

Summary of SC89994, *Raymond L. Norris v. Director of Revenue, State of Missouri*
Appeal from Dent County, Judge Sanborn N. Ball
Argued and submitted Dec. 16, 2009; opinion issued Feb. 9, 2010

Attorneys: The director was represented by Edwin R. Frownfelter of the attorney general's office in Kansas City, (816) 889-5019; and Norris was represented by David Simpson, an attorney in St. James, (573) 265-0220.

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 appeals a circuit court's decision to reinstate the driving privileges of a man who was not given 20 minutes, after being read the implied consent law, to contact an attorney before deeming the man had refused to submit to a chemical test. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the circuit court's judgment. The statutory 20-minute period allowing a driver to attempt to consult an attorney begins running as soon as the officer reads the implied consent law, regardless of whether the driver's request for an attorney was made before or after the implied consent law was read. Because the man requested an attorney before being read the implied consent law, he should have been given 20 minutes after the law was read to attempt to contact an attorney.

Facts: While on patrol at 3 a.m., a police officer approached a vehicle that had parked in the parking lot of a restaurant. The officer observed that the driver, Raymond Norris, was agitated, aggressive, sweating and difficult to understand. Norris consented to a search of his vehicle, and the officer found methamphetamine and arrested Norris. The officer read Norris his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and Norris requested an attorney. The officer took Norris to the police station and, at 4:13 a.m., informed him of the implied consent law set forth in section 577.020, RSMo 2000. Norris did not renew his request for an attorney and did not consent to submit to a blood test. The officer reminded Norris that refusing to take the test would result in the revocation of his driver's license. At 4:16 a.m., the officer noted Norris' refusal, and the director of revenue subsequently revoked his driver's license. Norris sought review in the circuit court, which reinstated his license. The director appeals.

AFFIRMED.

Court en banc holds: Because the director did not show Norris was not prejudiced by being denied his right to contact an attorney, as provided in section 544.041.1, RSMo 2000, the circuit court correctly reinstated Norris' driving privileges. Although section 577.041.1 does not require an officer to inform a driver of the right to seek legal counsel, it does provide that if a person asked to submit to chemical testing requests to speak with an attorney, that person shall be granted 20 minutes in which to attempt to contact an attorney. The director bears the burden of proving the driver was not prejudiced by the officer's failure to comply with the statute. Here, although the director concedes Norris requested an attorney prior to being read the implied consent law, the director maintains that because Norris did not request an attorney after being

read the implied consent law, he did not invoke the 20-minute rule of section 577.041.1. The court of appeals has reached conflicting results when addressing this issue. Two cases held that the plain language of section 577.041.1 provides that the 20-minute waiting period is triggered only if the driver asks to speak with an attorney after being asked to submit to a chemical test. *Paxton v. Director of Revenue*, 258 S.W.3d 68, 72 (Mo. App. 2008); *Williams v. Director of Revenue*, 277 S.W.3d 318, 321 (Mo. App. 2009). Conversely, another case held that, regardless of whether a driver's request to speak with an attorney comes before or after the implied consent law is read, the 20-minute waiting period begins immediately after the officer informs the driver of the implied consent law, reasoning that a driver who asks to speak with an attorney after being given a *Miranda* warning but before being read the implied consent law likely is unaware that he or she has the right to ask to speak with an attorney after being read the implied consent law. *Schussler v. Fischer*, 196 S.W.3d 648, 652 (Mo. App. 2006). *Schussler* is persuasive; the purpose of the statute is to give the driver reasonable opportunity to consult an attorney to make an informed decision as to whether to submit to a chemical test. Accordingly, when a person has requested an attorney, the 20-minute time period in section 577.041.1 begins immediately after the officer has informed the driver of the implied consent law, irrespective of whether the request for an attorney was made before or after the notice of the implied consent law. To hold otherwise would place an undue burden on the driver, defeat the statute's purpose, and invalidate a driver's clear and potentially repeated requests for an attorney. Here, Norris' request to speak to an attorney – after being given the *Miranda* warning but before being read the implied consent law – was sufficient to invoke the 20-minute rule, but the officer did not give Norris 20 minutes to contact an attorney after informing him of the implied consent law.