

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

APR - 8 2016

NATHAN J. SCHUERMANN, )

Plaintiff/Appellee, )

vs. )

STATE OF OKLAHOMA *ex rel.* )

DEPARTMENT OF PUBLIC SAFETY, )

Defendant/Appellant. )

**MICHAEL S. RICHIE**  
**CLERK**

Case No. 113,166

APPEAL FROM THE DISTRICT COURT OF  
GRANT COUNTY, OKLAHOMA

HONORABLE JACK D. HAMMONTREE, TRIAL JUDGE

**AFFIRMED**

Eric N. Edwards  
ERIC N. EDWARDS, P.C.  
Enid, Oklahoma

For Plaintiff/Appellee

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OKLAHOMA DEPARTMENT  
OF PUBLIC SAFETY  
Oklahoma City, Oklahoma

For Defendant/Appellant

OPINION BY P. THOMAS THORNBRUGH, PRESIDING JUDGE:

The State of Oklahoma ex rel. Department of Public Safety (DPS), appeals the order of the district court restoring the driving licenses of the plaintiff, Nathan

James Schuermann (Schuermann), on the grounds that the sworn report in this case was defective in failing to contain the required sworn statement of the officer. On review, we affirm the decision of the district court.

### **BACKGROUND**

On April 16, 2013, Schuermann was involved in a vehicle accident. The investigating highway patrol trooper arrested him on suspicion of driving under the influence, and for refusing to take a breath test. Schuermann made a timely request for an administrative hearing regarding suspension of his driver's license and disqualification of his commercial license. The first hearing scheduled for October 30, 2013, was postponed. DPS cancelled the second hearing scheduled on December 20, 2013.

On January 23, 2014, DPS sent notice of the next hearing. DPS also served a copy of a "Supplemental Sworn Report to the Officer's Affidavit and Notice of Revocation/Disqualification" (Supplemental Report). The Supplemental Report was in response to the decisions of *Roulston v. State ex rel. Dept. of Public Safety*, 2014 OK CIV APP 46, 324 P.3d 1261, and *Tucker v. State ex rel. Dept. of Public Safety*, 2014 OK CIV APP 45, 326 P.3d 542, both of which found statutory deficiencies in the form of the sworn report used by the DPS.

The Supplemental Report states:

On the above date, time and location the above named person was arrested. And I had reasonable grounds to believe the person was driving or in actual

physical control of a motor vehicle upon a public road, highway, street, turnpike, public parking lot, or other public place, or upon a private road, street, alley or lane which provides access to one or more single or multi-family dwellings within this state while under the influence of alcohol and/or other intoxicating substance prohibited by law, as indicated in the attached Officer's Affidavit and Notice of Revocation/Disqualification.

The hearing officer admitted the Supplement Report into evidence over Schuermann's objection. Schuermann appealed and then posted bond and filed his petition for review by trial *de novo* with the District Court. This appeal raises a claim of defective administrative process resulting in an erroneous revocation.

In the District Court, DPS presented the arresting officer and exhibits. The exhibits included the Supplemental Report, which was admitted over the objection of Schuermann. The arresting officer testified about the circumstances of his investigation leading to Schuermann's arrest, including Schuermann's physical appearance. Schuermann refused to submit to a breath test and then vacillated about his decision and his demand for a blood test. No test was administered. Schuermann admitted to drinking earlier before undertaking this trip and to stopping at a liquor store. An open container of an alcoholic beverage was in Schuermann's vehicle.

The arresting officer took Schuermann to the sheriff's office to be booked for DUI. There, Schuermann again refused to take the breath test. He complained of injury and was transported to a hospital. There he was treated and released to the arresting officer. Schuermann finally agreed to take the breath test, but the

two-hour time limit had expired.<sup>1</sup> The original sworn report was served on Schuermann on April 18, 2013. After the DPS provided the Supplemental Report to the arresting officer, he completed the form and returned it to DPS and a copy was served to Schuermann's attorney in early January 2014. The administrative hearing officer later sustained the revocation and disqualification of the licenses.

The trial court, upon reviewing *Roulston* and *Tucker*, found the original administrative documentation was defective pursuant to those decisions. The court then stated:

I'm not convinced the January 14 supplemental affidavit cured that deficiency. I'm not sure anybody can be sure of that until an appellate court were to tell us one way or the other. But I think that's fatal. I'm going to sustain the demurrer and vacate the order revoking Mr. Schuermann's license and direct that his driving privileges be restored.

DPS appeals.

### STANDARD OF REVIEW

On appeal from orders of implied consent revocations, the appellate courts may not reverse or disturb the findings below unless the lower court's determinations are found to be erroneous as a matter of law or lacking sufficient

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<sup>1</sup> The parties do not agree about whether Schuermann agreed to a breath test, and then refused a breath test, or whether he had a right to select a blood test. The trial court simply took the situation as one where no test was administered so it was not possible to conclude what the level of intoxication might have been.

evidentiary foundation. *Hollis v. State ex rel. Department of Public Safety*, 2006 OK CIV APP 25, ¶ 4, 131 P.3d 145.

The initial issue in this appeal is whether the Supplemental Report cures the *Roulston - Tucker* deficiency in the original report. Where, as here, the pertinent facts are not disputed, an appeal presents only a question of law, and the appellate court has the plenary, independent, and nondeferential authority to reexamine a trial court's legal rulings. *Neil Acquisition, L.L.C. v. Wingrod Investment Corp.*, 1996 OK 125, 932 P.2d 1100 n.1. Matters involving legislative intent present questions of law which are examined independently and without deference to the trial court's ruling. *Heffron v. District Court of Oklahoma County*, 2003 OK 75, ¶ 15, 77 P.3d 1069.

#### ANALYSIS AND REVIEW

The *Roulston* and *Tucker* cases ruled that the sworn reports in those cases were facially defective because each failed to contain the arresting officer's sworn statement of probable cause specifically required in the refusal cases by 47 O.S. 2011 § 753, and in blood or breath test cases by 47 O.S.2011 § 754(C). The original report in this case was similarly defective. The law appears reasonably clear that an administrative revocation based on a facially defective sworn report is invalid, and that such a defect cannot be subsequently cured in the trial court. We

must therefore first consider whether the supplemental report cured the original defective report prior to the administrative hearing.

### **A. The Supplemental Report**

In October 2015, the Supreme Court denied certiorari of the COCA opinion in *Gibson v. State ex rel., Dep't of Pub. Safety*, 2015 OK CIV APP 80, ¶ 12 (cert. denied 9/28/2015, mandated 10/15/2015). *Gibson* found that the supplemental affidavit used by the DPS cured the defect of failure to state probable cause in an original affidavit when served on defendant's attorney more than thirty days before the hearing. However, in February 2016, the Supreme Court approved as precedential the opinion of COCA in *Stopshaw v. State ex rel., Dep't of Pub. Safety*, Case No. 113,405 (approved for publication and accorded precedential value February 8, 2016). *Stopshaw* holds that the defect first noted in *Roulston* and *Tucker* renders the initial revocation notice *invalid*, and the supplemental affidavit does not cure this defect unless a *new notice of revocation* is issued and served with the supplemental affidavit. The supplemental affidavit in this case did not contain a new notice of revocation. Pursuant to the rule accorded precedential value in *Stopshaw*, the administrative paperwork in this case remained deficient, and the administrative revocation was invalid.

## CONCLUSION

The original administrative documentation in this case was defective, and the most recent Supreme Court precedent indicates that the supplemental affidavit, if not accompanied by a new notice of revocation, does not cure this defect. Despite the relevant statute denoting trial of these matters in the district court as “*de novo*,” *Roulston*, *Tucker* and now *Stopshaw* are clear that a defect in the administrative paperwork used for the initial revocation hearing invalidates the administrative revocation, leaving nothing further for the trial court to review. The most recent precedent requires us to affirm the decision of the trial court in this case.

**AFFIRMED.**

BARNES, J., and RAPP, J., concur.

April 8, 2016