

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

OCT 11 2017

DANIELLE R. NEALIS,

Plaintiff/Appellee,

vs.

STATE OF OKLAHOMA *ex rel.*

DEPARTMENT OF PUBLIC SAFETY,

Defendant/Appellant.

Case No. 115,595

APPEAL FROM THE DISTRICT COURT OF  
GARFIELD COUNTY, OKLAHOMA

HONORABLE PAUL K. WOODWARD, TRIAL JUDGE

**AFFIRMED**

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

For Plaintiff/Appellee

Heather M. Poole  
ASSISTANT GENERAL COUNSEL  
OKLAHOMA DEPARTMENT  
OF PUBLIC SAFETY  
Oklahoma City, Oklahoma

For Defendant/Appellant

OPINION BY JANE P. WISEMAN, JUDGE:

State of Oklahoma *ex rel.* Department of Public Safety (DPS) appeals the

trial court's order setting aside the revocation of Plaintiff Danielle R. Nealis' driving privileges. After review, we affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

On February 21, 2015, Nealis was arrested in Enid by Oklahoma Highway Patrol Trooper Joshua Byrd for driving under the influence. Nealis stated she was "informed of the Implied Consent Test Request" but refused to submit to the breath test. On February 24, 2015, DPS received a timely written request from Nealis seeking an administrative hearing and a speedy trial. On April 11, 2016, DPS conducted an administrative hearing and mailed the order on May 4, 2016, sustaining the revocation of Nealis' driver's license.

On May 18, 2016, Nealis timely appealed to the Garfield County District Court where she argued in relevant part:

Last, but not least, [DPS] has blatantly violated [Nealis'] right to a fair and speedy trial in this case. On February 24, 2015, [Nealis] faxed a written request for a speedy trial/hearing to [DPS]. The hearing was finally held on April 11, 2016 (13½ months later). There was no excuse for this delay. The trooper has been working and available the entire time. [Nealis] was/is not eligible for many jobs while her license is flagged and she has incurred significant expense in defending this matter. Further, the criminal case was dismissed with prejudice on August 24, 2015, but [Nealis] cannot expunge her court records of this ordeal until this DPS case is resolved. Therefore, under *Pierce v. DPS*, 327 P.3d 1194, 2014 OK 37, and *Ryan v. DPS*, No. 114,375 (OCCA, 1/15/16), the revocation must be reversed and

set aside for violating her rights to due process and a speedy trial.

(Emphasis omitted.) At the conclusion of the hearing on October 27, 2016, the trial court set aside the revocation of Nealis' driver's license finding that "after hearing testimony of witnesses, receiving evidence, and being fully advised, finds that [DPS] has violated [Nealis'] right to a speedy trial in this case under Okla. Const. Art. 2 § 6." The trial court ordered the revocation set aside, effective immediately, and exonerated the appeal bond.

DPS appeals.

### STANDARD OF REVIEW

"[C]onstitutional issues are reviewed *de novo*, requiring an independent, non-deferential re-examination of the Department's legal rulings." *Nichols v. State ex rel. Dep't of Pub. Safety*, 2017 OK 20, ¶ 10, 392 P.3d 692.

### ANALYSIS

The issue DPS raises on appeal is whether "the trial court erred, as a matter of law, by setting aside the revocation primarily based upon the length of time between the arrest and the administrative hearing." The Oklahoma Supreme Court in *Pierce v. State ex rel. Department of Public Safety*, 2014 OK 37, ¶ 8, 327 P.3d 530, set out a four factor test to determine whether DPS violated a driver's constitutional right to a speedy trial: "1) the length of the delay; 2) the reason for the delay; 3) the party's assertion of the right; and 4) the prejudice to the party

occasioned by the delay.” *Id.* *Pierce* also “instructs that personnel and budgetary restraints are insufficient to excuse the government’s constitutional duty to provide a timely right to be heard.” *Nichols*, 2017 OK 20, ¶ 10.<sup>1</sup>

According to the record, about 13½ months elapsed between Nealis’ timely written request for an administrative hearing and speedy trial and the date of the administrative proceeding. DPS’ explanation for this delay is insufficient, and Trooper Byrd testified he has been available for hearings “at any time [DPS] chose to set this.”<sup>2</sup> To the extent the delay was caused by administrative restraints, the Supreme Court in *Pierce* and *Nichols* has rejected this argument. *Pierce*, 2014 OK 37, ¶ 11; *see also Nichols*, 2017 OK 20, ¶ 10. Nealis neither caused nor controlled the delay. *See Pierce*, 2014 OK 37, ¶ 22 (“no element of [the delay] was under the control of the driver”). This Court in *Ryan v. Commissioner of the Department of Public Safety*, 2016 OK CIV APP 49, 377 P.3d 1255, concluded that a delay of 10-14 months violated the driver’s constitutional right to a speedy trial even though the delay was not intentional. *Id.* ¶¶ 6, 10 (“We agree delay without motive may

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<sup>1</sup> We note that since this case has been on appeal, the Oklahoma Supreme Court has provided guidance to DPS in an effort to avoid future claims of violating a driver’s constitutional right to a speedy trial. *Nichols v. State ex rel. Dep’t of Pub. Safety*, 2017 OK 20, ¶¶ 28-30, 392 P.3d 692.

<sup>2</sup> DPS states in its appellate brief, “[Nealis] provided no evidence of any deliberate action to delay the administrative hearing, but merely indicated how long it took for DPS to conduct an administrative hearing.” DPS further maintains that there was no “evidence showing that DPS scheduled [Nealis’] hearing outside the normal order for all hearings in due course. There cannot be a denial of due process when DPS followed the normal course for the administrative process.” We do not consider “due course” to be a substitute for due process.

be insufficient to demonstrate a deprivation of due process. However, in this case, we find delay did result in due process denial. We find the delay after timely request was not minimal and the evidence does not support a reasonable reason for the delay that did result in prejudice to [driver].”).

Nealis testified she has been prejudiced by the delay because it has “taken a long time” to get it resolved, she has to take off work, and has to pay her attorney. She has “lived under the cloud of a pending revocation proceeding for approximately” 13½ months. *See Pierce*, 2014 OK 37, ¶ 0; *see also Nichols*, 2017 OK 20, ¶ 26 (“Nichols was prejudiced simply because the state of his driving privileges remained in limbo for sixteen (16) months.”). Applying the four factors in *Pierce*, we conclude, as the trial court did, that the revocation of Nealis’ license must be set aside because her constitutional right to a speedy trial pursuant to Oklahoma Constitution art. 2, § 6 was violated.

### **CONCLUSION**

The trial court correctly set aside the revocation order and reinstated Nealis’ license.

**AFFIRMED.**

THORNBRUGH, V.C.J., and BARNES, P.J., concur.

October 11, 2017