20190228

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 7, 2019
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	Supreme Court No. 20190228
Plaintiff and Appellant,	)	
	)	District Court No. 18-2019-CR-00022
v.	)	
	)	
Stanley James Kolstad,	)	
	)	
Defendant and Appellee.	)	

BRIEF OF APPELLANT

ON APPEAL FROM ORDER GRANTING MOTION TO DISMISS
ENTERED ON JULY 29, 2019
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE JUDGE HAGER, PRESIDING.

ORAL ARGUMENT REQUESTED

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NORTH DAKOTA RULES OF COURT

JURISDICTIONAL STATEMENT

[¶1] This is an appeal in District Court No. 18-2019-CR-00022 from a district court Order dismissing Count II – Refusal to Submit to Chemical Test. Jurisdiction in this matter is pursuant to Rule 37 of the North Dakota Rules of Criminal Procedure. N.D.R.Crim.P. 37. The State may appeal from an order quashing an information or indictment or any count thereof. N.D.C.C. § 29-28-07(1). Specifically, "the Supreme Court has authority to review an appeal from the dismissal of a criminal charge." State v. Ritter, 472 N.W.2d 444, 447 (N.D. 1991).

STATEMENT OF THE ISSUES

[¶2] I. Whether the district court's dismissal of Count II – Refusal to Submit to a Chemical Breath Test is final and appealable.

II. Whether the district court abused its discretion in dismissing Count II – Refusal to Submit to Chemical Breath Test in light of unintentionally destroyed body camera footage.

STATEMENT OF THE CASE

[¶3] The Defendant/Appellee, Stanley James Kolstad, was cited and arrested on December 22, 2018, for the criminal offenses of Driving under the Influence and Refusal to Submit to Chemical Test. Case No. 18-2019-CR-00022. The Grand Forks County filed charges against Kolstad on January 7, 2019. Appellant's Appendix pg. 6-7. On January 8, 2019, attorney David Dusek filed a Notice of Appearance and Rule 16 Discovery Request. Appellant's Appendix pg. 8-16. On June 27, 2019, the parties appeared before the Honorable Donald Hager, District Court Judge for Jury Trial. During trial, the Grand Forks County District Court made an oral Order of Dismissal on the record on June 27, 2019, and then filed its Order Granting Motion to Dismiss on July 29, 2019. Tr. pp. 144, 170-171; Appellant's Appendix pg. 18. The State of North Dakota has appealed the district court's dismissal to the North Dakota Supreme Court. The State timely filed its Notice of Appeal on July 26, 2019, Corrected Notice of Appeal on July 30, 2019, Amended Notice of Appeal on August 9, 2019, and Second Amended Notice of Appeal on August 12, 2019. Appellant's Appendix pg. 17, 19-21.

STATEMENT OF THE FACTS

[¶4] On December 22, 2018, Stanley Kolstad was cited and arrested for DUI and Refusal to Submit to a Chemical Test in Grand Forks County, North Dakota. On the night of the arrest, Officer Hunter Nelson, UNDPD, stopped Stanley Kolstad's vehicle for a traffic violation. Officer Nelson suspected Kolstad was driving under the influence, and conducted a series of on-site field sobriety tests. After showing multiple signs of impairment on the initial field sobriety tests, Kolstad further consented to take a PBT, however Kolstad did not provide a sufficient breath sample for the PBT to generate results. Kolstad was subsequently placed under arrest for DUI and transported to the UND police station. At the police station, Officer Nelson read Kolstad the ND Implied Consent Advisory, and Kolstad consented to take a chemical breath test. Corporal Jayson Waltz,

UNDPD and a certified test operator, attempted to administer a chemical breath test using the Intoxilyzer 8000. Kolstad did not provide a sufficient breath sample and was additionally cited with Refusal to Submit a Chemical Test.

[¶5] At trial, the State called Officer Hunter Nelson and Corporal Jayson Waltz to testify in its case-in-chief. Officer Nelson, the State's first witness, testified he could not recall the exact version of the implied consent advisory he read to Kolstad as he did not have his implied consent advisory card with him at trial. Tr. p. 108. Furthermore, Officer Nelson testified on direct examination and cross-examination that while his body camera video was activated during the reading of the implied consent advisory, the University of North Dakota Police Department's storage system experienced a technical malfunction when Officer Nelson attempted to save the video. Tr. p. 59, lines 23-25; Tr. pp. 70-72. There is no other recording technology in the Intoxilyzer room, thus there is no footage of these events. Id.; Tr. pp. 108, 135. Defense counsel made no objection to Officer Nelson's testimony on this subject.

[¶6] The State's second witness, Corporal Waltz, then testified as to his knowledge of the events at the police station. Upon questioning regarding the implied consent advisory, Corporal Waltz testified he did not observe the administration of the implied consent advisory as he was not present at the time the advisory was issued. Tr. p. 150. Corporal Waltz testified that he was wearing a body camera during the incident in question, but it was only activated for less than 30 seconds. Tr. pp. 135-136. Corporal Waltz further testified he had activated his camera at approximately the time he walked into the Intoxilyzer room. Id. However, once he noticed Officer Nelson had his body camera activated, Corporal Waltz shut his camera off to preserve storage space. Tr. p. 135. Corporal Waltz testified that he saved the video and successfully uploaded it to the server. Tr. p. 136.

[¶7] Defense counsel, then requested for counsel to approach the Judge for a bench conference. Tr. p. 136. Defense argued he did not have body camera footage from the incident, thus a discovery violation existed. Tr. p. 136-138. He argued the district court had no choice but to dismiss the case in its entirety. Tr. p. 137. The State then indicated that they did not have a copy of the video and was not aware of its existence. Tr. p. 137. Defense stated, "We have no idea what implied consent was read." Tr. p. 139. Defense further argued it was possible that the advisory may have been read incorrectly as decided in State v. Vigen, and therefore the evidence was exculpatory. Tr. p. 139. The State opposed the request to dismiss, but the district court ultimately dismissed Count II – Refusal to Submit to Chemical Test and struck all of Corporal Waltz's testimony from the record and most of the State's exhibits. Tr. pp. 141-144.

[¶8] The State then made a motion to reconsider indicating Corporal Waltz was pulled off the stand prematurely. Tr. p. 145. The Court allowed additional testimony of Corporal Waltz outside the presence of the jury. Tr. p. 145. Corporal Waltz testified that the University of North Dakota Police Department was having IT problems regarding uploading videos. Tr. p. 146. Videos would record onto the body camera; officers would plug their camera into a network-connected dock; videos would be downloaded from the camera to an off-site server; and then as soon as it uploaded to the off-site server, the system would delete the video. Tr. p. 146. Officers could not access these lost videos. Tr. p. 146. The University of North Dakota's IT Department have been unsuccessful in retrieving these incidentally deleted videos. Tr. p. 146. After argument was heard between defense counsel and the State, the district court denied the State's Motion to Reconsider. Tr. p. 156.

[¶9] The next day, before closing arguments, the district court stated "the ruling to dismiss the charge was based on discovery violations, Rule 16, not as a motion in limine to suppress". Tr.

pp. 170-171. Later, while the jury was deliberating, the State attempted to clarify whether the district court dismissed Count II with prejudice or without prejudice. Tr. p. 223. The district court replied by stating:

> Well, I didn't say it was with prejudice. However, there might be some case law regarding that considering jeopardy attached during the middle of a trial. So my ruling may not have any effect on it whatsoever. And I can't tell you that without any further research, but I think once you are in the middle of the trial and the jury is impaneled, you got prejudice attached already at that point, and got jeopardy attached, and then you are not able to bring it again. I didn't say it with prejudice. So you can research it. And if you have a disagreement with that, you can certainly make your own decisions.

Tr. pp. 223-224.

LAW AND ARGUMENT

I. THE DISTRICT COURT'S DISMISSAL OF COUNT II – REFUSAL TO SUBMIT TO CHEMICAL BREATH TEST IS APPEALABLE, BUT WAS SILENT WHETHER IT WAS WITH OR WITHOUT PREJUDICE. THEREFORE, IT MUST BE REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

A. Double Jeopardy does not bar retrial.

[¶10] "The double jeopardy provisions of the federal and state constitutions, and state law, prohibit successive prosecutions and punishments for the same criminal offense. It is well settled that, in a jury trial, jeopardy attaches when the jury is empaneled and sworn. State v. Voigt, 734 N.W.2d 787, 790 (2001). Jeopardy attached in this case when the jury was empaneled and sworn.

[¶11] This Court has expressed "the State may appeal from an order of dismissal of a criminal case if the ruling is not based upon a resolution of some or all of the factual elements of the charged offense." State v. Hammond, 498 N.W.2d 126, 127 (N.D. 1993). In United States v. Scott, the United States Supreme Court considered whether the Double Jeopardy Clause would prevent retrial of a defendant who had successfully obtained, not a mistral, but a termination of the

trial before there was a determination of factual guilt or innocence. 437 U.S. 82, 97 (1978) ("a defendant is acquitted only when 'the ruling of the judge, whatever its label, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged.") Citing to the Scott rationale, the North Dakota Supreme Court held the Double Jeopardy Clause would not prevent retrial if a court's dismissal occurred was reversed and remanded. State v. Melin, 428 N.W.2d 227, 230-231 (N.D. 1988)

[¶12] Like in Scott, the district court dismissed Count II during a jury trial. However, unlike Scott, the basis for dismissal was pursuant to an alleged discovery violation. Tr. pp. 170-171. Since the dismissal was based upon a discovery violation, and not based upon a resolution of some or all of the factual elements of the charged offense, the State may appeal the district court's dismissal. Furthermore, the Double Jeopardy clause would not bar retrial if this case gets remanded.

B. It is unclear whether the district court dismissed Count II with or without prejudice.

[¶13] "[W]hen the dismissal of a criminal count or entire complaint is silent whether it is with or without prejudice, it is ambiguous and examination of the parties and the district court's intent is required." State v. Greenshields, 2019 ND 229, ¶8, 32 N.W.2d 903, 906. In Greenshields, there was "no evidence presented for the district court, or this Court on de novo review, to determine whether the first judge intended the dismissal to be with or without prejudice". Id. at ¶10. This Court then reversed the order of dismissal and remanded for further proceedings. Id.

[¶14] Similarly, there is no evidence to determine whether the district court intended the dismissal of Count II to be with or without prejudice in the case at hand. When the district court first dismissed Count II, it was silent whether it was with prejudice. Tr. p. 144. After the State's Motion to Reconsider was denied, the district court again stated Count II was dismissed, but there

was no mention of whether it was with or without prejudice. Tr. p. 156. The State then attempted to clarify the district court's intent. Tr. p. 223. The district court did not indicate that the dismissal was with prejudice or without. Tr. pp. 223-224. Therefore, this Court must reverse the order of dismissal and remand this case back to the district court to determine whether it intended the dismissal to be with or without prejudice.

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DISMISSING COUNT II – REFUSAL TO SUBMIT TO CHEMICAL BREATH TEST IN LIGHT OF UNINTENTIONALLY DESTROYED BODY CAMERA FOOTAGE.

[¶15] "This Court reviews district court decisions regarding discovery violations under the abuse of discretion standard. A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law." State v. Rolfson, 2018 ND 51, ¶6, 907 N.W.2d 780, 782.

A. The destroyed body camera footage is not exculpatory evidence.

[¶16] The State has duty to preserve potentially material or exculpatory evidence. To meet the standard of 'materiality' required under Brady v. State of Maryland, 373 U.S. 83, 87 (1963), "evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and also be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." City of Bismarck v. Bauer, 409 N.W.2d 90, 93 (N.D. 1987). Additionally, under Brady, the State's duty "to preserve evidence arises only after the State knows, or has reason to know, that the evidence is, or is claimed to be, material and exculpatory." Id.

[¶17] In Bauer, the defendant was charged with driving under the influence of alcohol, and performed physical tests and submitted to a breath test which were videotaped. Id. at 91. Prior to

trial, the video was inadvertently lost. Id. Defense moved to dismiss the complaint premised on the argument that the "inadvertent erasure of the videotape constituted destruction of exculpatory evidence". Id. There, this Court held that the defendant's opinion that the videotape was exculpatory is subjective. Id. at 93. The defendant failed to establish that it should have been apparent to the prosecution that the tape was material evidence favorable to the defendant prior to its erasure; and notice was not given to the prosecution of the defendant's view of the exculpatory value of the videotape until the erasure was discovered. Id. at 93. As such, the Court found the state did not violate due process in light of the erased video evidence. Id.

[¶18] Like in Bauer, Kolstad's view that the accidentally destroyed body camera footage was exculpatory is subjective. Additionally, he failed to establish that it should have been apparent to the prosecution that the tape was material evidence favorable to the defendant prior to its erasure. Kolstad argued that the evidence that would have been on the purged body camera video was exculpatory because it would have shown what implied consent was read and would have shown evidence of the refusal itself. Tr. pp. 139-140. However, based upon the testimony given by Corporal Waltz, Corporal Waltz was wearing a body camera during the incident in question, but had only turned it on for less than 30 seconds. Tr. pp. 135-136. Corporal Waltz further stated he had turned his camera on close to when he walked into the Intoxilyzer room but noticed Officer Nelson had his camera on so he shut his off to preserve storage space. Tr. p. 135.

[¶19] Corporal Waltz indicated he was not present when Officer Nelson read the implied consent to Kolstad and did not have personal knowledge of how implied consent was read. Tr. p. 150. Additionally, Officer Nelson testified that while his body camera video was activated during the reading of the implied consent advisory, the University of North Dakota Police Department's storage system experienced a technical malfunction when Officer Nelson attempted to save the

video. Tr. p. 59, lines 23-25; Tr. pp. 70-72. Therefore, the body camera footage in question would not have shown what implied consent was read. Further, since Officer Nelson was not in the room during the chemical test, it would be mere speculation as to whether the video from Corporal Waltz's body camera would have captured Kolstad's actions of refusal due to the short duration of the recording.

[¶20] Lastly, like in Bauer, notice was not given to the State of the defendant's view of the exculpatory value of the videotape until the erasure was discovered. In this case, erasure of the body camera footage was discovered at trial, at which time Kolstad's counsel raised the argument that the tape had exculpatory value.

B. The erasure of the body camera footage does not constitute suppression of apparent exculpatory evidence

[¶21] This Court deemed it "apparent that the Brady rule requires disclosure of material evidence where a defendant establishes some reasonable possibility, based on concrete evidence rather than fertile imagination, that it would be favorable to his cause." State v. Eugene, 340 N.W.2d 18, 26 (N.D. 1983). In State v. Larson, the defendant argued prosecution had a duty to make the chemical test ampoule from his breathalyzer available to him for independent testing, but the evidence was intentionally destroyed. 313 N.W.2d 750, 752 (N.D. 1981). The defendant sought to raise the possibility of defect in the ampoules used, and this Court concluded his "arguments constituted mere speculation on his part, but nothing more advanced to realistically suggest the probability that information of any definite value would be obtained from any recognized or reliable process of re-examination, or that the results of this particular endeavor would have been favorable to the defendant." Id. at 756. Therefore, this Court held that the State was not required to make the evidence available for the defendant. Id.

[¶22] The instant case involves evidence that has been inadvertently destroyed, and now the defendant is claiming this footage would have possibly provided favorable evidence to him. However, Kolstad bases this argument on the mere belief the erased body camera footage might have showed what implied consent was read and that it might have showed Kolstad completing the chemical test. Tr. pp. 139-140. Like in Larson, Kolstad's speculation as to the potential favorability of the evidence is not enough.

C. Failure to preserve potentially useful evidence did not constitute a denial of due process of law.

[¶23] "A prosecutor's failure to preserve evidence that is material and favorable to a defendant may violate a defendant's constitutional right to due process and a fair trial." State v. Thill, 2005 ND 13, ¶7, 91 N.W.2d 230, 232. However, as noted by the United States Supreme Court, "when the evidence is neither plainly exculpatory [n]or inculpatory, the defendant must show the police acted in bad faith." Id. "Unless a defendant can prove the State acted in bad faith, failure to preserve potentially useful evidence does not constitute a denial of due process of law." Id.

[¶24] "Bad faith, as used in cases involving destroyed evidence or statements, means that the state deliberately destroyed the evidence with the intent to deprive the defense of information; that is, that the evidence was destroyed by, or at the direction of, a state agent who intended to thwart the defense." State v. Steffes, 500 N.W.2d 608, 613 (N.D. 1993). "Whether a law enforcement officer's action could be termed reckless, intentional, negligent, or merely that of following or failing to follow regular police procedure, […] the evidentiary standard necessary to prove bad faith by the state with regard to the destruction or loss of evidence is quite high." State v. Ostby, 2014 ND 180, ¶15, 853 N.W.2d 556, 561.

[¶25] "This Court summarized three categories of cases in which courts have attempted to analyze an accused's right to due process when prosecutors fail to provide evidence to the defense which is within, or potentially within, their purview." State v. Schmidt, 2012 ND 120, ¶12, 817 N.W.2d 332, 336 (quoting Steffes, 500 N.W.2d at 612). The three categories include: "(1) the [S]tate's failure to collect evidence in the first instance, (2) the [S]tate's failure to preserve evidence once it has been collected, and (3) the [S]tate's suppression of evidence which has been collected and preserved." Id.

[¶26] This Court has decided conceptually similar cases to this one at hand. In Steffes, an officer recorded over an audio tape of a field sobriety test because he assumed the case was done and dealt with. 500 N.W.2d at 614. This Court noted that although his actions could be termed reckless, intentional, negligent, or merely that of following or failing to follow regular police procedure, it was not with the intent of thwarting the defense and did not meet the high evidentiary standard necessary to prove bad faith destruction of evidence. Id.

[¶27] In State v. Haibeck, on the morning of the jury trial, the State informed the trial court and defense counsel that the physical evidence the State had intended to present had been inadvertently destroyed due to the age of the case. 714 N.W.2d 52, 53-54 (2006). There, the State indicated it was prepared to proceed, but defense counsel moved for a judgment of acquittal, and the trial court granted the motion and dismissed all four counts. Id. The State then appealed and defendant admitted that there was no evidence of bad faith by the police. Id. at ¶7. Therefore, there was no violation of her due process rights and the trial court erred in concluding otherwise. Id.

[¶28] Like in the two cases above, this case involves the destruction of evidence while in law enforcement's possession. In Steffes, the taping over of audio that contained evidence pertaining to a field sobriety test was intentional and still did not meet the evidentiary standard

necessary to prove bad faith. Here, law enforcement attempted to upload their body camera footage and due to IT issues, the footage was inadvertently corrupted and could not be accessed. Tr. p. 146. Kolstad never alleged there was evidence of bad faith. The inadvertent destruction of the evidence and no evidence of bad faith in this case are similar to Haibeck, where this Court concluded there was no violation of due process. Therefore, failure to preserve potentially useful evidence did not constitute a denial of due process of law.

D. If this Court finds there was a discovery violation, dismissal was not the appropriate remedy.

[¶29] Rule 16 of the North Dakota Rules of Criminal Procedure governs discovery of evidence in criminal cases. State v. Rolfson, 2018 ND 51, ¶7, 907 N.W.2d780, 782. Under N.D.R.Crim.P. 16(a) and (f), it states:

> [T]he prosecution must furnish a defendant with statements made by prosecution witnesses and copies of any documents or data within the prosecution's possession, custody, or control if the item is material to preparing a defense, the prosecution intends to use the item in its case-n-chief at trial, or the item belongs to or was obtained from the defendant. The rule also requires the prosecution to disclose requested documents in the possession of other government agencies and is not limited to the materials actually in the prosecution's possession.

Id.

[¶30] "When apprised of a discovery violation, a trial court is authorized by Rule 16(d)(2), N.D.R.Crim.P., to use various remedies, but should impose the least severe sanction that will rectify the prejudice, if any, to the opposing party." State v. McNair, 491 N.W.2d 397, 400 (N.D. 1992). Some of those sanctions include ordering further disclosure, granting a continuance, prohibiting the evidentiary use of undisclosed material, relieving a requesting party from making a disclosure, or entering any other order it deems just under the circumstances. Id.

[¶31] This Court has reviewed cases similar to the case at hand and determined whether sanctions made in district court were appropriate. In McNair, during defense counsel's cross

examination of a witness, the witness testified that none of the defendant's personal belongings were found inside the building where the crime took place. Id. On redirect examination, the prosecuting attorney asked the witness whether any of the defendant's personal belongings were found during a search of the area, to which the witness testified that many of the defendant's personal belongings were found in the area of the crime. Id. These items were returned to defendant after they were found and the prosecuting attorney did not learn of them until the morning of trial. Id.

[¶32] The defendant claimed since the prosecution failed to inform defense counsel the items had been found, it constituted a violation of the State's continuing duty to disclose under Rule 16 that could only be remedied by the granting of a new trial. Id. This Court disagreed and held,

> Rule 16 is not a constitutional mandate, but is an evidentiary discovery rule designed to further the interests of fairness. Noncompliance results in a constitutionally unfair trial only where the barriers and safeguards are so relaxed or forgotten the proceeding is more of spectacle or a trial by ordeal than a disciplined contest.

Id.

[¶33] In City of Jamestown v. Snellman, the defendants were charged with violating a city ordinance prohibiting consumption of alcohol by a minor, and later moved to dismiss the charges, suppress evidence, and compel discovery. 586 N.W.2d 494, 495 (1998). During the pre-trial hearing, the district court sought to hear evidence regarding the motions, but the prosecution resisted, arguing it did not have notice an evidentiary hearing would occur during the pre-trial hearing. Id. at ¶3. The district court then dismissed the criminal cases because the prosecution was not ready to proceed. Id. at ¶3. This Court reversed the district court's dismissal of the case because the district court failed to consider a less drastic sanction than dismissal. Id. at ¶14.

[¶34] Further, this Court has stated:

> [D]ismissal should not be used where alternative, less drastic, sanctions are available and equally effective. Moreover, because dismissal is the most stringent

> sanction, we emphasized dismissal should be tailored to the severity of the misconduct and used sparingly, only in extreme situations. While we recognize trial courts have broad discretion in determining when sanctions are appropriate and what sanctions to impose, courts cannot dismiss cases without significant legal basis.

Id. at ¶9.

[¶35] Like in Snellman, the district court failed to consider a less drastic sanction than a complete dismissal of Count II. If the Court determines that there was a discovery violation, dismissal is not the appropriate remedy given the lack of severity of the alleged misconduct. In this case, body camera footage was inadvertently destructed when law enforcement was attempting to upload it. This was not an intentional destruction of evidence, nor was it done in bad faith. Dismissal of a charge should be used sparingly and only in extreme situations. This was not an extreme situation. The proper remedy in this case should have been to either continue on with the trial or to order a mistrial.

ORAL ARGUMENT REQUESTED

[¶36] This Court should conclude that oral argument would be helpful in deciding the issues on appeal given the procedural posture and facts of this case. Additionally, in the event the Appellee requests oral argument, the Appellant would request the opportunity to respond to any new claims raised and clarify its written argument on their merits.

CONCLUSION

[¶37] Therefore, based upon the foregoing argument, the State of North Dakota respectfully requests this Court reverse the judgment of the district court and remand for further proceedings.

DATED this 12th day of November, 2019.

/s/ Megan Jo Kvasager Essig
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vs.	)	
	)	
Stanley James Kolstad,	)	**Grand Forks County District Court**
	)	**Case No. 18-2019-CR-00022**
Defendant/Appellee.	)	
	)	

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STATE OF NORTH DAKOTA)
) SS
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the 7 day of November, 2019, she served true copies of the following documents:

Appellant's Brief
Appellant's Appendix
Certificate of Compliance

electronically through the Court Electronic Filing System to:

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Bobbi Jo Davidson
States Attorney's Office

Subscribed and sworn to before me this 7 day of November, 2019.

Notary Public

bjd

JENNIFER FLECK
NOTARY PUBLIC
STATE OF NORTH DAKOTA
My Commission Expires APRIL 13, 2023

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Defendant/Appellee.	)	
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CERTIFICATE OF COMPLIANCE

[¶1] The State of North Dakota, by and through Assistant State's Attorney Megan Jo Kvasager Essig hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 19 number of pages.

Dated this 7th day of November, 2019.

/s/ *Haley Wamstad*
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Bobbi Jo Davidson
States Attorney's Office

Subscribed and sworn to before me this 12 day of November, 2019.

Jennifer Fleck
Notary Public

bjd

JENNIFER FLECK
NOTARY PUBLIC
STATE OF NORTH DAKOTA
My Commission Expires APRIL 13, 2023

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Dated this 12th day of November, 2019.

/s/ *Haley Wamstad*
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