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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Courtney Thomas Krueger, Appellant, vs. Grant Levi, Director Department of Transportation, Appellee.	**SUPREME COURT NO. 20170425** District Court No. 49-2017-CV-00092

ON APPEAL FROM AN ORDER AFFIRMING AN
ADMINISTRATIVE HEARING OFFICER'S DECISION,
ENTERED NOVEMBER 1, 2017
TRAILL COUNTY DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT
STATE OF NORTH DAKOTA
THE HONORABLE SUSAN L. BAILEY, PRESIDING

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

[¶1] Whether the hearing officer erred by disregarding the jurisdictional limitations imposed on county law enforcement by the North Dakota Legislature.

[¶2] Whether the hearing officer erred by admitting evidence derived from the repeated search of Appellant's deep-lung air after Appellant provided readable results in accordance with a properly administered blood alcohol concentration test.

STATEMENT OF THE CASE

[¶3] Appellant, Courtney Thomas Krueger ("Mr. Krueger"), appeals an Order of the Honorable Susan L. Bailey, affirming an administrative suspension of his driving privileges. App., at 74. On June 29, 2017, a hearing officer's decision suspended Mr. Krueger's driving privileges. App., at 66-67. Following appeal, the district court issued an order affirming the hearing officer's decision. App., at 74. Mr. Krueger timely appeals to this Court. App., at 76-77. Mr. Krueger argues the arresting officer lacked lawful authority to arrest, and resultantly, the hearing officer's decision should be reversed. Mr. Krueger alternatively argues the hearing officer admitted evidence obtained in violation of Mr. Krueger's constitutional right to be free from unreasonable searches, and resultantly, the hearing officer's decision should be reversed.

STATEMENT OF THE FACTS

[¶4] At all relevant times, Deputy Andrew Klegstad ("Deputy Klegstad") was a deputy sheriff for the Traill County Sheriff's office. App., at 3, lns. 21-23. On June 3, 2017, Deputy Klegstad was patrolling near Hatton, North Dakota, in Traill County. App., at 5, lns. 1-5. Deputy Klegstad observed what he believed to be traffic infractions, App., at 5, lns. 6-10, and activated his overhead lights to effect a traffic

stop. App., at 7, lns. 18-24. When Deputy Klegstad first attempted to commence the traffic stop he was in Traill County. App., at 7-8, lns. 25-6. However, Deputy Klegstad did not succeed in pulling the vehicle over until it traveled into Grand Forks County. App., at 7-8, lns. 25-6. Despite travelling into Grand Forks County, Deputy Klegstad did not attempt to ascertain the availability of assistance from Grand Forks County law enforcement. App., at 8-9, lns. 24-3.

[¶5] Once the vehicle was pulled over, Deputy Klegstad approached the vehicle, App., at 10, lns. 11-14, and eventually asked Mr. Krueger to exit the vehicle to conduct field sobriety testing. App., at 11, lns. 18-20. By that time, law enforcement from Grand Forks County arrived at the scene to provide assistance. App., at 9-10, lns. 25-2. Despite the presence of Grand Forks County law enforcement, Deputy Klegstad continued his detention and investigation of Mr. Krueger. See generally App., at 11-16. Eventually, Deputy Klegstad believed Mr. Krueger to be under the influence of alcohol, and placed him under arrest. App., at 16, lns. 12-15. Deputy Klegstad arrested Mr. Krueger despite the presence and availability of Grand Forks County law enforcement at the scene. App., at 17, lns. 3-7; App., at 9-10, lns. 25-2; App., at 36, lns. 5-11. The arrest occurred in Grand Forks County. App., at 7-8, lns. 25-6; App., at 36, lns. 5-6.

[¶6] After the arrest, Deputy Klegstand transported Mr. Krueger to the Traill County Sheriff's office. App., at 17, lns. 8-12. Without reading the North Dakota implied consent warning, Deputy Klegstad asked Mr. Krueger to provide a sample of his deep-lung air for Intoxilyzer testing. App., at 17-18, lns. 17-6. Mr. Krueger agreed to

provide a sample, and provided a sample yielding a readable result. App., at 17-18, lns. 17-6; App., at 20-21, lns. 20-14.

[¶7] After the initial valid test, Deputy Klegstad realized he erred in not reading Mr. Krueger the implied consent advisory. App., at 18, lns. 7-11. Deputy Klegstad then read Mr. Krueger the implied consent warning, specifically advising Mr. Krueger that his failure to consent to additional testing was a criminal offense. App., at 19-20, lns. 10-5. After this warning, Mr. Krueger provided additional samples of his deep-lung air for the Intoxilyzer test. See generally App., at 21-24.

[¶8] Over the objections of counsel at the administrative hearing on June 29, 2017, see generally App., at 28-30, 46-48, the hearing officer determined Deputy Klegstad had jurisdiction to arrest Mr. Krueger in Grand Forks County, see generally App., at 52-53, and that the tests results obtained after Deputy Klegstad's inaccurate implied consent warning were admissible. See generally App., at 53-54.

LAW AND ARGUMENT

I. The Hearing Officer Erred By Concluding County Law Enforcement Has Jurisdiction to Investigate and Arrest Outside the Jurisdictional Limitations Imposed by the Legislature

[¶9] This case if primarily about honoring legislatively imposed limitations on police authority. The hearing officer erred by enlarging county law enforcement's jurisdiction beyond the authority granted by the legislature. This Court should reverse the hearing officer's decision, and award attorney fees and costs in Mr. Krueger's favor.

A. Standard of Review

[¶10] In accordance with the Administrative Agencies Practice Act, see generally N.D.C.C. ch. 28-32, on appeal, this Court reviews the agency decision, and not the

decision of the district court. Painte v. Dir., Dep't of Transp., 2013 ND 95, ¶ 6, 832 N.W.2d 319. In accordance with Section 28-32-46, the agency decision will be reversed if:

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 or 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; see also Painte, 2013 ND 95, ¶ 6 (same). Interpretation of a statute is a legal question, and a court will affirm an agency decision unless it "is not in accordance with the law." Harter v. North Dakota Dep't of Transp., 2005 ND 70, ¶ 7, 694 N.W.2d 677 (citation omitted). "In deciding whether an agency's findings of fact are supported by a preponderance of the evidence, [the Court's] review is confined to the record before the agency and to determining 'whether a reasoning mind reasonably could have determined the factual conclusions were proven by the weight of the evidence.'" Hawes v. North Dakota Dep't of Transp., 2007 ND 177, ¶ 14, 741 N.W.2d 202 (quoting Kraft v. North Dakota Bd. of Nursing, 2001 ND 131, ¶ 10, 631 N.W.2d

572).

B. The Legislature Specifically Limited Authority and Jurisdiction of County Law Enforcement

[¶11] The jurisdiction and authority of a North Dakota law enforcement officer is governed by statute. Territorial jurisdiction provides geographical limitations where officers may exercise their authority. See State v. Graven, 530 N.W.2d 328, 329-30 (N.D. 1995). "[A]s a general rule a police officer acting outside his jurisdiction is without official capacity and without official power to arrest." Kroschel v. Levi, 2015 ND 185, ¶ 7, 866 N.W.2d 109 (citations and internal quotation omitted); see also State v. Hook, 476 N.W.2d 565, 566 (N.D. 1991) ("Generally, a valid arrest may not be made outside the territorial jurisdiction of the arresting authority.").

[¶12] Jurisdiction and authority of county law enforcement is governed by Section 11-15-33. Relevant here, "[a] county law enforcement officer in fresh pursuit may enter another county and may continue within that county in fresh pursuit to make an arrest . . . if obtaining the aid of law enforcement officers having jurisdiction in that county would cause a delay permitting escape." N.D.C.C. § 11-15-33(2). "When a statute's language is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit, as legislative intent is presumed from the face of the statute." State v. Beilke, 489 N.W.2d 589, 592 (N.D. 1992) (citing N.D.C.C. § 1-02-05). The language of Section 11-15-33(2) is clear and unambiguous: the Legislature granted county law enforcement supplemental authority and jurisdiction to act outside their home county if in "fresh pursuit," and if pursuit and arrest is necessary because failure to pursue or arrest would cause delay allowing escape.

[¶13] The hearing officer found that because Deputy Klegstad was in "fresh pursuit" of Mr. Krueger when he entered Grand Forks County, "[t]he statute allows him to complete the arrest." App., at 53, lns. 9-13. In application, the Department's interpretation of Section 11-15-33(2) provides county law enforcement indelible jurisdiction and authority to act anywhere—regardless of subsequent developments—so long as fresh pursuit exists at the time county law enforcement leaves the home county. Stated another way, the Department's interpretation of Section 11-15-33(2) provides a Richland County deputy authority and jurisdiction to pursue or arrest a suspect through the State of North Dakota and into Divide County—despite the presence and availability of intervening county law enforcement—so long as the Richland County deputy was in fresh pursuit when he or she left Richland County. This interpretation misapplies Section 11-15-33(2) by completely denying meaning to the limiting clause that jurisdiction only vests to actions necessary because "obtaining the aid of law enforcement officers having jurisdiction in that county would cause a delay permitting escape." N.D.C.C. § 11-15-33(2). The plain language of the statute requires both "fresh pursuit" and "necessity," and the Department's disregard of the necessity requirement usurps the Legislature's authority to define the authority and jurisdiction of county law enforcement.

[¶14] This Court's reasoning and holding in Maher v. North Dakota Dep't of Transp., 510 N.W.2d 601 (N.D. 1994), underscores the Department's misapplication of Section 11-15-33(2). In Maher, a driver continued driving for 1.2 miles after municipal law enforcement attempted to seize his vehicle. Id. at 602. The controlling statute empowered municipal law enforcement with authority for actions taken in "hot

pursuit," id. at 603 (citing N.D.C.C. § 40-20-05), but limited this "hot pursuit" authority to actions "'whenever obtaining the aid of peace officers having jurisdictions' beyond the jurisdictional limits of the city 'would cause a delay permitting escape.'" Id. at 603 n.1 (quoting N.D.C.C. § 40-20-05(2)). Based on this jurisdictional authority, this Court affirmed the license suspension, concluding the hearing officer "necessarily found" the arresting officer needed to make the arrest to avoid the suspect's escape. Id. ("[B]y finding that the arrest was pursuant to section 40-20-05(2)" the hearing officer "necessarily found" obtaining the aid of an officer with jurisdiction "would cause delay permitting an escape."). But by reasoning the hearing officer "necessarily found" the actions were necessary to avoid escape, the Court necessarily found "necessity" to be an essential element of permissible hot pursuit authority.

[¶15] There is no necessity in the case before the Court. Assuming, *arguendo*, that Deputy Klegstad was in fresh pursuit of Mr. Krueger when he entered Grand Forks County, Deputy Klegstad's did not need to arrest Mr. Kreuger to prevent his escape because of the presence of Grand Forks County law enforcement at the scene at the time of the arrest. Under these factual circumstances, the hearing officer cannot permissibly find Deputy Klegstad needed to arrest Mr. Krueger to avoid his escape—a reasoning mind would not reasonably determine Deputy Klegstad's arrest of Mr. Krueger was necessary to prevent Mr. Krueger's escape when Grand Forks County law enforcement was present and able to arrest Mr. Krueger. Cf. Hawes, 2007 ND 177, ¶ 14.

[¶16] This Court should not approve the hearing officer's conclusion that county law enforcement officers have statewide jurisdiction because the legislature expressly

declined to do so. Cf. Forste v. Benton, 792 S.W.2d 910, 915 (Mo. Ct. App. 1990) ("The authority to arrest should not be vested by inference." (citing 6A C.J.S. Arrest § 11, p. 19 (1975))). In Love v. State, 687 S.W.2d 469 (Tex. App. 1989), the Court of Appeals of Texas accurately explained the expansion of law enforcement jurisdiction must come from the legislature, not the courts:

> It may be argued that there is always a serious shortage of peace officers and that the shortage can be partially alleviated by abolishing territorial limitations on their power and by granting them countywide or statewide warrantless arrest authority. On the other hand, it may be argued that the common law rule is needed in order to preserve local civilian control of peace officers, who should not be allowed to operate in cities or counties whose elected leaders have no control over their selection, training, discipline, supervision, and performance. These are difficult issues which are, and should be, controversial, but they are for the legislature to decide, not us. The legislature may, by simple majority vote, grant broad statewide warrantless arrest powers to all peace officers, thus abrogating both the common law rule keeping city police in their cities and the limitations of Chapter 14 on warrantless arrests. So far, however, it has not done so.

Id. at 478 (internal citation omitted), overruled on other grounds, Angel v. State, 70 S.W2d 727 (Tex. Crim. App. 1987); see also Britt v. State, 768 S.W.2d 514, 516 (Tex. App. 1989) (recognizing Texas lawmakers statutorily overruled Love, expanding police jurisdiction). This Court should decline the Department's invitation to ignore existing legislative limitations, expanding jurisdiction by judicial fiat. Because Deputy Klegstad lacked jurisdiction and authority to arrest Mr. Krueger—arrest by Deputy Klegstad was not necessary to prevent escape—the hearing officer's decisions must be reversed. Kroschel, 2015 ND 185 (reversing suspension of driving privileges when arrest was made by law enforcement without lawful jurisdiction).

C. The Department's Post-Hearing Argument for Deputy Klegstad's Jurisdiction Equally Fails

[¶17] Before the district court, the Department alternatively argued Deputy Klegstad arrested Mr. Krueger within the geographic limitations imposed by the Legislature. "A county law enforcement officer employed by a county has jurisdiction within that county and up to one thousand five hundred feet . . . outside the county." N.D.C.C. § 11-15-33(1). The hearing officer found the arrest occurred approximately one-half mile north of mile marker 139 on Highway 18. App., at 49, lns. 14-18. State and county maps show mile marker 139 is 0.1 mile south of the Traill County/Grand Forks County border.[1] Therefore, the hearing officer necessarily found law enforcement arrested Mr. Krueger 0.4 miles, or 2,112 feet, into Grand Forks County. The hearing officer's decision—that Mr. Krueger was beyond the geographic jurisdiction of Traill County law enforcement—is supported by the evidence, and should not be disturbed. Cf. N.D.C.C. § 28-32-46(5) (allowing reversal of an agency's decision if "[t]he findings of fact made by the agency are not supported by a preponderance of the evidence"). Deputy Klegstad did not arrest Mr. Krueger within the geographic limitations imposed by the Legislature

[1] Mr. Krueger respectfully requests that the Court take judicial notice of the location of the mile marker because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." N.D.R. Evid. 201(b)(2); see also Hackney v. Elliott, 137 N.W. 433 (N.D. 1912) (acknowledging courts are empowered to take judicial notice of matters of location, such as place, distance, extent, area, topography, and general conditions of lands within the county).

D. Attorney Fees and Costs Should Be Awarded in Appellant's Favor

[¶18] Mr. Krueger is entitled to attorney fees and costs in accordance with Section 28-32-50(1) if he prevails and the Court determines the agency acted without substantial justification. See N.D.C.C. § 28-32-50(1). Mr. Krueger urges the Department justify how Deputy Klegstad's arrest of Mr. Krueger was necessary to prevent Mr. Krueger's escape when Grand Forks County law enforcement was present and able to arrest Mr. Krueger. There is no justification for ignoring the law under the guise of enforcing it. Attorney fees and costs should be awarded in Mr. Krueger's favor.

II. The Hearing Officer Erred by Admitting Evidence Obtained in Violation of Mr. Krueger's Right to be Free from Unreasonable Searches

[¶19] Even if the Court concludes the Legislature granted Deputy Klegstad authority to arrest Mr. Krueger, the hearing officer still erred. The hearing officer erred by sanctioning the violation of Mr. Krueger's constitutional right to be free from unreasonable searches. This Court should reverse the hearing officer's decision, and award attorney fees and costs in Mr. Krueger's favor.

A. Standard of Review

[¶20] As outlined above, this appeal is governed by the Administrative Agencies Practice Act, with this Court reviewing the agency's decision. Painte, 2013 ND 95, ¶ 6. The agency's decision will be reversed if:

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 or 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; see also Painte, 2013 ND 95, ¶ 6 (same). "'If the hearing officer's findings of fact are supported by a preponderance of the evidence, the conclusions of law are sustained by the finding of fact, and the decision is supported by the conclusions of law, [this Court] will not disturb the decision.'" Brewer v. Ziegler, 2007 ND 207, ¶ 4, 743 N.W.2d 391 (quoting Borowicz v. North Dakota Dep't of Transp., 529 N.W.2d 186, 187 (N.D. 1995)). However, "[a]n agency's conclusions on questions of law are subject to full review." Deeth v. Director, North Dakota Dep't of Transp., 2014 ND 232, ¶ 10, 857 N.W.2d 86 (citations and internal quotations omitted).

B. This Court Specifically Limited Authority to Require Submission to Repetitive Warrantless Bodily Searches for Blood Alcohol Concentration

[¶21] The Fourth Amendment, applicable to the states through the Fourteenth Amendment, and Article 1, Section 8, of the North Dakota Constitution, "guarantee '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" Lapp v. North Dakota Dep't of Transp., 2001 ND 140, ¶ 7, 632 N.W.2d 419. This Court established the limitations of reasonableness for repetitive bodily testing for blood alcohol concentration in Broeckel

v. Moore, 498 N.W.2d 170 (N.D. 1993). Specifically this Court's holding establishes that "[o]nce a motorist is in police custody and a chemical test has been properly administered yielding a readable result, the motorist has a right to refuse any subsequent chemical tests used for determining his or her blood alcohol content." Id. at 173 (citations omitted). The right to refuse additional tests after a readable test "prevents law enforcement officials not only from attempting a 'shopping spree' through the motorist's bodily fluids in search of evidence which would indicate a BAC of more than [.08]%, but also prevents them from violating a motorist's Fourth, Fifth, and Fourteenth Amendment rights under the United States Constitution." Id. (citations omitted).

[¶22] Here, upon request, Mr. Krueger provided a sample of his deep-lung air to law enforcement. App., at 17-18, lns. 17-6; App., at 20-21, lns. 20-14. Law enforcement performed the test in accordance with the procedures established by the State Toxicologist, and the deep-lung air sample yielded a readable result. Cf. App., at 56-65. But Mr. Krueger was not read the implied consent warning prior to this initial testing. App., at 17-18, lns. 17-6; App., at 20-21, lns. 20-14 The initial valid results, therefore, were inadmissible at any criminal or administrative proceeding. See N.D.C.C. § 39-20-01(3)(b); see also State v. O'Connor, 2016 ND 72, ¶ 14, 877 N.W.2d 312 (Intoxilyzer test results obtained absent complete implied consent advisory are inadmissible).

[¶23] Realizing his error, Deputy Klegstad sought a subsequent admissible test result. App., at 18, lns. 7-11. Deputy Klegstad read Mr. Krueger the implied consent warning, specifically warning Mr. Krueger that his refusal to provide additional testing samples

would be a criminal offense. App., at 19-20, lns. 10-5. But contrary to Deputy Kelgstad's warning, because Mr. Krueger already provided a sample yielding a valid and readable test result, Mr. Krueger had the absolute "right to refuse any subsequent test used for determining his . . . blood alcohol content." Broeckel, 498 N.W.2d at 173 (citations omitted).

[¶24] Nevertheless, the Department argues Deputy Klegstand correctly warned Mr. Krueger—and that Mr. Krueger did not have the right to refuse additional testing after the first test—because the failure to read the implied consent warning prior to the initial testing renders and the initial test results invalid. The Department's argument conflates the term of art "properly administered" with statutory foundation and evidentiary admissibility. The advisory required by Section 39-20-01(3)(b) does not concern the validity of the testing procedures, but instead renders a valid test result inadmissible as evidence when proper admonitions are not provided. See N.D.C.C. § 39-20-01(3)(b) ("A test administered under this section is not admissible in any criminal or administrative proceeding . . . if the law enforcement officer fails to inform the individual charges as required in subdivision a." (emphasis added)). On the other hand, the phrase "properly administered" is a term of art requiring law enforcement's scrupulous compliance with the testing methods and procedures established and approved by the State Toxicologist. See Johnson v. North Dakota Dep't of Transp., 2004 ND 59, ¶ 12, 676 N.W.2d 807 ("Whether an Intoxilyzer test has been properly administered can be determined by proving that the method approved by the State Toxicologist has been scrupulously followed." (citing Buchholz v. North Dakota Dep't of Transp., 2002 ND 23, ¶ 7, 639 N.W.2d 490)). Contrary to the Department's

argument, the first test was "properly administered" in that it yielded a readable result obtained in compliance with the methods and procedures approved by the State Toxicologist. Cf. App., at 56-65 (outlining the testing procedures established by the State Toxicologist, and not requiring the warning required by N.D.C.C. § 39-20-01(3)(b)). Mr. Krueger, therefore, had the absolute right to refuse any subsequent testing. Broeckel, 498 N.W.2d at 173.

[¶25] The repetitive searching of Mr. Krueger's deep-lung air—premised on the incorrect warning that failure to submit to additional testing was criminal—was unreasonable. Cf. Missouri v. Seibert, 542 U.S. 600 (2004) (practice of non-Mirandized interrogation, followed by second Mirandizd interrogation to re-elicit confession, was unconstitutional as unduly coercive). Other states conclude an officer's failure to comply with implied consent laws requires a suitable remedy. In Cooper v. State, 587 S.E.2d 605 (Ga. 2003), a state trooper unlawfully and incorrectly advised a defendant regarding the state's implied consent law, telling the driver he was obligated to consent to testing before probable cause had been established. Id. at 612. The Supreme Court of Georgia said "the trooper completely misled Cooper, albeit unintentionally, about his implied consent rights, and any consent based upon the misrepresentation is invalid." Id. The court further noted "[t]he results of the blood test procured pursuant to the implied consent statute must be excluded." Id. at 613; see also State v. Leviner, 443 S.E.2d 688 (Ga. Ct. App. 1994) (where information given to a defendant contains substantial misleading, inaccurate, or extraneous information such that the defendant was confused as to her implied consent statutory privileges, the results of any test obtained pursuant to the implied consent statute must be excluded).

[¶26] Misleading statements regarding the effect of a state's implied consent law violate due process. See McDonnell v. Com'r of Pub. Safety, 473 N.W.2d 848, 853 (Minn. 1991). In McDonnell, the Minnesota Supreme Court said "The United States Supreme Court has also recognized that due process does not permit those who are perceived to speak for the state to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations." Id. at 854 (discussing Raley v. Ohio, 360 U.S. 423 (1959)). Convictions obtained by methods that offend due process are invalid. Rochin v. California, 342 U.S. 165, 174 (1952).

[¶27] The initial test results obtained by Depute Kelgstad were inadmissible because Deputy Klegstad failed to warn Mr. Krueger in accordance with the North Dakota implied consent warning. Nevertheless, the results were obtained through a properly administered test. Mr. Krueger, therefore, had the absolute right to refuse subsequent testing. Any test results obtained after Mr. Krueger was incorrectly warned that failure to submit to additional testing are, consequently, fruits of an unreasonable search. The hearing officer's decision to admit subsequent testing evidence violated Mr. Krueger's constitutional right to be free from unreasonable search.

C. Attorney Fees and Costs Should Be Awarded in Appellant's Favor

[¶28] Mr. Krueger is entitled to attorney fees and costs in accordance with Section 28-32-50(1) if he prevails and the Court determines the agency acted without substantial justification. See N.D.C.C. § 28-32-50(1). Mr. Krueger urges the Department justify why it is reasonable for the Government to coerce an individual to repeatedly submit to bodily invasions based solely on the Government's own errors. There is no

justification for ignoring the law under the guise of enforcing it. Attorney fees and costs should be awarded in Mr. Krueger's favor.

CONCLUSION

[¶29] Mr. Krueger respectfully requests this Court honor the legislatively-imposed limits, declining to widely expand county law enforcement authority, beyond actions actually necessary to prevent escape, when the Legislature specified otherwise. Because Deputy Klegstad acted outside his territorial jurisdiction when his arrest of Mr. Krueger was not necessary to prevent escape, Mr. Krueger's arrest was invalid, and the hearing officer's decision must be reversed.

[¶30] Alternatively, Mr. Krueger respectfully requests this Court validate Mr. Krueger's right to be free from unreasonable searches. This Court established an individual has an absolute right to refuse additional blood alcohol testing after the individual provides a readable result to a testing performed in compliance with the State Toxicologist's methods and procedures. Because Mr. Krueger provided a readable test result in compliance with the State Toxicologist's methods and procedures, he had the absolute right to refuse additional testing. Admission of evidence obtained subsequent to an inaccurate and coercive admonition was unreasonable, and the hearing officer's decision must be reversed.

Respectfully submitted January 10, 2018.

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IN SUPREME COURT
STATE OF NORTH DAKOTA

Courtney Thomas Krueger, Appellant, vs. Grant Levi, Director, Department of Transportation , Appellee.	Supreme Court No. 20170425 District Court No. 49-2017-CV-00092 **CERTIFICATE OF ELECTRONIC SERVICE**

[¶1] I hereby certify that on January 10, 2018, the following documents:

APPELLANT'S BRIEF AND APPELLANT'S APPENDIX (PAGES APP. i – APP. 77

were e-mailed to the address below and are the actual e-mail addresses of the parties intended to be so served and said parties have consented to service by e-mail:

DOUGLAS ANDERSON
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Dated: January 10, 2018

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