

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A26-0064**

Scot Theodore Fenske, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed August 24, 2026
Affirmed
Beane, Judge**

Ramsey County District Court
File No. 62-CV-24-3256

Benjamin W. Koll, Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Zoe Graham, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Beane, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

BEANE, Judge

Appellant Scot Theodore Fenske challenges the district court's order sustaining the revocation of his driver's license, arguing that the district court committed factual and legal errors by concluding that his right to consult with counsel before chemical testing was vindicated. We affirm.

FACTS

On May 19, 2024, a Roseville police officer arrested Fenske on suspicion of driving while impaired (DWI). After the officer read him the Minnesota Breath Test Advisory, Fenske asked to speak to an attorney. Footage from the officer's body-worn camera shows that the officer provided Fenske access to a landline phone and at least five attorney directories.

As Fenske looked through the directories, he said, "As if I'm going to find a number in here and call that guy or that girl." He also stated, "It's the same guy over and over." He then requested a specific attorney by name and said that he did not know how to contact the attorney. Fenske asked the officer to look up the attorney's phone number or retrieve Fenske's personal cell phone so Fenske could look up the attorney; the officer refused. Fenske perused the directories further, then made a phone call and spoke with someone for about seven minutes. After Fenske hung up, the officer asked him if he had adequate time to contact an attorney. Fenske agreed he had adequate time and did not request more time to speak with an attorney. Fenske then agreed to take a breath test.

Based on the results of Fenske's breath test, respondent Commissioner of Public Safety revoked Fenske's driver's license. Fenske petitioned the district court to rescind the revocation, arguing that the officer did not vindicate his right to counsel because the officer provided insufficient resources for him to choose an attorney and refused to help him contact the attorney he requested by name.

The district court conducted a hearing at which the officer testified consistent with the facts above. The officer also testified that the directories he provided to Fenske were

“almost exclusively, if not entirely exclusively attorneys” and were like directories he has seen before when working in Coon Rapids and Bloomington, although he acknowledged he does not know who is in the directories. The district court received the video from the officer’s body-worn camera as an exhibit. Based on that evidence, the district court sustained the revocation of Fenske’s license, reasoning that his right to counsel was vindicated because he “was given access to a telephone, up to five appropriate directories, and a reasonable time to contact and consult with an attorney.”

Fenske appeals.

DECISION

Under the Minnesota Constitution, a driver “has the 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) (citing Minn. Const. art. I, § 6). We review de novo whether the circumstances indicate that a driver was afforded a reasonable opportunity to consult with counsel. *Kuhn v. Comm’r of Pub. Safety*, 488 N.W.2d 838, 840 (Minn. App. 1992), *rev. denied* (Minn. Oct. 20, 1992). But we defer to the district court’s underlying factual findings unless they are clearly erroneous. *Mell v. Comm’r of Pub. Safety*, 757 N.W.2d 702, 712 (Minn. App. 2008). A finding is clearly erroneous if it leaves us with a “definite and firm conviction that a mistake has been made.” *Id.* at 708 (quotation omitted).

To protect the right to consult with counsel before chemical testing, “police officers must assist in its vindication.” *Friedman*, 473 N.W.2d at 835 (quoting *Prideaux v. State*,

Dep't of Pub. Safety, 247 N.W.2d 385, 394 (Minn. 1976)). But the right is “limited” because of “the evanescent nature of the evidence in DWI cases.” *Id.*

The right to counsel will be considered vindicated if the person is provided with a telephone prior to testing and given a reasonable time to contact and talk with counsel. If counsel cannot be contacted within a reasonable time, the person may be required to make a decision regarding testing in the absence of counsel.

Id. (quoting *Prideaux*, 247 N.W.2d at 394). We balance “the efforts made by the driver against the efforts made by the officer,” considering both the officer’s “duties in vindicating the right to counsel” and the driver’s “diligent exercise of the right,” as well as other factors like the “time of day and length of delay since the driver was arrested.” *Mell*, 757 N.W.2d at 713.

Fenske advances two arguments regarding the district court’s decision to sustain his license revocation. He first argues that the district court clearly erred by finding that the attorney directories provided to him were “appropriate.” Fenske emphasizes the officer’s testimony acknowledging that he did not know who was in the directories, as well as Fenske’s own statement, captured in the body-worn-camera video, that the directories showed “the same guy over and over.” We are not persuaded. The body-worn-camera video shows that the officer gave Fenske at least five different directories of various colors and thicknesses, bearing titles such as “Minneapolis St. Paul Attorney’s Directory,” “The Blue Pages,” and “24 Hour DWI/DUI Criminal Defense Attorneys.” The officer testified that the directories listed attorneys and were the same directories used in other police departments in the Twin Cities. And Fenske’s own reference to “that guy or that girl” as

he perused the directories contradicts his assertion that the multiple directories contained only one attorney “over and over.” On this record, the district court did not clearly err by finding that the attorney directories were appropriate.

Fenske also argues that the officer did not vindicate his right to counsel because the officer did not provide adequate resources to enable Fenske to consult with the attorney of his choice. He contends the officer provided inadequate resources by (1) giving him only five attorney directories, which “wasn’t enough”; (2) refusing to look up the contact information of the attorney Fenske requested; (3) refusing Fenske access to his cell phone; and (4) failing to inform Fenske that he could contact a non-attorney to help him contact counsel. Fenske is correct that, to assist a driver in vindicating the right to counsel, law enforcement must provide not only access to a phone but also reasonable resources from which a driver can choose an attorney to call. *See McNaughton v. Comm’r of Pub. Safety*, 536 N.W.2d 912, 915 (Minn. App. 1995). But Fenske does not identify, and our research has not revealed, any authority adopting the bright-line rules for law-enforcement assistance that Fenske urges. Rather, the right to counsel, including law enforcement’s role in vindicating the right, is “limited” and must be reasonable under the circumstances. *Mell*, 757 N.W.2d at 712-13. Because the officer provided Fenske with access to a phone and at least five attorney directories, and Fenske affirmed that he had adequate time to consult with counsel, the district court did not err by concluding that Fenske’s right to counsel was vindicated.

Affirmed.