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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0861**

State of Minnesota,
Respondent,

vs.

Donald Joseph Green,
Appellant.

**Filed January 14, 2019
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-CR-17-4230

Keith M. Ellison, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Anoka, Minnesota (for respondent)

Donald J. Green, Anoka, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Smith, John,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Police found Donald Green unconscious behind the wheel of a car with two open beer cans in the front-seat cup holders. He was drunk. Facing one count of first-degree driving while impaired and one count of first-degree driving while impaired—test refusal, Green moved to dismiss the charges for lack of probable cause. The district court denied the motion, and Green fired his public defender. Green moved the district court to order Anoka County to pay for services to assist with his self-representation, including an investigator, a paralegal, office supplies, and law-library fees. The district court denied the motion. Because Green failed to show how any requested services were necessary to an adequate defense, the district court did not abuse its discretion by denying the motion. We therefore affirm.

FACTS

Coon Rapids police officers responded to a report of an unconscious man behind the wheel of a car in an apartment-building parking lot. Officers found the man unresponsive in the driver's seat. The key was in the ignition, but the engine was off. Officers saw two open cans of beer in the front-seat cup holders. They rubbed the man's sternum to awaken him. He came to and identified himself as Donald Green. Officers smelled the odor of an alcoholic beverage on his breath and noticed his bloodshot eyes and slurred speech. Officer Chris Grew administered field sobriety tests and a preliminary breath test, which showed a blood-alcohol concentration of 0.183. Officer Grew arrested Green for impaired driving.

Green repeatedly interrupted Officer Grew's reading of the implied-consent advisory and then refused to answer after the officer asked approximately seven times if he would take a breath test. The state charged Green with first-degree driving while impaired and first-degree driving while impaired—test refusal.

Green, with the assistance of a public defender, moved to dismiss the charges for lack of probable cause. Brian Jeeninga, a service manager for Draeger Inc., testified that the car where Green sat unconscious was equipped with a Draeger ignition-interlock system that prevented the engine from starting unless the system received a breath sample indicating a blood-alcohol concentration below 0.02. The prosecutor asked Jeeninga if someone besides the driver could provide the breath sample, and Jeeninga answered, "Yes." Green's public defender submitted the ignition-interlock report for Green's car, establishing that Green had not tried to start the car before police discovered him. The district court denied the motion to dismiss, reasoning that inoperability did not require dismissal of the impaired-driving charge.

Green asked the district court to discharge his public defender and allow him to represent himself. The district court granted the request but appointed advisory counsel.

Green moved to reopen the omnibus hearing and filed a motion for services under Minnesota Statutes, section 611.21 (2018). He asked the district court to order the county to pay for investigative, paralegal, and law-library services, as well as telephone costs, office supplies, and a transcript of the omnibus hearing so that he could prepare for a new hearing and trial. He wanted a paralegal to collect case law. He wanted an investigator to investigate the training and directions implemented by the commissioner of public safety

about ignition-interlock devices. Green included a summary of the estimated costs of services he requested, an affidavit describing his financial limits, and an excerpt of jail policy listing the prices of services.

The district court granted Green’s request for transcript costs but otherwise denied his motion. It found that Green failed to show that the investigator and unnamed paralegal were necessary to his defense. And it found that the remaining requested services were not covered under section 611.21 because Green had discharged his public defender.

Green appeals the denial “immediately” as allowed under section 611.21(c).

D E C I S I O N

Green argues that the district court should have found that the investigative, paralegal, and clerical services he requested were necessary to his defense and ordered the county to pay for them. We review the district court’s decision whether to authorize payment for requested services for an abuse of discretion. *In re Jobe*, 477 N.W.2d 723, 725–26 (Minn. App. 1991).

The statute does not expressly authorize self-represented indigent defendants to apply for investigative services. It provides, “*Counsel appointed by the court* for an indigent defendant, or representing a[n indigent] defendant . . . may file an ex parte application requesting investigative, expert, or other services necessary to an adequate defense in the case.” Minn. Stat. § 611.21 (emphasis added). The section is one part of a broader statutory scheme that provides for a defendant’s right to a public defender. *See* Minn. Stat. §§ 611.14–.273 (2018). We previously observed that section “611.21 provides a ‘safety valve’ of court-ordered funding for [services other than counsel] when public

defender budgets are depleted.” *See In re Wilson*, 509 N.W.2d 568, 571 (Minn. App. 1993). It is not apparent that the statute authorizes anyone other than appointed counsel to apply for services. Neither party addresses this general-application issue, however, and we can decide Green’s appeal on its specific necessary-to-an-adequate-defense grounds. Green contends that the district court should have found that the requested services were necessary for his defense. The contention fails.

Green sought investigative services to learn more about the ignition-interlock system and police-officer training for an additional omnibus hearing and trial. The information is unnecessary for an omnibus hearing, because the district court already rejected Green’s argument that the temporary inoperability of his car due to the ignition-interlock device defeated the charge. *See State v. Starfield*, 481 N.W.2d 834, 838–39 (Minn. 1992) (concluding that whether temporary inoperability of a car precludes a defendant from being in “physical control” of a vehicle is a fact question for the jury). To the extent Green’s defense at trial might rely on the alleged inoperability of the car by virtue of the ignition-interlock device, Jeeninga’s testimony would satisfy the objective, and Green can secure his testimony by subpoena. Green failed to show how the requested investigative services are necessary for an adequate defense.

Green also sought a paralegal to help him with legal research. But *lawyers* conduct legal research, and Green rejected the legal services of the public defender’s office. Green asserts—we presume accurately—that “the Anoka County Public Defender’s [O]ffice has a full time paralegal . . . on their staff.” An indigent defendant does not have the statutory or constitutional right to counsel of his choosing and “must accept the court’s appointee.”

State v. Fagerstrom, 176 N.W.2d 261, 264 (Minn. 1970). By discharging the public defender, Green rejected taxpayer-funded legal assistance, which included the legal research his counsel would have provided and any related paralegal assistance.

Green also requested, and was denied, office supplies and law library fees. Regarding office supplies, the statute nowhere authorizes district courts to order the county to fund anything other than “services.” See Minn. Stat. § 611.21 (using the term “services” fifteen times but never “supplies” or other tangible things). Regarding library fees, the district court found that these “services are not covered under section 611.21 since [Green] discharged the Public Defender’s Office.” Green has not shown that the requested library funds are necessary to an adequate defense. And the jail’s policy he attached to his request informed him, “You may have extra time in the law library Monday thr[ough] Friday 8:00am – 2:00pm.” He has not shown why any library fees would be necessary.

Because Green failed to show that he lacked the services necessary to present an adequate defense, the district court did not abuse its discretion by denying his motion.

Affirmed.