

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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Craig Thomas Cudmore,)	STATE OF NORTH DAKOTA
)	
Appellant,)	Supreme Ct. No. 20150282
)	
v.)	District Ct. No. 50-2015-CV-00138
)	
Director of the North Dakota)	
Department of Transportation,)	
)	
Appellee.)	

APPEAL FROM THE DISTRICT COURT
JUDGMENT DATED AUGUST 5, 2015
WALSH COUNTY, NORTH DAKOTA
NORTHEAST JUDICIAL DISTRICT

HONORABLE M. RICHARD GEIGER

BRIEF OF APPELLEE

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STATEMENT OF ISSUE

[¶1] Whether Deputy Matthew Wark denied Craig Thomas Cudmore a reasonable opportunity to contact an attorney after he was arrested for driving under the influence?

STATEMENT OF CASE

[¶2] Deputy Matthew James Wark (Deputy Wark) of the Walsh County Sheriff's Department arrested Craig Thomas Cudmore (Cudmore) on March 29, 2015, for the offense of driving a vehicle while under the influence of intoxicating liquor. Transcript (Tr.) Exhibit (Ex.) 1b. Cudmore requested a hearing in accordance with N.D.C.C. § 39-20-05. Tr. Ex. 1c. The administrative hearing was held on April 21, 2015 at which time the hearing officer considered the following issues regarding Cudmore's refusal of the chemical blood test:

- (1) Whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug or substance in violation of N.D.C.C. section 39-08-01, or equivalent ordinance;
- (2) Whether the person was placed under arrest; and
- (3) Whether the person refused to submit to the test or tests.

Tr. 1; Ex. 2.

[¶3] Following the hearing, the hearing officer issued his findings of fact, conclusions of law, and decision revoking Cudmore's driving privileges for a period of 180 days. Cudmore requested judicial review of the Hearing Officer's Decision. App. 12-13.

STATEMENT OF FACTS

[¶4] On March 29, 2015, at approximately 2:29 a.m., Deputy Wark initiated a traffic stop on Cudmore's vehicle after Cudmore activated his high beam headlights and failed to dim them as their vehicles crossed paths. Tr. 4, ll. 1-10. Deputy Wark approached the vehicle and made contact with Cudmore and his passengers. Tr. 5, ll. 6-9. Deputy Wark requested Cudmore exit the vehicle due to the strong odor of alcohol coming from inside the vehicle. Tr. 5, l. 12 – Tr. 6, l. 3. Deputy Wark requested Cudmore submit to field sobriety testing, after smelling the odor of an alcoholic beverage coming from Cudmore even though Cudmore denied drinking. Tr. 6, l. 19 – Tr. 7, l. 8. Cudmore failed the Horizontal Gaze Nystagmus (HGN) Test exhibiting all 6 of the possible clues. Tr. 8, l. 23 – Tr. 9, l. 24. He also did not properly complete the partial alphabet and reverse count tests as instructed. Tr. 7, l. 10 – Tr. 8, l. 20. Deputy Wark read Cudmore the implied consent advisory and asked him to submit to an onsite screening test on the Alco-Sensor FST. Tr. 10, ll. 9-16. Cudmore eventually complied and produced a result that showed he was above the legal limit. Tr. 10, l. 18 – Tr. 12, l. 11.

[¶5] Deputy Wark told Cudmore he was being arrested for driving under the influence (DUI). Tr. 12, ll. 16-17. Deputy Wark handcuffed Cudmore and placed him in the back seat of the patrol car. Tr. 12, ll. 21-25. Deputy Wark then went to Cudmore's vehicle to speak with the passengers and inform them that they needed to find someone to come pick them up. Tr. 12, l. 25 – Tr. 13, l. 1. Deputy Wark returned to the patrol car and again spoke with Cudmore. During

this conversation Cudmore was asking about bond, so Deputy Wark asked Cudmore if he had previously been arrested for DUI. Tr. 13, ll. 1-5. Cudmore acknowledged having been previously arrested for DUI approximately 8 years prior and informed the deputy that he owns a trucking company and this current arrest was going to be a serious problem for him and the deputy. Tr. 13, ll. 5-8.

[¶6] Cudmore started getting agitated and stated, "he was going to f[***]ing lawyer up." Tr. 13, ll. 10-11. Cudmore's agitation continued and Deputy Wark informed Cudmore that he was going to read the DUI implied consent advisory to him, to which Cudmore responded, "F[***] you." Tr. 13, ll. 13-16. While Deputy Wark was reading the implied consent advisory, Cudmore was screaming profanities towards the deputy. Tr. 13, ll. 18-22. Deputy Wark requested Cudmore submit to a chemical blood test, and Cudmore responded by saying "what the f[***] do I need to take a blood test for?" Tr. 13, l. 25 – Tr. 14, l. 4. Deputy Wark attempted to explain why he was requesting the test but Cudmore kept swearing at the officer. Tr. 14, ll. 4-7. Cudmore then threw himself head first into the patrol car's Plexiglas cage. Tr. 14, ll. 9-10. Deputy Wark immediately observed blood coming from Cudmore's head. Tr. 14, ll. 10-11. Deputy Wark deemed Cudmore to have refused the blood test by his actions. Tr. 14, ll. 13-14. Deputy Wark called the dispatcher to report the injury and request assistance. Tr. 14, ll. 16-20.

[¶7] After Cudmore calmed down Deputy Wark retrieved a first aid kit and with the assistance of another deputy tended to Cudmore's wound. Tr. 14, l. 23 – Tr. 15, l. 4. Deputy Wark transported Cudmore to Unity Hospital. Tr. 15, ll. 4-5. As

they were walking to the entrance of the Emergency Room, Cudmore stated, "No, if you're going to take me to jail then take me to jail. I don't want no doctor." Tr. 15, ll. 22-25. Deputy Wark explained that they would have to have his injury examined before going to the jail, and Cudmore replied, "Why, so I can get a doctor bill on top of it? You Prick." Tr. 16, ll. 2-4. Cudmore refused medical treatment, and was transported to the Walsh County Jail. Tr. 16, ll. 6-12.

[¶8] Sergeant Stark of the Grafton Police Department assisted in dealing with Cudmore and Cudmore agreed that he did need medical treatment and was transported back to Unity Hospital. Tr. 16, ll. 14-21. Cudmore was compliant with hospital staff in receiving stitches for his head injury but was still screaming profanities at Deputy Wark throughout his time in the hospital. Tr. 17, ll. 12-20; Tr. 24, ll. 1-3. While in the hospital the subject of a blood test was not discussed by either Cudmore or Deputy Wark. Tr. 17, ll. 7-9.

PROCEEDINGS ON APPEAL TO DISTRICT COURT

[¶9] Cudmore requested judicial review of the Hearing Officer's Decision by the Walsh County District Court in accordance with N.D.C.C. § 39-20-06. App. 3-4. On appeal, Cudmore argued the hearing officer erred in determining his statement following arrest, but before being asked to take a chemical test, that "I'm going to F[***]ing lawyer up" was not an affirmative request for an attorney. The district court determined the hearing officer's findings of fact were supported by a preponderance of the evidence and that the sequence in which they occurred was consistent with the evidence presented at the hearing. App. 8. The court further determined the hearing officer's conclusion that Cudmore's

statement, "I'm going to f[***]ing lawyer up" was not a request to consult with an attorney before deciding to submit to the test, was supported and sustained by the factual findings. More specifically, the court concluded that "a reasonable person would interpret Cudmore's statement, 'I'm going to f[***]ing lawyer up' to be in response to his impending charge, and not the request to submit to chemical testing." App. 9.

[¶10] The district court issued its Order Affirming Administrative Hearing Officer's Decision on August 4, 2015. App. 5-10. Judgment was entered on August 5, 2015. App. 11. Cudmore appealed the Judgment to this Court. App. 12-13. On appeal, the Department requests this Court affirm the Judgment of the Walsh County District Court and the Hearing Officer's Decision revoking Cudmore's driving privileges for a period of 180 days.

STANDARD OF REVIEW

[¶11] "An appeal from a district court decision reviewing an administrative license suspension is governed by the Administrative Agencies Practice Act, Chapter 28-32, N.D.C.C." McPeak v. Moore, 545 N.W.2d 761, 762 (N.D. 1996). "This Court reviews the record of the administrative agency as a basis for its decision rather than the district court decision." Lamb v. Moore, 539 N.W.2d 862, 863 (N.D. 1995) (citing Erickson v. Dir., N.D. Dep't of Transp., 507 N.W.2d 537, 539 (N.D. 1993). "However, the district court's analysis is entitled to respect if its reasoning is sound." Kraft v. State Bd. of Nursing, 2001 ND 131, ¶ 10, 631 N.W.2d 572.

[¶12] This Court's review "is limited to whether (1) the findings of fact are supported by a preponderance of the evidence; (2) the conclusions of law are sustained by the findings of fact; and (3) the agency's decision is supported by the conclusions of law." McPeak, 545 N.W.2d at 762 (citing Zimmerman v. N.D. Dep't of Transp. Dir., 543 N.W.2d 479, 481 (N.D. 1996)).

[¶13] Findings by an administrative agency are sufficient if the reviewing court is able to understand the basis of the fact finder's decision. In re Boschee, 347 N.W.2d 331, 336 (N.D. 1984). A court must not make independent findings of fact or substitute its judgment for that of the agency. Bryl v. Backes, 477 N.W.2d 809, 811 (N.D. 1991). Rather, a reviewing court determines only "whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record." Id. (citation omitted).

[¶14] "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.

LAW AND ARGUMENT

Cudmore was not denied a right to consult with an attorney before deciding whether to submit to the chemical test for intoxication.

[¶15] "[A] person arrested for driving under the influence of intoxicating liquor has a qualified statutory right to consult with an attorney before deciding whether to submit to a chemical test." City of Mandan v. Leno, 2000 ND 184, ¶ 8, 618

N.W.2d 161 (citing Kuntz v. State Highway Comm'r, 405 N.W.2d 285, 290 (N.D. 1987)). The “right of an arrested person to have a reasonable opportunity to consult with an attorney before taking a chemical test is a statutory right based on N.D.C.C. § 29-05-20.” Leno, 2000 ND 184, ¶ 9, 618 N.W.2d 161 (citing Kuntz, 405 N.W.2d at 287).

[¶16] “[I]f an arrested person asks to consult with an attorney before deciding to take a chemical test, he must be given a reasonable opportunity to do so if it does not materially interfere with the administration of the test.” Kuntz, 405 N.W.2d at 290. “If he is not given a reasonable opportunity to do so under the circumstances, his failure to take the test is not a refusal upon which to revoke his license under Chapter 39-20, N.D.C.C.” Id.

[¶17] The issue of whether a reasonable opportunity to consult an attorney has been provided to an arrestee properly arises in those circumstances in which the request has been made in direct response to the person having been asked to submit to a chemical test, rather than in the investigative setting preceding that request. See Baillie v. Moore, 522 N.W.2d 748, 749 (N.D. 1994). In Baillie after being “asked . . . to submit to an Intoxilyzer examination Baillie responded that he would not take the test without an attorney.” This Court held “if a DUI arrestee, upon being asked to submit to a chemical test, responds with any mention of a need for an attorney - to see one, to talk to one, to have one, etc. - the failure to allow the arrestee a reasonable opportunity to contact an attorney prevents the revocation of his license for refusal to take the test.” Id. at 750 (emphasis added). “A refusal to take the test under these conditions is not the

affirmative refusal necessary to revoke a license under § 39-20-04, N.D.C.C.” Id. (emphasis added). See also Lies v. Dir., N.D. Dep’t of Transp., 2008 ND 30, ¶ 3, 744 N.W.2d 783 (“Lies stated he would not submit to testing until he spoke with his lawyer,” after “Officer Roehrich recited to Lies the implied-consent advisory and asked Lies if he would submit to a blood test.”); State v. Pace, 2006 ND 98, ¶ 2, 713 N.W.2d 535 (“Officer Hagel asked Pace for consent to a blood draw” “Pace responded, ‘I don’t know how to answer that’ and asked if he could speak to his attorney.”); Wetzel v. N.D. Dep’t of Transp., 2001 ND 35, ¶ 2, 622 N.W.2d 180 (“Following the arrest, Officer Sullivan recited the implied consent advisory and asked Wetzel to submit to a blood-alcohol concentration test. . . . Officer Sullivan again asked Wetzel if he would submit to a blood test. Wetzel said he wanted to talk to an attorney.”); Ehrlich v. Backes, 477 N.W.2d 211, 212 (N.D. 1991) (law enforcement officer “asked [Ehrlich] to take a chemical test of her blood to determine its blood-alcohol content. Ehrlich said that she would not take the test unless an attorney was present.”); Kuntz, 405 N.W.2d at 286 (Kuntz requested an opportunity to consult his attorney after being requested to submit to an Intoxilyzer test). But cf. State v. Lee, 2012 ND 97, ¶ 10, 816 N.W.2d 782 (“The district court found Lee did not ask to speak with counsel either when he agreed to the test or afterward. Rather, during a subsequent conversation with the officer, Lee made only passing reference to having ‘Cash give me a good try.’”); Leno, 2000 ND 184 at ¶¶ 4-5 (when “asked if he would consent to an on-site pre-breathalyzer screening test. . . . Leno asked if he could speak to his attorney . . .” When “asked if he would submit to a blood test at the Law

Enforcement Center [t]he officer testified Leno did not again ask to speak to his attorney at this point.”).

[¶18] This Court has stated that “an arrestee making an ambiguous statement suffers the consequence of that ambiguity.” Kasowski v. Dir., N.D. Dep’t of Transp., 2011 ND 92, ¶ 14, 797 N.W.2d 40 (citing Lange v. N.D. Dep’t of Transp., 2010 ND 201, ¶ 7, 790 N.W.2d 28 (discussing ambiguity regarding a request to take an independent chemical test for intoxication); Maisey v. N.D. Dep’t of Transp., 2009 ND 191, ¶ 20, 775 N.W.2d 200 (discussing ambiguity concerning a refusal to take a chemical test for intoxication)). “An arrestee cannot complain about a law enforcement officer’s reasonable interpretation of the arrestee’s ambiguous statements.” Kasowski, 2011 ND 92 at ¶ 14 (quoting Lange, 2010 ND 201 at ¶ 7). “An officer who deems a request to be ambiguous should attempt to clarify the matter with the driver.” City of Grand Forks v. Risser, 512 N.W.2d 462, 464 (N.D. 1994).

[¶19] “There are no bright line rules for determining whether a ‘reasonable opportunity’ to consult with an attorney has been afforded; rather, the determination of whether a reasonable opportunity has been provided turns on an objective review of the totality of the circumstances.” Lies, 2008 ND 30, at ¶ 10, (citing Pace, 2006 ND 98, at ¶¶ 6-7). “Whether a person has been afforded a reasonable opportunity to consult with an attorney is a mixed question of law and fact.” Wetzel, 2001 ND 35, at ¶ 10, (citing Groe v. Comm’r of Pub. Safety, 615 N.W.2d 837, 841 (Minn. Ct. App. 2000)).

[¶20] In this case, Cudmore's argument that he was denied his right to consult with an attorney before deciding whether to submit to the chemical test for intoxication fails on multiple grounds. First and foremost, Cudmore's alleged request to consult an attorney was not made with respect to any request he submit to a chemical test for intoxication. Rather, the undisputed evidence established that Cudmore's statement, "I'm going to f[***]ing lawyer up", while made shortly after his arrest, was made prior to Deputy Wark's reading the implied consent advisory and requesting a chemical blood test. There is simply no evidence in the record that Cudmore's request for an attorney was for him to consider whether he would submit to the chemical test requested by law enforcement.

[¶21] Further, when read the implied consent advisory and asked to submit to a blood test, Cudmore's response was to scream obscenities at the deputy. Tr. 14, ll. 3-7. Cudmore's actions showed he had no intent or desire to take a chemical test or determine whether it was in his best interest to get legal help in making that decision. Thereafter, Cudmore was taken to the hospital due to injuries he purposely caused to himself and at no point ever requested an attorney or indicated a willingness to submit to a chemical blood test.

[¶22] Second, Cudmore's request for an attorney was ambiguous. After informing Cudmore he was under arrest for DUI, handcuffing him and placing him in the back seat of the patrol car, Deputy Wark went to Cudmore's vehicle to speak with the passengers. Tr. 12, ll. 24-25. Upon returning to the patrol car, Deputy Wark again conversed with Cudmore. During this conversation Cudmore

was asking about bond, so Deputy Wark asked him if he had previously been arrested for DUI. Tr. 13, ll. 1-5. Cudmore acknowledged being arrested for DUI approximately 8 years prior and informed the deputy that he owns a trucking company and this arrest was going to be a serious problem for him and the deputy. Tr. 13, ll. 5-8. According to Deputy Wark's testimony, Cudmore started getting agitated and said "he was going to f[***]ing lawyer up." Tr. 13, ll. 10-11. This statement was made before Deputy Wark had requested a chemical test, and immediately followed Cudmore's comments about bond and his fears that the arrest would negatively impact his trucking business. Based on the context of the situation it can be reasonably inferred that Cudmore was denoting that he was going to get a lawyer to fight the DUI charge and protect his livelihood. Not, that Cudmore immediately wished to consult with an attorney. In fact, Deputy Wark's testimony throughout the hearing was consistent that he did not view Cudmore's statement "I'm going to f[***]ing lawyer up" as a request for counsel. See Tr. 20, ll. 21-24; Tr. 21, ll. 8-14; Tr. 25, l. 7; Tr. 26, ll. 4-8.

[¶23] And, even if Cudmore's statement could be viewed as an immediate request to consult an attorney Cudmore's statement cannot be reasonably seen as a request for counsel in connection with whether he would submit to a chemical test, as no such request had yet been made. And, upon being read the implied consent advisory Cudmore stated, "what the f[***] do I need to take a blood test for" and began screaming profanities at the deputy. Tr. 13, l. 25 – Tr. 14, l. 7. At no time did Cudmore request an attorney in connection with the deputy's request that he submit to a chemical blood test. Instead, Cudmore

threw himself head first into the patrol car's Plexiglas cage, causing an injury to his head that required several stitches. Tr. 14, ll. 9-11; Tr. 16, 20-23. Deputy Wark properly deemed Cudmore to have refused the blood test by his actions. Tr. 14, ll. 13-14.

[¶24] Furthermore, Cudmore failed to testify at the administrative hearing that his statement was intended to be a request to consult with an attorney before deciding whether to submit to a blood test, leading to the inference that it was not such a request. See Geiger v. Hjelle, 396 N.W.2d 302, 303 (N.D. 1986) (“[f]ailure of a party to testify permits an unfavorable inference in a civil proceeding” and “the hearing officer could also consider the lack of contrary evidence”).

[¶25] Based upon the evidence, the hearing officer found:

Mr. Cudmore was arrested for DUI at 2:46 AM, handcuffed in back and seated in the back seat of the patrol vehicle. Deputy Wark asked Mr. Cudmore if he had been arrested for DUI before. Mr. Cudmore replied that he had, about eight years ago, that he owned a trucking company, and that this was going to be a serious problem for him and Deputy Wark. Mr. Cudmore became agitated and stated, “I’m going to fucking lawyer up.” Deputy Wark explained that he was going to read the implied consent again. Mr. Cudmore replied, “Fuck you.” While reading the implied consent advisory, Mr. Cudmore screamed profanities throughout. Deputy Wark asked Mr. Cudmore to provide a blood sample for testing. Mr. Cudmore replied, “I’m screwed. What the fuck do I need to take a blood test for?” Deputy Wark explained that there are two parts to the testing process. Mr. Cudmore replied, “Fuck you” twice and threw himself head-first into the plexi-glass divider. Blood spilled from his head. Deputy Wark deemed this to be a refusal by action and called the dispatcher to report the injury.

...

During Deputy Wark’s contact with him, Mr. Cudmore did not request to speak to an attorney. Deputy Wark did not interpret Mr. Cudmore’s post-arrest, pre-request statement, “I’m going to fucking lawyer up” as a request to immediately speak to an attorney and his

interpretation was reasonable under the circumstances. Deputy Wark testified that he interpreted the statement simply to mean that Mr. Cudmore was going to hire a lawyer, and therefore, did not offer Mr. Cudmore a phone and directory at the jail. Deputy Wark's testimony was credible and not impeached. A reasonable person would interpret the statement as a challenge to occur in the future, even a threat, and not a request to immediately consult with an attorney.

Tr. 31, l. 11 – Tr. 33, l. 16. In his conclusions of law the hearing officer responded to Cudmore's arguments determining:

In his defense, Mr. Cudmore invokes the holding in *Baillie v. Moore*, 522 N.W.2d 748 (N.D. 1994) "that if a DUI arrestee, upon being asked to submit to a chemical test, responds with any mention of a need for an attorney – to see one, to talk to one, to have one, etc. – the failure to allow the arrestee a reasonable opportunity to contact an attorney prevents the revocation of his license for refusal to take the test." In the present matter, Mr. Cudmore had not yet been asked to provide a blood sample when he volunteered, "I'm going to fucking lawyer up." This statement was more of "passing reference" as characterized by the North Dakota Supreme Court in *State v. Lee*, 2012 ND 97:

[w]hile they sat in the patrol car waiting for assistance with the motorcycle, Lee twice told the arresting officer, "I hope you understand I've got to have Cash give me a good try." When the officer asked what he meant, Lee answered "Cash Aaland," the name of a Fargo attorney.

Id. at ¶ 2. The Court rejected the application of the *Baillie* holding to such facts, explaining:

[O]ur directive in *Baillie* is clear: If a DUI arrestee who has been asked to take a chemical test makes "any mention of a need for an attorney," the officer "must assume the arrestee is requesting an opportunity to consult with an attorney and must allow a reasonable opportunity to do so." *Id.* However, the directive in *Baillie* is not without its limits, and those limits are apparent from the *Baillie* holding itself.

Id. at ¶ 9. In *Lee* the driver had already consented to a chemical breath test. The Court affirmed the District Court's findings that "he

communicated no desire to contact his attorney prior to submitting to the chemical test. Instead, his statements are of a general nature and only mention retaining 'Cash' to defend him in order to 'protect his livelihood.'" Id. at ¶ 8. The Baillie holding applies when there has been an arrest and request for a chemical test and the driver mentions an attorney when responding to the request. Id. (driver's "statements were not requests to consult with counsel before taking the chemical test. . ." and driver "was not denied his limited statutory right to counsel. . . ."). Similarly, Mr. Cudmore asks to take the Baillie holding out of its temporal context, and apply it before the test has even been requested. After expressing concern about the impact of a DUI on his trucking company, he advanced a statement of a general nature that "I'm going to fucking lawyer up." Mr. Cudmore's passing comment made before the blood draw request was reasonably understood by Deputy Wark to mean only that he was going to fight the DUI. *Kasowski v. N.D. Dep't of Transportation*, 2011 ND 92 (findings of fact supported by evidence and "could not rely on those communications to invoke his statutory right to contact and attorney.").

Tr. 34, l. 6 – Tr. 36, l. 5.

[¶26] Deference must be given by the Court to the hearing officer's interpretation of Cudmore's statement under the applicable standard of review. See *Eriksmoen v. Dir.*, N.D. Dep't of Transp., 2005 ND 206, ¶ 13, 706 N.W.2d 610 ("The hearing officer concluded Eriksmoen's 'limited statutory right to consult with an attorney was afforded to her.' . . . We believe the hearing officer's findings are supported from the record and are not clearly erroneous.") Cudmore must suffer the consequences of his ambiguous statement. Cudmore cannot complain about the reasonable objective interpretation of his "lawyer up" statement as a passing reference for an attorney to protect his livelihood (his trucking business) and to help him after he bonded out. Cudmore must suffer the consequences of any ambiguity. Cudmore was not denied his statutory right to consult with an attorney before deciding whether to submit to a blood test.

CONCLUSION

[¶27] The Department respectfully requests this Court affirm judgment of the Walsh County District Court and affirm the hearing officer's decision revoking Cudmore's driving privileges for 180 days.

Dated this 30th day of November, 2015.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Craig Thomas Cudmore,)	
)	
Appellant,)	Supreme Ct. No. 20150282
)	
v.)	District Ct. No. 45-2015-CV-00138
)	
Director of the North Dakota)	
Department of Transportation,)	
)	
Appellee.)	

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


[¶1] Donna J. Connor 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 30th day of November, 2015, I served the attached **BRIEF OF APPELLEE** upon Craig Thomas Cudmore, by and through his attorney, Jennifer A. Braun, by placing a true and correct copy thereof in an envelope addressed as follows:

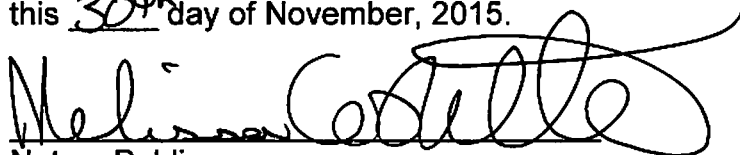
Jennifer A. Braun
Attorney at Law
P.O. Box 1817
Fargo, ND 58107-1817

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



Donna J. Connor

Subscribed and sworn to before me
this 30th day of November, 2015.



Notary Public

