

IN THE SUPREME COURT
 STATE OF NORTH DAKOTA

William Samuel Roberts,)	
)	
Appellant,)	
)	Supreme Ct. No. 20140433
v.)	District Ct. No. 51-2014-CV-00607
)	
North Dakota Department)	
of Transportation,)	
)	
Appellee.)	

APPEAL FROM THE DISTRICT COURT
 WARD COUNTY, NORTH DAKOTA
 NORTH CENTRAL JUDICIAL DISTRICT

HONORABLE DOUGLAS L. MATTSON

BRIEF OF APPELLANT

William S. Roberts
 Pro Se Appellant

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Pro Se Appellant

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TABLE OF AUTHORITIES CITED

North Dakota Century Codes

N.D.C.C. Section 39-20-01.2 – Chemical Test for Intoxication, Implied Consent

Specifically states “The test or tests must be administered at the direction of a law enforcement officer **only after placing the individual, except individuals mentioned in section 39-20-03, under arrest**”.

N.D.C.C. Section 39-20-04 – Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

Specifically states “**If a person refuses to submit to testing** under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available”.

N.D.C.C. Section 39-20-14.3 – Screening Tests

Specifically states “The results of such screening test **must be used only for determining whether or not a further test shall be given** under the provisions of section 39-20-01. **The officer shall inform the individual** that North Dakota law requires the individual to take the **screening test** to determine whether the individual is under the influence of alcohol, **that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test may result in a revocation** for at least one hundred eighty days and up to three years of that individual's driving privileges. **If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04,** and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available”.

N.D.C.C. Section 39-20-14.4 – Screening Tests

Specifically states “The director **must not revoke** an individual's driving privileges for refusing to submit to a screening test requested under this section **if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident**”.

N.D.C.C. Section 39-08-01.1e(2)(3) – Regulations Governing Operators

e. That individual **refuses to submit to** any of the following:

(2) A chemical test, or tests, of the individual's blood, **breath**, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, **breath**, or urine, at the direction of a law enforcement officer under section **39-20-01**; or (3) An onsite screening test, or tests, of the individual's **breath** for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under section **39-20-14**.

STATEMENT OF ISSUES TO BE REVIEWED

- A. Roberts', the appellant, was placed under arrest for DUI after submitting to a breathalyzer which was clearly improper procedure and negated any prosecution for Refusal or DUI without a verdict of guilt thru jury trial or plea bargain.
- B. Are the decisions of the Administrative Law Judge, (ALJ), and the District Court Judge in accordance with the laws?
- C. Was Due Process of the law adhered to when it took the Law Clerks ninety plus days after the briefs were submitted to get their findings of fact to the District Court Judge for review? Did the District Court Judge actually review the briefs or just follow the recommendations of the Law Clerks?
- D. Was there an air of prejudice in the way the Law Clerks shunned certain aspects of the case citing errors on my behalf concerning probable cause, arrest procedure and Ex Parte communication? That was pretty convenient for the ALJ and the short lived representation by my attorney. I terminated his services for lack of desire to appeal the outcome of the Administrative Hearing. I believe I was discriminated against and ridiculed as an ill-prepared Pro Se Appellant.

NATURE OF PROCEEDINGS

I request that Supreme Court carefully review this case. I do not believe the District Court Judge did as such but merely adopted the recommendations of the Law Clerks. The Law Clerks reviewed this in a prejudicial manner taking into account that I am a Pro Se Litigant and took full advantage of that opportunity. The correct decision should be a one year suspension for a DUI, not a two year revocation for a Refusal. The Supreme Court should come to this conclusion thereby directing the NDDOT to reverse and amend their decision.

STATEMENT OF FACTS

In accordance with law and procedure by virtue of the North Dakota Century Codes involved in this case it is virtually impossible to be arrested or cited for a refusal once the individual has been placed under arrest for a DUI.

ARGUMENT

The arresting officer did not follow proper procedure in accordance with North Dakota Century Code 39-20-01.2 by placing me under arrest after I submitted to a chemical test of my breath which resulted in a measured BAC which he used as a basis for the initial arrest.

The overseeing ALJ in the Administrative Court did not properly interpret the improper procedure involved by there being an arrest following the results of a breathalyzer.

The law clearly states that a chemical test by blood, breath or urine does not constitute a refusal. The individual can only be placed under arrest for refusal if they refuse chemical testing. (Refer to N.D.C.C. 39-20-01.2).


My overall argument would be Improper Procedure with Incorrect Punishment. I was subjected to a chemical test of the breath before being placed under arrest which resulted in my being charged with a DUI. It should have ended there. The DUI should have been suppressed because it was performed outside of lawful procedure. There can be no refusal with a known BAC which resulted from a submission of a chemical test to show those results. With one, the other cannot exist. DUI constitutes no refusal with a known BAC and refusal constitutes no DUI without a known BAC to prove it. I was requested to submit to a breathalyzer before being placed under arrest and then arrested for DUI based on the results of that breathalyzer. Where is the refusal?

CONCLUSION

I, William S. Roberts, ask the Supreme Court to recognize the incorrect decisions made by the Administrative and District Courts which resulted in a two year revocation of my driving privileges. I cannot stress enough that an initial arrest taking place after the results of a breathalyzer, was improper procedure as outlined by N.D.C.C. 39.20.01.2, and should have suppressed any and all charges sought after such an "illegal" procedure was performed. The laws are designed to interpret themselves and were not created for the courts to add to, take away from, modify or interpret them in a fashion which tilts the scale more in their favor.

I ask that the Supreme Court direct the NDDOT to remove the refusal and the two year revocation associated with a refusal and have them impose a one year suspension which is the proper punishment for the offense of DUI which I pled guilty to and am making restitution for.

As stated in my Notice of Appeal, it is not my intent to evade prosecution for my actions. I simply ask that the court carefully review the evidence and set punishment for the offense that I am guilty of. There is only one punishable offense now. There should be only one punishment.



William S. Roberts

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MAR 13 2015

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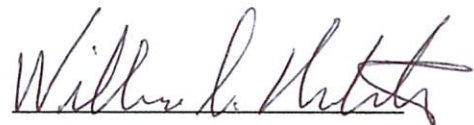
I, William S. Roberts, do hereby certify that on March 9 and 11 consecutively, 2015, I served the following documents:

1. Appellee's Brief (to Opposing Counsel and Word to Supreme Court)

On:

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