IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Appellant, vs. Jerome Greenshields, Appellee.	**SUPREME COURT NO. 20190105** Crim. No. 47-2019-CR-00019

ON APPEAL FROM THE MARCH 6, 2019 DISMISSAL OF
THE DISTRICT COURT
STUTSMAN COUNTY, NORTH DAKOTA
SOUTHEAST JUDICIAL DISTRICT
HONORABLE DANIEL D. NARUM PRESIDING

APPELLEE'S BRIEF

ORAL ARGUMENT REQUESTED

Mark A. Friese (#05646)
mfriese@vogellaw.com
Drew J. Hushka (#08230)
dhushka@vogellaw.com
VOGEL LAW FIRM
Attorneys for Appellee
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Paragraph(s)

Cases

Rules

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

[¶1] The State's failure to appeal from Case No. 47-2018-CR-00126 forecloses this appeal.

[¶2] The district court properly found Case No. 47-2018-CR-00126 was dismissed with prejudice.

[¶3] The district court did not abuse its discretion in dismissing the case for the State's deliberate violation of the district court's lawful order.

STATEMENT OF THE CASE

[¶4] In Case No. 47-2018-CR-00126 (the "Initial Case"), the State, charged Appellee, Jerome Greenshields ("Mr. Greenshields") with sexual assault and gross sexual imposition. Appellee's App'x, at App.3-App.4. Following the State's deliberate refusal to comply with the district court's order compelling a bill of particulars, the Honorable Troy J. LeFevre ("Judge LeFevre") granted Mr. Greenshields' motion to dismiss. Appellant's App'x, at A8-A9. The State did not appeal, instead choosing to request Judge LeFevre vacate the dismissal. Appellant's App'x, at A20-A23. Judge LeFevre denied the State's motion to vacate. Appellant's App'x, at A10. The State did not appeal the Initial Case. Appellant's App'x, at A4-A7.

[¶5] The State then reinstituted the same charges against Mr. Greenshields in the underlying case. Appellee's App'x, at App.15-App.16. Mr. Greenshields moved to dismiss, arguing Judge LeFevre's dismissal of the Initial Case foreclosed the new charges. Appellant's App'x, at A27-A30. While originally assigned to preside over the reinstated charges, the State removed Judge LeFevre. Appellee's App'x, at App.17-App.18. The Honorable Daniel D. Narum ("Judge Narum") then granted Mr. Greenshields' Motion to Dismiss, finding Judge LeFevre dismissed the Initial Case with prejudice because of the

State's deliberate violation of a court order. Appellant's App'x, at A3. The State now appeals. Appellant's App'x, at A39-A40.

STATEMENT OF THE FACTS

[¶6] In the Initial Case, the State charged Mr. Greenshields with sexual assault and gross sexual imposition. Appellee's App'x, at App.3-App.4. On August 8, 2018, Mr. Greenshields requested a bill of particulars from the State, arguing the necessity of the bill of particulars to guard against *ex post facto* prosecution. Appellee's App'x, at App.5; Appellee's App'x, at App.6-App.9. Judge LeFevre agreed, and on October 22, 2018, ordered the State to produce the requested bill of particulars by November 1, 2018. Appellee's App'x, at App.12, ¶ 2.

[¶7] Despite knowledge of Judge LeFevre's order, the State failed to timely produce the required bill of particulars. See generally Appellant's App'x, at A4-A7. Accordingly, on November 5, 2018, Mr. Greenshields moved to dismiss the charges against him, citing the State's systemic disregard of the law. Appellant's App'x, at A11-A13. On November 19, 2018, the State responded to Mr. Greenshields' motion, admitting its knowledge of Judge LeFevre's order, failing to provide any legal or factual justification for its failure to produce the bill of particulars, and boldly reiterating it would not produce the ordered bill of particulars. Appellant's App'x, at A14-A13. Accordingly, on November 21, 2018, Judge LeFevre dismissed the charges. Appellant's App'x, at A8-A9.

[¶8] After the dismissal, on December 13, 2018, the State filed a bill of particulars, and requested Judge LeFevre vacate his order of dismissal. Appellant's App'x, at A20-A23. On January 9, 2019, Judge LeFevre denied the motion. Appellant's App'x, at A10. The State failed to appeal to this Court either the initial dismissal, or the district court's denial of the motion to vacate. Appellant's App'x, at A4-A7.

[¶9] The next day, on January 10, 2019, the State reinstituted charges against Mr. Greenshields in a new case—this underlying case. Appellee's App'x, at App.15-App.16. On January 21, 2019, Mr. Greenshields again moved to dismiss, arguing dismissal of the Initial Case barred the reinstated prosecution. Appellant's App'x, at A27-A30. The State opposed the Mr. Greenshields' Motion to Dismiss, and removed Judge LeFevre, who was initially assigned to preside over the reinstated charges. Appellant's App'x, at A31-A34; Appellee's App'x, at App.17-App.18. Following submissions by the parties, on March 6, 2019, Judge Narum dismissed the reinstated charges, finding Judge LeFevre intended to dismiss the Initial Case with prejudice. Appellant's App'x, at A3. The State then commenced this appeal. Appellant's App'x, at A39-A40.

LAW AND ARGUMENT

I. The State's Failure to Appeal the Initial Case Denies Jurisdiction to Consider Collateral Attacks Against that Dismissal

[¶10] "The courts have uniformly held that the taking of an appeal within the prescribed time is mandatory and jurisdictional." United States v. Robinson, 361 U.S. 220, 229 (8th Cir. 1960). After Judge LeFevre dismissed the Initial Case, the State chose not to appeal the decision, and instead reinstituted charges against Mr. Greenshields in a separate case. The State's failure to timely appeal Judge LeFevre's dismissal of the Initial Case denies this Court of jurisdiction to consider any collateral attack against Judge LeFevre's decision. This Court should affirm the Judge Narum's dismissal.

[¶11] The North Dakota Rules of Criminal Procedure require the State to appeal a judgment or order "within 30 days after entry of judgment or order being appealed." N.D.R. Crim. P. 37(b)(2). The dismissal of a charging document is an appealable final order. State v. O'Boyle, 356 N.W.2d 122, 123 (N.D. 1984). Judge LeFevre dismissed the

Initial Case on November 21, 2018. See Appellant's App'x, at A8-A9. The North Dakota Rules of Criminal Procedure, therefore, required the State to appeal his decision on or before December 21, 2018. See N.D.R. Crim. P. 37(b)(2). The State failed to appeal Judge LeFevre's dismissal before December 22, 2018—or ever.[1] Accordingly, the order is final, and its propriety is not subject to review.

[¶12] In this appeal, the State improperly seeks to argue issues this Court lacks jurisdiction to consider. The primary crux of the State's arguments on appeal is alleged errors Judge LeFevre committed in dismissing the Initial Case: (1) Judge LeFevre abused his discretion by dismissing the Initial Case without finding bad faith, harassment, or misconduct; (2) Judge LeFevre abused his discretion by dismissing the Initial Case absent extreme circumstances; and (3) Judge LeFevre abused his discretion by failing to order an alternative remedy than dismissal. See Br. of Pl.-Appellant State of N.D. ("Appellant's Brief"), ¶¶ 41-58. These arguments plainly attack Judge LeFevre's dismissal, not the underlying case appealed here. The State's collateral attack is impermissible because "[a] judgment may be attacked only by direct action, and by taking the proper steps to have it set aside or modified by direct attack in the proceedings in which it was rendered." Farrington v. Swenson, 210 N.W.2d 82, 84 (N.D. 1973) (citation omitted). The State's failure to timely appeal Judge LeFevre's dismissal of the Initial Case denies this Court of jurisdiction to weigh the State's collateral attacks in this case.

[1] The State did not request an extension of time to file an appeal in accordance with Rule 4(b)(4) of the North Dakota Rules of Appellate Procedure. Likewise, the request to vacate did not prolong the State's window to file a timely appeal. See State v. Pogue, 2015 ND 211, ¶ 6, 868 N.W.2d 522 ("Under N.D.R. App. P. 4(b)(1)(B), the State must file the notice of appeal within 30 days after entry of the order being appealed. A motion for reconsideration does not toll the time for filing a notice of appeal." (citation omitted)).

[¶13] Illustrative of the impermissibility of the State's attempts to collaterally attack final decision not appealed is State v. Mehlhoff, 318 N.W.2d 314 (N.D. 1982), where this Court held the validity of a driver's license suspension may not be collaterally attacked at a trial for driving under suspension. Id. at 316. This Court reasoned the defendant had notice of the suspension, and the defendant's failure to challenge the decision "when he had a prior opportunity to do so" prevented him from collaterally attacking the suspension. Id.

[¶14] Similarly, in State v. Larson, 419 N.W.2d 897 (N.D. 1988), the defendant was convicted for driving with a suspended license. Id. at 898. On appeal, the defendant challenged his underlying license suspension, arguing it arose from an unconstitutional delegation of legislative authority. Id. (citation omitted). This Court rejected the argument, finding the defendant's failure to challenge his license suspension in the license suspension process foreclosed the constitutionality argument as an untimely collateral attack. Id.

[¶15] Here, the State had notice of Judge LeFevre's dismissal of the Initial Case. Appellant's App'x, at A8-A9. The State had a prior opportunity to appeal Judge LeFevre's dismissal, but chose not to appeal, and instead attempted to simply reinstitute charge against Mr. Greenshields. Appellant's App'x, at A20-A23; Appellee's App'x, at App.15-App.16. Decisions have consequences—the failure to appeal Judge LeFevre's decision denies jurisdiction to entertain collateral attacks against the dismissal of the Initial Case.

[¶16] Judge LeFevre dismissed the Initial Case, ruling the State's deliberate decision to ignore the Court's clear, lawful, order warranted dismissal. Appellant's App'x, at A8-A9. The State chose not to appeal this decision, effectively abandoning any argument against Judge LeFevre's dismissal it could have pursued—effectively abandoning its arguments: (1) Judge LeFevre abused his discretion by dismissing the Initial Case without finding bad

faith, harassment, or misconduct; (2) Judge LeFevre abused his discretion by dismissing the Initial Case absent extreme circumstances; and (3) Judge LeFevre abused his discretion by failing to order an alternative remedy than dismissal. The State's deliberate choice to pursue reinstated charges instead of appealing Judge LeFevre's dismissal has consequences—the State cannot pursue arguments it could and should have pursued in a direct appeal. Because the crux of the State's argument in this appeal is alleged shortcomings of Judge LeFevre's dismissal of the Initial Case, the Court should ignore the State's improper collateral attacks as the Court lacks jurisdiction to rule on the attacks. Cf. State v. Emmil, 172 N.W.2d 589, 590 (N.D. 1969) ("The right to appeal being purely statutory, it must be exercised within the time which the Legislature has seen fit to provide."). The Court should affirm Judge Narum's dismissal.

II. The District Court Correctly Found the District Court Dismissed the Initial Case with Prejudice

[¶17] The parties agree Judge LeFevre's dismissal of the Initial Case was silent on the issue of prejudice. Cf. Appellant's App'x, at A8-A9 (order not specifying whether dismissal was with or without prejudice). The parties also agree that "[w]hen the dismissal of a criminal count (or an entire indictment) is silent as to whether it is with or without prejudice, some examination of the parties (and the district court's) intent is required." United States v. Lara-Ruiz, Crim. No. 09-00121-01-CR-W-DGK, 2010 WL 5788661, at *2 (W.D. Mo. Dec. 30, 2010). Intent is a factual question. Cf. Cook v. Jacklitch & Sons, Inc., 315 N.W.2d 660, 664 (N.D. 1982) ("The question of intent is a factual issue to be determined by the trial court as the trier of fact and will not be set aside on appeal unless it is clearly erroneous[.]" (citation omitted)). This Court affirms a district court's factual findings unless the record lacks competent evidence in support of the decision, or the

manifest weight of the evidence weighs against the decision. City of Fargo v. Wonder, 2002 ND 142, ¶ 8, 651 N.W.2d 665 (citations omitted). Judge Narum's factual finding that Judge LeFevre dismissed the Initial Case with prejudice is supported by competent evidence, and is not contrary to the manifest weight of the evidence. Accordingly, this Court should affirm.

[¶18] Judge LeFevre granted Mr. Greenshields' motion to dismiss because of the State's systemic misconduct. Appellant's App'x, at A11-A13. The motion sought to have the charges dismissed to end both the State's systemic misconduct, and its prosecution of him. The State does not argue Mr. Greenshields actually sought dismissal without prejudice. See generally Appellant's Br. Because Judge LeFevre explicitly granted Mr. Greenshields' motion to dismiss, and because it is undisputed Mr. Greenshields intended dismissal to be with prejudice, Judge LeFevre must have dismissed the Initial Case with prejudice. Judge Narum's decision is supported by the record.

[¶19] The intent of the trial court is succinctly explained by Judge Narum, noting dismissal of the Initial Case "would have no meaning at all if it was not WITH PREJUDICE." Appellant's App'x, at A3 (emphasis in original). Nevertheless, the State argues "[i]f Judge LeFevre intended to dismiss the case with prejudice, he would have said so in the Order for Dismissal." Appellant's Br., ¶ 62 (citation omitted). The State's argument is circular—failing to disprove the corollary that "if Judge LeFevre intended to dismiss the [Initial Case] with[out] prejudice, he would have said so in the Order for Dismissal." But the State reasons Judge LeFevre dismissed the Initial Case without prejudice because he intended his dismissal solely to "sanction" the State. Id. The State's reasoning fails because dismissal without prejudice fails to sanction the State—no sanction

is imposed if the State can reinstitute charges against Mr. Greenshields without repercussion with the stroke of a pen. Dismissal without prejudice does not sanction the State, and would instead sanction the non-offending party, causing additional fees to Mr. Greenshields in defending himself and in rebuilding his legal defense after releasing the lawyers and experts retained to defend the Initial Case.

[¶20] Moreover, the State's own actions betray its argument. The State argues Judge LeFevre did not intend his dismissal of the Initial Case to operate as a permanent dismissal of the charges against Mr. Greenshields, yet the State removed Judge LeFevre from presiding over the underlying case where he would have been able to clarify his intent personally. Appellee's App'x, at App.17-App.18 (removing Judge LeFevre from presiding over the reinstituted charges). There simply was no legitimate purpose to remove Judge LeFevre from presiding over the underlying case if Judge LeFevre actually would have agreed to the State's successive prosecution. Dismissal of the Initial Case "would have no meaning at all if it was not WITH PREJUDICE." Appellant's App'x, at A3 (emphasis in original).

[¶21] The parties agree, "[w]hen the dismissal of a criminal count (or an entire indictment) is silent as to whether it is with or without prejudice, some examination of the parties (and the district court's) intent is required." Lara-Ruiz, 2010 WL 5788661, at *2. There is no credible dispute Mr. Greenshields intended dismissal with prejudice. Judge Narum found Judge LeFevre intended the dismissal with prejudice. Because this factual finding of intent is supported by competent evidence, and was not contrary to the manifest weight of the evidence, this Court should affirm.

III. The Lower Court Did Not Abuse its Discretion in Concluding the State's Deliberate Violation of Its Order Warranted Dismissal

[¶22] The State argues Judge Narum abused his discretion in dismissing the reinstated charges. A district court abuses its discretion when "it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination." J.B. v. R.B., 2018 ND 83, ¶ 5, 908 N.W.2d 687 (quotation omitted). Judge Narum did not abuse his discretion in dismissing the reinstated charges because of the State's misconduct. Accordingly, the Court should affirm Judge Narum's dismissal.

A. Dismissal without an Evidentiary Hearing Was Not an Abuse of Discretion Because the Undisputed Facts Establish the State's Misconduct

[¶23] The State argues the lower court abused its discretion by dismissing the charges without holding an evidentiary hearing on the issue of the State's bad faith, harassment, or misconduct. See Appellant's Br., ¶¶ 40-50. The State's argument is unsupported by law.

[¶24] In State ex rel. Koppy v. Graff, 484 N.W.2d 822 (N.D. 1992), a district court denied the state's motion to dismiss, and the State sought a supervisory writ ordering the district court to order dismissal of criminal charges without prejudice. Id. at 856. This Court granted the writ, but declined the relief requested. Id. The Court found the State lacked the absolute right to dismiss charges without prejudice. Id. at 858 ("Although the prosecutor has discretion [in seeking to dismiss charges], the trial court should not merely serve as a 'rubber stamp' for the prosecutor's decision." (citation omitted)). The Court specifically warned that trial courts should not grant dismissal without prejudice "if the trial court is satisfied the prosecutor is acting in bad faith, contrary to public interest, or intentionally harassing the defendant." Id. While this Court's review of the Koppy record

found "a basis for claims of harassment or misconduct[,]" the Court found the trial court neither held a hearing on the issue, nor made explicit findings on the issue of harassment or misconduct. Id. at 859. Absent such a hearing or findings, the Court determine the case should be dismissed without prejudice, but the issue of the State's misconduct would need to be determined in any subsequent criminal proceedings. Id.

[¶25] While the district court did not hold a hearing on the issue, the State's misconduct is beyond dispute. The State explicitly admitted knowledge of the order requiring a bill of particulars, and the State knowingly failed to file the required bill of particulars. Appellant's App'x, at A15, ¶ 4. Judge LeFevre explicitly dismissed the Initial Case because of the State's willing refusal to comply with his order. Appellant's App'x, at A8-A9, ¶ 2. While the dismissal order did not use the term "misconduct" in dismissing of the Initial Case, the failure to comply with a lawful court order is plainly misconduct. Cf. PHI Fin. Servs. v. Johnston Law Office, P.C., 2016 ND 114, ¶ 24, 881 N.W.2d 216 (the district court did not abuse its discretion in finding a party's failure to comply with a court order was contempt of court); cf. also Pietz v. Penix, No. L-94-030, 1994 WL 700710, at *3 (Ohio Ct. App. Dec. 16, 1994) ("Contempt is misconduct which tends to obstruct the due and orderly administration of justice." (citations omitted)). Judge LeFevre properly found the State's misconduct warranted dismissal. Koppy did not require a separate evidentiary hearing on the issue of undisputed misconduct.

[¶26] The State argues its failure to comply with Judge LeFevre's order for a bill of particulars was not "misconduct," but was merely "a negligent misunderstanding of how to comply with an order that was not required by law for good reason." See Appellant's Br., ¶ 45. A party acts more than negligently when it ignores a clear court order, it commits

misconduct. In PHI, a judgment-debtor ignored a district court's order compelling discovery. 2016 ND 114, ¶ 5. On appeal, the judgment-debtor argued, because it believed in good-faith the district court erred, noncompliance with the order was not actionable misconduct. Id. at ¶ 23. This Court rejected the argument, finding:

> "[w]hen a court has issued an allegedly erroneous order, the party to whom the order was issued must obey it as long as it remains in force or until it is reversed on appeal, and the failure to obey the order is punishable as contempt of court." Peters-Riemers v. Riemers, 2003 ND 96, ¶ 16, 663 N.W.2d 657. A party's disagreement with how a court interpreted the law does not provide license to disobey a court order without consequence. Id.

Id. at ¶ 23 (alteration in original).

[¶27] Here, Judge LeFevre ordered the State to provide Mr. Greenshields with a bill of particulars. Even if the State, in good-faith, doubted the propriety of Judge LeFevre's order, any disagreement with the order did not provide the State license to disobey the order without consequence. This Court has repeatedly cautioned even pro se litigants are required to comply with court rules. See, e.g., State v. Noack, 2007 ND 82, ¶ 9, 732 N.W.2d 389 ("[P]ro se litigants, if they wish this Court to review the decision of the trial court, must reasonably comply with our appellate rules."). The State should not be afforded greater slack than pro se litigants. The State's knowing decision to ignore Judge LeFevre's order was willful misconduct.

[¶28] Moreover, even if the State could ignore court orders with which it disagrees, without consequence, the State's argument still fails because Judge LeFevre properly ordered a bill of particulars. Mr. Greenshields sought the bill of particulars to determine whether the State's charges violated his right to be free from *ex post facto* prosecution. Cf. United States v. Slater, No. MO-08-CR-131, 2008 WL 4368581, at *4-5 (W.D. Tex. Sept. 16, 2008) (ordering bill of particulars when viability of charge depended on the date(s) of

the alleged offense). The State alleged Mr. Greenshields committed the charge offense during a multi-month window, but amendments to the charging statute took effect during the charged window. Appellee's App'x, at App.3-App.4. Mr. Greenshields required the bill of particulars because the alleging witness allegations repeatedly changed during the preliminary hearing, failing to allege the date of the offense with any specificity. While not an element of the offense, information on the date was necessary to determine whether prosecution violated Mr. Greenshields' right to be free from *ex post facto* prosecution. Cf. State v. Burr, 1999 ND 143, ¶ 10, 598 N.W.2d 147 (prosecution violates the *ex post facto* clause, in part, if a statute increases the criminal penalty or criminalizes additional behavior).

[¶29] The State's undisputed misconduct in violating Judge LeFevre's lawful order to produce a bill of particulars provides justification for dismissal of the Initial Case. Koppy, 484 N.W.2d at 859. Judge Narum did not abuse his discretion in not requiring a hearing on an undisputed fact. This Court should affirm.

B. Dismissal in Lieu of a Lesser Sanction Was Not an Abuse of Discretion Because the Undisputed Facts Establish the State's Misconduct

[¶30] The State alternatively argues Judge Narum abused his discretion in refusing to order an alternative sanction. Appellant's Br., ¶ 55 (citations omitted). The State's argument fails. A district court only abuses its discretion if alternative sanctions exist and there was no misconduct by the prosecutor. State v. Tweeten, 2004 ND 90, ¶ 14, 679 N.W.2d 287 (citation omitted). The State's misconduct is undisputed—the State knowingly refused to comply with a lawfully entered order. Cf. PHI, 2016 ND 114, ¶ 24 (knowing violation of court order is misconduct supporting order of contempt of court no matter the good-faith the belief the order was improperly decided). Dismissal with

prejudice because of knowing misconduct was not an abuse of discretion. The Court should affirm.

CONCLUSION

[¶31] "[T]he party to whom the order was issued must obey it as long as it remains in force or until it is reversed on appeal, and the failure to obey such an order is punishable as contempt of court." Fargo Women's Health Org., Inc. v. Larson, 391 N.W.2d 627, 634 n.8 (N.D. 1986) (citations omitted). No matter its disagreement with the order, the State was required to obey it as long as it remained in force, and its conscious failure to produce the ordered bill of particulars was misconduct warranting dismissal with prejudice. By failing to appeal Judge LeFevre's dismissal, the State waived its ability to challenge the decision. Judge Narum's finding the Initial Case was dismissed with prejudiced because of the State's misconduct is supported by the record. There is no basis to reinstate the charges against Mr. Greenshields, and he requests the Court affirm.

[¶32] Mr. Greenshields requests oral argument to assist the Court in understanding the timing of the underlying cases and the effect of the timing and failure to appeal.

Respectfully submitted May 24, 2019.

VOGEL LAW FIRM

By: */s/ Drew J. Hushka*

Mark A. Friese (#05646)
mfriese@vogellaw.com
Drew J. Hushka (#08230)
dhushka@vogellaw.com
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
ATTORNEYS FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(e) of the North Dakota Rules of Appellate Procedure, this brief complies with the page limitation and consists of 18 pages.

Dated this 24th day of May, 2019.

VOGEL LAW FIRM

BY: */s/ Drew J. Hushka*

Mark A. Friese (#05646)
mfriese@vogellaw.com
Drew J. Hushka (#08230)
dhushka@vogellaw.com
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
ATTORNEYS FOR APPELLEE

20190105
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 24, 2019
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Appellant, vs. Jerome Greenshields, Appellee.	**SUPREME COURT NO. 20190105** Crim. No. 47-2019-CR-00019

ON APPEAL FROM THE MARCH 6, 2019 DISMISSAL OF
THE DISTRICT COURT
STUTSMAN COUNTY, NORTH DAKOTA
SOUTHEAST JUDICIAL DISTRICT
HONORABLE DANIEL D. NARUM PRESIDING

CERTIFICATE OF SERVICE

[¶1] I hereby certify that on May 24, 2019, the following documents:

Appellee's Brief (Replacement – Requesting Oral Argument)

were filed electronically with the North Dakota Supreme Court Clerk of Court and electronically served to the following:

Joseph K. Nwoga at attorney@stutsmancounty.gov

[¶2] I certify under penalty of perjury that the foregoing is true and correct.

Dated this 24th day of May, 2019.

/s/ Drew J. Hushka

Drew J. Hushka (#08230)
dhushka@vogellaw.com
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
ATTORNEYS FOR APPELLEE