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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0877**

State of Minnesota,
Respondent,

vs.

Lucas William Haugen,
Appellant.

**Filed May 28, 2019
Affirmed
Florey, Judge**

Beltrami County District Court
File No. 04-CR-16-3254

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, David P. Frank, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this direct appeal from his conviction of first-degree driving while impaired
(DWI)—test refusal, appellant argues that law enforcement failed to vindicate his right to

counsel before deciding whether to submit to testing. He also argues that there is insufficient evidence of test refusal to sustain the conviction. Because appellant's right to counsel was vindicated, and the evidence was sufficient, we affirm.

FACTS

A conservation officer stopped appellant Lucas William Haugen for driving on the shoulder of the road and speeding. A state trooper assisted with the stop and observed indicia of intoxication. The trooper arrested appellant for DWI, took him to jail, and read him the implied-consent advisory. Appellant asked to speak with an attorney, and the trooper provided a telephone and phonebooks. Appellant used neither, but refused to submit to testing until he spoke with his attorney. The trooper deemed appellant's conduct a test refusal.

The state charged appellant by amended complaint with one count of first-degree DWI—test refusal. Appellant moved to suppress evidence of his refusal, asserting that his right to speak with an attorney prior to testing was not vindicated. He argued that the trooper did not assist him in obtaining the telephone number of his attorney. The district court held a contested omnibus hearing on the issue, the trooper testified, and a video recording of the implied-consent process was received as an exhibit.

The district court ultimately denied appellant's suppression motion, concluding that appellant failed to make a good-faith effort to contact an attorney. The court found that, after appellant was offered a telephone and phonebooks, he did not use them, but rather "argued that he would not be able to reach an attorney due to the hour." And when the trooper pointed out that appellant could at least try, appellant argued that he needed a

Minneapolis phonebook. The trooper indicated that appellant could use the phonebooks in the room, and appellant became upset because he did not have access to his cellphone, which purportedly contained his attorney's contact information. The district court noted that appellant did not have his cellphone when he arrived at the jail.

Following the denial of his suppression motion, appellant waived his right to a jury trial, and the parties agreed to submit the matter to the district court for trial on stipulated evidence, pursuant to Minn. R. Crim. P. 26.01, subd. 3. Appellant again moved to suppress evidence of his test refusal, asserting that his limited right to counsel was not vindicated.

On January 6, 2018, the district court issued its verdict, convicting appellant of first-degree DWI—test refusal. The court found that after appellant was asked to submit to testing, he “refused to provide a test until after he contacted an attorney,” but he made no attempt to use the telephone or phonebooks. The court found that appellant’s “actions and words constituted a refusal.” The court sentenced appellant to 60 months’ imprisonment. This appeal followed.

D E C I S I O N

I.

Appellant first argues that his right to speak with an attorney prior to deciding whether to submit to chemical testing was not vindicated. This presents a mixed question of law and fact; we apply the controlling law to the facts determined by the district court. *Hartung v. Comm’r of Pub. Safety*, 634 N.W.2d 735, 737 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). We review the district court’s findings of fact for clear error, and the district court’s legal conclusions de novo. *Id.*

A driver has a state constitutional right, “upon request, to a reasonable opportunity to obtain legal advice before deciding whether to submit to chemical testing.” *Friedman v. Comm’r of Pub. Safety*, 473 N.W.2d 828, 835 (Minn. 1991). The driver has the right to consult with the lawyer of his choosing, and the officer must assist in vindicating this right. *State v. Collins*, 655 N.W.2d 652, 656 (Minn. App. 2003), *review denied* (Minn. Mar. 26, 2003). However, the right is “limited,” and may be vindicated when a police officer provides the driver with “a telephone and a reasonable amount of time to contact and speak with an attorney.” *Gergen v. Comm’r of Pub. Safety*, 548 N.W.2d 307, 309 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). To determine if an officer has provided a reasonable amount of attorney time, this court balances “the efforts made by the driver against the efforts made by the officer,” focusing “both on the police officer’s duties in vindicating the right to counsel and the defendant’s diligent exercise of the right.” *Mell v. Comm’r of Pub. Safety*, 757 N.W.2d 702, 713 (Minn. App. 2008) (quotation omitted).

Here, the district court engaged in a “fact-specific inquiry” and found that appellant failed to make a good-faith effort to contact an attorney. *See Gergen*, 548 N.W.2d at 309 (“[A]s a threshold matter the driver must make a good faith and sincere effort to reach an attorney.” (quotation omitted)). The record supports this finding. Appellant made no attempt to use the telephone or phonebooks. “[G]iving up trying to contact an attorney is fundamentally different than making a continued good-faith effort to reach an attorney.” *Kuhn v. Comm’r of Pub. Safety*, 488 N.W.2d 838, 841 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

Appellant contends that the trooper's act of supplying "two local Beltrami phonebooks" was insufficient, and the trooper was obligated to conduct an Internet search to find the contact information for his Minneapolis-based attorney. We disagree. Appellant cites no caselaw to support his assertion that the trooper was obligated to provide additional phonebooks or conduct an Internet search. The limited right to counsel before deciding whether to submit to chemical testing "is vindicated when the driver is provided with a telephone and given reasonable time to contact and talk with an attorney." *Duff v. Comm'r of Pub. Safety*, 560 N.W.2d 735, 737 (Minn. App. 1997). The trooper was only required to allow and facilitate appellant's right to counsel, he was not required to ensure that appellant "received the best or even proper counsel." *Butler v. Comm'r of Pub. Safety*, 348 N.W.2d 827, 829 (Minn. App. 1984). The trooper provided appellant with a telephone and phonebooks, and appellant failed to make a good-faith effort to contact an attorney. Appellant's right to counsel was vindicated.

II.

Appellant next argues that there was insufficient evidence of test refusal to sustain the conviction. Under Minn. Stat. § 169A.20, subd. 2 (2016), "[i]t is a crime for any person to refuse to submit to a chemical test of the person's . . . breath . . . under section 169A.51." See also Minn. Stat. § 169A.24, subd. 1(2) (2016) (defining first-degree DWI to include a violation of section 169A.20 by a person previously convicted of a felony under section 169A.24). "[R]efusal to submit to chemical testing includes any indication of actual unwillingness to participate in the testing process, as determined from the driver's words

and actions in light of the totality of the circumstances.” *State v. Ferrier*, 792 N.W.2d 98, 102 (Minn. App. 2010), *review denied* (Minn. Mar. 15, 2011).

Because appellant did not expressly refuse testing, we apply a circumstantial-evidence standard of review to determine whether there was sufficient evidence of “actual unwillingness” to test based upon appellant’s conduct. *See id.* at 101-02. This involves a two-step process. We first identify the circumstances proved, deferring “to the [factfinder’s] acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016) (quotations omitted). Second, we “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotations omitted). “In order to sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

Here, the circumstances proved are that appellant refused to provide a test until he spoke with his attorney, but he made no attempt to contact that attorney or any other attorney, despite being provided a telephone and phonebooks. Rather than utilizing the available resources, appellant argued with the officer and blamed the officer for failing to grab his cellphone and failing to have a Minneapolis phonebook on hand. These circumstances are consistent with an actual unwillingness to test.

Appellant argues that his conduct did not constitute a refusal, rather, his “request to speak to his attorney was simply a plea for the trooper’s assistance in finding his attorney’s number.” The circumstances proved are not consistent with this hypothesis. As previously discussed, the trooper was under no obligation to conduct an Internet search or provide a Minneapolis phonebook. But, even if we entertain appellant’s alternative hypothesis, it is inconsistent with the circumstances proved. Appellant failed to name his attorney or request assistance from the trooper, other than to request a Minneapolis phonebook, which the trooper did not have available. Appellant could have used the telephone and phonebooks available to pursue his desired attorney’s contact information. Instead, he made no effort. The circumstances proved are consistent with test refusal and inconsistent with any other rational hypothesis.

Affirmed.