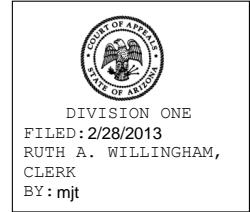


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOSEPH CHOLLAMPEL,)	1 CA-SA 13-0033
)	
Petitioner,)	DEPARTMENT A
)	
v.)	Maricopa County
)	Superior Court
THE HONORABLE CRANE MCCLENNEN,)	No. LC2011-122716-001DT
Judge of the SUPERIOR COURT OF)	
THE STATE OF ARIZONA, in and for)	West Mesa Justice Court
the County of MARICOPA, and THE)	No. TR2011122716
HONORABLE MARK ANDERSON, Judge)	
of the WEST MESA JUSTICE COURT)	DECISION ORDER
OF THE STATE OF ARIZONA, in and)	
for the County of)	
MARICOPA,)	
)	
Respondent Judges,)	
)	
STATE OF ARIZONA,)	
)	
Real Party in Interest.)	
_____)	

Joseph Chollampel (Petitioner) filed a Petition for Special Action challenging the superior court's ruling that his right to counsel was not violated. We are asked to determine whether the superior court abused its discretion in issuing the ruling in light of existing legal authority. This Court, Judge Patricia A. Orozco presiding and Judges Peter B. Swann and Lawrence F. Winthrop participating, has considered the Petition for Special

Action, as well as the State's Response to Petition for Special Action. For the following reasons, we accept jurisdiction, grant relief and remand so that the justice court may determine whether the violation impeded Petitioner's ability to gather exculpatory evidence.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 1:52 a.m., on May 6, 2011, Salt River Police Officer J. (Officer J.) observed Petitioner's vehicle enter the State Route 101 freeway. Suspecting the driver was impaired, Officer J. stopped the vehicle. After conducting the driving under the influence (DUI) investigation, Officer J. placed Petitioner under arrest for DUI. After his arrest, Petitioner requested that Officer J. speak with his passenger, Marcus (Passenger), with regards to contacting an attorney. Officer J. obliged Petitioner's request but testified that Passenger said he did not have a telephone number for an attorney, but his father was a policeman. After Officer J. informed Petitioner that Passenger did not have a telephone number for an attorney, Petitioner requested that Officer J. ask Passenger again. After a second attempt, Officer J. told Petitioner that Passenger did not have a telephone number for an attorney and that Petitioner could attempt to contact an attorney at the police station.

At 2:55 a.m., Officer J. arrived at the police station with Petitioner. Officer J. proceeded to search for a phonebook but was unable to find one. As a result, Officer J. told Petitioner to dial 4-1-1 and ask the directory assistance operator for a "minimum" of three telephone numbers for DUI attorneys. Petitioner followed Officer J.'s instructions; however, the operator told Petitioner that she did not have the attorneys specifically categorized as DUI attorneys but could give him the names of attorneys. After the operator provided Petitioner with telephone numbers for three attorneys, Petitioner called each number between 3:00 and 3:05 a.m., but each call went to voicemail. Petitioner left a message explaining his arrest and providing his cell phone number and the station's call-back number.

Although Officer J. testified that he would have allowed Petitioner to use the telephone again, Petitioner did not ask to use the telephone between 3:05 and 3:18 a.m. At 3:18 a.m., after Petitioner refused to take a blood alcohol content (BAC) test unless he spoke with an attorney, Officer J. proceeded to obtain a search warrant. Officer J. testified that, in his experience, obtaining a warrant took between an hour and an hour and fifteen minutes. At 3:25 a.m., Officer J. transported Petitioner to the main police station in order to obtain the search warrant. Finally, at 4:59 a.m., Officer J. directed a

blood draw for the BAC test because waiting any longer would have interfered with the DUI investigation.

Petitioner was charged with and convicted of DUI. At trial, the justice court denied Petitioner's motion to dismiss, which alleged that Officer J. violated Petitioner's right to counsel. On appeal, the superior court affirmed Petitioner's conviction and concluded that the justice court properly denied Petitioner's motion to dismiss.

JURISDICTION

This Court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-120.21.A.4 (2003). Special action jurisdiction is highly discretionary and is appropriate when there is no adequate remedy on appeal. *State ex rel. Thomas v. Duncan*, 216 Ariz. 260, 262, ¶ 4, 165 P.3d 238, 240 (App. 2007); see Arizona Rule of Procedure for Special Actions 1(a) (Special action jurisdiction is appropriate when a petitioner would have no "equally plain, speedy, and adequate remedy by appeal."). "[T]his court has jurisdiction to hear a special action in a case originating in justice or police court that has been appealed to the superior court." *State ex rel. McDougall v. Superior Court (Klemencic)*, 170 Ariz. 474, 475, 826 P.2d 337, 338 (App. 1991).

DISCUSSION

"[I]n reviewing a trial [court's] order within the context

of a special action, ordinarily we must find the [court] abused [its] discretion or exceeded [its] jurisdiction or legal authority before we may grant relief." *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 253-54, ¶ 10, 63 P.3d 282, 284-85 (2003) (citing Arizona Rule of Procedure for Special Actions 3). A court abuses its discretion when it incorrectly applies the law or predicates a decision upon irrational bases. *Brown v. Superior Court*, 137 Ariz. 327, 332, 670 P.2d 725, 730 (1983).

Right to Counsel

Petitioner argues that the superior court abused its discretion in refusing to find that Petitioner's right to counsel was violated; specifically, Petitioner argues the superior court's order did not follow the established legal precedent of *State v. Penney*, 229 Ariz. 32, 270 P.3d 859 (App. 2012), and *State v. Rosengren*, 199 Ariz. 112, 14 P.3d 303 (App. 2000). We agree.

A defendant's right to assistance of counsel is guaranteed by both the Sixth Amendment to the United States Constitution and Article 2, Section 24, of the Arizona Constitution. See also Ariz. R. Crim. P. 6.1.a (stating that the right to counsel includes the right to consult with an attorney privately "as soon as feasible after a defendant is taken into custody"). A DUI suspect should be provided a "reasonable opportunity" to exercise this right. *State v. Sanders*, 194 Ariz. 156, 158, ¶ 8,

978 P.2d 133, 135 (App. 1998). Once a suspect invokes his right to counsel, police must take "reasonable steps" to "provide the suspect with reasonable means of contacting a lawyer." *Penney*, 229 Ariz. at 36, ¶ 15, 270 P.3d at 863.

In *Penney*, a DUI suspect's right to counsel was violated when police placed the suspect in a room with one set of white pages and one set of yellow pages with the attorney listings torn out. *Id.* at 34, 37, ¶¶ 4-5, 20, 270 P.3d at 861, 864. Although the suspect informed the police of the incomplete yellow pages, the officer did nothing to assist him. *Id.* at 35, ¶ 13, 270 P.3d at 862. Reasonable steps would have required providing *Penney* with a complete set of yellow pages or responding "in some other appropriate fashion." *Id.* at 36, ¶ 15, 270 P.3d at 863. Furthermore, without a specific attorney to contact, the white pages were not a reasonable means of contacting an attorney. *Id.* at ¶ 14.

Similarly, in *Rosengren*, a suspect's right to counsel was violated after police denied the suspect's specific request to contact his father, an out-of-state attorney. 199 Ariz. at 115-16, ¶¶ 4, 10, 14 P.3d at 306-07. Instead, the police offered the suspect the opportunity to contact any attorney in the local telephone book. *Id.* at 115, ¶ 4, 14 P.3d at 306.

In this case, access to a directory assistance operator is not a reasonable means of replicating the specific categories of

legal services provided in the yellow pages. Without already having the name of a DUI attorney, directory assistance access was practically meaningless and, like *Penney*, comparable to the white pages. See *Penney*, 229 Ariz. at 36, ¶ 14, 270 P.3d at 863. Officer J. could have responded "in some other appropriate fashion" by permitting digital access to a web phonebook or web pages devoted to DUI attorney listings or by allowing Petitioner, if possible, to access such Internet information via his own cell phone. See *id.* at ¶ 15.

We find that merely providing access to directory assistance, without a specific number to contact, is not a reasonable means for purposes of protecting Petitioner's right to counsel. Therefore, the superior court erred in finding that Petitioner's right to counsel had not been violated.

Remedy

Petitioner requested the matter be remanded and dismissed. For the reasons discussed in *Penney*, we reverse and remand to the justice court to determine whether violation of right to counsel prejudiced defendant's ability to gather exculpatory evidence. See *id.* at 36-37, ¶¶ 16-19, 270 P.3d at 863-64.

CONCLUSION

For the foregoing reasons, we accept jurisdiction, grant relief and remand to the justice court for further proceedings consistent with this decision.

/S/

PATRICIA A. OROZCO, Presiding Judge