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ROGER D. TEETERS, APPELLEE, V. BEVERLY NETH, DIRECTOR, STATE OF NEBRASKA, DEPARTMENT OF MOTOR VEHICLES, APPELLANT.

790 N.W.2d 213

Filed October 12, 2010. No. A-09-1127.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record.
2. ____: ____: ____. When reviewing an order of the district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Judgments: Appeal and Error.** Whether a decision conforms to the law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court.
4. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Police Officers and Sheriffs: Jurisdiction: Appeal and Error.** When there is no dispute as to the information contained in the sworn report of an arresting officer, an appellate court must reach an independent conclusion whether the sworn report provided the required statutory information necessary to confer jurisdiction on the Department of Motor Vehicles to revoke a driver's license.
5. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Evidence: Jurisdiction.** The sworn report of the arresting officer is received into the record by the hearing officer as the jurisdictional document of a license revocation hearing, and upon receipt of the sworn report, the order of revocation by the director of the Department of Motor Vehicles has prima facie validity.
6. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Police Officers and Sheriffs.** The Department of Motor Vehicles makes a prima facie case for license revocation once it establishes that the arresting officer provided his or her sworn report containing the required recitations to the director of the department.
7. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Police Officers and Sheriffs: Jurisdiction.** In an administrative license revocation proceeding, the arresting officer's sworn report must, at a minimum, contain the information specified in the applicable statute, in order to confer jurisdiction.

Appeal from the District Court for Dawson County: JAMES E. DOYLE IV, Judge. Reversed and remanded with directions.

Jon Bruning, Attorney General, and Milissa Johnson-Wiles for appellant.

David W. Jorgensen, of Nye, Hervert, Jorgensen & Watson, P.C., for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

CARLSON, Judge.

INTRODUCTION

Beverly Neth, the director of the Nebraska Department of Motor Vehicles (the Department), appeals the Dawson County District Court's decision reversing the revocation of Roger D. Teeters' driver's license, which reversal was based upon the court's finding that the sworn report offered at Teeters' administrative hearing did not include the information required by Neb. Rev. Stat. § 60-498.01(3) (Reissue 2004) and, as a result, did not confer jurisdiction on the director of the Department to revoke Teeters' driver's license. We find that the sworn report in this case was sufficient to confer jurisdiction on the director, and we reverse, and remand with directions.

BACKGROUND

On April 12, 2009, a police officer with the Lexington Police Department arrested Teeters for driving under the influence of alcohol. Teeters was notified that, effective 30 days from the date of his arrest, his driver's license would be automatically revoked. Teeters contested the automatic revocation, and an administrative license revocation hearing was held. At the hearing, the sworn report completed by the arresting officer was admitted into evidence. The sworn report stated that Teeters was arrested pursuant to Neb. Rev. Stat. § 60-6,197 (Reissue 2004), and the handwritten reasons for his arrest were as follows: "[O]bserved a vehicle violate the centerline three different times. Performed a traffic stop and detected the odor of alcoholic beverage on Teeter's [sic] breath. Teeters showed impairment during sobrieties." (Emphasis omitted.) The sworn report also stated that Teeters submitted to a chemical breath test indicating a blood alcohol content of .15 of 1 gram of alcohol per 210 liters of Teeters' breath. After the hearing, the hearing officer recommended that Teeters' driver's license be revoked for the statutory period. The director of the Department adopted the recommended order of the hearing

officer and revoked Teeters' driver's license for a period of 1 year.

Teeters appealed the revocation to the Dawson County District Court, which found that the sworn report did not include the information required by § 60-498.01(3) and, as a result, did not confer jurisdiction on the director of the Department to revoke Teeters' driver's license. Specifically, the court found that the sworn report did not identify Teeters as the driver of the vehicle. Thus, the district court reversed the director of the Department's order and directed that Teeters' driving privileges be reinstated. The director of the Department has timely appealed to this court.

ASSIGNMENT OF ERROR

The director of the Department assigns that the district court erred in finding that the sworn report did not meet the requirements of § 60-498.01(3), thus depriving the director of jurisdiction to revoke Teeters' driver's license.

STANDARD OF REVIEW

[1-3] A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Walz v. Neth*, 17 Neb. App. 891, 773 N.W.2d 387 (2009). When reviewing an order of the district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Walz, supra.* Whether a decision conforms to the law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court. *Id.*

ANALYSIS

The director of the Department assigns that the district court erred in finding that the sworn report did not meet the requirements of § 60-498.01(3), thus depriving the director of the Department of jurisdiction to revoke Teeters' driver's license. Specifically, the director of the Department argues that the

district court erred in determining that the sworn report was insufficient because it did not identify Teeters as the driver of the vehicle stopped for violating the centerline. The director of the Department contends that inclusion of the arrested person's name under the "reasons for the arrest" portion of the sworn report is not required and would be superfluous given that the arrested person is identified on the top portion of the sworn report.

[4] In this case, there is no dispute as to the information contained in the sworn report. Therefore, this court must reach an independent conclusion whether the sworn report of the arresting officer provided the required statutory information necessary to confer jurisdiction on the director of the Department to revoke Teeters' driver's license. See *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

[5,6] The sworn report of the arresting officer is received into the record by the hearing officer as the jurisdictional document of the hearing, and upon receipt of the sworn report, the director's order of revocation has prima facie validity. *Barnett v. Department of Motor Vehicles*, 17 Neb. App. 795, 770 N.W.2d 672 (2009). The Department makes a prima facie case for license revocation once it establishes that the arresting officer provided his or her sworn report containing the required recitations. *Id.*

[7] In an administrative license revocation proceeding, the arresting officer's sworn report must, at a minimum, contain the information specified in the applicable statute, in order to confer jurisdiction. *Betterman, supra*. When a person submits to a chemical test of breath, as in the present case, the required recitations in the sworn report are (1) that the person was arrested as described in § 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in Neb. Rev. Stat. § 60-6,196 (Reissue 2004). See § 60-498.01(3).

The sole issue presented on appeal is whether the reasons for Teeters' arrest, as listed on the sworn report, are sufficient to indicate that Teeters was the driver of the vehicle stopped for violating the centerline. There are several Nebraska cases that have addressed similar issues in regard to what the arresting officer must include in the "reasons for the arrest" portion of the sworn report to be sufficient to confer jurisdiction.

In *Betterman*, the list of reasons for the arrest in the sworn report stated: "'[R]eckless driving. Driver displayed signs of alcohol intoxication. Refused all SFST and later breath test.'" 273 Neb. at 182, 728 N.W.2d at 578. The Nebraska Supreme Court concluded that the sworn report conveyed the information required by statute because "'[r]eckless driving'" was a valid reason for a stop of the vehicle and that because the arrested person displayed signs of alcohol intoxication, the officer had cause to allege he was driving a motor vehicle while under the influence of alcoholic liquor. *Id.* at 186, 728 N.W.2d at 581. We note that the "reasons for the arrest" in the sworn report in *Betterman* did not specifically identify the arrested person as the driver.

In contrast, this court determined in *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 446, 451, 729 N.W.2d 95, 99 (2007), that a sworn report was inadequate to establish a prima facie case for revocation where the report stated the reasons for arrest were as follows: "'[P]assed out in front of [the gas] Station, near front doors. Signs of alcohol intoxication.'" (Emphasis omitted.) This court concluded that the allegations were insufficient to confer jurisdiction, because the stated reasons for the arrest did not allege the presence of a motor vehicle, let alone whether the arrested person was located in or near the vehicle at the time of the arresting officer's arrival. The present case is different from the *Yenney* case because the sworn report at issue here indicates the presence of a motor vehicle, a traffic violation observed by the arresting officer, and a traffic stop of the vehicle.

In *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 169, 736 N.W.2d 731, 733 (2007), the Nebraska Supreme Court found that the stated reason for the arrest, "'Speeding (20 OVER)/D.U.I.,'" was sufficient to explain the initial traffic

stop but was insufficient to confer jurisdiction because it merely noted the officer's conclusion that the arrested person was guilty of driving under the influence, but provided no underlying factual reasons supporting the arrest. The result in *Snyder* was not based upon a failure of the sworn report to show that the arrested person was driving a motor vehicle; rather, the court found that the abbreviation "'D.U.I.,'" which is the common abbreviation for driving under the influence, was a conclusion, not a reason for arrest.

The case most similar to the one at hand is *Barnett v. Department of Motor Vehicles*, 17 Neb. App. 795, 770 N.W.2d 672 (2009), in which the arrested person argued that the sworn report was insufficient because it contained no statement indicating that he had been the driver of the vehicle. The list of reasons for the arrest in the sworn report stated: "'1 vehicle accident, odor of Alcoholic beverage Bloodshot watery eyes, Slurred Speech, Refused Field Sobriety. Refused PBT Refused Legal Blood, Refused Urine sample test.'" *Id.* at 797, 770 N.W.2d at 674. This court concluded that the sworn report was insufficient to confer jurisdiction because, similar to *Yenney, supra*, the reasons for arrest did not indicate or allow an inference that the arrested person was ever operating a motor vehicle. We noted that the arresting officer in *Barnett* did not make a traffic stop and failed to include sufficient factual allegations in the sworn report to indicate an allowable inference that the arrested person was the one who had been driving the vehicle involved in the one-vehicle accident.

The issue in the present case is similar to the issue in *Barnett, supra*, that being whether the sworn report was sufficient to identify the arrested individual as the driver of the vehicle. However, in the instant case, unlike in *Barnett* and *Yenney*, the sworn report indicates that the arresting officer made a traffic stop after observing a traffic violation. Specifically, the reasons for the arrest in the sworn report state: "[O]bserved a vehicle violate the centerline three different times. Performed a traffic stop and detected the odor of alcoholic beverage on Teeter's [sic] breath. Teeters showed impairment during sobrieties." (Emphasis omitted.) The reasons for the arrest in the instant

case allow an inference that Teeters was the driver of the vehicle stopped.

Further, the top portion of the sworn report identifies "Teeters, Roger D." as the individual arrested and states that "the above-named individual was arrested pursuant to Neb. Rev. Stat. § 60-6,197, and the reasons for the arrest are," which is followed by the reasons filled in by the arresting officer as stated above. While the "reasons for the arrest" portion does not specifically state that Teeters was the driver of the vehicle that violated the centerline, when the sworn report is considered in its entirety, it is apparent that Teeters was the driver of the vehicle. As the director of the Department contends, requiring further inclusion of Teeters' name under the "reasons for the arrest" would be superfluous. We further note that in none of the cases discussed above was the arrested individual identified by name as the driver in the "reasons for the arrest" portion of the sworn report.

We conclude that Teeters was sufficiently identified as the driver of the vehicle in the sworn report and that the district court erred in determining that the requirements of § 60-498.01(3) were not met.

CONCLUSION

We conclude the district court erred in determining that the sworn report did not meet the requirements of § 60-498.01(3) and that thus, the report did not confer jurisdiction on the director of the Department to revoke Teeters' driver's license. Accordingly, the district court erred in reversing the director of the Department's order of revocation. We reverse, and remand with directions to vacate the district court's order reinstating Teeters' driver's license. As a result, Teeters' driver's license will be revoked for a period of 1 year as ordered by the director of the Department.

REVERSED AND REMANDED WITH DIRECTIONS.