

NO. 46341-5

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

LOUIS P. TRUTMAN,

Respondent,

v.

STATE OF WASHINGTON DEPARTMENT OF LICENSING,

Appellant.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This case involves a straight forward application of this Court's recent decision in *Watkins v. Dep't of Licensing*, 187 Wn. App. 591, 349 P.3d 946 (2015). That case held that a police officer's uncertified arrest report is admissible in an administrative proceeding to suspend a license under the implied consent law, RCW 46.20.308. *Id.* at 601-02.

In this case, Louis Trutman was stopped by a Washington State Patrol Trooper David Bangart for driving under the influence of alcohol (DUI). The trooper observed an odor of intoxicants, and Trutman admitted to consuming alcohol. A second State Patrol Trooper—R.I. Howson—arrived at the scene and, at Trooper Bangart's request, arrested Trutman and transported him to a State Patrol District Office for advisement of the implied consent warnings and a breath test. Trutman took the breath test, which revealed a breath alcohol concentration above the legal limit.

Trooper Howson submitted a DUI Arrest Report packet to the Department of Licensing that included his own certified written narrative. On the first page of the report, Trooper Howson certified that there were reasonable grounds to believe that Trutman was DUI at the time of the arrest. The report packet also included Trooper Bangart's written narrative, which was uncertified. At a hearing requested by Trutman to

challenge the Department's proposed driver's license suspension, a Department hearing officer admitted Trooper Bangart's uncertified report over Trutman's objection and affirmed the proposed suspension. On appeal, the Pierce County Superior Court reversed the suspension, finding it was error to rely on the unsworn report to establish probable cause for the arrest. CP at 115-16.

The Department sought discretionary review in this Court. The Court's Commissioner then stayed the motion for discretionary review pending the Court's decision in *Watkins*. Order Staying Mot. for Discretionary Review at 2. After the Court issued its published decision in *Watkins*, the Commissioner lifted the stay and subsequently granted discretionary review.

Because the essential facts and legal issues in this case are the same as in *Watkins*, the Court should reverse the superior court and affirm the Department's suspension of Trutman's driver's license.

II. ASSIGNMENT OF ERROR

The Department assigns no error to the decision subject to this Court's review: the Department's final order suspending Trutman's driver's license. However, the superior court erred in reversing that decision by concluding the Department improperly relied upon an unsworn report to establish probable cause for the arrest.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Consistent with *Watkins*, the plain language of the implied consent law, and the Department's relaxed rules of evidence, did the Department's hearing officer properly admit Trooper Bangart's narrative report, which accompanied the signed certified report of another trooper?

IV. STATEMENT OF THE CASE

On July 9, 2013, Trooper David Bangart of the Washington State Patrol observed a car passing vehicles using the center turn lane. Clerk's Papers (CP) at 24 (FF 2), 52. The trooper initiated a stop. *Id.* Upon contact, Trutman stated that he understood he had been stopped because he was passing in a no passing zone and revealed that he had been shooting, drinking, and off road driving. CP at 24 (FF 3), 54. Trooper Bangart detected an odor of intoxicants and asked Trutman about his drinking. *Id.* Trutman replied, "I'm not going to lie to you I've had three or four beers . . . you may as well take me in." *Id.* After administration of the field sobriety tests, Washington State Patrol Trooper R. I. Howson arrived on the scene. CP at 24 (FF 3). Trooper Bangart instructed Trooper Howson to place Trutman under arrest. CP at 24 (FF 3), 55.

On July 16, 2013, Trooper Howson faxed a report titled "Report of Breath[,] Blood Test for Alcohol[,] or Refusal to Submit to Breath/Blood

Test for Alcohol Drugs.” (DUI Arrest Report Packet¹). CP at 24 (FF 1), 67-80. Attached to the report were a certified narrative report of investigation by Trooper Howson and a narrative report of investigation from Trooper Bangart. CP at 54-56. The end of Trooper Bangart’s narrative report contained penalty of perjury language required by RCW 9A.72.085, the place of signature, and the date of signature. CP at 56. The signature box was blank. *Id.* However, the box for the officer’s printed name contained “/S/ David Bangart.” *Id.*

In his certified narrative case report, Trooper Howson described his contact with Trooper Bangart and Trutman. CP at 50. He reported that Trooper Bangart had asked him to place Trutman under arrest. *Id.* After the arrest was completed, Trooper Bangart also told Trooper Howson why he had stopped Trutman. *Id.*

Trooper Howson transported Trutman to a Washington State Patrol District Office. CP at 51. During transport, Trooper Howson could smell the odor of intoxicants coming from the back of his patrol car. *Id.* At the district office, Trooper Howson advised Trutman of the implied consent warnings for breath. CP at 25 (FF 4), 51. Trutman agreed to submit to a

¹ Trooper Howson faxed a report on July 16. CP at 66-79. The cover page of the report indicated that 16 pages were included in the fax, but only 14 pages were received. CP at 66. At the Department’s request, the report was faxed a second time. CP at 38. The subsequent fax included the same 14 pages contained in the first fax, but also contained additional pages. CP at 41-59. In any event, both faxes contain the written narratives of both officers. This brief cites to the second report received, at CP 41-59.

test and provided two breath samples registering a blood alcohol content of .089 and .101, over the legal limit for driving. CP at 25 (FF 6), 49, 52.

Pursuant to the implied consent statute, Former RCW 46.20.308(7),² the Department mailed Trutman a Notice of Suspension stating that the Department would suspend his driving privileges for 90 days. CP at 66. The Department also sent a Notice of Disqualification stating that the Department would suspend his commercial driver's license for one year. CP at 81. Trutman requested an administrative hearing. CP at 23. At the hearing, Trutman argued that Trooper Bangart's narrative was not certified, should be suppressed, and without the report, there was insufficient evidence for the initial traffic stop. CP at 23. The Department's hearing officer concluded that Trooper Bangart's report was admissible because it accompanied Trooper Howson's certified report under RCW 46.20.308 and was also admissible under the Department's rules of evidence. CP at 26 (CL 2). Relying in part on Trooper Bangart's report, she concluded that there were reasonable grounds to believe that Trutman was driving a motor vehicle while under the influence of alcohol. CP at 26 (CL 2). She sustained Department's suspension of Trutman's driver's license. CP at 12.

² ESSB 5912 amended RCW 46.20.308 resulting in the renumbering of several subsections. The amendments took effect on September 28, 2013, approximately two months after the Notice of Suspension was mailed to Trutman. Laws of 2013, ch. 35, §36. The amendments have no substantive effect on this case.

Trutman appealed the administrative decision to superior court. CP at 1-2. The superior court reversed, concluding that the hearing officer erred in relying on an unsworn report to establish probable cause for the arrest. CP at 115-16. The Department sought discretionary review in this Court. The Court then decided a similar case, *Watkins v. Dep't of Licensing*, 187 Wn. App. 591. Subsequently, review was also granted in this case.

V. STANDARD OF REVIEW

The Court of Appeals reviews the Department's decision from the same position as the superior court. *Clement v. Dep't of Licensing*, 109 Wn. App. 371, 373, 35 P.3d 1171 (2001). Trutman challenged the hearing officer's order suspending his license in superior court. CP at 1-2. Therefore, he carries the burden of demonstrating its invalidity in this Court, too.

The implied consent statute, RCW 46.20.308, governs judicial review of the Department's order. *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 48, 50 P.3d 627 (2002). If a person's license suspension, revocation, or denial is sustained at an administrative hearing, he has the right to appeal that decision to the superior court. Former RCW 46.20.308(9) (2012).

Under former RCW 46.20.308(9):

The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) that were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department.

Therefore, the Court of Appeals reviews the administrative order to determine whether the Department has committed any errors of law, upholding findings of fact supported by substantial evidence in the record. *Id.*; *Clement*, 109 Wn. App. at 374.

VI. ARGUMENT

The Court should reverse the superior court and affirm the Department's suspension order because the Court's recent decision in *Watkins v. Dep't of Licensing*, in which the Court held the arresting officer's uncertified report that accompanied another officer's certified report was admissible at the administrative hearing, directly applies to the present case. 187 Wn. App. at 601-02 (2015). In this case, the Department admitted an uncertified police report that accompanied the certified report of another officer. Based on *Watkins*, the hearing officer properly admitted and relied on the uncertified report.

In *Watkins*, a law enforcement officer stopped a driver who had watery and bloodshot eyes. *Watkins*, 187 Wn. App. at 594. After the officer arrested the driver for DUI, he transported the driver to the police

department to meet a state trooper for DUI processing. *Id.* at 595. The trooper administered implied consent warnings, and the driver refused to submit to the breath test. *Id.*

The trooper who administered the breath test submitted a 16 page DUI arrest report to the Department that included a certification on the first page stating there were reasonable grounds to believe the driver had been driving under the influence. *Id.* The DUI arrest report contained additional documents, including an uncertified report of the officer who had arrested Watkins. *Id.* At the administrative hearing, the hearing officer admitted the uncertified report. *Id.* at 596. The superior court reversed the Department, finding that the Department erred in relying upon the uncertified report to establish jurisdiction and probable cause for the arrest. *Id.*

This Court reversed, noting that “the purpose of the implied consent statute is to ‘insure swift and certain punishment for those who drink and drive,’ and ‘free Washington roads of drivers who take the wheel under the influence of alcohol or controlled substances.’” *Id.* at 597 (quoting *State v. Vasquez*, 148 Wn.2d 303, 315, 59 P.3d 648 (2002)). The Court held that the first page certification of the trooper who administered the breath test was sufficient to establish the Department’s jurisdiction to revoke the driver’s license because the language tracked with the implied

consent statute.³ *Id.* at 597-600. Additionally—and relevant here—the Court held that the Department did not err in admitting the arresting officer’s uncertified report at the hearing. *Id.* at 600-02. The Court found that the uncertified report was admissible because the “sworn [or certified] report and *any other evidence accompanying it . . . are admissible at the hearing without further evidentiary foundation.*” *Id.* at 601 (quoting *Cannon v. Dep’t of Licensing*, 147 Wn.2d 41, 51, 50 P.3d 627 (2002)). Because the uncertified arrest report accompanied the certified report, it was admissible without further evidentiary foundation. *Id.* at 601. The Court also found that the uncertified report was admissible hearsay because it was the type of evidence reasonably prudent persons are accustomed to rely on in the conduct of their affairs, which is admissible in license suspension hearings. *Id.* (quoting WAC 308-103-120(1), and citing *Ingram v. Dep’t of Licensing*, 162 Wn.2d 514, 525, 173 P.3d 259 (2007)).

³ Unlike *Watkins*, Trutman has not objected to the Department’s jurisdiction to suspend his license at any stage of the proceeding. In any event, the certified first page of the DUI arrest report containing summary language considered in *Watkins* was the same form used by the Trooper Howson in the present case. CP at 42; *Watkins*, 187 Wn. App. at 595. So the Court’s holding that the first page certification was sufficient to confer the Department with jurisdiction to take action against the driver’s license would apply here.

In *Watkins*, the court also addressed whether an officer who did not make the arrest but administered implied consent warnings and complied with the driver’s refusal was authorized to send a report to the Department. *Watkins*, 187 Wn. App. at 600. That issue is not present in this case because the trooper who made the arrest also administered the test.

Here, the facts regarding the preparation and transmission of the report are the same as in *Watkins*. Trooper Howson, the officer who completed the latter part of the DUI investigation, faxed a certified DUI Arrest Report to the Department. CP at 24 (FF 1), 66-79. The report included a certification on the first page that stated there were reasonable grounds to believe the person had been DUI. CP at 42. The report also included a certified narrative report of investigation by Trooper Howson and was accompanied by an uncertified narrative report of investigation from Trooper Bangart. CP at 50-54.

Trutman requested an administrative hearing before the Department and objected to the admission of the uncertified report only. CP at 22. The Department's hearing officer admitted Trooper Bangart's report because it accompanied Trooper Howson's certified report under former RCW 46.20.308(8) and was also admissible under the Department's rules of evidence. CP at 26 (CL 2). *Watkins* confirms the admission of the report was proper.

Trutman will likely argue that *Watkins* can be distinguished because Trooper Howson's narrative report does not specifically identify Trutman as the defendant. CP at 49-52. However, the narrative report references the video file for "Trutman." CP at 49. Additionally the other

documents transmitted by Howson refer to the driver as “Trutman.” CP at 42, 49, 54-56. This argument is unavailing.

Trutman also may argue that Trooper Howson’s narrative report does not recite the specific conduct that led to the stop of Trutman’s vehicle. However, Trooper Bangart’s admissible report establishes the sufficiency of the stop. There is no requirement in either *Watkins* or the implied consent statute that Trooper Howson repeat what Trooper Bangart observed in his own written report.

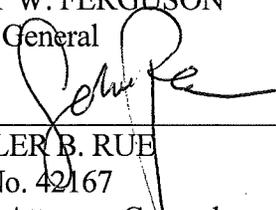
In this case, the Department properly admitted the uncertified report of Trooper Bangart because it was evidence accompanying the certified report of Trooper Howson. Former RCW 46.20.308(8) (2012); *Watkins*, 187 Wn. App. at 597-600. The uncertified report of the trooper was also admissible hearsay because it was the type of evidence reasonably prudent persons are accustomed to rely on in the conduct of their affairs. WAC 308-103-120(1); *Watkins*, 187 Wn. App. at 601. *Watkins* is controlling here. The superior court’s reversal of the Department’s order of suspension was an error. The Court should reinstate the order of suspension.

VII. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Court reverse the decision of the superior court and reinstate the hearing officer's suspension order.

RESPECTFULLY SUBMITTED this 17th day of December, 2015.

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