "the sanctity of the attorney-client privilege. … is of

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[8] *See also Holland*, 147 Ariz. at 455 ("it is universally accepted that effective representation is not possible without the right of a defendant to confer in private with his counsel.") (*citing State v. Cory*, 382 P.2d 1019, 1020 (Wash. 1963)); *Greenwood*, 27 P.3d at 153 ("Confidentiality is inherent in the right to consult with counsel; to hold otherwise would effectively render the right meaningless.") (citation omitted); *State v. Durbin*, 63 P.3d 576, 579 (Or. banc 2003) ("appropriate legal advice requires frank communication between the client and the lawyer.").

greater societal value … than the admissibility of a given piece of evidence in a particular lawsuit." *Peabody*, 863 S.W.2d at 607 (*quoting Great American*, 574 S.W.2d at 383). Accordingly, "anything that materially interferes with [the attorney-client] relationship must be restricted or eliminated, …" *Id*.

In refusing to allow Appellant to consult with his attorney in private, in listening to every word that Appellant said to his attorney, and in video- and audio-recording Appellant's attorney-client phone call, burning it to a DVD, and distributing it to the prosecuting attorneys' office for use in the criminal case against Appellant, Appellant submits that he was deprived of his statutory right to consult with counsel, in private, in violation of sections 577.041 and 600.048, RSMo.

CONCLUSION

As part of the Director's burden of proof, he must show that Appellant "was not prejudiced by the violation of the implied consent law." *Weil v. Director of Revenue*, 304 S.W.3d 768, 770 (Mo. App. E.D. 2010) (*quoting Schussler v. Fischer*, 196 S.W.3d 648, 653 (Mo. App. W.D. 2006)) (additional citations omitted). Under existing law, the "[r]evocation of [Appellant's driver's] license demonstrates that [Appellant] was prejudiced by the violation of section 577.041.1." *Id*. at 770. Additionally, Appellant submits that he was deprived of a reasonable opportunity to engage in a meaningful consultation with his attorney, in violation of sections 577.041 and 600.048, RSMo, and his refusal is therefore presumed to have been uninformed and non-consensual. Thus Appellant was prejudiced by the violation of the implied consent law. To hold otherwise would allow law enforcement to continue to (1) deny drivers the right to a private

consultation with an attorney in violation of section 577.041, (2) deny persons arrested and held under suspicion of a crime the right to a private consultation with an attorney in violation of section 600.048, and/or (3) eavesdrop on, and video- and/or audio-record, privileged attorney-client communications—and yet claim that there is no prejudice because the driver (or detainee) was allowed to engage in a limited and completely ineffective consultation with their attorney, which may be distributed to the prosecution to be used in subsequent civil or criminal prosecutions.

Simply put, under any standard, the Director cannot meet his burden of proof of showing that Appellant was not prejudiced by the violation of his statutory right to counsel. As such, Appellant requests that this Honorable Court reverse the Director's revocation of his driver's license, and for such other and further relief as the Court deems just and proper.

Dated: October 29, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Rule 84.06(b) of the Missouri Rules of Civil Procedure, because it contains 4,189 words, excluding the parts of the brief exempted by Rule 84.06(b). This brief complies with the typeface and type style requirements of Rule 84.06(a) because this brief and its supplements have been prepared in a proportionally spaced typeface using Microsoft Word 2016 in font size 13 of Times New Roman. This brief also includes the information required by Rule 55.03.

/s/ Bill Kenney
William C. Kenney
Counsel for Appellant Jereme Roesing

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, the foregoing Substitute Brief and Appendix to the Substitute Brief have been electronically filed with the Clerk of the Court for the Missouri Supreme Court using the Court's electronic filing system, and will be served on all counsel of record.

/s/ Bill Kenney
William C. Kenney
Counsel for Appellant Jereme Roesing