

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Larry William Hewitt,

Appellant,

vs.

Ronald Henke, Interim Director, Department
of Transportation,

Appellee.

SUPREME COURT NO. 20190389

Civil No. 47-2019-CV-00296

ON APPEAL FROM NOVEMBER 26, 2019 JUDGMENT OF
THE DISTRICT COURT
COUNTY OF STUTSMAN
STATE OF NORTH DAKOTA
SOUTHEAST JUDICIAL DISTRICT
HONORABLE TROY J. LEFEVRE PRESIDING

PETITION FOR REHEARING and ADDENDUM

Luke T. Heck (#08133)
Drew J. Hushka (#08230)
Vogel Law Firm
Attorneys for Appellant
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
Email: lheck@vogellaw.com
dhushka@vogellaw.com

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW/REHEARING

[¶1] Whether this Court overlooked and/or misapprehended whether the Department systemically disregarded the law, whether equitable estoppel barred Mr. Hewitt’s license revocation, and whether Mr. Hewitt was deprived a fair hearing.

STATEMENT OF THE CASE

[¶2] On April 14, 2019, Appellant, Larry William Hewitt (“Mr. Hewitt”) was arrested for DUI. Appellant’s App’x, at 55.¹ Mr. Hewitt timely requested, and received, an administrative hearing. *Id.* at 7, 14. At the hearing, the hearing officer admitted documents over Mr. Hewitt’s objection. *Id.* at 55. The hearing officer left the record open, and Mr. Hewitt submitted additional evidence. *Id.* The hearing officer then issues his decision, revoking Mr. Hewitt’s driving privileges for two (2) years. *Id.* at 55-56.

[¶3] Mr. Hewitt appealed the decision to the district court, arguing the decision was not in accordance with the law, and the hearing officer denied him a fair hearing. *Id.* at 57-60. The district court affirmed. *Id.* at 62-67. Mr. Hewitt then appealed to this Court. On May 7, 2020, the Court entered an Opinion affirming Mr. Hewitt’s license revocation, with entry of Judgment subsequently occurring on May 11, 2020. See *Hewitt v. NDDOT*, 2020 ND 102. Mr. Hewitt now petitions this Court for rehearing.

STATEMENT OF THE FACTS

[¶4] On February 12, 2019, the Department placed Glenn Jackson (“Jackson”)—previously Director of the Driver’s License Division of the Department—on administrative leave to investigate allegations of workplace harassment. Appellant’s App’x, at 46. The

¹ Citations to Appellant’s Appendix is in reference to Mr. Hewitt’s Appendix filed simultaneously with his initial Brief of Appellant in this matter.

Department instructed Jackson not to make contact with members of the Department's Driver's License Division and directed Jackson to surrender "all [Department] cards, including ID, telephone and credit[,]" his "passwords for all computer programs [he had] access to[,]" and any "keys to doors, and [the] office." *Id.* Jackson never again worked for the Department, unceremoniously retiring on May 3, 2019. *Id.* at 45.

[¶5] On April 14, 2019, Mr. Hewitt was issued a Report and Notice form after he refused a chemical test. *Id.* at 7, 14, 55. Mr. Hewitt requested an administrative hearing. *Id.* at 16. Prior to the hearing, the hearing officer provided Mr. Hewitt with a hearing file purportedly certified by Jackson. *Id.* at 5-9. Mr. Hewitt requested discovery from the Department about Jackson's leave and the purported certification. *Id.* at 10-11. The Department did not answer the request prior to the hearing, and instead provided the hearing officer with documents purportedly certified by "Robing [sic] Rehborg" ("Rehborg"). *Id.* at 12-16.

[¶6] Mr. Hewitt's administrative hearing occurred on May 9, 2019. *Id.* at 57. At the hearing, the hearing officer offered both documents purportedly certified by Jackson and Rehborg, and admitted both over objection, despite not knowing which file was being relied on by the Department himself. *Tr.*, 15:3-25:16. Mr. Hewitt's license was revoked. *Id.* at 55-56. Mr. Hewitt appealed to the district court, who affirmed the revocation. See Appellant's App'x, at 57-67. Mr. Hewitt appealed to this Court, who affirmed the hearing officer's decision on May 7, 2020. *Id.* at 69-70; *Hewitt v. NDDOT*, 2020 ND 102.

[¶7] Three days prior to Mr. Hewitt's administrative hearing, the issue of Jackson's false certification was raised to the same hearing officer who presided over Mr. Hewitt's administrative hearing. Appellant's Add. at 3-4; *see Ouradnik v. Henke*, 2020 ND 39, 938 N.W.2d 392. Two days prior to Mr. Hewitt's administrative hearing, and prior to him

requesting documentation regarding Jackson from the Department, the Department began issuing administrative hearing files certified by Rehborg. Appellant's Add. at 5-14. However, despite knowing of Jackson's forced leave, and despite using an alternative certification page prior to Mr. Hewitt's hearing, the Department failed to address Jackson's false certification with Mr. Hewitt until the agency provided a hearing file with Rehborg's apparent signature in response to his discovery request. Appellant's App'x, at 12-18. Then, despite a clear awareness of the circumstances, the Department again continued fraudulently using and relying on Jackson's certification to suspended motorists licenses multiple times, even over one week after Mr. Hewitt's discovery request and administrative hearing. Appellant's Add. at 15-40; *see Christianson v. Henke*, 2020 ND 76.

LAW AND ARGUMENT

[¶8] Consistent with N.D.R.App.40(a)(2), Mr. Hewitt petitions the Court for rehearing of his appeal, seeking relief because of a number of factual and legal points that he believes this Court overlooked and/or misapprehended in its May 7, 2020 Opinion. "It is undoubtedly the duty of this court to grant a rehearing and order a reargument in the interest of justice when it appears that a decision has been based upon a mistaken assumption of fact or a misinterpretation of the evidence." *State v. Cook*, 53 N.D. 756, 208 N.W. 556, 558 (1926) (citing *Security M. L. Ins. Co. v. Prewitt*, 26 S. Ct. 619, 202 U. S. 246, 50 L. Ed. 1013, 6 Ann. Cas. 317). In some circumstances, a rehearing may be granted to consider new aspects of material evidence, which may affect the merits of the main controversy, and which, through inadvertence, were not presented by the parties or considered by the court when the original opinion was rendered. *Id.*

[¶9] This Court's Opinion overlooked multiple substantive and material issues, including whether the Department engaged in a systemic disregard for the law, whether the

doctrine of equitable estoppel barred the revocation of Mr. Hewitt's license, and whether Mr. Hewitt was deprived of a fair hearing. The Court overlooked or misapprehended that the aforementioned legal claims were separate and distinct from the sole issue addressed in its Opinion, Rehborg's certification, and erred in concluding the issues were "either without merit or unnecessary to [the Court's] decision." *See Hewitt v. NDDOT*, 2020 ND 102, at ¶ 15. Finally, court records show a clear pattern of misconduct by the Department regarding the fraudulent use of Jackson's signature. Appellant's Add. 3-40.

I. The legal issues related to the Department's misconduct were necessary for this Court to address on the merits, and court records unequivocally support that the Department engaged in a consistent pattern of misconduct.

[¶10] Whether the Department's misconduct required reversal based on its systemic disregard of the law, on equitable estoppel principles, and/or because the Department deprived Mr. Hewitt of a fair hearing were separate and distinct substantive issues on appeal to this Court, and the Court overlooked and misapprehended the issues by simply deeming them to be "either without merit or unnecessary" to the Court's decision. *Hewitt* at ¶ 15. In short, the aforementioned issues required analysis and substantive disposition, as the Court's decision on the sole issue addressed in its Opinion, Rehborg's certification, was immaterial to any of these alternative legal claims asserted by Mr. Hewitt. Rather, whether the Department's repeated knowing use of a false certification form amounted to a systemic disregard of the law was certainly not an argument that lacked merit, and the Court overlooked and misapprehended that the admissibility of Rehborg's certified hearing file did not somehow absolve the Department of any fraud or wrongdoing. In fact, whether the Department systemically disregarded the law, and the Department's pattern of fraudulent conduct as a whole, was the primary issue addressed in the parties' briefs, and the primary

issue discussed throughout Mr. Hewitt's Oral Argument. *See, e.g.*, Appellant's Br. at ¶¶ 17-19, 28-33; Appellee's Br. at ¶¶ 59-74; Appellant's Reply Br. at ¶¶ 2-5, 13-17.

[¶11] Furthermore, an analysis of whether the Department's inclusion of a second hearing file, certified by Rehborg, in response to Mr. Hewitt's discovery request, coupled with the fact that neither Mr. Hewitt or even the hearing officer knew which hearing file was actually being relied on, deprived Mr. Hewitt of a fair hearing was an issue wholly unrelated to admissibility of Rehborg's certification. Tr., 23:5-16. "The right to a fair hearing comporting with due process includes a reasonable notice or opportunity to know of the claims of opposing parties and an opportunity to meet them." *Municipal Servs. Corp. v. North Dakota Dep't of Health and Consol. Lab*, 483 N.W.2d 560, 564 (N.D. 1992). "Due process not only guarantees fair play, "[i]ts purpose, more particularly, is to protect [a person's] use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property.'" *State v. One Black 1989 Cadillac VIN 1G6DW51Y8KR722027*, 522 N.W.2d 457, 465 (N.D. 1994) (citations omitted). Even if Rehborg's certified hearing file was admissible, whether Mr. Hewitt received a fair hearing when neither he, or the Department's own hearing officer, had any idea what hearing file was being relied on by the Department, and when the second hearing file came one day prior to the hearing, is material to the Court's final disposition.

[¶12] Additionally, North Dakota district court records unambiguously reflect that the Department was aware of the ongoing fraudulent use of Jackson's signature to certified administrative hearing files, and that the agency continually persisted in using the false certification on some files even after Mr. Hewitt's hearing, while simultaneously using Rehborg's signature on files certified before Mr. Hewitt even requested discovery from the

Department. *See* Appellant's Add. at 3-40. Court records evidences that: 1) the same hearing officer that presided over Mr. Hewitt's hearing addressed the issue with the use of Jackson's false certification on May 6, 2019, three days prior to Mr. Hewitt's hearing. *See* Appellant's Add. at 3-4; 2) on May 7, 2019, two days prior to Mr. Hewitt's hearing, and one day prior to his discovery request, the Department knew about the fraud, and started using Rehborg's signature. *See id.* at 5-14; and 3) despite both knowing of the fraud the agency was committing and using Rehborg's certification on hearing files as a result of the same over a week earlier, the Department continually used and relied on Jackson's false certification to suspend motorist's drivers licenses on May 13-20, 2019. *Id.* at 15-40.

[¶13] While the aforementioned records were in part cited to in Mr. Hewitt's Reply Brief, a thorough review warrants granting Mr. Hewitt a rehearing for the Court to provide a substantive analysis of the legal issues related to the Department's misconduct. *See* Appellant's Reply Br. at ¶ 5, footnote 2. If the Court did not believe such an analysis was warranted before, a substantive determination on whether the Department was systemically disregarding the law, in light of the above-records, is more than appropriate to ensure the Department acts in accordance with the law in the future. *See Madison v. North Dakota Department of Transportation*, 503 N.W2d 243, 245-47 (N.D. 1993). The same holds true for whether equitable estoppel principles require reversal, as well as whether Mr. Hewitt was deprived his right to a fair hearing.

[¶14] Our state and federal constitutions prohibit the government from treating individuals differently who are alike in all relevant aspects. *See Hamich, Inc. v. State ex rel. Clayburgh*, 1997 ND 110, ¶ 31, 564 N.W.2d 640. Here, Mr. Hewitt has been treated differently by both the Department when compared to other motorists, and this Court when

compared to the motorist in *Christianson*, all because his attorney requested that the Department provide documentation that would evince the agency's wrongdoings prior to his hearing, and others did not. *See Christianson*, 2020 ND 76; Appellant's Add. at 3-40. Mr. Hewitt should not be left without relief because the Department responded to his attempt to seek the truth by sending him another hearing file, certified by someone else, in order to bolster their ability to revoke his license. That is not justice, nor is condoning a government agencies misconduct because the agency conjured up an apparently admissible hearing file, only after they were aware that they were caught engaging in ongoing fraudulent conduct. An unwillingness to substantively address Mr. Hewitt's additional claims is condonation of the conduct itself. Rehearing this matter is warranted.

CONCLUSION

[¶15] For the above-cited reasons, Mr. Hewitt respectfully requests that this Court GRANT his Petition for Rehearing, require the Department to submit a response to same, and reopen the appeal for subsequent proceedings.

Respectfully submitted May 21, 2020.

VOGEL LAW FIRM

By: /s/ Luke T. Heck

Luke T. Heck (#08133)

Drew J. Hushka (#08230)

218 NP Avenue

PO Box 1389

Fargo, ND 58107-1389

701.237.6983

Email: lheck@vogellaw.com

dhushka@vogellaw.com

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 32(e) and 40(b) of the North Dakota Rules of Appellate Procedure, this brief complies with the page limitation and consists of 10 pages.

Dated this 21 day of May, 2020.

VOGEL LAW FIRM

BY: /s/ Luke T. Heck
Luke T. Heck (#08133)
Drew J. Hushka (#08230)
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
Email: lheck@vogellaw.com
dhushka@vogellaw.com
ATTORNEYS FOR APPELLANT

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DEPARTMENT OF TRANSPORTATION,

APPELLEE.

SUPREME COURT NO. 20190389

Civil No. 47-2019-CV-00296

CERTIFICATE OF ELECTRONIC SERVICE

[¶1] I hereby certify that on May 21, 2020, the following document:

Appellant's Reply Brief AND Appellants Addendum

was 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:

Michael Pitcher
mtpitcher@nd.gov

VOGEL LAW FIRM

By: /s/ Luke T. Heck

Luke T. Heck (#08133)

lheck@vogellaw.com

218 NP Avenue

PO Box 1389

Fargo, ND 58107-1389

Telephone: 701.237.6983

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Michael Pitcher
mtpitcher@nd.gov

VOGEL LAW FIRM

By: /s/ Luke T. Heck

Luke T. Heck (#08133)

lheck@vogellaw.com

218 NP Avenue

PO Box 1389

Fargo, ND 58107-1389

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APPELLANT'S ADDENDUM TO PETITION FOR REHEARING

Luke T. Heck (#08133)
Drew J. Hushka (#08230)
VOGEL LAW FIRM
Attorneys for Appellant
218 NP Avenue
PO Box 1389
Fargo, ND 58107-1389
701.237.6983
Email: lheck@vogellaw.com
dhushka@vogellaw.com

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HEARING OFFICER'S DECISION

North Dakota Department of Transportation, Legal Division

Name of Petitioner OURADNIK, KYLE STEVEN		Hearing Date 5/6/2019	Operator's License Number OUR-79-3818	7962
Address of Petitioner 3513 EVERGREEN RD N, FARGO, ND 581021218		Attorney MARK FRIESE	County of Occurrence CASS	
Date of Birth 5/21/1979	Date of Occurrence 4/5/2019	Date of Temp Operator's Permit 4/6/2019	Issuing Agency ND HIGHWAY PATROL	

FINDINGS OF FACT:

On April 5, 2019 at approximately 11:37 PM, NDHP Trooper Ben Hixson (Hixson) observed a vehicle driven east by Kyle Steven Ouradnik (Ouradnik) approaching the intersection of Cass County Road 81 on County Road 20. Hixson was on flood duty, standing in the middle of the intersection directing traffic away from an excavator that had fallen through a sewer line between CR 81 and University Drive, north of the Jet Center. Hixson was allowing only local traffic to proceed through the road block that he had established with his patrol vehicle by activating flashing emergency lights. He found it necessary to stand in the intersection because vehicles had been driving around his parked patrol vehicle. Hixson saw Ouradnik's vehicle exit I-29. As it approached a railroad bridge, it almost struck the bridge, making a sharp, abrupt correction at the last moment. Ouradnik pulled up next to Hixson and rolled down his window without prompting. Hixson asked, "Where are you heading?" Ouradnik planned to continue east beyond the immediate vicinity. If vehicles wanted to continue east, Hixson was allowing local traffic only. Vehicles could turn north or south without contact with Hixson. Hixson observed that Ouradnik's eyes were bloodshot and watery and his speech was mumbled and slurred. He also observed that Ouradnik's response time to his inquiry was delayed, suggesting impairment. Hixson asked, "How drunk are you?" and Ouradnik replied that he had consumed two or three drinks. Hixson reasonably suspected that Ouradnik was over the legal limit and instructed him to park on the side of the road. Hixson explained that "You're inebriated" and advised him that another officer would arrive shortly. Ouradnik agreed to pull over and wait. Trooper Paul Sova (Sova) arrived on scene. He was likewise on flood duty but was mobile. He had followed a vehicle that appeared suspicious away from the intersection and was returning. Hixson motioned for Sova to come over to his position. Hixson pointed out Ouradnik's vehicle parked nearby and briefed him on his observations requesting that Sova conduct a DUI investigation. Sova approached Ouradnik's vehicle and spoke to him, detecting an odor of alcohol. Sova observed that Ouradnik's eyes were watery and his face was flushed. Ouradnik sat in the front seat of the patrol vehicle. Inside, the odor of alcohol, watery eyes, and flushed face persisted. He displayed six of a possible six clues on the horizontal gaze nystagmus, five of eight clues on the walk & turn, and two of four clues on the 1-leg-stand standardized field sobriety tests indicating that he was under the influence. In addition, he failed to complete the partial alphabet and reverse count tests as instructed. Ouradnik was provided an implied consent advisory and consented to an on-site breath screening test. Sova is certified to administer the Alco-Sensor and did so in accordance with the approved method obtaining results of .13. At 11:54 PM, Ouradnik was arrested for DUI, handcuffed in back, and transported to the Cass County Jail. He was provided the statutory implied consent advisory and consented to a chemical breath test. Ouradnik had nothing to eat, drink, or smoke for at least 20 minutes prior to the chemical breath test. Trooper Sova is certified to administer the Intoxilyzer 8000 and did so in accordance with the approved method obtaining results showing .113 at 12:32 AM on April 6th on an installed device. Sova noted the results on the Report and Notice and issued the driver's copy to Ouradnik along with a copy of the test record. The DLD copy and certified copy of the test record were mailed to NDDOT within five days of issuance. The hearing officer took judicial notice that DLD Director Glenn Jackson (Jackson) was on administrative leave on April 16, 2019 when the Exhibit 1 was certified. Mr. Ouradnik did not appear for the administrative hearing or offer any evidence regarding the authenticity of documents certified in Exhibit 1. Both Hixson's and Sova's testimonies were credible and not impeached. Counsel offered Trooper Sova's request for subpoena or notice to have Trooper Hixson appear for the hearing as evidence which was admitted as Exhibit 16.

CONCLUSIONS OF LAW:

While on flood duty, Trooper Hixson had a reasonable and articulable basis to activate his emergency lights to protect the public and workers from the scene of an excavator that fell through the road blocking both lanes. Petitioner Ouradnik elected to stop, roll down his window, and speak to Hixson. Petitioner's Counsel cited *State v. Langseth*, 492 N.W.2d 298 (N.D. 1992), to support a claim that Hixson's activation of flashing lights at an emergency road block constituted an illegal seizure. Ouradnik did not offer any evidence that he felt his liberty was restrained in any way prior to Hixson observing indicators of impairment. *State v. Schneider*, 2014 ND 198 (Langseth involved pursuit of a moving vehicle with emergency lights activated). Use of flashing emergency lights at the scene for the safety of the officer and others in the vicinity does not constitute an unreasonable seizure. *City of Fargo v. Sivertson*, 1997 ND 204 ("person alleging his rights have been violated under the Fourth Amendment has an initial burden of establishing a prima facie case of illegal seizure"); *State v. Glaesman*, 545 N.W.2d 178 (N.D. 1996) (community caretaking may justify law enforcement contact, including stops, without reasonable suspicion of unlawful conduct, citing *State v. Halfmann*, 518 N.W.2d 729 (N.D. 1994)); *State v. Hanson*, 504 N.W.2d 219 (Minn. 1993) ("flashing lights ... serve other purposes, including warning oncoming motorists in such a situation to be careful."). Hixson had a reasonable and articulable basis to temporarily detain Ouradnik for field sobriety testing by Trooper Sova. Sova had reasonable grounds to believe that Ouradnik had been driving a vehicle while under the influence of intoxicating liquor in violation of NDCC 39-08-01. Ouradnik was arrested for DUI, was provided the statutory implied consent advisory, consented to a chemical breath test, and was tested in accordance with NDCC Chapter 39-20 and the approved method. The valid test results show that Ouradnik had an alcohol concentration of at least eight one hundredths of one percent but less than eighteen one hundredths of one percent within two hours of driving. Ninety-one (91) days is the appropriate period of license suspension for a driver with a chemical breath test showing alcohol concentration results of .08 or greater with no prior DUI/APC convictions, suspensions or revocations of record within seven years.

Petitioner's Counsel asserted that Ouradnik could not receive a fair hearing because of training and cooperation between the North Dakota Highway Patrol and NDDOT to reduce drunk driving. It was argued that the troopers must be subpoenaed to attend NDDOT administrative hearings because of the subpoena requirement. No legal authority was offered in support of this argument. The greater weight of the evidence in the administrative record establishes that Petitioner Ouradnik received a fair hearing. *Peterson v. ND Dept. Of Transportation*, 536 N.W.2d 367 (N.D. 1995).

CASE ANALYSIS:

Petitioner's Counsel argued that the administrative driver's license suspension must be dismissed because DLD Director Glenn Jackson was on administrative leave when his signature was placed on page 1 of Exhibit 1 certifying the hearing file. A similar argument was reviewed by the North Dakota Supreme Court because the Director's certification signature is a rubber stamp or machine signature. In *State v. Obrigewitch*, 356 N.W.2d 105 (N.D. 1984), the Court explained:

The issue raised here is whether or not a script signature made by a rubber stamp is sufficient for authentication purposes to comply with the rules of evidence, specifically Rule 902, N.D.R.Ev. Generally, in the absence of a statute providing otherwise, a signature may be affixed to a document by writing by hand, by printing, by stamping, or by other means. ... The evidentiary rule requiring authentication and certification of records is designed to avert the inconvenience and occasional impossibility of producing original documents in court. By allowing certified copies of records to be admissible, the trial of cases is expedited. North Dakota does not have a specific statute requiring signatures to be made in any certain form. We conclude that the rubber-stamp certification and signature as used in this case is sufficient to meet the evidentiary requirements of Rule 902, N.D.R.Ev. By so concluding we intend to further the policy of avoiding waste of time and money that would result in requiring manual signing of every record certified from the Drivers License Division.


In this case *Obrigewitch* failed to present any evidence going to the issue of genuineness of the State's exhibits but instead attacked only the method of certification of those documents by the Drivers License Division. Thus *Obrigewitch* failed to rebut the presumption of authenticity for public records found in Rule 902, N.D.R.Ev. Furthermore, we conclude that the State has met the burden of proof in Rule 901(a), N.D.R.Ev., which provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." We conclude that the trial judge did not commit error by allowing admission of the order of suspension and the driving record.

Id (case citations omitted). At the time of the Ouradnik certification, April 16th, Jackson held the title of Director, Driver's License Division for NDDOT. Counsel cited *Peterson v. ND Dept. Of Trans.*, 518 N.W.2d 690 (N.D. 1994) as authority to dismiss the suspension. The nature of the records at issue in *Peterson* were distinctly different than the Report and Notice, certified Intoxilyzer Test Record and Checklist, hearing request, and driving record found in Exhibit 1 of Ouradnik's administrative proceeding. In *Peterson*, the Court explained, "[T]hese documents bear no reliable, verifiable indicia that they are in fact true and correct copies of Minnesota police records. ... We will not sanction suspension or revocation of that privilege based upon evidence that is no more reliable than an anonymous letter." In contrast, the documents in Exhibit 1 come directly from Driver's License Division of the North Dakota Department of Transportation involving a DUI arrest in North Dakota investigated by the North Dakota Highway Patrol. The Court has consistently treated the two situations differently in its analysis. *Isaak v. Sprynczynatyk*, 2002 ND 64 (if prior offense was North Dakota matter, no proof in addition to driving record is required). Ouradnik did not offer any evidence to challenge the authenticity of the documents certified by Exhibit 1, page 1.

DECISION: SUSPENDED for 91 Days

NOTICE: If this decision is to suspend or revoke, it constitutes the official notice of the action against your driving privileges by the NDDOT Director as of this date.

Date: 5/6/2019


DWAIN E FAGERLUND, HEARING OFFICER
NDDOT
1951 N. WASHINGTON ST
GRAND FORKS, ND 58203
(701) 787-6590

TEMPORARY PERMIT: This document is not valid as a temporary permit.
Reason: Notice effective 3 days from mailing.

Date: 5/6/2019


Signature of Hearing Officer

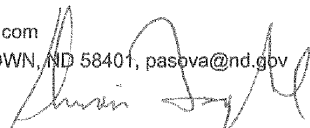
CERTIFICATE OF SERVICE

The undersigned certifies that on 05/06/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

MARK A FRIESE, ATTORNEY AT LAW, PO BOX 1389, FARGO, ND 58107, mfriese@vogellaw.com

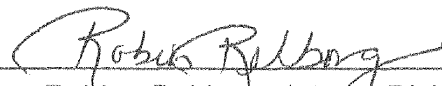
TROOPER PAUL SOVA, ND HIGHWAY PATROL, 205 6TH STREET SE SUITE 103, JAMESTOWN, ND 58401, pasova@nd.gov

KYLE STEVEN OURADNIK, 3513 EVERGREEN RD N, FARGO, ND 581021218



CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 4 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 5/7/2019.

A handwritten signature in cursive script, reading "Robing Rehborg", is written over a horizontal line.

Robing Rehborg, Interim Division Director
Drivers License Division
Department of Transportation, Bismarck, ND

REPORT AND NOTICE UNDER CHAPTER 39-20 OR 39-06.2 NDCC

North Dakota Department of Transportation, Drivers License
SFN 9362 (6-2017)



RECEIVED
DRIVERS LICENSE
DIVISION
2019 APR 26 AM 10:22
ENVELOPE POSTMARKED
APR 24 2019

Date of Occurrence 4-23-19	Time of Driving/Physical Control/Crash 11:00 AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	Time of Arrest/Lawfully Detained 11:32 AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	Citation Number 103510200
County of Occurrence Ward	City of Occurrence Minot	Enforcement Agency Minot PD	
Location of Arrest or Where Detained 1500 b/k 31st Ave SW			
Last Name Durno	First Name Douglas	Middle Name Michael	ICN 19-12113
Residence Address 600 31st Ave SW #206	City MINOT	State ND	ZIP Code 58701
DLN DUR 86 2212	State ND	Date of Birth 2-26-86	
Class D	Endorsement	Rest Code	Sex M
Area Code & Phone Number 702 810 2222			

On the above date, there existed reasonable grounds to believe that the above-named person was operating:

- ☒ Non-Commercial motor vehicle
☐ Commercial motor vehicle (CMV)
☐ CMV transporting hazardous materials in violation of NDCC Section 39-08-01 or 39-06.2-10.2

The above named person:

- ☒ Was advised by law enforcement of the implied consent advisory for a screening test required by NDCC Section 39-20-14.
☐ Refused onsite screening test (NDCC Section 39-20-14 or 39-06.2-10.2)
☒ Was lawfully arrested and informed that he or she will be charged with the offense of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.
☐ Was lawfully detained and officer has probable cause to believe that the driver was operating a CMV, while having alcohol or drugs in his or her system.
☐ Was lawfully detained and officer has probable cause to believe that the driver was under twenty-one (21) years of age, while having alcohol in his or her system.

☒ Was advised by law enforcement of the implied consent advisory for a chemical test as required by NDCC Section 39-20-01.

- ☒ Refused under NDCC, Section 39-20-01 or 39-06.2-10.2 a chemical test or tests of ☐ BLOOD ☒ BREATH ☐ URINE
☐ Provided specimen of ☐ BLOOD ☐ BREATH ☐ URINE Time Obtained ☐ AM ☐ PM Test Results
☐ Additional specimen of ☐ BLOOD ☐ BREATH ☐ URINE ☐ REFUSAL Time Obtained ☐ AM ☐ PM Test Results

TEMPORARY OPERATOR'S PERMIT: (To be issued to driver. Mark valid or not valid.) ND License/Permit attached? ☐ Yes ☒ No ☐ Lost

This permit is:

- ☒ **VALID** as a Temporary Operator's Permit for 25 days from date of issue (unless terminated earlier by hearing officer)
☐ **NOT VALID** as a Temporary Operator's Permit because:
☐ Non-Licensed Driver
☐ License Suspended/Revoked
☐ Current permit under NDCC 39-20 or 39-06.2

This permit is NOT valid for operating a CMV until

MM/DD/CCYY

COMMERCIAL: Refusal to submit to onsite screening chemical test(s) requested by a law enforcement officer will result in being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under NDCC 39-06.2-10.

I certify that I (check one) ☒ Issued ☐ Mailed this Temporary Operator's Permit to the driver on MM/DD/CCYY 04/24/2019

Name of Officer/Badge or ID Number (Please Print)

Tyler Ruelle 309/7462

Signature of Officer

[Signature]

OFFICER'S STATEMENT OF PROBABLE CAUSE: (Check appropriate boxes and explain.)

Reasonable suspicion to stop or reason lawfully detained:

- ☐ erratic driving Explain: Speeding, 44 mph, 30 mph zone.
☒ traffic violation
☐ crash
☐ already stopped

Probable cause to arrest/lawfully detain:

- ☒ odor of alcoholic beverage Explain: Open can of "PBR" beer in vehicle. Druggy and glassy eyes. Admitted to drinking one tall glass of Bud Light beer. Odor and slurring while speaking. NEM-6 PBT = .222
☐ poor balance
☒ failed field sobriety test(s)
☒ failed screening test

I personally certify as a law enforcement officer that this written report is true and correct to the best of my knowledge at the time of completing this report.

Signature of Officer

[Signature]

Name of Officer/Badge or ID Number (Please Print)

Tyler Ruelle 309/7462

Dated (MM/DD/CCYY)

04/24/2019

DRIVERS LICENSE DIVISION

Page 2 of 4

From: DOT, Drivers License Hearing Request
Sent: Friday, May 03, 2019 11:20 AM
To: DOT, Drivers License Hearing Request
Subject: DL Administrative Hearing Request for Douglas Durno

Importance: High

This notification verifies that your request was successfully submitted. Retain this notification for your records.

Contact Name: Douglas Durno

Mailing Address:

Phone Number: 701-323-0123

Email Address: herbellawfirm@yahoo.com

Secondary Email Address:

Date of Birth: 2/26/1986

Drivers License Number: DUR862212

Attorney Name: Dan Herbel

Attorney Phone: 701-323-0123

Date of Offense:

Reason for Request: DOT administrative hearing

05/06/19

DRIVERS LICENSE DIVISION
CENTRAL RECORD

DL3-006-M1

DRIVER ID: DUR-86-2212 OS: ND SSN #: XXX-XX-5474

NAME: DURNO, DOUGLAS MICHAEL
FIRST NAME: DOUGLAS
MIDDLE NAME: MICHAEL
LAST NAME: DURNO
SUFFIX:

PREV NAME: DURNO, DOUGLAS

R/A: 600 31ST AVE SW

CITY MINOT

CO 51 ZIP 58701-7001

DOB: 02/26/1986 SEX: M WT: 155 HT: 5-08 HAIR: BRO EYES: BLU DONOR:
EXP: 02/26/2024 STATUS: LI CLASS: D RESTR:

POINTS: 002 REDUCED: 05/02/19 REVIEW DATE: 11/19/14 SR-22 REQ'D UP: 00/00/00
PERMIT/LICENSE:

07/01/16	KNOWLDG TEST	CLASS	D	PASSED	SITE 26	EX 143
07/01/16	INSTRUCTION CL D	02/26/22			SITE 26	EX 143
07/20/16	ROAD TEST	CLASS	D	PASSED	SITE 20	EX 155
07/20/16	LICENSE	CLASS	D		SITE 20	EX 155
06/04/18	ND LICENSE SURRENDERED IA				SITE 99	EX 099
01/04/19	KNOWLDG TEST	CLASS	D	WAIVED	SITE 20	EX 175
01/04/19	ROAD TEST	CLASS	D	WAIVED	SITE 20	EX 175
01/04/19	LICENSE	CLASS	D		SITE 20	EX 175
01/04/19	PREVIOUS DOCUMENT	IA			SITE 20	EX 175

SPEXS ACTIVITY: 01/04/19 CHANGE STATE OF RECORD TO ND

VIOLATIONS/CONVICTIONS

5466278

ADM 5 09/30/14 IMPLIED CONSENT

102414

3510273

ADM 5 04/23/19 REFUSAL

050119

SUSPENSIONS/REVOCATIONS/CANCELLATIONS

SUSP 5 11/19/14 BAC OVER LEGAL LIMITS 180D L 11/19/14 R 06/28/16 0825

VIOLATIONS/CONVICTIONS

42800530

VIOL 1 04/06/19 OFF 03/05/19 ELECTRONIC DEVICE -ADULT PT 000 CT 28 074 4 040719

7058190

VIOL 1 05/02/19 OFF 03/31/19 PERMIT UNAUTH. PERSON DR PT 002 CT 30 008 4 050219

HEARING NOTICES

HEAR 5 10/25/14 SUSPENDED - TIME LIMIT UP BAC OVER LEGAL LIMITS PER 180 D

HEAR 1 04/09/19 COMPLIED WITH REQUIREMENT FAIL TO APPEAR/POST BOND PER 000

COURT: CO 28 CITY 074 ID 2 OFFENSE: 411

HEAR 5 04/23/19 AWAITING HEARING OUTCOME REFUSED CHEMICAL TEST PER 002 Y

AKA DATA:

NAME: DURNO, DOUGLAS

DOB: 02/26/1986 SSN: 000-00-0000

O/S: IA DLN: 285AP1059

O/S: NV DLN: 1701930833

NOTICE OF ADMINISTRATIVE HEARING BEFORE THE NDDOT DIRECTOR

North Dakota Department of Transportation, Legal Division

EXHIBIT 2

Name of Petitioner DURNO, DOUGLAS MICHAEL		Hearing Date 05/24/2019	Operator's License Number DUR-86-2212	8101
Address of Petitioner 600 31ST AVE SW, MINOT, ND 587017001		Attorney DANNY HERBEL	County of Occurrence WARD	
Date of Birth 2/26/1986	Date of Occurrence 4/23/2019	Date of Temporary Operator's Permit 4/24/2019	Issuing Agency MORTON CO. SHERIFF'S OFFICE	

NOTE: If you will need an accommodation for a disability, or if you speak a foreign language and need an interpreter, please contact the Hearing Officer for assistance.

The administrative hearing regarding the suspension or revocation of the Petitioner's North Dakota driving privileges for a period of **2 Years** will be held by telephone on **May 24, 2019 at 9:00 AM (Central Time)**.

Please call (701) 328-4320 before the time set for the hearing and inform the Hearing Officer named below of a number at which you can be reached for the hearing.

In accordance with North Dakota Century Code section 39-20-05. The issues to be considered and decided at the administrative hearing are:


Revocation hearing for refusing to submit to an alcohol concentration or drug 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.

Admissibility of evidence will be determined in accordance with the North Dakota Rules of Evidence. The hearing will be electronically recorded. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the Hearing Officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available.

Temporary Permit: If the Report and Notice form included a valid 25-day permit, then this Notice of Hearing extends the 25-day permit to the hearing date and time.

Dated: 05/14/2019


SARAH A HUBER, HEARING OFFICER
NDDOT, 608 E. BOULEVARD AVE., BISMARCK, ND
58505
(701) 328-4320

CERTIFICATE OF SERVICE

The undersigned certifies that on 05/14/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

DANNY LEE HERBEL, ATTORNEY AT LAW, 3333 E BROADWAY AVENUE SUITE 1205, BISMARCK, ND 58501,
herbellawfirm@yahoo.com
SGT TYLER RUELLE, MINOT POLICE DEPT, 515 2ND AVE SW, MINOT, ND 58701, tyler.ruelle@minotnd.org
DOUGLAS MICHAEL DURNO, 600 31ST AVE SW, MINOT, ND 587017001


Signature of Hearing Officer

NOTICE OF INFORMATION

North Dakota Department of Transportation, Legal Division

EXHIBIT 3

Name of Petitioner DURNO, DOUGLAS MICHAEL		Hearing Date 5/24/19		Operator's License Number DUR-86-2212	8101
Address of Petitioner 600 31ST AVE SW, MINOT, ND 587017001		Attorney DANNY HERBEL		County of Occurrence WARD	
Date of Birth 2/26/86	Date of Occurrence 4/23/19	Date of Temp Operator's Permit 4/24/19		Issuing Agency MORTON CO. SHERIFF'S OFFICE	

Enclosed is a copy of Exhibit 1, which is the hearing file prepared by NDDOT Drivers License Division. Exhibit 1 contains regularly kept records of the NDDOT Director that will be offered into evidence regarding the issues to be determined at the hearing.

Regularly kept records received by NDDOT from the State Crime Laboratory may be offered as foundational evidence concerning testing for alcohol concentration. Copies of these documents can be inspected during business hours, by prior appointment, at the NDDOT central office in Bismarck, at NDDOT district offices in Fargo, Grand Forks, Devils Lake or at the office of the county recorder or other official designated by the county commissioners. Documents from the State Crime Laboratory can be found at <http://www.ag.nd.gov/CrimeLab/Lab.htm>.

The arresting officer will be requested to testify. Other witnesses may also testify. The petitioner must pay all witness fees and expenses for all witnesses subpoenaed at the petitioner's request.



SARAH A HUBER, HEARING OFFICER
NDDOT, 608 E. BOULEVARD AVE., BISMARCK, ND 58505
(701) 328-4320

CERTIFICATE OF SERVICE

The undersigned certifies that on 5/14/19 a true and correct copy of this document and Exhibit 1 was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

DANNY LEE HERBEL, ATTORNEY AT LAW, 3333 E BROADWAY AVENUE SUITE 1205, BISMARCK, ND 58501



Signature of Hearing Officer

CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 4 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 5/8/2019.

A handwritten signature in cursive script, appearing to read "Robing Rehborg", is written over a horizontal line.

Robing Rehborg, Interim Division Director
Drivers License Division
Department of Transportation, Bismarck, ND

REPORT AND NOTICE UNDER CHAPTER 39-20 OR 39-06.2 NDCC

North Dakota Department of Transportation, Drivers License Division
SFN 9362



Date of Occurrence 05/02/2019	Time of Driving/Physical Control/Crash 8:39 AM	Time of Arrest/Lawfully Detained 8:57 AM	Citation Number 3124501569
County of Occurrence Stark	City of Occurrence DICKINSON	Enforcement Agency DICKINSON POLICE DEPARTMEN	
Location of Arrest or Where Detained 400 BLK E VILLARD			
Name - Last ZIMAN	First ALEX	Middle TODD	ICN 19-03790
Residence Address 405 DUPONT ST		City DICKINSON	State ND
DLN ZIM903241		Zip Code 58601	Date of Birth 09/18/1990
Class D	Endorsement	Rest Code	Sex M
Area Code & Phone Number			

On the above date, there existed reasonable grounds to believe that the above-named person was operating:

☒ Non-Commercial motor vehicle

The above named person:

☒ Was lawfully arrested and informed that he or she will be charged with the offense of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.

Was advised by law enforcement of the implied consent advisory for a chemical test as required by NDCC Section 39-20-01.

CHEMICAL TEST:

☒ **BREATH OR URINE**
I must inform you that North Dakota Law requires you to take a chemical breath or urine test to determine whether you are under the influence of alcohol or drugs. Refusal to take a chemical breath or urine test may result in the revocation of your driving privileges for a minimum of 180 days and up to 3 years. I must also inform you that refusal to take a chemical breath or urine test is a crime punishable in the same manner as driving under the influence. Do you consent to take the chemical breath/urine test I am requesting?

☒ Refused under NDCC, Section 39-20-01 or 39-06.2-10.2 a chemical test or tests of ☒ URINE

TEMPORARY OPERATOR'S PERMIT: (To be issued to driver. Mark valid or not valid.) ND License/Permit attached? ☒ No

This permit is:

☒ **VALID** as a Temporary Operator's Permit for 25 days from date of issue (unless terminated earlier by hearing officer)

☐ **NOT VALID** as a Temporary Operator's Permit because:

☐ Non-Licensed Driver

☐ License Suspended/Revoked

☐ Current permit under NDCC 39-20 or 39-06.2

☐ THIS PERMIT IS NOT VALID FOR OPERATING A CMV UNTIL MM/DD/CCYY

COMMERCIAL: Refusal to submit to onsite screening or chemical test(s) requested by a law enforcement officer will result in being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under NDCC 39-06.2-10.

I certify that I personally ☒ Issued this Temporary Operator's Permit to the driver on **05/02/2019**

Officer Name and Badge or ID Number
WISE, IAN 420

Signature of Officer
/S/ IAN WISE

OFFICER'S STATEMENT OF PROBABLE CAUSE: (Check appropriate boxes and explain.)

Reasonable suspicion to stop or reason to lawfully detain:

☒ traffic violation

☒ Explain
DRIVER APPEARED TO HAVE THROWN AN OBJECT FROM VEHICLE INTO ALLEY. VEHICLE DROVE 31MPH IN 25MPH ZONE

Probable cause to arrest/lawfully detain:

☒ poor balance

☒ failed field sobriety test(s)

☒ Explain
DRIVER WAS INITIALLY ARRESTED FOR OTHER OFFENSES AND PARTICIPATED IN DRE EVALUATION. ADMITTED TO SMOKING MARIJUANA AND PERFORMED POORLY ON TESTING. REFUSED CHEMICAL TEST

I personally certify as a law enforcement officer that this report is true and correct to the best of my knowledge at the time of completing this report.

Signature of Officer
/S/ IAN WISE

Officer Name and Badge or ID Number (Please Print)
WISE, IAN 420

Dated (MM/DD/CCYY)
05/02/2019

RECEIVED
DRIVERS LICENSE
DIVISION
2019 MAY -6 AM 11:11
ENVELOPE POSTMARKED
MAY - 3 2019

From: DOT, Drivers License Hearing Request
Sent: Monday, May 06, 2019 8:24 AM
To: DOT, Drivers License Hearing Request
Subject: DL Administrative Hearing Request for Ales Ziman

Importance: High

This notification verifies that your request was successfully submitted. Retain this notification for your records.

Contact Name: Ales Ziman

Mailing Address: 405 Dupont St.

Dickinson ND 58601

Phone Number: 701-260-1424

Email Address: markusp@hplawnd.com

Secondary Email Address: becky@hplawnd.com

Date of Birth: 9/18/1990

Drivers License Number: ZIM-90-3241

Attorney Name: Markus Powell

Attorney Phone: 701-483-8700

Date of Offense: 5/2/2019 12:00:00 AM

Reason for Request: Mr. Ziman was charged with DUI on 5/2/2019 Attorney Powell requests the hearing in person

05/07/19

DRIVERS LICENSE DIVISION
CENTRAL RECORD

DL3-006-M1

DRIVER ID: ZIM-90-3241 OS: ND SSN #: XXX-XX-7267

NAME: ZIMAN,ALEX TODD
FIRST NAME: ALEX
MIDDLE NAME: TODD
LAST NAME: ZIMAN
SUFFIX:

R/A: 405 DUPONT ST CITY DICKINSON CO 45 ZIP 58601-4572

DOB: 09/18/1990 SEX: M WT: 200 HT: 6-00 HAIR: BRO EYES: HAZ DONOR:
EXP: 09/18/2024 STATUS: LI CLASS: D RESTR:

POINTS: 001 REDUCED: 03/02/19 REVIEW DATE: 12/01/16 SR-22 REQ'D UP: 00/00/00
PERMIT/LICENSE:

06/28/05	KNOWLDG TEST	CLASS	D	PASSED	SITE 85	EX 050
05/23/06	ROAD TEST	CLASS	D	PASSED	SITE 80	EX 016
05/09/08	ID CARD		05/09/16		SITE 80	EX 078
09/16/08	KNOWLDG TEST	CLASS	D	PASSED	SITE 85	EX 016
09/30/08	ROAD TEST	CLASS	D	PASSED	SITE 85	EX 095
09/14/12	RENEWAL LICENSE	CLASS	D		SITE 80	EX 144
12/16/14	DUPLICATE LICENSE	CLASS	D		SITE 88	EX 151
09/25/18	RENEWAL LICENSE	CLASS	D		SITE 85	EX 174

VIOLATIONS/CONVICTIONS

24501153
VIOL 1 08/30/18 OFF 08/18/18 SPEEDING 065/40 PT 003 CT 45 006 3 083018
24501569
ADM 5 05/02/19 REFUSAL 050719

SUSPENSIONS/REVOCATIONS/CANCELLATIONS

SUSP 9 06/13/16 ADMIN/CHILD SUPPORT 000 L 00/00/00 R 07/07/16 1245
SUSP 1 10/09/16 FAIL TO APPEAR/POST BOND 000 L 00/00/00 R 10/18/16 0952
COURT: CO 45 CITY 006 ID 1 OFFENSE: 404
SUSP 9 12/01/16 ADMIN/CHILD SUPPORT 000 L 00/00/00 R 02/15/17 1340

VIOLATIONS/CONVICTIONS

84500105
VIOL 1 09/10/16 OFF 08/10/16 IMPROPER REGISTRATION PT 000 CT 45 006 3 091116
94500825
VIOL 1 09/20/18 OFF 09/17/18 SPEEDING 035/25 PT 000 CT 45 006 4 092018

HEARING NOTICES

HEAR 1 09/19/16 SUSPENDED - TIME LIMIT UP FAIL TO APPEAR/POST BOND PER 000
COURT: CO 45 CITY 006 ID 1 OFFENSE: 404
HEAR 5 05/02/19 AWAITING HEARING OUTCOME REFUSED CHEMICAL TEST PER 180 D

CRASHES

CRS 1 10/18/16 INJURY RPT 00/00/00 CRASH E 1019704 DAMAGES 22500 15000

CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 5 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 4/25/2019.

A handwritten signature in black ink, appearing to read 'G. Jackson', is written over a horizontal line.

Glenn Jackson, Division Director
Drivers License Division
Department of Transportation, Bismarck, ND

REPORT AND NOTICE UNDER CHAPTER 39-20 OR 39-06.2 NDCC

North Dakota Department of Transportation, Drivers License
SFN 9362 (6-2017)



RECEIVED
DRIVERS LICENSE
DIVISION
2019 APR 22 AM 10:39
RECEIVED IN
ENVELOPE POSTMARKED
APR 18 2019

Date of Occurrence 4-18-19	Time of Driving/Physical Control/Crash 0414 hrs <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Time of Arrest/Lawfully Detained 0429 hrs <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Citation Number 358869
County of Occurrence CASS	City of Occurrence FARGO	Enforcement Agency FARGO POLICE DEPT	
Location of Arrest or Where Detained 1400 BLK 12 ST S			
Last Name PIKOP	First Name DAVID	Middle Name ALAN	ICN 19-31786
Residence Address 1500 BAY RD #2745	City MIAMI BEACH	State FL	ZIP Code 33139
DLN P-210-161-74-214-0	State FL	Date of Birth 6-14-74	
Class E	Endorsement E	Rest Code A	Sex M
Area Code & Phone Number 941-875-8755			

On the above date, there existed reasonable grounds to believe that the above-named person was operating:

- ☒ Non-Commercial motor vehicle
☐ Commercial motor vehicle (CMV)
☐ CMV transporting hazardous materials in violation of NDCC Section 39-08-01 or 39-06.2-10.2

The above named person:

- ☐ Was advised by law enforcement of the implied consent advisory for a screening test required by NDCC Section 39-20-14.
☐ Refused onsite screening test (NDCC Section 39-20-14 or 39-06.2-10.2)
☒ Was lawfully arrested and informed that he or she will be charged with the offense of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.
☐ Was lawfully detained and officer has probable cause to believe that the driver was operating a CMV, while having alcohol or drugs in his or her system.
☐ Was lawfully detained and officer has probable cause to believe that the driver was under twenty-one (21) years of age, while having alcohol in his or her system.
☒ Was advised by law enforcement of the implied consent advisory for a chemical test as required by NDCC Section 39-20-01.
☐ Refused under NDCC, Section 39-20-01 or 39-06.2-10.2 a chemical test or tests of ☐ BLOOD ☐ BREATH ☐ URINE
☒ Provided specimen of ☐ BLOOD ☒ BREATH ☐ URINE Time Obtained **0458** ☒ AM ☐ PM Test Results **.099**
for testing under NDCC Chapter 39-20 or 39-06.2-10.2
☐ Additional specimen of ☐ BLOOD ☐ BREATH ☐ URINE ☐ REFUSAL Time Obtained ☐ AM ☐ PM Test Results ☐

TEMPORARY OPERATOR'S PERMIT: (To be issued to driver. Mark valid or not valid.) ND License/Permit attached? ☐ Yes ☒ No ☐ Lost

This permit is:
☒ **VALID** as a Temporary Operator's Permit for 25 days from date of issue (unless terminated earlier by hearing officer)
☐ **NOT VALID** as a Temporary Operator's Permit because:
☐ Non-Licensed Driver
☐ License Suspended/Revoked
☐ Current permit under NDCC 39-20 or 39-06.2

This permit is NOT valid for operating a CMV until ☐ MM/DD/CCYY
COMMERCIAL: Refusal to submit to onsite screening chemical test(s) requested by a law enforcement officer will result in being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under NDCC 39-06.2-10.

I certify that I (check one) ☒ Issued ☐ Mailed this Temporary Operator's Permit to the driver on MM/DD/CCYY **04/18/2019**

Name of Officer/Badge or ID Number (Please Print)

J. HELM #472

Signature of Officer

[Signature] **#472**

OFFICER'S STATEMENT OF PROBABLE CAUSE: (Check appropriate boxes and explain)

Reasonable suspicion to stop or reason lawfully detained:

- ☐ erratic driving Explain: **VEHICLE WAS CALLED**
☐ traffic violation **IN AS SUSPICIOUS; DRIVER**
☐ crash **WAS ASLEEP VEHICLE WAS**
☒ already stopped **RUNNING.**

Probable cause to arrest/lawfully detain:

- ☐ odor of alcoholic beverage Explain: **RED/WATERY**
☒ poor balance **EYES; SLURRED SPEECH;**
☒ failed field sobriety test(s) **ADMISSION OF DRINKING;**
☒ failed screening test **FAILED WNT, DWI LGS**
STAND.

I personally certify as a law enforcement officer that this written report is true and correct to the best of my knowledge at the time of completing this report.

Signature of Officer

[Signature] **#472**

Name of Officer/Badge or ID Number (Please Print)

J. HELM #472

Dated (MM/DD/CCYY)

04/18/2019

DRIVERS LICENSE DIVISION

Page 2 of 5

Intoxilyzer Test Record and Checklist
NDOAG Crime Lab. Div., Bismarck, ND 58501

CMI, Inc. Intoxilyzer Alcohol Analyzer
North Dakota Model 8000 SN 80-007097
Location = CASS 8164.16.00 09/18
04/18/2019 04:56

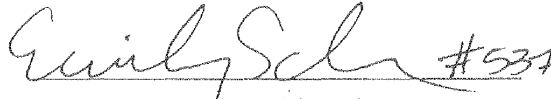
Test	AC	Time
01 Diagnostic	OK	04:57
02 Room Air	0.000	04:58
03 Subject Test 1	0.099	04:58
04 Room Air	0.000	05:01
05 Std. Gas	0.080	05:02
06 Room Air	0.000	05:03
07 Subject Test 2	0.108	05:04
08 Room Air	0.000	05:04
09 Reported AC	0.099	04:58

Difference OK
No RFI Detected

Sub Name = PIKOP, DAVID ALAN
Sub DOB = 06/14/1974
Sub Sex = Male Weight = 210
Test = DUI Cit = 358869
Dr. Lic. = FL/P210161742140
Lot No = 13518080A6
Cyl No = 14
Expiration Date = 08/05/2020
County = 09 Oper No. = 131803

20 minute waiting period ascertained? Y
Clean Mouthpiece used and disposed? Y
Clean Mouthpiece used and disposed? Y

I followed the Approved Method and the
instructions displayed by the Intoxilyzer
in conducting this test.

 #537

Operator Signature
EMILY SCHARES

Remarks:

Form 106-I8000

I hereby certify that the information in
the attached document is a certified
copy of the original document
received by this enforcement agency.

 #470
Fargo Police Department

Date: 4-18-2019

RECEIVED
DRIVERS LICENSE
DIVISION
2019 APR 22 AM 10:39

RECEIVED IN
ENVELOPE POSTMARKED
APR 18 2019

From: DOT, Drivers License Hearing Request
Sent: Friday, April 19, 2019 1:31 PM
To: DOT, Drivers License Hearing Request
Subject: DL Administrative Hearing Request for David Pikop



Importance: High

Follow Up Flag: Follow up

Flag Status: Flagged

This notification verifies that your request was successfully submitted. Retain this notification for your records.

Contact Name: David Pikop

Mailing Address: 1688 West Ave. #303

Miami Beach FL 33139

Phone Number: 941-875-8755

Email Address: mfriese@vogellaw.com

Secondary Email Address: jbye@vogellaw.com

Date of Birth: 6/14/1974

Drivers License Number: P210161742140

Attorney Name: Mark A. Friese

Attorney Phone: 7013566366

Date of Offense: 4/18/2019 12:00:00 AM

Reason for Request: I have been retained to represent David Pikop on the charge of DUI. We write to formally request an administrative hearing be scheduled in this matter. Mr. Pikop asks that this letter be accepted as a request that he be afforded the right to confront and cross-examine each and every person furnishing evidence or information to the hearing officer. Please have the hearing officer contact me prior to scheduling this case.

04/24/19

DRIVERS LICENSE DIVISION
CENTRAL RECORD

DL3-006-M1

DRIVER ID: A00-26-7783 OS: FL SSN #: 000000000000

NAME: PIKOP, DAVID ALAN
FIRST NAME: DAVID
MIDDLE NAME: ALAN
LAST NAME: PIKOP
SUFFIX:

R/A: M/A: | 1500 BAY RD APT 2745 CITY MIAMI BEACH CO 00 ZIP ST FL ZIP 33139-3252

DOB: 06/14/1974 SEX: M WT: 000 HT: 0-00 HAIR: EYES: DONOR:
EXP: 00/00/0000 STATUS: RO CLASS: RESTR:

POINTS: 000 REDUCED: 00/00/00 REVIEW DATE: 00/00/00 SR-22 REQ'D UP: 00/00/00

VIOLATIONS/CONVICTIONS

358869
ADM 5 04/18/19 IMPLIED CONSENT 042319

HEARING NOTICES

HEAR 5 04/18/19 AWAITING HEARING OUTCOME BAC OVER LEGAL LIMITS PER 091 D

AKA DATA:

O/S: FL DLN: P210161742140

NOTICE OF ADMINISTRATIVE HEARING BEFORE THE NDDOT DIRECTOR

North Dakota Department of Transportation, Legal Division

EXHIBIT 2

Name of Petitioner PIKOP, DAVID ALAN		Hearing Date 05/13/2019	Operator's License Number A00-26-7783	8033
Address of Petitioner 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252		Attorney MARK FRIESE	County of Occurrence CASS	
Date of Birth 6/14/1974	Date of Occurrence 4/18/2019	Date of Temporary Operator's Permit 4/18/2019	Issuing Agency FARGO POLICE DEPT	

NOTE: If you will need an accommodation for a disability, or if you speak a foreign language and need an interpreter, please contact the Hearing Officer for assistance.

The administrative hearing regarding the suspension or revocation of the Petitioner's North Dakota driving privileges for a period of 91 Days will be held on **May 13, 2019 at 4:00 PM (Central Time)** in the NDDOT - ADMINISTRATIVE HEARING OFFICE, 722 13TH AVE E, STE 102, WEST FARGO, ND 58078.

In accordance with North Dakota Century Code section 39-20-05. The issues to be considered and decided at the administrative hearing are:


Suspension hearing on alcohol concentration test results:

1. Whether the arresting 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 in violation of N.D.C.C. section 39-08-01 or equivalent ordinance;
2. Whether the person was placed under arrest;
3. Whether the person was tested in accordance with N.D.C.C. section 39-20-01 and, if applicable, section 39-20-02; and
4. Whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent but less than eighteen one-hundredths of one percent by weight.

Admissibility of evidence will be determined in accordance with the North Dakota Rules of Evidence. The hearing will be electronically recorded. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the Hearing Officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available.

Temporary Permit: If the Report and Notice form included a valid 25-day permit, then this Notice of Hearing extends the 25-day permit to the hearing date and time.

Dated: 05/02/2019


DWAIN E FAGERLUND, HEARING OFFICER
NDDOT, 1951 N. WASHINGTON ST, GRAND FORKS,
ND 58203
(701) 787-6590

CERTIFICATE OF SERVICE

The undersigned certifies that on 05/02/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

MARK A FRIESE, ATTORNEY AT LAW, PO BOX 1389, FARGO, ND 58107, mfriese@vogellaw.com

OFFICER JESSE D. HELM, #472, FARGO POLICE DEPT, 222 NORTH FOURTH STREET, FARGO, ND 58102, JHELM@FARGOND.GOV

DAVID ALAN PIKOP, 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252

DAVID ALAN PIKOP, 1688 WEST AVE APT 303, MIAMI BEACH, FL 331392366


Signature of Hearing Officer

NOTICE OF INFORMATION

North Dakota Department of Transportation, Legal Division

EXHIBIT 3

Name of Petitioner PIKOP, DAVID ALAN		Hearing Date 5/13/19	Operator's License Number A00-26-7783	8033
Address of Petitioner 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252		Attorney MARK FRIESE	County of Occurrence CASS	
Date of Birth 6/14/74	Date of Occurrence 4/18/19	Date of Temp Operator's Permit 4/18/19	Issuing Agency FARGO POLICE DEPT	

Enclosed is a copy of Exhibit 1, which is the hearing file prepared by NDDOT Drivers License Division. Exhibit 1 contains regularly kept records of the NDDOT Director that will be offered into evidence regarding the issues to be determined at the hearing.

Regularly kept records received by NDDOT from the State Crime Laboratory may be offered as foundational evidence concerning testing for alcohol concentration. Copies of these documents can be inspected during business hours, by prior appointment, at the NDDOT central office in Bismarck, at NDDOT district offices in Fargo, Grand Forks, Devils Lake or at the office of the county recorder or other official designated by the county commissioners. Documents from the State Crime Laboratory can be found at <http://www.ag.nd.gov/CrimeLab/Lab.htm>.

The arresting officer will be requested to testify. Other witnesses may also testify. The petitioner must pay all witness fees and expenses for all witnesses subpoenaed at the petitioner's request.

The Intoxilyzer 8000 forms found at:

<https://attorneygeneral.nd.gov/sites/ag/files/documents/Intoxilyzer-Devices/InstallRepairMaint/2018-12-28%20Installation%20and%20Repair%20Checkout.pdf>

will be offered as Exhibit 7 at the administrative hearing.


DWAIN E FAGERLUND, HEARING OFFICER
NDDOT, 1951 N. WASHINGTON ST, GRAND FORKS, ND 58203
(701) 787-6590

CERTIFICATE OF SERVICE


The undersigned certifies that on 5/2/19 a true and correct copy of this document and Exhibit 1 was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

MARK A FRIESE, ATTORNEY AT LAW, PO BOX 1389, FARGO, ND 58107, mfriese@vogellaw.com

OFFICER JESSE D. HELM, #472, FARGO POLICE DEPT, 222 NORTH FOURTH STREET, FARGO, ND 58102, JHELM@FARGOND.GOV

DAVID ALAN PIKOP, 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252

DAVID ALAN PIKOP, 1688 WEST AVE APT 303, MIAMI BEACH, FL 331392366


Signature of Hearing Officer

HEARING OFFICER'S DECISION

North Dakota Department of Transportation, Legal Division

Name of Petitioner PIKOP, DAVID ALAN		Hearing Date 5/13/2019	Operator's License Number A00-26-7783	8033
Address of Petitioner 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252		Attorney MARK FRIESE	County of Occurrence CASS	
Date of Birth 6/14/1974	Date of Occurrence 4/18/2019	Date of Temp Operator's Permit 4/18/2019	Issuing Agency FARGO POLICE DEPT	

FINDINGS OF FACT:

On April 18, 2019 at approximately 4:04 AM, Fargo Police Officer Jessie Helm (Helm) received a dispatch to check on a suspicious vehicle parked in a residential area near the residence of the reporting party in the 1400 block of 12th Street South in Fargo. The caller, who asked to remain anonymous, described a dark colored pickup with the lights on and the engine running parked at that location since 2:30 AM. The caller was not sure whether the pickup was occupied. At 4:14 AM, Helm arrived on scene at the described location and observed the described pickup parked in front of the caller's residence with the lights on and the engine running. Helm parked his patrol vehicle on the street without activating emergency lights and did not block the pickup's exit. The vehicle had Florida license plates. Helm approached on foot and observed a male in the driver's seat, slightly reclined. The driver's eyes were closed and he appeared to be sleeping. The keys were in the ignition and the dash lights were illuminated. Given the circumstances, Helm was concerned for the driver's medical condition and conducted a welfare check. At the hearing, Helm could not recall whether he tapped on the window or rocked the vehicle; however, he noted that in his experience, rocking the vehicle is usually more effective at waking driver's in similar situations. Helm has approximately 5 1/2 years of experience in law enforcement. Helm observed head movement and the driver, David Alan Pikop (Pikop), woke up. His eyes were extremely red. Pikop's eyes were also watery. Helm either tapped or motioned for Pikop to roll down the window. Pikop rolled down the rear passenger window of the pickup. Helm asked if he was O.K. and Pikop replied in the affirmative. He knew that he was in Fargo. When asked why he was parked at that location, Pikop replied that he was sleeping. He said that he had a long day at work. Helm was standing at the rear window and Pikop was reclined back looking at him. When asked, "Why are you sleeping here?", Pikop replied that he knows someone. He said that he lives in Fergus Falls. Helm observed that Pikop abruptly ended certain words as he was talking. Helm had the impression that Pikop was consciously trying to avoid slurring his words. Pikop acknowledged consuming four beers at about 6:00 PM with dinner at an Irish pub somewhere. He did not know the name of the pub or the location. From Helm's experience, the closest Irish pub was at least 15 blocks away. Pikop said that he had a hotel somewhere in Fargo, but was tired and decided to pull over and rest. He estimated that he had been parked at that location since 11:30 PM. Pikop produced his Florida driver's license at Helm's request. Pikop agreed to field sobriety testing. The horizontal gaze nystagmus test was attempted but not completed because Pikop would not follow the stimulus with his eyes, suggesting non-compliance or the presence of narcotics. Pikop had denied use of narcotics. Helm observed that Pikop seemed to be projecting where the stimulus would move, rather than actually following it with his eyes. Helm was concerned that Pikop's eyes were so extremely red. Pikop said that he slept in his contacts and does not usually do that. Helm asked if he would provide a breath sample for a preliminary test and Pikop consented. Helm is certified to administer the Alco-Sensor FST on-site breath screening test. When asked at the hearing if he administered that test in accordance with the approved method, Helm volunteered that he did not perform a mouth check. Upon further inquiry, however, Helm verified that Pikop had not put anything in his mouth for at least three minutes prior to the test. Petitioner's Counsel objected to testimony regarding the results of the test arguing that there was no moving traffic violation and that Helm had admitted not following the approved method. The approved method for the Alco-Sensor does not require a mouth check. Exhibit 4. Mr. Pikop did not appear for the administrative hearing to testify. The implied consent advisory was not used to request the test. The objection was overruled. The results of the Alco-Sensor were .110. Helm observed that Pikop had an issue stepping up onto the adjacent sidewalk for the balance tests, and used his flashlight to provide him assistance. Mr. Pikop displayed five clues on the walk & turn and three clues on the 1-leg-stand standardized field sobriety tests providing indicators of alcohol impairment. Having observed Pikop behind the wheel of a vehicle with the engine running, Helm arrested Pikop for APC at 4:29 AM. Pikop's hands were cuffed behind his back and he was seated in the back seat of the patrol vehicle. His mouth was checked at 4:32 AM and found to be clear. Pikop was provided the statutory implied consent advisory and consented to a chemical breath test. He was transported to the Cass County Jail. Officer Emily Schares (Schares), who is certified to administer the Intoxilyzer 8000, was requested to conduct the test. Pikop had nothing to eat, drink, or smoke for at least 20 minutes prior to the chemical breath test. Schares administered the Intoxilyzer 8000 in accordance with the approved method obtaining results for Mr. Pikop showing .099 at 4:58 AM on an installed device. Schares signed the test record and delivered it to Helm. Helm noted the results on the Report and Notice and issued the driver's copy to Pikop. The DLD copy of the Report and Notice and a certified copy of the test record were mailed to NDDOT within five days of issuance. Petitioner's Counsel offered Exhibit 16 (letter to Glenn Jackson from Mark Nelson dated February 12, 2019) and Exhibit 17 (resignation letter of Glenn Jackson dated May 3, 2019) which were admitted into evidence. Officer Helm's testimony was credible and not impeached.

CONCLUSIONS OF LAW:

Upon finding Petitioner Pikop at 4:14 AM asleep behind the wheel of a vehicle reported by a nearby resident to have been parked with the engine running since 2:30 PM, Officer Helm had a reasonable and articulable basis to conduct a welfare check. Even without the results of the on-site breath screening test, Helm had reasonable grounds to believe that Pikop had been driving or was in actual physical control of a vehicle while under the influence of intoxicating liquor in violation of NDCC 39-08-01. Pikop admitted consuming alcohol with dinner. The evidence in the record establishes by the preponderance of the evidence that the approved method to operate the Alco-Sensor was followed. *Buchholz v. N.D. Dep't of Transportation*, 2002 ND 23 (approved Method does not require test operators

to check drivers' mouths prior to administering the test). In *State v. Stroh*, 2011 ND 139, the North Dakota Supreme Court upheld an APC conviction where the Officer was aware that the driver had chewing tobacco in his pocket and the driver was left alone twice within 20 minutes of the chemical breath test. Pikop was arrested for APC, was provided the statutory implied consent advisory, and consented to a chemical breath test. The test was fairly administered in accordance with Chapter 39-20 and the approved method. The test results show that Pikop had an alcohol concentration of at least eight one hundredths of one percent but less than eighteen one hundredths of one percent within two hours of APC. Ninety-one days is the appropriate period of license suspension for a driver with an alcohol concentration of .08 or greater with no prior suspension for driving with a BAC over the legal limit of record within seven years.

Petitioner's Counsel argued that Pikop was unlawfully seized citing *Cady v. Dombrowski*, 413 U.S. 433 (1973). A person alleging his rights have been violated under the Fourth Amendment has an initial burden of establishing a prima facie case of illegal seizure. *City of Fargo v. Sivertson*, 1997 ND 204. Pikop did not offer any evidence at the administrative driver's license hearing on this issue. Counsel argued a GPS tracking case and a tire chalking case to argue that Helm committed a trespass when he touched the vehicle to wake Pikop up. Unlike the circumstances of those two unrelated scenarios, Helm had no contact with Pikop until 4:15 AM, when he observed him unconscious behind the wheel of a running vehicle reported to have been parked at that residential location since 2:30 AM. Community caretaking may justify law enforcement contact, including stops, without reasonable suspicion of unlawful conduct. *State v. Glaesman*, 545 N.W.2d 178 (N.D. 1996)(pickup truck stuck in the snow - driver of second vehicle unhooking chain connected to pickup). Only after making observations to confirm the report received did Helm take incremental measures to check on Pikop. *City of Fargo v. Egeberg*, 2000 ND 159. The progression of Helm's investigation was reasonable, advancing only as more evidence of impairment became apparent. If an officer learns something during a caretaking encounter that causes a reasonable suspicion or probable cause, the encounter can lead to further investigation, seizure, and even arrest. *Rist v. NDDOT*, 2003 ND 113 (deputy could not be sure whether Rist was simply sleeping in his vehicle or in need of assistance). If the police find a person unconscious or disoriented and incoherent in a vehicle, it is reasonable for them to enter the vehicle for the purpose of giving aid to the person in distress and of finding information bearing upon the cause of his condition. *City of Mandan v. Gerhardt*, 2010 ND 112 ("it would have been unreasonable for the officer not to check and determine if the occupant of the pickup was in need of assistance"). In Pikop's situation, Helm did not enter the vehicle but merely knocked or rocked the vehicle to wake him up. Knocking on window is not a seizure. *State v. Schneider* 2014 ND 198; *Richter v. N.D. Dep't of Transportation*, 2010 ND 150. This is not a trespass on a person's home and it is not a stop of a moving vehicle. This was not a quick catnap at a rest area. Sleeping in a running vehicle parked in a residential area at 4:14 AM, Pikop's privacy interests were minimal. *Wibben v. ND State Highway Commissioner*, 413 N.W.2d 329 (N.D. 1987). Constitutional protections afforded in criminal proceedings are not applicable in administrative license suspension proceedings. In *Holte v. ND State Highway Comm.*, 436 N.W.2d 250 (ND 1989), the Court held: "The benefit of using reliable information of intoxication in license revocation proceedings, even when that evidence is inadmissible in criminal proceedings, outweighs the possible benefit of applying the exclusionary rule to deter unlawful conduct." The exclusionary rule does not apply to civil administrative license suspension proceedings. *Beylund v. Levi*, *Wojan v. Levi*, 2017 ND 30. Officer Helm's actions were reasonable and did not constitute a seizure that would require dismissal of the proposed 91-day suspension.

The argument that the 91-day administrative license suspension must be dismissed theorizing that the handwritten letter "s" in the upper right corner of the Report and Notice (Exhibit 1, page 2) might be a secret message is without merit.

CASE ANALYSIS:

Petitioner's Counsel argued that the administrative driver's license suspension must be dismissed because DLD Director Glenn Jackson was on administrative leave when his signature was placed on page 1 of Exhibit 1 certifying the hearing file. The statute does not require a handwritten signature by the Director for a document to be considered admissible in evidence. NDCC section 39-20-05(4) ("At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation."). A similar argument was reviewed by the North Dakota Supreme Court when it was pointed out that the Director's signature was exactly the same on every hearing file suggesting that it was a rubber stamp or machine signature. In *State v. Obrigewitch*, 356 N.W.2d 105 (N.D. 1984), the Court explained:

The issue raised here is whether or not a script signature made by a rubber stamp is sufficient for authentication purposes to comply with the rules of evidence, specifically Rule 902, N.D.R.Ev. Generally, in the absence of a statute providing otherwise, a signature may be affixed to a document by writing by hand, by printing, by stamping, or by other means. ... The evidentiary rule requiring authentication and certification of records is designed to avert the inconvenience and occasional impossibility of producing original documents in court. By allowing certified copies of records to be admissible, the trial of cases is expedited. North Dakota does not have a specific statute requiring signatures to be made in any certain form. We conclude that the rubber-stamp certification and signature as used in this case is sufficient to meet the evidentiary requirements of Rule 902, N.D.R.Ev. By so concluding we intend to further the policy of avoiding waste of time and money that would result in requiring manual signing of every record certified from the Drivers License Division.

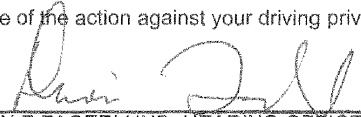
In this case *Obrigewitch* failed to present any evidence going to the issue of genuineness of the State's exhibits but instead attacked only the method of certification of those documents by the Drivers License Division. Thus *Obrigewitch* failed to rebut the presumption of authenticity for public records found in Rule 902, N.D.R.Ev. Furthermore, we conclude that the State has met the burden of proof in Rule 901(a), N.D.R.Ev., which provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." We conclude that the trial judge did not commit error by allowing admission of the order of suspension and the driving record.

Id. (citations omitted). Pikop did not offer any evidence to challenge the authenticity of the documents certified by Exhibit 1, page 1.

DECISION: SUSPENDED for 91 Days


NOTICE: If this decision is to suspend or revoke, it constitutes the official notice of the action against your driving privileges by the NDDOT Director as of this date.

Date: 5/16/2019


DWAIN E FAGERLUND, HEARING OFFICER
NDDOT
1951 N. WASHINGTON ST
GRAND FORKS, ND 58203
(701) 787-6590

TEMPORARY PERMIT: This document is not valid as a temporary permit.
Reason: Notice effective 3 days from requested mailing.

Date: 5/16/2019


Signature of Hearing Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on 05/16/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

MARK A FRIESE, ATTORNEY AT LAW, PO BOX 1389, FARGO, ND 58107, mfriese@vogellaw.com

OFFICER JESSE D. HELM, #472, FARGO POLICE DEPT, 222 NORTH FOURTH STREET, FARGO, ND 58102, JHELM@FARGOND.GOV

DAVID ALAN PIKOP, 1500 BAY RD APT 2745, MIAMI BEACH, FL 331393252

DAVID ALAN PIKOP, 1688 WEST AVE APT 303, MIAMI BEACH, FL 331392366


Signature of Hearing Officer

CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 5 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 5/2/2019.

A handwritten signature in black ink, appearing to read 'G. Jackson', is written over a horizontal line.

Glenn Jackson, Division Director
Drivers License Division
Department of Transportation, Bismarck, ND

REPORT AND NOTICE UNDER CHAPTER 39-20 OR 39-06.2 NDCC

North Dakota Department of Transportation, Drivers License Division

SFN 9362



Date of Occurrence 04/26/2019		Time of Driving/Physical Control/Crash 1:09 AM		Time of Arrest/Lawfully Detained 1:31 AM		Citation Number 6012700280	
County of Occurrence McKenzie			City of Occurrence			Enforcement Agency MCKENZIE COUNTY SHERIFF	
Location of Arrest or Where Detained HIGHWAY 85 MILE MARKER 128							
Name - Last GASS		First DILLAN		Middle BERNARD		ICN	
Residence Address 523 3RD AVE SE			City DICKINSON		State ND	Zip Code 58601	
DLN GAS919857				State ND	Date of Birth 12/29/1991		
Class A	Endorsement	Rest Code K	Sex M	Area Code & Phone Number			

RECEIVED
DRIVERS LICENSE
DIVISION
2019 APR 29 AM 11:05
POSTMARK
UNREADABLE

On the above date, there existed reasonable grounds to believe that the above-named person was operating:

☒ Non-Commercial motor vehicle

NO DL ENCLOSED

The above named person:

☒ Was advised by law enforcement of the implied consent advisory for a screening test required by NDCC Section 39-20-14.

SCREENING TEST ADVISORY:
I must inform you that North Dakota law requires you to take a screening test to determine whether you are under the influence of alcohol. Refusal to submit to a screening test may result in revocation of your driving privileges for at least 180 days and up to 3 years. Do you consent to take the screening test I am requesting?

☒ Was lawfully arrested and informed that he or she will be charged with the offense of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.

Was advised by law enforcement of the implied consent advisory for a chemical test as required by NDCC Section 39-20-01.

CHEMICAL TEST:

☒ **BREATH OR URINE**
I must inform you that North Dakota Law requires you to take a chemical breath or urine test to determine whether you are under the influence of alcohol or drugs. Refusal to take a chemical breath or urine test may result in the revocation of your driving privileges for a minimum of 180 days and up to 3 years. I must also inform you that refusal to take a chemical breath or urine test is a crime punishable in the same manner as driving under the influence. Do you consent to take the chemical breath/urine test I am requesting?

☒ Refused under NDCC, Section 39-20-01 or 39-06.2-10.2 a chemical test or tests of ☒ BREATH

TEMPORARY OPERATOR'S PERMIT: (To be issued to driver. Mark valid or not valid.) ND License/Permit attached? ☒ Yes

This permit is:

☒ **VALID** as a Temporary Operator's Permit for 25 days from date of issue (unless terminated earlier by hearing officer)

☐ **NOT VALID** as a Temporary Operator's Permit because:

☐ Non-Licensed Driver

☐ License Suspended/Revoked

☐ Current permit under NDCC 39-20 or 39-06.2

☐ THIS PERMIT IS NOT VALID FOR OPERATING A CMV UNTIL MM/DD/CCYY

COMMERCIAL: Refusal to submit to onsite screening or chemical test(s) requested by a law enforcement officer will result in being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under NDCC 39-06.2-10.

I certify that I personally ☒ Issued this Temporary Operator's Permit to the driver on **04/26/2019**

Officer Name and Badge or ID Number MCCULLOUGH, NOAH 3427	Signature of Officer /S/ NOAH MCCULLOUGH
---	--

OFFICER'S STATEMENT OF PROBABLE CAUSE: (Check appropriate boxes and explain.)

Reasonable suspicion to stop or reason to lawfully detain:

☒ erratic driving

☒ traffic violation

☒ Explain

86 MPH IN A POSTED 65 MPH ZONE. VEHICLE TRAVELLED OVER FOG LINE AND RUMBLE STRIPS.

Probable cause to arrest/lawfully detain:

☒ odor of alcoholic beverage

☒ poor balance

☒ failed field sobriety test(s)

☒ Explain

HGN 6/6. WAT 4/8. OLS 3/4. PBT 0.059. DRIVER ADMITTED TO DRINKING. BLOOD SHOT WATERY EYES

I personally certify as a law enforcement officer that this report is true and correct to the best of my knowledge at the time of completing this report.

Signature of Officer /S/ NOAH MCCULLOUGH	Officer Name and Badge or ID Number (Please Print) MCCULLOUGH, NOAH 3427	Dated (MM/DD/CCYY) 04/26/2019
--	--	---

From: DOT, Drivers License Hearing Request
Sent: Monday, April 29, 2019 10:09 AM
To: DOT, Drivers License Hearing Request
Subject: DL Administrative Hearing Request for Dillan Gass

Importance: High

This notification verifies that your request was successfully submitted. Retain this notification for your records.

Contact Name: Dillan Gass

Mailing Address:

Phone Number: 701-235-8000

Email Address: mandy@okeeffeatorneys.com

Secondary Email Address:

Date of Birth: 12/29/1991

Drivers License Number: GAS919857

Attorney Name: Tatum O'Brien

Attorney Phone: 701-235-8000

Date of Offense:

Reason for Request: DUI

05/01/19

DRIVERS LICENSE DIVISION
CENTRAL RECORD

DL3-006-M1
DLN DATE: 05/18/2015

DRIVER ID: GAS-91-9857 OS: ND SSN #: XXX-XX-4365

PREV ID: A00-17-0542

NAME: GASS,DILLAN BERNARD
FIRST NAME: DILLAN
MIDDLE NAME: BERNARD
LAST NAME: GASS
SUFFIX:

R/A: 523 3RD AVE SE

CITY DICKINSON

CO 45 ZIP 58601-6014

DOB: 12/29/1991 SEX: M WT: 165 HT: 6-01 HAIR: BRO EYES: HAZ DONOR:
EXP: 12/29/2023 STATUS: LI CLASS: A RESTR: K

POINTS: 006 REDUCED: 03/02/19 REVIEW DATE: 00/00/00 SR-22 REQ'D UP: 00/00/00
PERMIT/LICENSE:

10/03/11	KNOWLDG TEST	CLASS	D	WAIVED	SITE 85	EX 134
10/03/11	ROAD TEST	CLASS	D	WAIVED	SITE 85	EX 134
05/05/15	KNOWLDG TEST	CLASS	B	PASSED	SITE 85	EX 160
05/07/15	KNOWLDG TEST	CLASS	A	PASSED	SITE 85	EX 160
05/18/15	KNOWLDG TEST-AIR BRAKES			PASSED	SITE 88	EX 144
05/18/15	INSTRUCTION CL A		11/14/15		SITE 88	EX 144
01/02/18	RENEWAL LICENSE	CLASS	D		SITE 85	EX 174
03/26/18	KNOWLDG TEST - COMBO	CLASS	A	FAILED	SITE 80	EX 168
03/26/18	KNOWLDG TEST - GK	CLASS	B	PASSED	SITE 80	EX 168
03/27/18	KNOWLDG TEST - COMBO	CLASS	A	FAILED	SITE 85	EX 151
03/29/18	KNOWLDG TEST - COMBO	CLASS	A	PASSED	SITE 80	EX 168
03/29/18	KNOWLDG TEST-AIR BRAKES			PASSED	SITE 80	EX 168
03/29/18	INSTRUCTION CL A		09/25/18		SITE 80	EX 168
04/23/18	ROAD TEST-AIR BRAKES			FAILED	SITE 85	EX 174
09/27/18	INSTRUCTION CL A		03/26/19		SITE 85	EX 174
01/23/19	ROAD TEST - VI	CLASS	A	PASSED	SITE 86	EX 184
01/23/19	ROAD TEST - BCS	CLASS	A	PASSED	SITE 86	EX 184
01/23/19	ROAD TEST	CLASS	A	PASSED	SITE 86	EX 184
01/23/19	ROAD TEST-AIR BRAKES			PASSED	SITE 86	EX 184
01/23/19	COMM. DUP. LICENSE	CLASS	A		SITE 86	EX 184

SPEXS ACTIVITY: 05/18/15 ADD RECORD TO SPEXS

VIOLATIONS/CONVICTIONS

6995233
VIOL 1 03/02/18 OFF 02/21/18 SPEEDING 102/75 PT 010 CT 45 006 4 030218
12700280
ADM 5 04/26/19 REFUSAL 050119

VIOLATIONS/CONVICTIONS

06674889
VIOL 3 06/06/13 OFF 05/15/13 COMM MOTOR VEHICLE VIOL PT 000 CT 45 006 2 060713
94500386
VIOL 1 03/17/15 OFF 02/24/15 SPEEDING 070/55 PT 001 CT 45 006 2 032015
6820347
VIOL 1 05/15/15 OFF 04/19/15 STOP/STAND, PARK ON HWY PT 002 CT 09 001 2 052115
4500523
VIOL 1 08/01/16 OFF 07/19/16 SAFETY BELT REQUIRED PT 000 CT 45 006 4 080116
6995235
VIOL 2 03/02/18 OFF 02/21/18 SAFETY BELT REQUIRED PT 000 CT 45 006 4 030218
60101253
VIOL 1 08/15/18 OFF 08/09/18 SPEEDING 075/65 PT 000 CT 01 029 4 081518

HEARING NOTICES

HEAR 5 04/26/19 AWAITING HEARING OUTCOME REFUSED CHEMICAL TEST PER 180 D
HEAR 6 04/26/19 AWAITING HEARING OUTCOME ND REFUSAL-CDL HOLDER PER 001 Y

Page 4 of 5

*

05/01/19 DRIVER ID: GAS-91-9857 STATUS: LI DOB: 12/29/1991 DL3-006-M1

CRASHES

CRS 1	10/09/09	PROP. DAMAGE RPT 00/00/00	CRASH E 199478	DAMAGES	1600	1500
CRS 1	10/25/09	PROP. DAMAGE RPT 00/00/00	CRASH 191019	DAMAGES	5000	

AKA DATA:

O/S: SD DLN: 01154964

NOTICE OF ADMINISTRATIVE HEARING BEFORE THE NDDOT DIRECTOR

North Dakota Department of Transportation, Legal Division

EXHIBIT 2

Name of Petitioner GASS, DILLAN BERNARD		Hearing Date 05/20/2019	Operator's License Number GAS-91-9857	8084
Address of Petitioner 523 3RD AVE SE, DICKINSON, ND 586016014		Attorney TATUM O'BRIEN	County of Occurrence MCKENZIE	
Date of Birth 12/29/1991	Date of Occurrence 4/26/2019	Date of Temporary Operator's Permit 4/26/2019	Issuing Agency MCKENZIE CO. SHERIFF'S OFFICE	

NOTE: If you will need an accommodation for a disability, or if you speak a foreign language and need an interpreter, please contact the Hearing Officer for assistance.

The administrative hearing regarding the suspension or revocation of the Petitioner's North Dakota driving privileges for a period of **180 Days** will be held on **May 20, 2019 at 3:00 PM (Central Time)** in the NDDOT - ADMINISTRATIVE HEARING OFFICE, 722 13TH AVE E, STE 102, WEST FARGO, ND 58078.

In accordance with North Dakota Century Code section 39-20-05. The issues to be considered and decided at the administrative hearing are:


Revocation hearing for refusing to submit to an alcohol concentration or drug 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.

Admissibility of evidence will be determined in accordance with the North Dakota Rules of Evidence. The hearing will be electronically recorded. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the Hearing Officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available.

Temporary Permit: If the Report and Notice form included a valid 25-day permit, then this Notice of Hearing extends the 25-day permit to the hearing date and time.

Dated: 05/03/2019


JOHN ALLEN, HEARING OFFICER
NDDOT ADMINISTRATIVE HEARING OFFICE, 722
13TH AVE E, STE 102, WEST FARGO, ND 58078
(701) 239-8946

CERTIFICATE OF SERVICE

The undersigned certifies that on 05/03/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

TATUM O'BRIEN, ATTORNEY AT LAW, TATUM@OKEEFFEATTORNEYS.COM, MANDY@OKEEFFEATTORNEYS.COM
DEPUTY NOAH MCCULLOUGH, #3427, MCKENZIE CO. SHERIFF'S OFFICE, 1201 12TH STREET SE, SUITE B, WATFORD CITY,
ND 58854, NMCCULLOUGH@CO.MCKENZIE.ND.US
DILLAN BERNARD GASS, 523 3RD AVE SE, DICKINSON, ND 586016014


Signature of Hearing Officer

NOTICE OF INFORMATION

North Dakota Department of Transportation, Legal Division

EXHIBIT 3


Name of Petitioner GASS, DILLAN BERNARD		Hearing Date 5/20/19	Operator's License Number GAS-91-9857	8084
Address of Petitioner 523 3RD AVE SE, DICKINSON, ND 586016014		Attorney TATUM O'BRIEN	County of Occurrence MCKENZIE	
Date of Birth 12/29/91	Date of Occurrence 4/26/19	Date of Temp Operator's Permit 4/26/19	Issuing Agency MCKENZIE CO. SHERIFF'S OFFICE	

Enclosed is a copy of Exhibit 1, which is the hearing file prepared by NDDOT Drivers License Division. Exhibit 1 contains regularly kept records of the NDDOT Director that will be offered into evidence regarding the issues to be determined at the hearing.

Regularly kept records received by NDDOT from the State Crime Laboratory may be offered as foundational evidence concerning testing for alcohol concentration. Copies of these documents can be inspected during business hours, by prior appointment, at the NDDOT central office in Bismarck, at NDDOT district offices in Fargo, Grand Forks, Devils Lake or at the office of the county recorder or other official designated by the county commissioners. Documents from the State Crime Laboratory can be found at <http://www.ag.nd.gov/CrimeLab/Lab.htm>.

The arresting officer will be requested to testify. Other witnesses may also testify. The petitioner must pay all witness fees and expenses for all witnesses subpoenaed at the petitioner's request.

This hearing is being conducted by telephone by agreement with the Petitioner and/or the Petitioner's attorney.


JOHN T. ALLEN, HEARING OFFICER
NDDOT ADMINISTRATIVE HEARING OFFICE, 722 13TH AVE E, ST
102, WEST FARGO, ND 58078
(701) 239-8946

CERTIFICATE OF SERVICE

The undersigned certifies that on 5/3/19 a true and correct copy of this document and Exhibit 1 was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

TATUM O'BRIEN, ATTORNEY AT LAW, TATUM@OKEEFFEATTORNEYS.COM, MANDY@OKEEFFEATTORNEYS.COM
DEPUTY NOAH MCCULLOUGH, #3427, MCKENZIE CO. SHERIFF'S OFFICE, 1201 12TH STREET SE, SUITE B, WATFORD CITY,
ND 58854, NMCCULLOUGH@CO.MCKENZIE.ND.US


Signature of Hearing Officer

CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 5 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 4/30/2019.

A handwritten signature in black ink, appearing to read 'G. Jackson', is written over a horizontal line.

Glenn Jackson, Division Director
Drivers License Division
Department of Transportation, Bismarck, ND

REPORT AND NOTICE UNDER CHAPTER 39-20 OR 39-06.2 NDCC

North Dakota Department of Transportation, Drivers License
SFN 9362 (6-2017)



RECEIVED
DRIVERS LICENSE
DIVISION
2019 APR 24 AM 10:18

Date of Occurrence 04/20/19	Time of Driving/Physical Control/Crash 2194 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Time of Arrest/Lawfully Detained 2213 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Citation Number 5744320
County of Occurrence Barnes	City of Occurrence Valley City	Enforcement Agency Valley City PD	
Location of Arrest or Where Detained 900 Bill 8th Ave SW			
Last Name Kolstad	First Name Kenton	Middle Name Evans-McConnell	ICN -
Residence Address 408 Roberts St N # 301	City Fargo	State ND	ZIP Code 58102
DLN 1KOL-87-2499	State ND	Date of Birth 12/10/87	
Class D	Endorsement -	Rest Code -	Sex M
Area Code & Phone Number 701-272-6730			

On the above date, there existed reasonable grounds to believe that the above-named person was operating:

- ☒ Non-Commercial motor vehicle
☐ Commercial motor vehicle (CMV)
☐ CMV transporting hazardous materials in violation of NDCC Section 39-08-01 or 39-06.2-10.2

The above named person:

- ☒ Was advised by law enforcement of the implied consent advisory for a screening test required by NDCC Section 39-20-14.
☐ Refused onsite screening test (NDCC Section 39-20-14 or 39-06.2-10.2)
☒ Was lawfully arrested and informed that he or she will be charged with the offense of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.
☐ Was lawfully detained and officer has probable cause to believe that the driver was operating a CMV, while having alcohol or drugs in his or her system.
☐ Was lawfully detained and officer has probable cause to believe that the driver was under twenty-one (21) years of age, while having alcohol in his or her system.
☒ Was advised by law enforcement of the implied consent advisory for a chemical test as required by NDCC Section 39-20-01.
☐ Refused under NDCC, Section 39-20-01 or 39-06.2-10.2 a chemical test or tests of ☐ BLOOD ☐ BREATH ☐ URINE
☒ Provided specimen of ☐ BLOOD ☒ BREATH ☐ URINE Time Obtained **2248** ☐ AM ☒ PM Test Results **0.121**
☐ Additional specimen of ☐ BLOOD ☐ BREATH ☐ URINE ☐ REFUSAL Time Obtained ☐ AM ☐ PM Test Results ☐

TEMPORARY OPERATOR'S PERMIT: (To be issued to driver. Mark valid or not valid.) ND License/Permit attached? ☐ Yes ☒ No ☐ Lost

This permit is:

- ☒ **VALID** as a Temporary Operator's Permit for 25 days from date of issue (unless terminated earlier by hearing officer)
☐ **NOT VALID** as a Temporary Operator's Permit because:
☐ Non-Licensed Driver
☐ License Suspended/Revoked
☐ Current permit under NDCC 39-20 or 39-06.2

This permit is NOT valid for operating a CMV until ☐ MM/DD/CCYY

COMMERCIAL: Refusal to submit to onsite screening chemical test(s) requested by a law enforcement officer will result in being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under NDCC 39-06.2-10.

I certify that I (check one) ☒ Issued ☐ Mailed this Temporary Operator's Permit to the driver on MM/DD/CCYY **04/20/2019**

Name of Officer/Badge or ID Number (Please Print)

Christopher Olson / 1606

Signature of Officer

OFFICER'S STATEMENT OF PROBABLE CAUSE: (Check appropriate boxes and explain.)

Reasonable suspicion to stop or reason lawfully detained:

- ☐ erratic driving Explain: ☐ traffic violation Explain: **speeding - 37 mph in 25 mph zone**
☐ crash ☐ already stopped

Probable cause to arrest/lawfully detain:

- ☒ odor of alcoholic beverage Explain: **odor of alcoholic beverage**
☐ poor balance **- bloodshot watery eyes**
☒ failed field sobriety test(s) **- 4/6 NGN**
☒ failed screening test **- 3/8 WAT, 2/4 OLS**
- failed screening test

I personally certify as a law enforcement officer that this written report is true and correct to the best of my knowledge at the time of completing this report.

Signature of Officer

Name of Officer/Badge or ID Number (Please Print)

Christopher Olson / 1606

Dated (MM/DD/CCYY)

04/20/2019

DRIVERS LICENSE DIVISION

Page 2 of 5

Intoxilyzer Test Record and Checklist
NDOAG Crime Lab. Div., Bismarck, ND 58501

CMI, Inc. Intoxilyzer Alcohol Analyzer
North Dakota Model 8000 SN 80-006679
Location = VALI 8164.14.00 09/16
04/20/2019 22:40

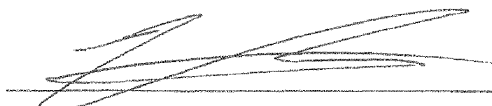
Test	AC	Time
01 Diagnostic	OK	22:42
02 Room Air	0.000	22:42
03 Subject Test 1	0.126	22:43
04 Room Air	0.000	22:45
05 Std. Gas	0.081	22:46
06 Room Air	0.000	22:47
07 Subject Test 2	0.121	22:48
08 Room Air	0.000	22:49
09 Reported AC	0.121	22:48

Difference OK
No RFI Detected

Sub Name = KOLSTAD, KENTON EVANS-MCCONNELL
Sub DOB = 12/10/1987
Sub Sex = Male Weight = 145
Test = DUI Cit = 5744320
Dr. Lic. = ND/KOL872499
Lot No = 19817080A4
Cyl No = 6
Expiration Date = 09/05/2019
County = 02 Oper No. = 131795

20 minute waiting period ascertained? Y
Clean Mouthpiece used and disposed? Y
Clean Mouthpiece used and disposed? Y


I followed the Approved Method and the
instructions displayed by the Intoxilyzer
in conducting this test.


Operator Signature
CHRISTOPHER OLSON

Remarks:

Form 106-I8000

I CERTIFY THAT THIS IS A TRUE AND
CORRECT PHOTOCOPY OF THE
ORIGINAL RETAINED BY THIS OFFICER
UNTIL COURT.

SIGNATURE 
DATE 04/20/19
TIME 7754

2019 APR 24 AM 10:18
RECEIVED
DRIVERS LICENSE
DIVISION

RECEIVED IN
ENVELOPE POSTMARKED
APR 22 2019

From: DOT, Drivers License Hearing Request
Sent: Monday, April 29, 2019 8:58 AM
To: DOT, Drivers License Hearing Request
Subject: DL Administrative Hearing Request for Kenton Kolstad

Importance: High

This notification verifies that your request was successfully submitted. Retain this notification for your records.

Contact Name: Kenton Kolstad

Mailing Address:

Phone Number: 701-232-7944

Email Address: officemanager@aalandlaw.com

Secondary Email Address:

Date of Birth: 12/10/1987

Drivers License Number: KOL872499

Attorney Name: Jesse N. Lange

Attorney Phone: 701-232-7944

Date of Offense: 4/20/2019 12:00:00 AM

Reason for Request: I have been retained to represent Mr. Kolstad on the charge of DUI. An administrative hearing regarding the driving privileges of Kenton Evans-Kolstad is hereby requested. A formal request will be sent via U.S. mail.

04/30/19

DRIVERS LICENSE DIVISION
CENTRAL RECORD

DL3-006-M1

DRIVER ID: KOL-87-2499 OS: ND SSN #: XXX-XX-7457

NAME: KOLSTAD, KENTON EVANS MCCONNELL
FIRST NAME: KENTON
MIDDLE NAME: EVANS-MCCONNELL
LAST NAME: KOLSTAD
SUFFIX:

R/A: 408 ROBERTS ST N APT 301 CITY FARGO CO 09 ZIP 58102-4622

DOB: 12/10/1987 SEX: M WT: 145 HT: 5-11 HAIR: BLK EYES: GRN DONOR: Y
EXP: 12/10/2019 STATUS: LI CLASS: D RESTR:

POINTS: 000 REDUCED: 00/00/00 REVIEW DATE: 00/00/00 SR-22 REQ'D UP: 00/00/00

PERMIT/LICENSE:

10/27/14	KNOWLDG TEST	CLASS	D	WAIVED	SITE 54	EX 027
10/27/14	ROAD TEST	CLASS	D	WAIVED	SITE 54	EX 027
10/27/14	LICENSE	CLASS	D		SITE 54	EX 027
10/27/14	PREVIOUS DOCUMENT		MN		SITE 54	EX 027
11/15/16	DUPLICATE LICENSE	CLASS	D		SITE 58	EX 071

VIOLATIONS/CONVICTIONS

CONV: 11/01/16 OFF: 09/12/16 S93 SPEEDING**** CMV: N HAZ: N JUR: MN
CONV: 03/07/17 OFF: 02/10/14 S93 SPEEDING**** CMV: N HAZ: N JUR: MN
5744320
ADM 5 04/20/19 IMPLIED CONSENT 042519

VIOLATIONS/CONVICTIONS

40901330
TOL 1 01/04/16 OFF 12/22/15 SPEEDING 040/30 PT 000 CT 09 001 3 010416
80901729
TOL 1 09/26/16 OFF 08/27/16 SPEEDING 040/30 PT 000 CT 09 001 3 092616

HEARING NOTICES

HEAR 5 04/20/19 AWAITING HEARING OUTCOME BAC OVER LEGAL LIMITS PER 091 D

CRASHES

CRS 1 05/25/15 PROP. DAMAGE RPT 00/00/00 CRASH E 327531 DAMAGES 6500 5000

AKA DATA:

/S: MN DLN: C063058207409

CERTIFICATION

The undersigned, having legal custody, certifies that the information contained herein, consisting of 2 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 5/2/2019.



Glenn Jackson, Division Director
Drivers License Division
Department of Transportation, Bismarck, ND





AALAND LAW OFFICE, LTD.

ATTORNEYS AT LAW

Licensed in North Dakota and Minnesota

CASH H. AALAND
JESSE N. LANGE
DANIEL E. HOPPER
JENNIFER A. BRAUN
RACHEL M. GEHRIG
JESSICA L. BUSSE

P.O. BOX 1817
415 11th Street South
Fargo, North Dakota 58107

Phone: (701) 232-7944
(701) 232-8326
Fax: (701) 232-4037

April 29, 2019

Department of Transportation
Drivers License Division
608 E. Boulevard Ave.
Bismarck ND 58505-0700

RE: Kenton Evans-McConnell Kolstad
Operator's License #: KOL 87 2499 ND
DOB: 12/10/1987
Date of Alleged DUI: 04/20/2019

Dear Sir/Madam:

I have been retained to represent Mr. Kolstad on the charge of DUI. An administrative hearing regarding the driving privileges of Kenton Evans-McConnell Kolstad is hereby requested. Mr. Kolstad asks that this letter be accepted as a request and that he be afforded the right to confront and cross-examine each and every person furnishing evidence or information to the hearing officer. Additionally, Mr. Kolstad demands an opportunity to review every writing, note, video or other object used by the Department's witness(s) to refresh their recollection at or prior to the hearing. Please contact my office to schedule a time.

Please note that Mr. Kolstad will not waive nor will he consent to the waiver of the North Dakota Rules of Evidence.

Sincerely,


Jesse N. Lange

JNL/dmb

RECEIVED
DRIVERS LICENSE
DIVISION
2019 MAY -1 AM 10:50
RECEIVED IN
ENVELOPE POSTMARKED
APR 29 2019

7

NOTICE OF ADMINISTRATIVE HEARING BEFORE THE NDDOT DIRECTOR

North Dakota Department of Transportation, Legal Division

EXHIBIT 2

Name of Petitioner KOLSTAD, KENTON EVANS-MCCONNELL		Hearing Date 05/13/2019	Operator's License Number KOL-87-2499	8069
Address of Petitioner 408 ROBERTS ST N APT 301, FARGO, ND 581024622		Attorney JESSE LANGE	County of Occurrence BARNES	
Date of Birth 12/10/1987	Date of Occurrence 4/20/2019	Date of Temporary Operator's Permit 4/20/2019	Issuing Agency VALLEY CITY POLICE DEPT	

NOTE: If you will need an accommodation for a disability, or if you speak a foreign language and need an interpreter, please contact the Hearing Officer for assistance.

The administrative hearing regarding the suspension or revocation of the Petitioner's North Dakota driving privileges for a period of **91 Days** will be held on **May 13, 2019 at 9:30 AM (Central Time)** in the BARNES COUNTY COURTHOUSE, DES BASEMENT CONF RM, 230 4TH ST NW, VALLEY CITY, ND 58072.

In accordance with North Dakota Century Code section 39-20-05. The issues to be considered and decided at the administrative hearing are:

Suspension hearing on alcohol concentration test results:

1. Whether the arresting 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 in violation of N.D.C.C. section 39-08-01 or equivalent ordinance;
2. Whether the person was placed under arrest;
3. Whether the person was tested in accordance with N.D.C.C. section 39-20-01 and, if applicable, section 39-20-02; and
4. Whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent but less than eighteen one-hundredths of one percent by weight.

Admissibility of evidence will be determined in accordance with the North Dakota Rules of Evidence. The hearing will be electronically recorded. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the Hearing Officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available.

Temporary Permit: If the Report and Notice form included a valid 25-day permit, then this Notice of Hearing extends the 25-day permit to the hearing date and time.

Dated: 05/02/2019


DWAIN E FAGERLUND, HEARING OFFICER
NDDOT, 1951 N. WASHINGTON ST, GRAND FORKS,
ND 58203
(701) 787-6590

CERTIFICATE OF SERVICE

The undersigned certifies that on 05/02/2019 a true and correct copy of this document was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

JESSE N LANGE, ATTORNEY AT LAW, PO BOX 1817, FARGO, ND 58107, OFFICEMANAGER@AALANDLAW.COM
OFFICER CHRISTOPHER OLSON, #1606, VALLEY CITY POLICE DEPT, 216 2ND AVENUE NORTHEAST, VALLEY CITY, ND 58072
KENTON EVANS-MCCONNELL KOLSTAD, 408 ROBERTS ST N APT 301, FARGO, ND 581024622


Signature of Hearing Officer

NOTICE OF INFORMATION

North Dakota Department of Transportation, Legal Division

EXHIBIT 3

Name of Petitioner KOLSTAD, KENTON EVANS-MCCONNELL		Hearing Date 5/13/19	Operator's License Number KOL-87-2499	8069
Address of Petitioner 408 ROBERTS ST N APT 301, FARGO, ND 581024622		Attorney JESSE LANGE	County of Occurrence BARNES	
Date of Birth 12/10/87	Date of Occurrence 4/20/19	Date of Temp Operator's Permit 4/20/19	Issuing Agency VALLEY CITY POLICE DEPT	

Enclosed is a copy of Exhibit 1, which is the hearing file prepared by NDDOT Drivers License Division. Exhibit 1 contains regularly kept records of the NDDOT Director that will be offered into evidence regarding the issues to be determined at the hearing.

Regularly kept records received by NDDOT from the State Crime Laboratory may be offered as foundational evidence concerning testing for alcohol concentration. Copies of these documents can be inspected during business hours, by prior appointment, at the NDDOT central office in Bismarck, at NDDOT district offices in Fargo, Grand Forks, Devils Lake or at the office of the county recorder or other official designated by the county commissioners. Documents from the State Crime Laboratory can be found at <http://www.ag.nd.gov/CrimeLab/Lab.htm>.

The arresting officer will be requested to testify. Other witnesses may also testify. The petitioner must pay all witness fees and expenses for all witnesses subpoenaed at the petitioner's request.

The Intoxilyzer 8000 forms found at:

<https://attorneygeneral.nd.gov/sites/ag/files/documents/Intoxilyzer-Devices/InstallRepairMaint/2017-05-08%20Installation%20and%20Repair%20Checkout.pdf>

will be offered as Exhibit 7 at the administrative hearing.



DWAIN E FAGERLUND, HEARING OFFICER
NDDOT, 1951 N. WASHINGTON ST, GRAND FORKS, ND 58203
(701) 787-6590

CERTIFICATE OF SERVICE

The undersigned certifies that on 5/2/19 a true and correct copy of this document and Exhibit 1 was sent by mail, United States postage prepaid, or was sent by email, to the following persons:

JESSE N LANGE, ATTORNEY AT LAW, PO BOX 1817, FARGO, ND 58107, OFFICEMANAGER@AALANDLAW.COM
OFFICER CHRISTOPHER OLSON, #1606, VALLEY CITY POLICE DEPT, 216 2ND AVENUE NORTHEAST, VALLEY CITY, ND 58072
KENTON EVANS-MCCONNELL KOLSTAD, 408 ROBERTS ST N APT 301, FARGO, ND 581024622



Signature of Hearing Officer