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FEBRUARY 9, 2015
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

David Michael Mesch,	)	
	)	
Appellant,	)	**Supreme Ct. No. 20140419**
	)	
v.	)	
	)	**District Ct. No. 45-2014-CV-00469**
Grant Levi, Director of the North Dakota Department of Transportation,	)	
	)	
Appellee.	)	

APPEAL FROM THE DISTRICT COURT
STARK COUNTY, NORTH DAKOTA
SOUTHWEST JUDICIAL DISTRICT

HONORABLE DANN GREENWOOD

BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Paragraph(s)**

Statutes and Other Authorities

STATEMENT OF ISSUES

[¶1] Whether Mesch freely and voluntarily consented to the onsite screening test and the Intoxilyzer test.

[¶2] Whether North Dakota's implied consent laws impose an unconstitutional condition upon persons in exchange for receiving driving privileges.

STATEMENT OF CASE

[¶3] Dickinson Police Sergeant Nicolas Gates ("Sgt. Gates") arrested David Michael Mesch ("Mesch") on March 14, 2014, for the offense of driving a vehicle while under the influence of intoxicating liquor. (Appellant's App. ("Mesch's App.") 4.) Following the April 11, 2014, administrative hearing, the hearing officer issued her Hearing Officer's Decision suspending Mesch's driving privileges for a period of 180 days. (Id.) Mesch filed a Petition for Reconsideration, which the hearing officer denied. (Id. at 5-14.) Mesch requested judicial review of the Hearing Officer's Decision. (Id. at 15-17.)

STATEMENT OF FACTS

[¶4] On March 14, 2014, Sgt. Gates responded to a request for assistance by fellow Dickinson Police Officer Hilton in the investigation as to whether Mesch had been driving a vehicle while under the influence of intoxicating liquor. (Transcript ("Tr.") 4, l. 9 – 6, l. 4.) Sgt. Gates testified that he noticed the odor of an alcoholic beverage coming from Mesch's vehicle when he first spoke with him. (Id. at 8, ll. 1-6.)

[¶5] Sgt. Gates requested Mesch submit to a series of field sobriety tests. (Id. at 7, ll. 20-21.) Mesch failed to properly perform the horizontal gaze nystagmus

test, the walk-and-turn test, the one-leg stand test, and the alphabet-recitation test. (Id. at 12, l. 23 – 18, l. 8.) After informing him of the implied consent advisory, Sgt. Gates requested Mesch submit to an onsite screening test. (Id. at 18, ll. 9-15.) Mesch produced a result of greater than .08 on the screening test. (Id. at 19, ll. 5-14.)

[¶6] Sgt. Gates placed Mesch under arrest for driving a vehicle while under the influence of an intoxicating beverage. (Id. at 19, ll. 15-17.) Sgt. Gates testified he requested Mesch submit to an Intoxilyzer test and asked Mesch if he "remember[ed] the implied consent and all those items in the implied consent still apply." (Id. at 20, ll. 16-25.) Mesch agreed to Sgt. Gate's request he submit to the chemical test. (Id. at 21, ll. 4-5.) The results of the Intoxilyzer test established Mesch had a blood alcohol concentration of 0.244% by weight. (Mesch App. 4.)

[¶7] At the administrative hearing, Mesch testified "I was very reluctant to take the [onsite screening] test because I knew I'd lose my license immediately on the spot and then get another ticket as well." (Tr. 40, l. 16 – 41, l. 2.) In response to his attorney's leading question "[h]ad law enforcement not told you that it was a crime to refuse the search or the test and that you would lose your driving privileges, if you refused the search or the test, however you want to put it, would you have voluntarily done that?," Mesch responded "[n]o." (Id. at 41, ll. 6-11.) Mesch testified he felt he was coerced into taking the onsite screening test because "I felt he was threatening my driving privileges, if I turned him down." (Id. at 43, ll. 10-17.)

[¶8] When asked why he submitted to the Intoxilyzer test, Mesch testified "[w]e were already in the police station and I thought that was just standard procedure that I do this, do the breath test, book me and just go about the evening, I guess." (Id. at 42, ll. 14-21.) Mesh stated he did not believe he had a choice because "[o]nce I was in there, no, I thought it was that or get thrown in jail, I guess." (Id. at 42, ll. 22-24.) When asked by his attorney whether he felt he was coerced into taking the Intoxilyzer test, Mesch stated "I thought that was procedure. I thought I had to do it. I also wasn't going anywhere anytime soon. I thought that all had to be done in the process of me getting bailed and leaving." (Id. at 43, ll. 18-22.)

PROCEEDINGS ON APPEAL TO DISTRICT COURT

[¶9] Mesch requested judicial review of the Hearing Officer's Decision by the Stark County District Court pursuant to N.D.C.C. § 39-20-06. (Mesch's App. 15-17.) On appeal, Mesch alleged:

> [¶3] The Administrative Hearing Officer erred in the Conclusions of Law because the chemical test takens [sic] by law enforcement were a warrantless searches and the department failed to establish an exception to the warrant requirement . . . .
>
> [¶4] The facts of this case demonstrate that Mr. Mesch was coerced into giving his consent both by the conduct of law enforcement and by the reading of the Implied Consent Advisory which included the threat of criminal charges. . . .
>
> [¶5] The Administrative Hearing Officer erred in the Conclusions of Law because the unconstitutional conditions doctrine articulated in Frost v. Railroad Comm'n, 271 U.S. 583, 593-94 (1926) applies to North Dakota's implied consent law making it unconstitutional when a test is sought without a valid search warrant. . . .

(Id. at 15-16.)

[¶10] The district court issued its Memorandum Opinion on September 23, 2014, in which it rejected the constitutional arguments raised by Mesch and affirmed the Hearing Officer's Decision. (Id. at 18-25.) Judgment was entered on October 9, 2014. (Id. at 26.) Mesch appealed the Judgment to the North Dakota Supreme Court. (Id. at 29-30.) On appeal, the Department requests this Court affirm the Judgment of the Stark County District Court and the Department's decision suspending Mesch's driving privileges for a period of 180 days.

STANDARD OF REVIEW

[¶11] "The Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, governs the review of a decision to revoke driving privileges." Haynes v. Dir., Dep't of Transp., 2014 ND 161, ¶ 6, 851 N.W.2d 172. The Court must affirm an administrative agency's order unless one of the following is present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.

8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

N.D.C.C. § 28-32-46.

[¶12] "In an appeal from a district court's review of an administrative agency's decision, [the Court] reviews the agency's decision." Haynes, at ¶ 6. The Court "do[es] not make independent findings of fact or substitute [its] judgment for that of the agency; instead, [it] determine[s] whether a reasoning mind reasonably could have concluded the findings were supported by the weight of the evidence from the entire record." Id.

[¶13] "When an 'appeal involves the interpretation of a statute, a legal question, this Court will affirm the agency's order unless it finds the agency's order is not in accordance with the law.'" Harter v. N.D. Dep't of Transp., 2005 ND 70, ¶ 7, 694 N.W.2d 677 (quoting Phipps v. N.D. Dep't of Transp., 2002 ND 112, ¶ 7, 646 N.W.2d 704). The "[i]nterpretation of a statute is a question of law fully reviewable on appeal." State v. Fasteen, 2007 ND 162, ¶ 8, 740 N.W.2d 60.

[¶14] The Supreme Court's "'standard of review for a claimed violation of a constitutional right is de novo.'" McCoy v. N.D. Dep't of Transp., 2014 ND 119, ¶ 8, 848 N.W.2d 659 (quoting Martin v. N.D. Dep't of Transp., 2009 ND 181, ¶ 5, 773 N.W.2d 190 (citation omitted)).

LAW AND ARGUMENT

I. Mesch freely and voluntarily consented to the onsite screening test and the Intoxilyzer test.

[¶15] "N.D.C.C. § 39-20-01 [i.e., the implied consent statute] does not apply when a person voluntarily consents to chemical testing." McCoy, at ¶ 13. "After a driver agrees to testing, *the question becomes whether the driver 'voluntarily' consented to chemical testing.*" Id. at ¶ 14 (citing Fossum v. N.D. Dep't of Transp., 2014 ND 47, ¶ 13, 843 N.W.2d 282) (emphasis added). "The issue of voluntariness is generally decided by examining the totality of the circumstances which surround the giving of consent to see whether it is the product of an essentially free and unconstrained choice or the product of coercion." Fossum, at ¶ 13 (quoting State v. Anderson, 336 N.W.2d 634, 639 (N.D. 1983) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)).

[¶16] In this case, Mesch alleges "[t]he facts of this case demonstrate that Mr. Mesch was coerced into giving his consent by the reading of the Implied Consent Advisory which included the threat of criminal charges." Appellant's Br. ¶ 25. However, "consent to a chemical test is not coerced and is not rendered involuntary merely by a law enforcement officer's reading of the implied consent advisory that accurately informs the arrestee of the consequences for refusal, including the administrative and criminal penalties, and presents the arrestee with a choice." State v. Birchfield, 2015 ND 6, ¶ 11 (citing McCoy, ¶ 21; State v. Smith, 2014 ND 152, ¶ 16, 849 N.W.2d 599; State v. Boehm, 2014 ND 154, ¶ 20, 849 N.W.2d 239; State v. Fetch, 2014 ND 195, ¶ 9, 855 N.W.2d 389).

[¶17] In Birchfield, at ¶ 19, the Supreme Court "conclude[d] the criminal refusal statute is not unconstitutional under the Fourth Amendment or N.D. Const. art. I, § 8." In reaching its decision, the Court again emphasized the United States Supreme Court recognition in Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552, 1568 (2013) (plurality decision), of implied consent statutes as being "acceptable 'legal tools' with 'significant consequences' for refusing to submit to testing which are available to the states as alternatives to warrantless, nonconsensual blood draws . . ." Id. at ¶ 13. The Court also recognized the *growing number* of post-McNeely decisions from other jurisdictions in which "criminal refusal statutes have continued to withstand Fourth Amendment challenges." Id. at ¶ 12; see, e.g., State v. Brooks, 838 N.W.2d 563, 572 (Minn. 2013), cert. denied, 134 S. Ct. 1799 (2014); State v. Yong Shik Won, 332 P.3d 661, 681-82 (Haw. Ct. App. 2014), cert. granted, 2014 WL 2881259 (Haw. June 24, 2014), Hoover v. Ohio, 549 F. Appx. 355, 356-57 (6th Cir. 2013) (per curiam); United States v. Muir, No. 8:13-mj-03005-TMD, 2014 WL 4258701, at *9 (D. Md. Aug. 28, 2014).

[¶18] In reaching its decision in Birchfield, at ¶¶ 13-16, the Court also differentiated that line of warrantless, suspicionless search cases, which Mesch would argue support the reversal of McCoy such as Camara v. Municipal Court of City & County of San Francisco, 387 U.S. 523 (1967); See v. City of Seattle, 387 U.S. 541, 546 (1967); and Lebron v. Secretary of Florida Department of Children and Families, 772 F.3d 1352, 1378 (11th Cir. 2014). For example, the Court stated "[u]nlike the regulation in *Camara* which allowed for suspicionless

searches of private property, implied consent laws, like North Dakota law, do not authorize chemical testing unless an officer has probable cause to believe the defendant is under the influence, and the defendant will already have been arrested on the charge." Id. at ¶ 15. "Unlike the regulation in *Camara*, the test refusal statute criminalizes the refusal to submit to a chemical test but does not authorize a warrantless search." Id. "Furthermore, reliance on Camara 'overlooks the apparent difference between the way the Supreme Court treats cases in which the Fourth Amendment affects searching individuals by testing in the drunk-driving context and those where it affects a home search in any context.'" Id. (quoting State v. Chasingbear, No. A14-0301, 2014 WL 3802616, at *14 (Minn. Ct. App. Aug. 4, 2014) (unpublished opinion).

[¶19] With respect to cases such as See and Lebron, the Court stated "[b]ecause none of these cases were decided in the context of drunk-driving prosecutions where an officer had probable cause to search a defendant's body, we do not believe they are helpful in determining whether criminalizing a defendant's refusal to submit to a chemical test when an officer has probable cause to believe the defendant is under the influence of alcohol violates a defendant's Fourth Amendment rights." Id. at ¶ 16. The Court continued "[i]ndeed, the Supreme Court has said 'the Constitution does not forbid every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.'" Id. (quoting Jenkins v. Anderson, 447 U.S. 231, 236 (1980) (citation omitted)).

[¶20] Despite Mesch's criticism of the Court's decision, the consent analysis of McCoy is dispositive of this case. Mesch agreed to submit to the onsite screening test and the Intoxilyzer test after being informed of the implied consent advisory by Sgt. Gates. As with the driver in McCoy, Mesch presented no evidence to rebut Sgt. Gates' testimony that he merely read the implied consent advisory to Mesch and asked him to take the tests. Under the totality of the circumstances, Mesch freely and voluntarily consented to the onsite screening test and the Intoxilyzer test.

II. North Dakota's implied consent laws do not impose an unconstitutional condition upon persons in exchange for receiving driving privileges.

[¶21] Mesch further alleges North Dakota's implied consent law violates the unconstitutional conditions doctrine "by conditioning the grant of the privilege to drive upon a driver's surrender of his Constitutional right to be secure against unreasonable searches by requiring that the driver submit to a test without a warrant." (Appellant's Br. ¶ 42.) Mesch claims "[he] had a constitutional right to refuse consent to a warrantless request to take a breath test." (Id. at ¶ 44.)

[¶22] In Frost v. Railroad Commission of State of California, the United States Supreme Court summarized what has been referred to as the "unconstitutional conditions doctrine" stating "as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose." 271 U.S. 583, 593. "But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights." Id. at 593-94. "If the state may compel

the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all." Id. at 594. "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." Id.

[¶23] "[T]o invoke this 'unconstitutional conditions' doctrine, [a party] must *first* show the statute in question in fact denies them a benefit they could otherwise obtain by giving up their [constitutional] rights." Council of Indep. Tobacco Mfrs. of Am. v. State, 713 N.W.2d 300, 306 (Minn. 2006) (emphasis added). "[T]he unconstitutional-conditions doctrine does not apply when the search is constitutionally permissible." State v. Quigley, No. A13-1493, 2014 WL 7011072, at *4 (Minn. Ct. App. Dec. 15, 2014) (unpublished opinion) (citing State v. Netland, 762 N.W.2d 202, 211-12 (Minn. 2009), abrogated in part by McNeely, 133 S.Ct. 1552, as recognized in Brooks, 838 N.W.2d at 567). See also Peppin v. Comm'r of Pub. Safety, No. A12-0164, 2012 WL 5990267, at *3 (Minn. Ct. App. Dec. 3, 2012) (unpublished opinion) ("[I]f a seizure of evidence is constitutionally valid, there is no need to reach the constitutionality question or analyze the unconstitutional-conditions doctrine.").

[¶24] Even the existence of a constitutional right sought to be surrendered is not *solely* determinative of whether a statute violates the unconstitutional conditions doctrine. "Under the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right-here the right to receive just compensation when property is taken for a public use-in exchange for a discretionary benefit conferred by the government *where the*

benefit sought has little or no relationship to the property." Dolan v. City of Tigard, 512 U.S. 374, 385-86 (1994) (emphasis added).

[¶25] Therefore, "[i]n evaluating [an unconstitutional conditions] claim, [the court] must first determine whether the '*essential nexus*' exists between the 'legitimate state interest' and the [challenged government regulation]." Id. at 386 (emphasis added) ("If we find that a nexus exists, we must then decide the required degree of connection between the exactions and the projected impact of the proposed development.") (citing Nollan v. Cal. Coastal Comm'n, 483 U.S. 825, 837 (1987)). See also Sherbert v. Verner, 374 U.S. 398, 406 (1963) ("We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right.").

[¶26] For example, the Supreme Court in Frost stated "[i]t is very clear that the act, as thus applied, is in no real sense a regulation of the use of the public highways. It is a regulation of the business of those who are engaged in using them. Its primary purpose evidently is to protect the business of those who are common carriers in fact by controlling competitive conditions. Protection or conservation of the highways is not involved." 271 U.S. at 591.

[¶27] Stated otherwise, "[n]ot all conditions are prohibited, however; if a condition is germane -- that is, if the condition is sufficiently related to the benefit -- then it may validly be imposed." Nat'l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 747 (1st Cir. 1995). "In the final analysis, 'the legitimacy of a government proposal depends on the degree of relatedness between the

condition on a benefit and the reasons why government may withhold the benefit altogether.'" Id. (quoting Kathleen M. Sullivan, *Unconstitutional Conditions*, 103 Harv. L. Rev. 1413, 1457 (1989)). "'The more germane a condition to a benefit, the more deferential the review; nongermane conditions, in contrast, are suspect.'" Id. (quoting Sullivan, supra, at 1457).

[¶28] Applying a similar reasoning to a constitutional challenge to Minnesota's implied consent laws, the Minnesota Court of Appeals has stated "[t]he unconstitutional conditions doctrine looks to the purpose of the challenged condition, and it invalidates only those laws whose challenged condition bears no significant relevance to the governmental objective of the privilege that the government is conditionally conferring." Chasingbear, at *6. The court of appeals determined "[u]nlike those cases in which the Supreme Court has invalidated laws under the unconstitutional conditions doctrine, the condition imposed here tightly relates to the privilege conferred." Id. at *7. "The statutory condition that every arrested, apparently drunk, driver agrees to submit to a chemical test or be penalized for refusing the test directly and *only* furthers the state's interest in the sober use of public highways." Id. (original emphasis).

[¶29] The Minnesota Court of Appeals also rejected an unconstitutional-conditions argument brought by a driver against Minnesota's implied consent law in Stevens v. Commissioner of Public Safety, 850 N.W.2d 717 (Minn. Ct. App. 2014). In Stevens, the court determined the unconstitutional-conditions argument brought by the driver failed for four reasons: (1) there is no legal support for applying the unconstitutional-conditions doctrine to a Fourth

Amendment constitutional challenge; (2) the implied consent law "does not authorize any search," because no chemical test is given if a person does not consent; (3) even if the law "authorizes a search of a driver's blood, breath, or urine, such a search would not violate the Fourth Amendment" because it would be constitutionally reasonable; and (4) the implied consent law is not sufficiently coercive to violate the unconstitutional-conditions doctrine. Id. at 724-31.

[¶30] Within the third prong of this analysis, the court stated "caselaw suggests that the unconstitutional-conditions doctrine does not invalidate state laws that authorize warrantless searches as a reasonable means of exercising control over a highly regulated activity." Id. at 730. "[Minnesota's] strong interest in ensuring the safety of its roads and highways outweighs a driver's diminished privacy interests in avoiding a search following an arrest for DWI. Thus, if we assume that the implied-consent statute authorizes a search of a driver's blood, breath, or urine, such a search would not violate the Fourth Amendment." Id.

[¶31] In this case, the evidence established Mesch freely and voluntarily consented to the onsite screening test and the Intoxilyzer test under North Dakota's constitutionally valid implied consent laws as determined by the Court in Birchfield. The seizures of Mesch's breath samples were valid under the consent exception to the Fourth Amendment's search warrant requirement. Therefore, this Court need not analyze Mesch's unconstitutional conditions claim. Cf. Nippa v. Comm'r of Pub. Safety, No. A13-1723, 2014 WL 3799945 at *3 (Minn. Ct. App. Aug. 4, 2013) (unpublished opinion) ("It is unclear whether the unconstitutional-

conditions doctrine applies in this particular context, in which a driver has validly consented to a breath test.").

[¶32] Even if the Court were to consider Mesch's unconstitutional conditions argument, the conditions imposed by the implied consent statutes are sufficiently related to the benefits derived so as to be reasonable and to justify the relinquishment of any rights. "Driving is a privilege, not a constitutional right and, therefore, subject to reasonable control of the State under its police power." Smith, at ¶ 8. See also N.D. Dep't of Transp. v. DuPaul, 487 N.W.2d 593, 598 (N.D. 1992) (although license is "important privilege," it is not "constitutionally guaranteed"); State v. Mische, 448 N.W.2d 412, 413 (N.D. 1989) ("It is well established that individuals do not have a natural right to drive a motor vehicle on a public highway ...."); State v. Larson, 419 N.W.2d 897, 898 (N.D. 1988) (driver's license not unconstitutional "title of nobility"); State v. Kouba, 319 N.W.2d 161, 163 (N.D. 1982) (driving is "a privilege which a person enjoys subject to the control of the State in its valid exercise of its police power").

[¶33] "There is no Federal constitutional right to be entirely free of intoxication tests." State v. Murphy, 516 N.W.2d 285, 286, n. 1 (N.D. 1994). Instead, "[t]he essence of our implied consent laws is that the driver of a vehicle in North Dakota is deemed to have consented to submit to a chemical test if arrested for driving, or being in actual physical control while intoxicated." Id. at 287. "*The fact that North Dakota drivers are able to refuse testing is a matter of legislative grace.*" Id. (emphasis added) see also Grosgebauer v. N.D. Dep't of Transp., 2008 ND 75, ¶ 11, 747 N.W.2d 510 ("Section 39-20-01, N.D.C.C., establishes

that consent to testing is presumed. This presumption is tempered by legislative grace allowing a driver to opt out of testing.").

[¶34] This Court also has stated "North Dakota, like other states, has continued to increase penalties and enact tougher laws in response to the carnage on our nation's highways." Smith, at ¶ 8. See also Martin, at ¶ 7 (quoting Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990)) ("Indeed, '[n]o one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion.'"); State v. Zimmerman, 539 N.W.2d 49, 51 (N.D. 1995) ("State legislatures and the Congress have enacted increasingly tougher laws in response to the carnage on our nation's highways."); Kobilansky v. Liffrig, 358 N.W.2d 781, 791 (N.D. 1984) ("We may also take judicial notice of the carnage caused by the drunk driver."); South Dakota v. Neville, 459 U.S. 553, 558-59 (1983) ("The carnage caused by drunk drivers is well documented and needs no detailed recitation here.").

[¶35] The conditions imposed by the North Dakota's implied consent statutes are sufficiently related to the benefits derived so as to be reasonable and to justify the relinquishment of any rights. North Dakota's implied consent laws do not impose an unconstitutional condition upon persons in exchange for receiving driving privileges.

CONCLUSION

[¶36] The Department requests this Court affirm the Judgment of the Stark County District Court and the Department's decision suspending Mesch's driving privileges for a period of 180 days.

Dated this 9th day of February, 2015.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

David Michael Mesch, Appellant, v. Grant Levi, Director of the North Dakota Department of Transportation, Appellee.	)	**Supreme Ct. No. 20140419** **District Ct. No. 45-2014-CV-00469** **AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

[¶1] Melissa Castillo states under oath as follows:

[¶2] I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

[¶3] I am of legal age and on the 9th day of February, 2015, I served the attached **BRIEF OF APPELLEE** upon the appellant by placing a true and correct copy thereof in an envelope addressed as follows:

Thomas F. Murtha, IV
Attorney at Law
P.O. Box 1111
Dickinson, ND 58602-1111

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

Melissa Castillo

Subscribed and sworn to before me this 11th day of February, 2015.

Notary Public

JOLENE J. THIEL
Notary Public
State of North Dakota
My Commission Expires June 14, 2017