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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1924**

Thomas Luke Bashaw, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed June 4, 2012  
Affirmed  
Kalitowski, Judge**

Aitkin County District Court  
File No. 01-CV-11-410

Rory Patrick Durkin, Giancola-Durkin, P.A., Anoka, Minnesota (for appellant)

Lori Swanson, Attorney General, Tibor M. Gallo, Sara P. Boeshans, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant Thomas Luke Bashaw challenges the district court's order sustaining the revocation of his driver's license, arguing that the district court erred in concluding that his right to additional chemical testing was not prevented or denied by law enforcement. We affirm.

## DECISION

A person who operates a motor vehicle in Minnesota consents to a state-administered chemical test of that person's blood, breath, or urine to determine the presence of alcohol. Minn. Stat. § 169A.51, subd. 1(a) (2010). The law-enforcement officer requiring the test has the authority to decide whether the test is of blood, breath, or urine. *Id.*, subd. 3 (2010). The statute provides a limited right to additional testing:

The person tested has the right to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person does not preclude the admission in evidence of the test taken at the direction of a peace officer *unless the additional test was prevented or denied by the peace officer.*

*Id.*, subd. 7(b) (2010) (emphasis added).

The district court's determination of whether a driver's statutory right to an additional test was violated includes both questions of law and fact. *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009). The district court's findings of fact must be sustained unless clearly erroneous. *Id.* “[T]his court reviews de novo whether, as a matter of law, the driver's right to an independent test was prevented or denied.” *Id.*

During a February 18, 2011 traffic stop, appellant submitted to a preliminary breath test, which indicated an alcohol concentration of .216. The law-enforcement officer placed appellant under arrest on suspicion of driving while impaired (DWI) and

transported him to the Aitkin County jail. After speaking to an attorney, appellant agreed to submit to a blood test and was transported to a hospital. The officer informed appellant of his right to seek an additional test. While the blood was being drawn, appellant stated that he was a medical professional and requested that a second blood sample be taken at that time for his own test. The officer refused and told appellant that he could arrange for an additional test when he returned to the jail. At the jail, appellant was provided a phone and a phone directory. Appellant used the phone and attempted to contact a testing service, but was unable to arrange an additional test.

Appellant argues that his right to additional testing was prevented or denied by law enforcement. We disagree.

The right to an additional test is a limited one. *Theel v. Comm'r of Pub. Safety*, 447 N.W.2d 472, 474 (Minn. App. 1989), *review denied* (Minn. Jan. 8, 1990). Minn. Stat. § 169A.51, subd. 7(b), provides that the additional test must be “obtained at the place where the person is in custody.” And when a driver requests an additional test, the officer’s only obligation is to provide the driver use of a phone. *Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 638 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). An officer has no duty to assist a driver in obtaining an additional test. *Haveri v. Comm'r of Pub. Safety*, 552 N.W.2d 762, 765 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). Thus, an officer does not have a duty to “furnish supplies or transportation, and a test is neither prevented nor denied when such assistance is refused.” *Theel*, 447 N.W.2d at 474.

When appellant requested an additional test at the hospital, the officer informed him that he would have access to a phone at the jail and would be able to arrange an additional test at that time. In addition, the officer called the jail from the hospital to ensure that appellant would be permitted to use the jail phone, and appellant was afforded unlimited use of the jail phone. We conclude that appellant was provided all that the statute requires and his right was not violated when he was required to wait until returning to the jail to arrange for an additional test. *See Short v. Comm'r of Pub. Safety*, 422 N.W.2d 40, 41-42 (Minn. App. 1988) (finding no violation of the right to additional testing when the driver was required to wait one hour before receiving access to a phone).

Appellant argues that because he is a medical professional with the authority to order blood tests, the officer should have permitted him to order an additional test at the hospital. We reject the contention that the statutory right to additional testing differs based on the driver's occupation. Moreover, the record does not support a finding that appellant, who is a dentist, had the authority to order a blood test at the hospital at that time, or that he contacted a person at the hospital with the authority to do so. And the officer had no duty to assist him in doing so.

Appellant also argues that his right to additional testing was prevented or denied at the jail because the phone directory he received was limited. We disagree. Law enforcement is required to provide a phone, but is not required to furnish other supplies to facilitate an additional test. *State v. Hatlestad*, 347 N.W.2d 843, 845 (Minn. App. 1984). Therefore, by providing a phone directory, law enforcement offered more assistance than the statute demands.

Finally, appellant argues that his right to additional testing was prevented or denied because he was not permitted to use his cell phone at the jail. But appellant was given unlimited access to the jail phone, and law enforcement is not required to diverge from standard policy when a driver in custody requests an additional test. *See Cosky v. Comm’r of Pub. Safety*, 602 N.W.2d 892, 894 (Minn. App. 1999) (reasoning that when officers did not permit the appellant to leave a phone number so his attorney or a clinic offering testing services could return his call, the appellant’s right was not violated because “[b]y following standard policy and not permitting incoming calls, the officers failed to assist [him], but they did not hamper his attempt to obtain an additional test”), *review denied* (Minn. Jan. 18, 2000).

Because the record does not support a determination that law enforcement prevented or denied the administration of an additional test, we conclude the district court did not err in sustaining appellant’s license revocation.

**Affirmed.**