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a procedure for determining what time Marcos will be able to spend with his children when his circumstances inevitably change. Because the judge ordered earlier in the same hearing that Marcos receive no visitation with his children, the order granting custody to Jennifer essentially deprived Marcos of all parental rights without notice or the opportunity to be heard on that issue. This was an unacceptable violation of Marcos' right to procedural due process and an abuse of discretion by the juvenile court.

CONCLUSION

We find it was an abuse of discretion for the court to award legal custody to Jennifer, relieve DHHS of its legal duty, and terminate the jurisdiction of the juvenile court without providing Marcos notice and the opportunity to be heard on a motion for custody. The decision of the juvenile court is reversed, and the cause is remanded for further proceedings in accordance with this decision.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

RONALD D. SHERMAN, APPELLANT, V. BEVERLY NETH, DIRECTOR, NEBRASKA DEPARTMENT OF MOTOR VEHICLES, APPELLEE.

808 N.W.2d 365

Filed December 27, 2011. No. A-10-945.

1. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Police Officers and Sheriffs: Jurisdiction.** Neb. Rev. Stat. § 60-498.01 (Reissue 2010) provides that the Department of Motor Vehicles acquires jurisdiction to administratively revoke the driving privileges of a motorist arrested as described in Neb. Rev. Stat. § 60-6,197(2) (Reissue 2010) upon receipt of a proper sworn report of the arresting officer.
2. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Police Officers and Sheriffs: Proof.** The Department of Motor Vehicles makes a prima facie case for license revocation once it establishes that the officer provided a sworn report containing the statutorily required recitations.
3. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Evidence.** In an administrative license revocation proceeding, if the sworn report

does not include information required by statute, the report may not be supplemented by evidence offered at a subsequent hearing.

4. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Appeal and Error.** An appellate court reaches an independent conclusion whether the sworn report provided the required statutory information to confer authority to the Department of Motor Vehicles to revoke an operator's license.
5. **Rules of the Road.** Neb. Rev. Stat. § 60-6,197 (Reissue 2010) is located in the Nebraska Rules of the Road.
6. **Drunk Driving: Proof: Convictions.** A conviction pursuant to Neb. Rev. Stat. § 60-6,197 (Reissue 2010) can be secured based only upon a motorist's operating a motor vehicle while intoxicated on a public road or on private property open to public access, and the location of the offense being somewhere to which the Nebraska Rules of the Road are applicable is a necessary element of the underlying offense.
7. ____: ____: ____. Being on a public road or private property open to public access is a necessary element which must be proven by the State to support a conviction under Neb. Rev. Stat. § 60-6,197 (Reissue 2010).
8. **Administrative Law: Motor Vehicles: Licenses and Permits: Revocation: Jurisdiction: Proof.** For the sworn report to confer jurisdiction for an administrative license revocation proceeding and to prove the State's prima facie case that a valid arrest pursuant to Neb. Rev. Stat. § 60-6,197 (Reissue 2010) occurred, the sworn report must contain sufficient assertions to allow an inference that the motorist was on a public road or private property open to public access.

Appeal from the District Court for Cheyenne County: DEREK C. WEIMER, Judge. Reversed and remanded with directions.

Bell Island, of Island, Huff & Nichols, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Gregory J. Walklin for appellee.

IRWIN, MOORE, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Ronald D. Sherman appeals an order of the district court for Cheyenne County, Nebraska, upholding the Department of Motor Vehicles' administrative revocation of Sherman's operator's license for refusal to submit to a chemical test. On appeal, Sherman asserts that the sworn report submitted at the administrative license revocation hearing was insufficient to establish a prima facie case and confer jurisdiction on the Department

of Motor Vehicles (hereinafter the Department). Specifically, Sherman contends the refusal statutes, like the driving under the influence statutes, require that the sworn report sufficiently establish he was on a public road or private property open to public access at the time of his arrest. We agree and conclude that the sworn report was insufficient, and we reverse, and remand with directions.

II. BACKGROUND

On April 10, 2010, at approximately 9:30 p.m., an officer with the Sidney Police Department was on patrol when he observed a vehicle parked in a nonresidential area of the town. According to the officer's testimony, the vehicle was parked on a "driveway entering [a] recycling place directly parallel with East Elm Street" in Sidney, on private property. Upon stopping and investigating, the officer discovered Sherman sleeping in the driver's seat of the vehicle, with an open beer can between his legs and "an open 30-pack" of beer on the passenger-side floorboard; Sherman was the only occupant of the vehicle. The officer observed that Sherman had "glossy" eyes and that there was a strong smell of alcohol, and Sherman acknowledged having consumed approximately six beers. The officer testified that he had driven past the location approximately 30 minutes before and had not observed the vehicle.

The officer had Sherman exit the vehicle, and the officer requested that Sherman perform field sobriety tests. Sherman refused, contending that he had not been driving. Sherman also refused to submit to a preliminary breath test, again contending that he had not been driving. The officer then placed Sherman under arrest for refusal of the preliminary breath test and driving under the influence.

Sherman was transported to the police department for administration of a chemical test. Sherman refused to submit to a chemical test, once again contending that he had not been driving. The officer then completed the "Notice/Sworn Report/Temporary License" form and provided Sherman a copy. Sherman timely filed a petition for a hearing. On May 11, 2010, the Department entered an administrative order revoking Sherman's operator's license.

Sherman appealed to the district court. On September 3, 2010, the district court entered an order affirming the administrative license revocation order. The court rejected Sherman's assertion that the Department had lacked jurisdiction for insufficiency of the sworn report to sufficiently establish a prima facie case and confer jurisdiction. This appeal followed.

III. ASSIGNMENT OF ERROR

On appeal, Sherman asserts that the district court erred in finding that the Department had jurisdiction based on the sufficiency of the sworn report.

IV. ANALYSIS

Sherman asserts on appeal that the sworn report in this case was insufficient to satisfy the statutory prerequisites for conferring jurisdiction upon the Department and for establishing the Department's prima facie case for administrative license revocation. Specifically, Sherman asserts that the assertions on the sworn report concerning the reasons for his arrest fail to sufficiently establish that he was on a public road or private property open to public access at the time of his arrest. We agree.

[1-4] Neb. Rev. Stat. § 60-498.01 (Reissue 2010) provides that the Department acquires jurisdiction to administratively revoke the driving privileges of a motorist arrested as described in Neb. Rev. Stat. § 60-6,197(2) (Reissue 2010) upon receipt of a proper sworn report of the arresting officer. The Department makes a prima facie case for license revocation once it establishes that the officer provided a sworn report containing the statutorily required recitations. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007). If the sworn report does not include information required by statute, the report may not be supplemented by evidence offered at a subsequent hearing. *Id.* An appellate court reaches an independent conclusion whether the sworn report provided the required statutory information to confer authority to revoke an operator's license. See *id.*

Section 60-498.01(2) requires the sworn report to state "(a) that the person was arrested as described in subsection (2) of

section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test." The appellate courts in Nebraska have previously addressed the necessary assertions required to sufficiently demonstrate the reasons for arrest in a variety of situations. See, *Snyder v. Department of Motor Vehicles*, 274 Neb. 168, 736 N.W.2d 731 (2007); *Betterman v. Department of Motor Vehicles, supra*; *Barnett v. Department of Motor Vehicles*, 17 Neb. App. 795, 770 N.W.2d 672 (2009); *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 446, 729 N.W.2d 95 (2007).

In *Betterman v. Department of Motor Vehicles*, 273 Neb. at 186, 728 N.W.2d at 581, the Nebraska Supreme Court noted that an arrest described in § 60-6,197(2) is an arrest "'for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs.'" In the cases cited above, and in others addressing the sufficiency of the sworn report, the appellate courts of this state have primarily addressed what assertions are necessary to establish that the motorist was intoxicated or operating a motor vehicle; none of the cases address a question concerning the location of the motorist at the time of contact with law enforcement.

[5,6] Section 60-6,197 is located in the Nebraska Rules of the Road. See Neb. Rev. Stat. §§ 60-601 to 60-6,380 (Reissue 2010, Cum. Supp. 2010 & Supp. 2011) (known as the Nebraska Rules of the Road). Section 60-6,108 specifically provides that § 60-6,197 "shall apply upon highways and anywhere throughout the state except private property which is not open to public access." As such, a conviction pursuant to § 60-6,197 can be secured based only upon a motorist's operating a motor vehicle while intoxicated on a public road or on private property open to public access, and the location of the offense being somewhere to which the Nebraska Rules of the Road are applicable is a necessary element of the underlying offense.

In *Betterman v. Department of Motor Vehicles, supra*, the Nebraska Supreme Court found sufficient a sworn report that

indicated the motorist had been driving recklessly, displayed signs of alcohol intoxication, and refused field sobriety tests and a breath test. An assertion that the motorist was "driving recklessly" is sufficient to allow an inference that he was on a public road when stopped by the officer. In *Snyder v. Department of Motor Vehicles*, 274 Neb. at 169, 736 N.W.2d at 733, the Nebraska Supreme Court found insufficient a sworn report that indicated that the motorist had been arrested for "'Speeding (20 OVER)/D.U.I.,'" or driving under the influence, because the assertion of "'D.U.I.'" was insufficient to establish the reasons for suspecting the motorist of being intoxicated. The assertion that the motorist was stopped for speeding would have been sufficient to allow an inference that he was on a public road when stopped. In *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. at 451, 729 N.W.2d at 99, this court found insufficient a sworn report that indicated that the motorist had been "passed out in front of [the gas] Station, near front doors" with "Signs of alcohol intoxication," because the assertions were not sufficient to demonstrate that the motorist had actually been driving or in control of the vehicle. The assertions in that case that the motorist was in front of a gas station would have been sufficient to allow an inference that he was on private property open to public access. See, also, *State v. Prater*, 268 Neb. 655, 686 N.W.2d 896 (2004) (parking lot for apartment complex was open to public access).

[7,8] Nebraska appellate courts have not previously specified that the reasons for the arrest recited on the sworn report must allow an inference that the motorist was on a public road or on private property open to public access. Nonetheless, it is axiomatic that being on a public road or private property open to public access is a necessary element which must be proven by the State to support a conviction under § 60-6,197. As such, inasmuch as the sworn report confers jurisdiction for administrative license revocation and proves the State's prima facie case that a valid arrest pursuant to § 60-6,197 occurred, the sworn report must contain sufficient assertions to allow an inference that the motorist was on a public road or private property open to public access.

In the present case, the sworn report includes the following handwritten reasons for Sherman's arrest: "[A]sleep behind wheel with keys in ignition [and] vehicle off, with open beer between legs. Subject pulled parrallel [sic] with east elm street. Subject smelled strongly of alcoholic beverage, glossy eyes[,] trouble walking. Made contact reference suspicious vehicle." While these assertions would be sufficient to establish that Sherman was driving or in physical control of the vehicle and that he was intoxicated, the assertions are not sufficient to allow an inference that Sherman was on a public road or private property open to public access. Unlike the assertions in the cases discussed above, the assertions in the sworn report in this case do not indicate that the location "parrallel [sic]" to a public street was either a public road or private property open to public access. As such, we conclude that the sworn report in this case was insufficient to confer jurisdiction on the Department, and the district court erred in upholding the administrative license revocation.

V. CONCLUSION

The sworn report in the present case was insufficient to confer jurisdiction on the Department. The district court erred in rejecting Sherman's challenge to the sufficiency of the report and in upholding the administrative license revocation. We reverse, and remand with directions to reverse the revocation.

REVERSED AND REMANDED WITH DIRECTIONS.

MIDWEST RENEWABLE ENERGY, LLC, APPELLANT, V. LINCOLN COUNTY BOARD OF EQUALIZATION, APPELLEE.

807 N.W.2d 558

Filed December 27, 2011. No. A-10-1106.

1. **Taxation: Judgments: Appeal and Error.** Appellate courts review decisions rendered by the Tax Equalization and Review Commission for errors appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to