

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota, )  
 )  
 Plaintiff-Appellee, )  
 )  
 vs. ) SUPREME COURT NO. 20090115  
 )  
 Jeremiah James Johnson, )  
 )  
 Defendant-Appellant. )

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REPLY BRIEF

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APPEAL FROM THE MARCH 20, 2009 CRIMINAL JUDGMENT  
THE CASS COUNTY COURT IN FARGO, NORTH DAKOTA  
THE HONORABLE GEORGIA DAWSON PRESIDING

ATTORNEY FOR APPELLANT

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## ARGUMENT

- I. The State's argument that suppression of the illegally obtained test result is not required is wrong because this court has said for over 24 years that suppression is required when the test result was illegally obtained.

The State's argument that the exclusionary rule does not apply to the suppression of a chemical test obtained in violation of the Fourth Amendment and N.D.C.C. § 39-20-04 is misguided. In Appellee's Brief in ¶ 24, the State quotes State v. Kimball, 361 N.W.2d 601, 604 (N.D. 1985) in support of their argument. However, the State conveniently omits the crucial footnote which is dispositive of the issue:

"Under the North Dakota implied consent statutes a person has the right to refuse to submit to a blood alcohol test. N.D.C.C. § 39-20-04. If Kimball had refused to submit to the extraction of his blood 39-20-04 would prohibit introducing the test results as evidence regardless if his blood was; taken pursuant to a Schmerber-type search incident to an arrest. In other words, if a person refuses to submit to a blood alcohol test, but such a test is nevertheless conducted, the tests results are not admissible as the fruit of a valid search incident to an arrest because of the operation of NDCC § 39-20-04." [emphasis added] Id.

Defendant respectfully urges this Court not to overturn

State v. Kimball and usurp the clear legislative intent in  
N.D.C.C. § 39-20-04.

**CONCLUSION**

WHEREFORE, the reasons stated herein and in Appellant's  
Brief, Defendant respectfully requests this Honorable Court  
reverse the March 20, 2009 Judgment, allow Defendant to  
withdraw his Conditional Plea of guilty, and suppress the  
blood test results where Defendant did not consent to the  
test because he affirmatively refused to submit to the test.

Dated this 29th day of June, 2009.



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