IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Jonathan P. Ike,

Appellant,

v.

Director, North Dakota Department of Transportation,

Appellee.

Supreme Ct. No. 20070302

District Ct. No. 07-C-0449

APPEAL FROM THE DISTRICT COURT
WILLIAMS COUNTY, NORTH DAKOTA
NORTHWEST JUDICIAL DISTRICT

HONORABLE DAVID W. NELSON

BRIEF OF APPELLEE

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STATEMENT OF ISSUES

I. Whether the basic and mandatory provisions of N.D.C.C. § 39-20-03.1 were met so the Department of Transportation ("Department") had jurisdiction to suspend Ike's driving privileges.

II. Whether a reasoning mind reasonably could have concluded Ike's blood specimen was drawn by a person who was medically qualified to withdraw blood for the purpose of determining its alcohol content.

STATEMENT OF CASE

Williston Police Officer Heather Christianson arrested Jonathan P. Ike ("Ike") on May 11, 2007, for the offense of driving a vehicle while under the influence of intoxicating liquor. (Appendix to Appellant's Brief ("Ike App.") 3, ll. 9-13; 9, ll. 6-14). Ike requested a hearing on June 1, 2007, in accordance with N.D.C.C. § 39-20-05. (Appendix to Appellee's Brief ("DOT App.") 7). Prior to the administrative hearing, Ike was provided copies of documents maintained as regularly kept records of the Department which were intended to be offered into evidence at the hearing, including the Report and Notice. (DOT App. 9).

The administrative hearing was held June 22, 2007. (Ike App. 33). The hearing officer, in accordance with N.D.C.C. § 39-20-05, considered the following issues:

a. 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. § 39-08-01 or equivalent ordinance;

b. Whether the person was placed under arrest;

c. Whether the person was tested in accordance with N.D.C.C. § 39-20-01 or 39-20-03 and, if applicable, § 39-20-02; and

d. 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. (DOT App. 8).

Following the hearing, the hearing officer issued his findings of fact, conclusions of law, and decision suspending Ike's driving privileges for a period of 91 days. (Ike App. 33).

STATEMENT OF FACTS

On May 11, 2007, Williston Police Officer Heather Christianson ("Officer Christianson") observed a vehicle traveling a rate of speed in excess of the posted speed limit. (Ike App. 7, ll. 15-23; 21, ll. 20-25; 22, ll. 1-25). Officer Christianson activated the red lights on her patrol car and stopped the vehicle. (Ike App. 7, ll. 23-24).

Officer Christianson informed the driver of the vehicle, identified as Ike, of the reason for the stop. (Ike App. 8, ll. 19-20; 9, ll. 1-2). Officer Christianson observed the strong odor of alcoholic beverage coming from Ike and that his eyes were bloodshot. (Ike App. 9, ll. 3-12). Ike agreed to Officer Christianson's request that he perform a series of field sobriety tests. (Id. at ll. 13-16). Ike displayed six out of six clues on the horizontal gaze nystagmus test. (Ike App. 10, ll. 10-17). Ike also failed the one-leg stand and the walk-and-turn tests. (Id. at ll. 18-25; 11, ll. 1-13; 12, ll. 2-9). Officer Christianson read the implied consent advisory to Ike and requested he submit to the S-D2 onsite screening test. (Ike App. 12, ll. 10-13). Ike produced a result of .167 on the screening test. (Ike App. 13, ll. 3-5).

Officer Christianson placed Ike under arrest for driving a vehicle while under the influence of intoxicating liquor and read him his *Miranda* rights and the

implied consent advisory. (Id. at ll. 6-13). Officer Christianson transported Ike to Mercy Medical Center to obtain a blood test. (Id. at ll. 15-20).

At the administrative hearing, Officer Christianson acknowledged she inadvertently signed the portion of the Report and Notice that purports to certify that she personally issued the temporary operator's permit to the driver; however, she admitted she did not personally issue the temporary operator's permit to Ike, nor was she able to testify as to the issuance of the permit to Ike. (Ike App. 16, l. 25; 17; 18; 19, ll. 14). Officer Christianson also testified she did not write Ike's test result or the date of issuance of the temporary operator's permit on the Report and Notice. (Ike App. 16, ll. 18-24; 17, ll. 9-10). Ike objected to the admissibility of the Report and Notice on the ground there was no evidence "that in fact it was served." (Ike App. 15, ll. 24-25; 16, ll. 1-2). The hearing officer overruled Ike's objection and admitted the Report and Notice into evidence. (Ike App. 20, ll. 21-23).

At the administrative hearing, Ike also objected to the admissibility of the Submission for Blood (Form 104) on the ground the abbreviation of the medical designation of the person who drew Ike's blood specimen did not match the list of abbreviated designations of persons qualified to draw blood as listed by the State Toxicologist. (Id. at 20, ll. 2-13; 32). The hearing officer found the first three characters following the person's name were "MLT", and that the State Toxicologist's list includes "MLT as an abbreviation for Medical Laboratory Technician." (Ike App. 20, ll. 14-18; 31-32). The hearing officer overruled Ike's objection and admitted the Submission for Blood (Form 104) into evidence. (Ike App. 20, ll. 18-19).

The Analytical Report (Form 107) attached to the Submission for Blood (Form 104) shows the analysis of Ike's blood specimen was conducted on May

16, 2007, and that Ike's blood had an alcohol concentration of .16 percent by weight. (Ike App. 30). The Submission for Blood (Form 104) and the Analytical Report (Form 107) were received by the Williston Police Department on May 21, 2007. (DOT App. 4-5). The Report and Notice shows Ike's driver's license was attached to the document. (Ike App. 29). The Report and Notice and the Submission for Blood (Form 104) with the attached Analytical Report (Form 107) show they were received by the Department's "Driver License & Traffic Safety Div." on May 25, 2007, in an envelope postmarked May 24, 2007. (Ike App. 29-30).

PROCEEDINGS ON APPEAL TO DISTRICT COURT

Ike appealed the administrative decision to the Williams County District Court. (Ike App. 3-4). Ike identified his Specifications of Errors, based upon his objections at the administrative hearing, as follows:

1. It was not shown that the person who drew the blood was a person designated by the State Toxicologist to draw blood.

2. It was not shown that Ike was personally issued the temporary operator's permit on May 24, 2007, and therefore the statutory authority for proceeding with the administrative hearing was not shown.

3. Ike was not legally placed under arrest.[1]

(Ike App. 3).

Judge David W. Nelson issued the Court's Order affirming the hearing officer's decision on September 10, 2007. (Ike App. 34-35). Judgment was entered on September 18, 2007. (Ike App. 36). Ike appealed the Judgment to the North Dakota Supreme Court. (Ike App. 37). The Department requests that this Court affirm the judgment of the Williams County District Court and the administrative suspension of Ike's driving privileges for a period of 91 days.

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[1] Ike did not pursue the third specification of error in his appeal.

STANDARD OF REVIEW

"The Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, governs the review of administrative license suspensions." Ringsaker v. Dir., N.D. Dep't of Transp., 1999 ND 127, ¶ 5, 596 N.W.2d 328. "On appeal from a district court's review of an administrative agency's decision, [the North Dakota Supreme Court] review[s] the agency decision." Elshaug v. Workforce Safety & Ins., 2003 ND 177, ¶ 12, 671 N.W.2d 784. Section 28-32-46, N.D.C.C., provides that the Court must affirm an administrative agency's order unless one of the following is present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

"When reviewing the agency's factual findings, [the Court] do[es] not make independent findings of fact or substitute [its] judgment for that agency, but determine[s] only whether a reasoning mind reasonably could have determined the factual conclusions were proven by the weight of the evidence from the entire

record." Ringsaker, 1999 ND 127, ¶ 5, 596 N.W.2d 328. However, on legal questions, "such as an interpretation of a statute, an agency's decision is fully reviewable on appeal. Our primary objective in the interpretation of a statute is to ascertain the intent of the legislature, which must be sought initially from the language of the statute." Lentz v. Sprynczatyk, 2006 ND 27, ¶ 4, 708 N.W.2d 859 (citation omitted). "In construing a statute, words are to be understood in their ordinary sense." Id.; N.D.C.C. § 1-02-02.

LAW AND ARGUMENT

I. The basic and mandatory provisions of N.D.C.C. § 39-20-03.1 were met so the Department had jurisdiction to suspend Ike's driving privileges.

A. Introduction.

The North Dakota Supreme Court has held that "[t]he Department's authority to suspend a person's license is given by statute and is dependent upon the terms of the statute. The Department must meet the basic and mandatory provisions of the statute to have authority to suspend a person's driving privileges." Aamodt v. N.D. Dep't of Transp., 2004 ND 134, ¶ 15, 682 N.W.2d 308 (emphasis added).

Section 39-20-03.1, N.D.C.C., the statute at issue in this case, in part provides:

> If a person submits to a test under section 39-20-01 . . . and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight . . . at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:
>
> 1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law

> enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
>
> . . . .
>
> 3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

"This Court has previously discussed whether certain provisions in N.D.C.C. § 39-20-03.1 are basic and mandatory provisions that require compliance before the Department is authorized to suspend a person's driving privileges." Aamodt, 2004 ND 134, ¶ 16, 682 N.W.2d 308. Within the context of the Court's rulings on the jurisdictional nature of the provisions of section 39-20-03.1, the legal significance of the Report and Notice has been addressed with respect to the document's purpose as the temporary operator's permit and its purpose as the certified written report. Common to the Court's decisions in either situation has been a particularized finding as to an articulable impact, or lack thereof, resulting from the claimed deficiency in the statutory procedure, rather than a mere consideration of the law in a vacuum.

In his Specifications of Error on appeal to the district court, Ike alleged "[i]t was not shown that Ike was personally issued the temporary operator's permit on May 24, 2007, and therefore the statutory authority for proceeding with the administrative hearing was not shown." (Ike App. 3). Ike cites the provisions of N.D.C.C. § 39-20-03.1 but does not explain how the lack of evidence regarding the issuance of the temporary operator's permit implicates the basic and mandatory provisions of the section. Ike also does not contend he did not in fact receive the form, nor does he contend he suffered any prejudice as the result of the lack of evidence regarding issuance of the form to him. Rather, the substance of Ike's argument appears to be limited to the contention that without evidence regarding the issuance of the temporary operator's permit to him, the Department – strictly as a matter of law – lacked jurisdiction to suspend his driving privileges.

B. The jurisdictional requirements of the Report and Notice as the temporary operator's permit were not violated.

The language of N.D.C.C. § 39-20-03.1(1) indicates that, as a temporary operator's permit, the Report and Notice serves as evidence of the person's driving privileges, in lieu of the person's operator's license and that the permit extends the person's driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer. The temporary operator's permit also serves as the official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, thereby giving the person notice and the opportunity for a hearing "if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit." N.D.C.C. § 39-20-05(1).

The North Dakota Supreme Court addressed the jurisdiction requirements of the Department with respect to temporary operator's permits under N.D.C.C. § 39-20-03.1 in cases such as Schwind v. Director, North Dakota Department of Transportation, 462 N.W.2d 147 (N.D. 1990), Sabinash v. Director of Department of Transportation, 509 N.W.2d 61 (N.D. 1993), and in Samdahl v. North Dakota Department of Transportation Director, 518 N.W.2d 714 (N.D. 1994).

In Schwind, the Supreme Court was presented with the issue of whether a procedural deficiency involving the lack of evidence of whether the law enforcement officer sent Schwind's driver's license to the Department as directed by section 39-20-03.1(1) "was fatal to the Director's jurisdiction to conduct a hearing." 462 N.W.2d at 148-49. The Court held:

> The clear legislative intent in enacting chapter 39-20, NDCC, was for the protection of the public, i.e., to prevent individuals from driving while under the influence of intoxicants. Williams v. North Dakota State Highway Comm'r, 417 N.W.2d 359, 360 (N.D.1987); Asbridge v. North Dakota State Highway Comm'r, 291 N.W.2d 739, 750 (N.D.1980). Section 39-20-03.1, NDCC, was enacted, in part, to help ensure that an individual who violated this chapter would not continue to drive. It would be an absurd result if we were to hold that an officer's failure to strictly comply with this portion of the statute had the opposite effect. While it is clear that section 39-20-03.1, NDCC, requires the officer to forward the operator's license, the failure to do so does not destroy the Director's jurisdiction to suspend a violator's driving privileges. A contrary holding would defeat the Legislature's intent to protect the public from potential hazards posed by intoxicated drivers.

Id. at 150. In reaching its decision, the Supreme Court cited the facts that "Schwind had full notice and knowledge of the administrative proceedings and has not been shown to have been prejudiced by the alleged failure to submit the license." Id. at 151. Addressing the jurisdictional requirements of section 39-20-03.1, the Court ruled:

> The prerequisite for the exercise of the Director's jurisdiction is the certified written report and test records of either breath, blood, saliva, or urine. Because these were forwarded as required by

> statute, we hold that the Director's jurisdiction was properly exercised.

Id.

In Sabinash, the Supreme Court was presented with the issue of whether the failure of a law enforcement officer to check a box on the temporary operator's permit issued to Sabinash indicating whether the permit was "valid" or was "invalid," deprived him of his rights of procedural due process and the Department of jurisdiction to conduct the administrative hearing. 509 N.W.2d at 62-63. The Supreme Court found:

> Although Sabinash's temporary operator's permit was not marked as "valid," it was also not marked as "not valid." Nor was one of the three reasons marked for invalidating the permit. There is no hint in this record that Judd's failure to mark the appropriate box was anything other than an inadvertent oversight. At worst, Judd's failure to mark one of the boxes may have resulted in Sabinash receiving an ambiguous temporary operator's permit, but it clearly did not result in his receiving an invalid one.
>
> Moreover, there is no evidence that Sabinash was stopped by law enforcement officers while driving with this temporary operator's permit, no evidence that he refrained from driving because of the permit's ambiguity, and no evidence that he was even aware of the ambiguity prior to the administrative hearing.

Id. at 63-64. The Court concluded:

> [A]lthough Sabinash's permit may have been facially incomplete, his permit was valid, and, having suffered no adverse consequences from the oversight, Sabinash was deprived of no rights granted by NDCC § 39-20-03.1(1) . . . .

Id. at 64.

In Samdahl, the Supreme Court was presented with the issue of whether a 36-day delay in issuing the driver a temporary operator's permit deprived the Department of jurisdiction to suspend Samdahl's driving privileges. 518 N.W.2d at 715. Relying on the procedural requirements of section 39-20-03.1, Samdahl argued "the hearing officer was without jurisdiction because 'immediately' after receiving the toxicologist results, a police officer neither took possession of

Samdahl's operator's license, nor issued him a temporary operator's permit as required under § 39-20-03.1." Id. at 717. The Supreme Court rejected Samdahl's jurisdictional argument and ruled:

> This case is very similar to Schwind, in which we held an absurd result would occur if we required that the statute be followed to the letter. Id. "Section 39-20-03.1, NDCC, was enacted, in part, to help ensure that an individual who violated this chapter would not continue to drive." Id. Although the unexplained delay of more than one month between the testing of the blood and the giving of notice of intention to suspend driving privileges does not strictly comply with "the letter of the law," we seek to avoid absurd results. It would be an absurd result if, in the absence of any showing of harm or prejudice to Samdahl, we were to hold the officer's failure to strictly comply with the statute resulted in Samdahl retaining his driving privileges.

Id. at 717 (footnotes omitted).

In this case, as with the drivers in Schwind, Sabinash, and Samdahl, Ike is unable to demonstrate, and in fact does not contend, he suffered any prejudice or adverse consequences as a result of the lack of evidence regarding the issuance of the temporary operator's permit to him. Ike did not present any evidence at the administrative hearing that he refrained from driving a motor vehicle at any time prior to the date of his administrative hearing. Ike requested and was granted an administrative hearing.

The conclusion that the Department had jurisdiction to suspend Ike's driving privileges is even more compelling than in Schwind, Sabinash, or Samdahl when considered in light of the additional facts of this case. Significantly, Ike did not present any evidence that a temporary operator's permit was not issued to him, thereby allowing an unfavorable inference to be drawn. See Geiger v. Hjelle, 396 N.W.2d 302, 303 (N.D. 1986) ("[f]ailure of a party to testify permits an unfavorable inference in a civil proceeding" and "the hearing officer could also consider the lack of contrary evidence"). The evidence established:

a. Ike's driver's license was attached to the Report and Notice – a condition indicative of the contemporaneous surrender of the person's operator's license upon the issuance of a temporary operator's permit as required by section 39-20-03.1(1); and

b. Ike submitted his request for hearing within ten days of the date shown on the Report and Notice as the date of the purported issuance of the temporary operator's permit in compliance with N.D.C.C. § 39-20-05(1).

The evidence leads to the reasonable conclusion that Ike was issued a temporary operator's permit on May 24, 2007, and his argument regarding the lack of evidence of the issuance is effectively moot.

Any issue involving the lack of evidence in the issuance of the temporary operator's permit to Ike, under the facts of this case, does not implicate the basic and mandatory provisions of N.D.C.C. § 39-20-03.1. The Department had jurisdiction to suspend Ike's driving privileges.

C. The jurisdictional requirements of the Report and Notice as the certified written report were not violated.

As the certified written report under N.D.C.C. § 39-20-03.1(3), the Report and Notice provides the Department with the required information that is material under N.D.C.C. § 39-20-05 to its decision to suspend a person's driving privileges – i.e., "whether there were reasonable grounds to believe the person was driving or was in actual physical control of a vehicle while under the influence of alcohol, whether the person was properly tested, and whether the person's blood-alcohol level exceeded the legal limit." Aamodt, 2004 ND 134, ¶ 23, 682 N.W.2d 308. The Report and Notice also provides the person the means "to know what the officer was relying on," Id., at ¶ 25, in determining whether "to request a hearing to challenge the suspension of his or her driving

privileges." Jorgensen v. N.D. Dep't of Transp., 2005 ND 80, ¶ 13, 695 N.W.2d 212.

The Supreme Court addressed the jurisdiction requirements of the Department with respect to certified written reports under N.D.C.C. § 39-20-03.1 in cases such as Aamodt, Jorgensen, and Whitecalfe v. North Dakota Department of Transportation, 2007 ND 32, 727 N.W.2d 779.

In Whitecalfe, the Supreme Court summarized its prior holdings with respect to the jurisdictional nature of issues relating to certified written reports as follows:

> In Aamodt, the driver was arrested for driving while under the influence of alcohol, submitted to a chemical test, and was given a copy of the report and notice informing him of the Department's intent to suspend his driving privileges. Aamodt, 2004 ND 134, ¶ 3, 682 N.W.2d 308. A law enforcement officer sent a copy of the report and notice to the Department, but that copy did not include the law enforcement officer's statement of reasonable grounds for believing the driver was in actual physical control of a vehicle while under the influence of alcohol. Id. at ¶ 15, 682 N.W.2d 308. We said the Department's authority to suspend a person's license was given by and dependant on the terms of the statute. Id. We held the statutory provision requiring the officer to show probable cause in the report and notice to the Department was a basic and mandatory provision, and therefore the Department lacked the authority to suspend the driver's driving privileges because the report and notice sent to the Department did not comply with statutory requirements. Id. at ¶ 26, 682 N.W.2d 308.
>
> In Jorgensen, the driver was arrested for driving while under the influence of alcohol and submitted to a chemical test. Jorgensen, 2005 ND 80, ¶ 2, 695 N.W.2d 212. The driver was given a copy of the report and notice informing him of the Department's intent to suspend his driving privileges. Id. at ¶ 4, 695 N.W.2d 212. A copy of the report and notice was also sent to the Department along with an analytical report for the driver's blood sample, but the law enforcement officer failed to record the results of the chemical test on the report and notice as required by statute. Id. at ¶ 4, 95 N.W.2d 212. We held the Department lacked the authority to suspend the driver's driving privileges because the officer failed to record the chemical test results on the copy of the report and notice sent to the Department as required by statute. Id. at ¶ 13, 695 N.W.2d 212.

> The Department lacked authority in Aamodt and Jorgensen because of a failure to comply with statutory requirements for the reports sent to the Department. Here, N.D.C.C. § 39-20-04 requires a law enforcement officer to include in the report sent to the Department (1) "reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance"; (2) "the person was lawfully arrested"; and (3) "the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14."

2007 ND 32, ¶¶ 10-12, 727 N.W.2d 779.

The Court in Whitecalfe declined to extend the holdings in Aamodt and Jorgensen to the circumstance in which the driver's copy of the Report and Notice – unlike the copy of the Report and Notice submitted to the Department – did not include the portion of the document with the officer's statement of probable cause. The Court ruled:

> For the Department to have the authority to revoke the individual's driving privileges the plain language of N.D.C.C. § 39-20-04 requires that information be included in the report sent to the Department. It does not require the information to be provided to the driver at that stage of the process.
>
> In this case, the copy of the report and notice sent to the Department contained all the information required by statute, including the officer's statement of probable cause. The driver's copy of the report and notice Whitecalfe and Berg received did not include the officer's statement of probable cause. However, we conclude that omission does not affect the Department's authority to revoke Whitecalfe's and Berg's driving privileges because N.D.C.C. § 39-20-04 only requires the driver receive a temporary operator's permit, which serves as notice of the Department's intent to revoke driving privileges and informs the driver of the hearing procedures. Section 39-20-04, N.D.C.C., does not require the officer's statement of probable cause be given to the driver at that stage of the process in order for the Department to have authority to suspend or revoke an individual's driving privileges. We decline to read this requirement into the statute. . . . We conclude the Department had authority to revoke Whitecalfe's and Berg's driving privileges.

2007 ND 32, ¶¶ 12-13, 727 N.W.2d 779.

In this case, Ike cites Jorgensen in ostensible support of his contention the Department lacked jurisdiction to suspend his driving privileges, however, Ike

does not explain the manner in which the issue in Jorgensen relates to or supports his argument. Unlike the drivers in Aamodt and in Jorgensen, Ike does not contend the Report and Notice sent to the Department was in any manner deficient in the criteria required by N.D.C.C. § 39-20-03.1(3). Ike was provided a copy of the Report and Notice with the required information by mail on June 6, 2007, well in advance of the June 22, 2007, administrative hearing, thereby satisfying the Whitecalfe requirements. (DOT App. 9).

Any issue regarding the Report and Notice as the certified written report, under the facts of this case, does not implicate the basic and mandatory provisions of N.D.C.C. § 39-20-03.1. The Department had jurisdiction to suspend Ike's driving privileges.

II. **A reasoning mind reasonably could have concluded Ike's blood specimen was drawn by a person who was medically qualified to withdraw blood for the purpose of determining its alcohol content.**

The admissibility of an analytical result of a chemical test of a blood specimen is dependent, in part, on compliance with the requirements of N.D.C.C. § 39-20-02. Section 39-20-02 provides:

> Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content therein. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse.

In this case, Ike objected to the admissibility of the Submission for Blood (Form 104) at the administrative hearing on the ground the abbreviation of the medical designation that followed the name of the person who drew Ike's blood specimen purportedly did not match the State Toxicologist's list of abbreviated designations of persons qualified to draw blood. (Ike App. 20, ll. 2-13; 32). The hearing officer found the first three characters of the designation following the

person's name were "MLT", and that the State Toxicologist's list includes "MLT as an abbreviation for Medical Laboratory Technician." (Ike App. 20, ll. 14-18; 31-32). Ike appears to concede that the first three characters of the designation can be read as "MLT," but that the hearing officer's finding was unreasonable because no determination was made as to the meaning of the remaining characters.[2]

The North Dakota Supreme Court has held:

> In deciding whether the findings of fact made by an administrative agency are supported by a preponderance of the evidence, we determine only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record. Power Fuels, Inc. v. Elkin, 283 N.W.2d 214, 220 (N.D.1979). We do not decide whether the hearing officer was right in his factual determinations and inferences. Id.

Lorenzen v. State Highway Comm'r, 401 N.W.2d 526, 528 (N.D. 1987). A fact-finder is permitted to draw reasonable inferences from the evidence. Dettler v. Sprynczynatyk, 2004 ND 54, ¶ 23, 676 N.W.2d 799. "[W]hen more than one reasonable inference can be made from the evidence, a reviewing court must affirm the inference made by the hearing officer." Russell v. Moore, 1997 ND 111, ¶ 10, 564 N.W.2d 278.

It was reasonable for the hearing officer to infer from the evidence that the first three letters, which Ike concedes can be read as "MLT," represents the State Toxicologist's approved abbreviation for "medical laboratory technician," without

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[2] Although the hearing officer made no finding regarding the full abbreviation, licensing boards of other jurisdictions have recognized "MLT (ASCP)" as an abbreviation for a medical laboratory technician who has been certified by the American Society for Clinical Pathology. See, e.g., Fla. Admin. Code Ann. r. 64B3-5.0011(18) & (32), & r. 64B3-5.004; 28 Pa. Code § 30.20.; Tenn. Comp. R. & Regs. 1200-6-1-.22.; see also, Higgins v. Am. Soc'y of Clinical Pathologists, 238 A.2d 665, 667 (N.J. 1968) ("Technologists certified by ASCP may designate their professional status by the use of the initials M.T. (ASCP) after their names.").

further inquiry as to the meaning of the additional characters that followed this proper designation. A reasoning mind reasonably could have concluded that Ike's blood specimen was drawn by medical laboratory technician who was medically qualified to withdraw blood for the purpose of determining its alcohol content.

CONCLUSION

The Department respectfully requests that this Court affirm the judgment of the Williams County District Court and the Department's decision suspending Ike's driving privileges for a period of 91 days.

Dated this 30th day of January, 2008.

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