

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Bruce Van Arnold Beck,

Appellee

Supreme Court No. 20210312

v.

Director, North Dakota
Department of Transportation,

Appellant

* * * * *

BRIEF OF APPELLEE

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Appeal from August 30, 2021 Judgment of the District Court
Morton County District Court
South Central Judicial District
Honorable Bruce Romanick
Morton County Case No. 30-2021-CV-00491

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<u>Dettler v. Sprynczynatyk</u> , 2004 ND 54	4
<u>Glaser v. N.D. Dep't of Transp.</u> , 2017 ND 253	4, 5, 6, 7, 8
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[¶1] ARGUMENT

[¶2] Appellant does not contest that the arresting officer, the only testifying witness for Appellant, did not know the exact time of driving.

Brief of Appellant, ¶ 19. Appellant’s position is that “Beck did not rebut the prima facie showing that he was involved in an accident at 3:00 a.m. on April 4, 2021.” Brief of Appellant, ¶ 19.

[¶3] That 3:00 a.m. time comes from the time of crash stated on the Motor Vehicle Crash Report, a part of Exhibit 1, pp. 10-11 (A. 38-39). That report reflects it was completed by Mandan City Police Officer Jacob Valleroy (A. 38), who did not testify. The report itself reflects no facts supporting the 3:00 a.m. time. The report does list 3:12 a.m. as the time police were notified of the crash, reflects the opinion that Beck was involved in the crash, and, finally, states that Beck’s vehicle was “later found” by a Morton County Sheriff Deputy.

[¶4] This appeal is governed by the analysis set forth in Glaser v. N.D. Dep’t of Transp., 2017 ND 253, ¶¶ 11-12, 902 N.W.2d 744, including the three cases cited therein, Pavek v. Moore, 1997 ND 77, 562 N.W.2d 574; Dawson v. N.D. Dep’t of Transp., 2013 ND 62, 830 N.W.2d 221; and Dettler v. Sprynczynatyk, 2004 ND 54, 676 N.W.2d 799. Here, the Hearing Officer’s Decision wholly failed to address this legal analysis (A. 40). The

district court reversed the Hearing Officer's Decision based on an analysis under the Dawson case (A. 48-51).

[¶5] Beck placed the 3:00 a.m. time of driving into question at the administrative hearing. See Glaser at ¶ 11, which indicates that the time of driving reflected in the Department's prima facie case can be placed into question. Beck objected to the crash report on hearsay and foundation grounds (A. 28-29). Beck argued the time of driving was not proven (A. 29, lines 16-19). Beck cross-examined the arresting officer placing the time of driving into question. Id.

[¶6] There is no evidence in the record supporting the 3:00 a.m. time listed by Officer Valleroy in the crash report. See Glaser at ¶ 14. Beck agrees with the district court which wrote:

“Nothing in the record establishes, or even suggests, that Officer Valleroy personally saw Beck driving. . . . Nothing in the record further establishes how or why the 3:00 A.M. driving time is the actual driving time. . . . It is unclear from the record where the ‘3:00 A.M.’ timeframe listed in the crash report came from.”

(A. 50, ¶¶ 20-22).

[¶7] Further, there was no evidence which showed the length of time Beck's vehicle was at the shop before being found by the Morton County Sheriff Deputy, which possibly could be used to support an inference as to the time of driving. See Glaser at ¶ 13. Here, too, the district court agreed

with Beck's position (see A. 49, ¶ 18).

[¶8] Finally, although a hearing officer may use common sense and experience to draw inferences from the evidence presented, see Glasser at ¶ 18, the Hearing Officer's Decision did not analyze the facts in this case in any attempt to draw a reasonable inference as to the time of driving. Indeed, there exists no evidence in this record, direct or circumstantial, allowing a reasonable mind to conclude Beck had been driving within two hours of the chemical test. Again, the district court agreed with Beck's position (see A. 51, ¶ 24). The Hearing Officer's Decision against Beck is not legally supported.

[¶9] CONCLUSION

[¶10] Wherefore, Appellee Beck respectfully requests the Court to affirm the district court's judgment reversing the Hearing Officer's Decision in this case.

[¶11] Respectfully submitted January 13, 2022.

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/s/Michael R. Hoffman_____
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[¶12] CERTIFICATE OF SERVICE

Michael R. Hoffman states that on January 13, 2022 a true and correct copy of the Brief of appellee was filed and served electronically with the North Dakota Supreme Court Clerk through the North Dakota Supreme Court's Electronic File & Serve ("EFS"), and that EFS will send a Service Notification to the following:

Michael Pitcher @ mtpitcher@nd.gov

[¶13] CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(e) of the North Dakota Rules of Appellate Procedure, the undersigned certifies that the foregoing brief complies with the N.D.R.App.P. 32(a)(8)(A). The total pages of the brief, including this Certificate of Compliance, totals 7 pages.

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