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20090056

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Darren J. Landsiedel,

Appellant,

v.

Director, North Dakota Department of Transportation,

Appellee.

Supreme Ct. No. 20090056

District Ct. No. 08-C-0150

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STATE OF NORTH DAKOTA

APPEAL FROM THE DISTRICT COURT
MCLEAN COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE DAVID E. REICH

BRIEF OF APPELLEE w/attached Addendum

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1. Whether the telephonic hearing violated N.D.C.C. § 28-32-35 or otherwise denied Landsiedel a fair hearing.

2. Whether the hearing officer abused his discretion by admitting the Report and Notice into evidence.

STATEMENT OF CASE

McLean County Deputy Sheriff Terry Mehlhoff arrested Darren Jay Landsiedel ("Landsiedel") for being in actual physical control of a vehicle while under the influence of alcohol. (Appendix ("App.") 25, ll. 17-18.) The arrest occurred on June 14, 2009. (App. 18, ll. 23-25.) Deputy Mehlhoff issued a Report and Notice to Landsiedel on the same date, after concluding he had refused to submit to a request for a chemical breath test.[1] The Report and Notice informed Landsiedel of the intent of the North Dakota Department of Transportation ("Department") to revoke his driving privileges.

In response to a request for hearing, the hearing officer issued a "NOTICE OF ADMINISTRATIVE HEARING BEFORE THE NDDOT DIRECTOR" ("Notice of Hearing") on June 20, 2008, scheduling the hearing to be held at the McLean County Courthouse on July 11, 2008. (App. 36.) The hearing officer added a handwritten notation at the bottom of the Notice of Hearing stating as follows: "I will be calling the sheriff's office to take testimony telephonically." (Id.) On June 30, 2008, the hearing officer issued an Amended Notice of Hearing scheduling the hearing to be held at the McLean County Courthouse on July 8, 2008. (App. 37.) The Amended Notice of Hearing did not include a notation about telephone testimony. (Id.)

[1] Landsiedel did not include in the Appendix a copy of the Report and Notice, which the hearing officer admitted into evidence as Exhibit 1b. Hence, the Department has attached a copy of the Report and Notice to this brief, as noted in the table of contents.

At the hearing on July 8, 2008, all participants were present at the McLean County Courthouse except the hearing officer, who appeared telephonically. (App. 6, ll. 1-11.) Landsiedel objected to the hearing officer appearing telephonically. (App. 6, ll. 10-18.) The hearing officer overruled the objection. (App. 8, ll. 19-20.) In addition, Landsiedel objected to admission into evidence of the Report and Notice on the grounds that the foundation witness, Deputy Mehlhoff, was not able to see the copy of the Report and Notice that was received into evidence at the hearing officer's location. (App. 28, ll. 1-5.) The hearing officer overruled the objection. (App. 28, ll. 9-10.) At the conclusion of the hearing, the hearing officer issued his findings of fact, conclusions of law and decision revoking Landsiedel's driving privileges for one year. (App. 33, l. 6 to App. 35, l. 23.)

Landsiedel appealed the hearing officer's decision to the McLean County District Court. (App. 3-5.) Judge David E. Reich issued his Memorandum Opinion and Order affirming the hearing officer's decision on November 14, 2008. (App. 40-47.) Judgment was entered on December 4, 2008. (App. 48.) The Department served Notice of Entry of Judgment on December 8, 2008. (App. 49.) Landsiedel appealed from the Judgment to this Court. (App. 50.) The Department asks this Court to affirm the judgment of the Grand Forks County District Court and the administrative revocation of Johnson's driving privileges for three years.

STATEMENT OF FACTS

Elmer Hinsz ("Hinsz") was in his residence in Riverdale, North Dakota when he observed a man, later identified as Landsiedel, get out of his pickup and walk behind the house across the street from Hinsz's residence. (App. 13, ll. 5-21.) Hinsz was able to clearly see Landsiedel's pickup because it was parked

under a street light. (App. 13, ll. 23-25.) Hinsz watched as Landsiedel returned to his pickup and drove away. (App. 13, l. 21.)

Landsiedel then drove past Hinsz's residence three or four times. (App. 13, ll. 21-22.) Landsiedel parked and got out of his pickup for a second time. (App. 14, l. 7.) Landsiedel then walked behind another house across the street from Hinsz's residence. (App. 14, ll. 8-10.) Landsiedel tripped or stumbled as he walked back to his pickup. (App. 15, ll. 3-6.) Landsiedel got into his pickup and drove up the street. (App. 15, ll. 8-9.)

Landsiedel doubled back and drove by Hinsz's residence another three times before parking across the street again. (App. 15, ll. 10-11.) Landsiedel got out of his pickup and walked up to the house across the street from Hinsz's residence. (App. 15, ll. 11-12.) Landsiedel looked through one of the house's windows before entering the house through the front door. (App. 15, ll. 13-14.) Hinsz watched as Landsiedel walked around inside the house and then walked out, got back into his pickup and drove away. (App. 15, ll. 14-16.)

Hinsz saw Landsiedel a fourth time when he drove by again. (App. 15, ll. 19-21.) Landsiedel got out of his pickup and walked up to the house across the street. (App. 15, ll. 24-25.) Landsiedel looked through one of the house's windows before walking back to his pickup. (App. 15, l. 25, App. 16, l. 1.) Landsiedel reached into the pickup's cab and removed what appeared to be a case of beer. (App. 16, ll. 1-3.) Landsiedel put the case of beer into a tool box in the rear of the pickup. (App. 16, ll. 3-4.) Landsiedel then got back in the pickup and reclined the seat. (App. 16, ll. 4-6.) Hinsz called the sheriff's office at that point, which was 1:13 a.m., and described what he had observed. (App. 16, ll. 6-14.)

A law enforcement dispatcher contacted Deputy Mehlhoff at 1:14 a.m. concerning Hinsz's call. (App. 20, ll. 4-6.) Deputy Mehlhoff arrived on the scene

at approximately 1:22 a.m. (App. 20, ll. 7-10.) After locating Landsiedel's pickup, Deputy Mehlhoff relayed the license plate to the dispatcher and then walked up to the pickup. (App. 20, ll. 11-22.) Deputy Mehlhoff shined his flashlight into the pickup and observed Landsiedel sleeping behind the wheel. (App. 20, ll. 23-24.) Landsiedel woke up and opened the door after Deputy Mehlhoff knocked on the window. (App. 20, ll. 24-25.)

Deputy Mehlhoff detected "a fairly strong odor of an alcoholic beverage" on Landsiedel's breath. (App. 21, ll. 2-5.) Landsiedel had difficulty locating his driver's license. (App. 26, ll. 19-23.) His eyes appeared to be somewhat bloodshot. (App. 27, ll. 10-12.) Following some field tests, Deputy Mehlhoff advised Landsiedel that he was under arrest for being in actual physical control of his pickup while under the influence of alcohol. (App. 25, ll. 16-18.) A notation atop the Report and Notice indicates that the arrest occurred at 1:50 a.m.

Deputy Mehlhoff handcuffed Landsiedel and transported him to the law enforcement center in Washburn, North Dakota. (App. 25, 20-22.) Deputy Mehlhoff recited the implied consent advisory and requested that Landsiedel submit to an Intoxilyzer test at 2:40 a.m. (App. 26, ll. 2-3.) Landsiedel replied, no. (App. 26, l. 4.) Deputy Mehlhoff asked Landsiedel a second time whether he would submit to an Intoxilyzer test and Landsiedel again refused. (App. 26, ll. 5-7.)

PROCEEDINGS ON APPEAL TO DISTRICT COURT

Judge Reich observed as follows: "Landsiedel argues that he was denied a fair hearing due to [the] fact that the hearing officer appeared by telephone. However, Landsiedel does not specifically identify how the hearing officer's appearance by phone denied him a fair hearing." (App. 43.) Judge Reich added as follows: "Landsiedel was given notice of the hearing and an opportunity to be

heard. He has failed to show that he was prejudiced by the fact that the hearing officer conducted the hearing by telephone." (App. 43.)

On the question of the admissibility of the Report and Notice, Judge Reich observed as follows:

> Landsiedel was provided a copy of the Report and Notice prior to the hearing. [Exhibit 3.] Deputy Mehlhoff testified that the Report and Notice form he used in his testimony was a copy of the one he issued in this case and provided to Landsiedel. Landsiedel had the opportunity at the hearing to review the Report and Notice Deputy Mehlhoff referred to in his testimony to compare it to the exhibit [Landsiedel] had been provided prior to the hearing. Landsiedel does not contend that the Report and Notice form referred to by Deputy Mehlhoff was not the same form he had received as Exhibit 1b. Under these circumstances, the Court determines that the hearing officer did not err in admitting Exhibit 1b and that Landsiedel was not denied a fair hearing by the admission of this exhibit.

(App. 44-45) (citations omitted.) Judge Reich affirmed the hearing officer's decision revoking Landsiedel's driving privileges for one year. (App. 47.)

STANDARD OF REVIEW

"Judicial review of a decision to suspend a driver's license is governed by the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32." Eriksmoen v. Dir., N.D. Dep't of Transp., 2005 ND 206, ¶ 6, 706 N.W.2d 610. "This Court exercises a limited review in appeals involving drivers' license suspensions or revocations." Henderson v. Dir., N.D. Dep't of Transp., 2002 ND 44, ¶ 6, 640 N.W.2d 714. This Court has stated as follows: "We give great deference to administrative agency rulings by not making independent findings of fact or substituting our own judgment for that of the agency." Sonsthagen v. Sprynczynatyk, 2003 ND 90, ¶ 7, 663 N.W.2d 161.

On appeal, this Court reviews the administrative agency's decision. Rist v. N.D. Dep't of Transp., 2003 ND 113, ¶ 6, 665 N.W.2d 45. "Although our review is limited to the record before the administrative agency, 'the district

court's analysis is entitled to respect if its reasoning is sound.'" Id. (quoting Obrigewitch v. Dir., N.D. Dep't of Transp., 2002 ND 177, ¶¶ 7-8, 653 N.W.2d 73).

LAW AND ARGUMENT

I. The telephonic hearing did not violate N.D.C.C. § 28-32-35 or otherwise deny Landsiedel a fair hearing.

Landsiedel argues on appeal that the telephonic hearing violated N.D.C.C. § 28-32-35 and otherwise denied him a "fair hearing". Landsiedel does not clearly identify any "fair hearing" standard that he contends is applicable other than N.D.C.C. § 28-32-35.

This Court has held that "[a] driver's license is a protectable property interest to which the guarantee of procedural due process applies." Kobilansky v. Liffrig, 358 N.W.2d 781, 786 (N.D. 1984). However, '[t]he minimal due process before an administrative board is not synonymous with the minimal requirements of due process in a court of law." Id. "Due process requires a participant in an administrative proceeding be given notice of the general nature of the questions to be heard, and an opportunity to prepare and be heard on those questions." Morrell v. N.D. Dep't of Transp., 1999 ND 140, ¶ 9, 598 N.W.2d 111. The due process requirements for administrative hearings on suspension or revocation of drivers licenses are embodied in N.D.C.C. ch. 28-32 and ch. 39-20. See Sabinash v. Dir., Dep't of Transp., 509 N.W.2d 61, 63 (N.D. 1993); Morrell, at ¶ 9.

N.D.C.C. § 28-32-35 states as follows:

> The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted

> in total or in part by making use of telephone, television, facsimile services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

(Emphasis added). The provision in N.D.C.C. § 28-32-35 that an administrative hearing may be conducted by telephone provided it would not "substantially prejudice or infringe on the rights and interests of any party" is largely consistent with the due process analysis that "[g]enerally, there is no right to redress if a party cannot show prejudice" from the defect in the hearing process. See Morrell, 1999 ND 140, ¶ 11, 598 N.W.2d 111.

In addition to citing N.D.C.C. § 28-32-35, Landsiedel cites Lawrence v. Delkamp, 2008 ND 111, 750 N.W.2d 452. In Lawrence, this Court concluded that a district court had not abused its discretion under N.D.R.Civ.P. 43(a) by denying the appellant's request to take the appellee's testimony by telephone during a motion hearing. Lawrence, at ¶ 17. N.D.R.Civ.P. 43(a) states in part, as follows:

> In every trial, the testimony of witnesses must be taken orally or by non-oral means in open court, unless otherwise provided by statute or these rules. . . . The court may, upon the agreement of the parties, or for good cause shown in compelling and unexpected circumstances, and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. Notice must be given to the other parties as soon as reasonably possible for testimony by contemporaneous transmission . . . .

(Emphasis added.) Since the taking of telephonic testimony in an administrative proceeding is "otherwise provided by statute", application of N.D.C.C. § 28-32-35, and not N.D.R.Civ.P. 43(a), controls the question of whether the hearing officer erred by taking the testimony of Hinsz and Deputy Mehlhoff by telephone. Specifically, under N.D.C.C. § 28-32-35, the question is whether the telephone

testimony "substantially prejudice[d] or infringe[d] on the rights and interests" of Landsiedel.

Landsiedel makes several claims that do not really constitute arguments that his rights and interests were substantially prejudiced or infringed. Specifically, Landsiedel claims that he had requested an in-person hearing. (Landsiedel's Brief at 10.) Along the same lines, Landsiedel claims that the hearing officer had not provided notice that he would be appearing by telephone. (Id.) Similarly, Landsiedel claims that the hearing officer did not explain why he appeared by telephone. (Id. at 12.) However, standing alone, these claims do not address the questions of how Landsiedel's rights and interests were substantially prejudiced and infringed.

For example, Landsiedel does not explain how he would have prepared differently for the hearing officer appearing telephonically, such that Landsiedel's rights and interests were substantially prejudiced and infringed by allegedly not being put on notice that the hearing officer would be appearing telephonically. Further, Landsiedel does not explain how his rights and interests were prejudiced by the hearing officer not explaining why he appeared telephonically. Indeed, N.D.C.C. § 28-32-35 did not require the hearing officer to give any kind explanation for appearing by telephone. Rather, the question is whether any of Landsiedel's rights or interests were substantially prejudiced or infringed by the hearing officer appearing telephonically.

Landsiedel's argument on how his rights and interests were substantially prejudiced and infringed centers on the hearing officer being unable to visually observe the witnesses during their testimony. (Landsiedel's Brief at 10-11.) As Landsiedel points out, this Court has observed as follows:

> In testimony by telephone the image of the witness cannot be seen nor does it disclose if the witness is using or relying upon any notes or documents and, as a result, meaningful communication is

> effectively curtailed or prevented. . . . Above all, in testimony by telephone the trier of facts is put in a difficult, if not impossible, position to take into account the demeanor of the witness in determining the witness' credibility.

Lawrence, 2008 ND 111, ¶ 10, 750 N.W.2d 452 (quoting In re Gust, 345 N.W.2d 42 (N.D. 1984)).

Landsiedel attempts to suggest the importance of visually observing the demeanor of the witnesses in this particular case as follows: "At the hearing, there were questions regarding whether the vehicle in question was operable, and the two hour time limit. Credibility of witnesses and their testimony was inherent in the proceedings, overall and specifically in regard to those two questions." (Landsiedel's Brief at 10) (internal citations omitted.) Landsiedel's argument is unpersuasive for several reasons.

First, as a matter of law, there was no "two hour time limit" at Landsiedel's hearing. The plain language of the opening sentence in both N.D.C.C. § 39-20-03.1 and N.D.C.C. § 39-20-03.2 makes performance of a chemical test within two hours after driving or being in actual physical control of a vehicle a prerequisite to suspension of driving privileges under N.D.C.C. § 39-20-04.1. However, the plain language of the opening sentence in N.D.C.C. § 39-20-04(1) does not make a refusal within two hours after driving or being in actual physical control of a vehicle a prerequisite to revocation of driving privileges.

In other words, while the Department is precluded from suspending driving privileges under N.D.C.C. § 39-20-04.1 if a chemical test is not performed within the applicable two-hour period, refusal to submit to a chemical test beyond the two-hour period requires the Department to revoke driving privileges. As a result, while the hearing officer made what amounts to findings of fact on the question, the findings are superfluous. (App. 35, ll. 13-16.) Simply stated, whether Landsiedel refused to submit to Deputy Mehlhoff's request for an Intoxilyzer test

within two hours after Landsiedel was found in his vehicle is immaterial as a matter of law.

Second, Landsiedel's argument that his rights and interests were substantially prejudiced and infringed as a result of the hearing officer being unable to visually observe the two witnesses during their testimony also is unpersuasive because Landsiedel has never identified any of the two witnesses' testimony that he disputes. Landsiedel also did not present any testimony refuting the testimony of either Hinsz or Deputy Mehlhoff. See Geiger v. Hjelle, 396 N.W.2d 302, 303 (N.D. 1986) ("Failure of a party to testify permits an unfavorable inference in a civil proceeding.")

More particularly, Landsiedel does not identify any testimony by either Hinsz or Deputy Mehlhoff that Landsiedel claims was not believable or credible. The hearing officer's resolution of this case did turn not on resolving factual disputes but rather on the legal significance of undisputed facts. Landsiedel makes his credibility argument in a vacuum. Under the circumstances of this case, Landsiedel does not explain how his rights or interests were substantially prejudiced by the hearing officer being unable to visually observe the unrefuted and undisputed testimony of Hinsz and Deputy Mehlhoff. As a result, Landsiedel has failed to establish that the hearing officer violated N.D.C.C. § 28-32-35 or otherwise denied Landsiedel a fair hearing.

II. The hearing officer did not abuse his discretion or violate N.D.C.C. § 28-32-35 by admitting the Report and Notice into evidence.

Landsiedel argues that the Report and Notice that was admitted into evidence as Exhibit 1b was not authenticated because Deputy Mehlhoff was unable to see the copy of the Report and Notice that the hearing officer had in his possession. (Landsiedel's Brief at 12-13.) In addition, Landsiedel argues that admitting the Report and Notice into evidence violated N.D.C.C. § 28-32-35

because the hearing officer "may have been able to make use of facsimile services to provide [Deputy] Mehlhoff with a copy of Exhibit 1b." (Landsiedel's Brief at 13.) Neither of Landsiedel's arguments have any merit.

A. A reasoning mind reasonably could have concluded that there was a reasonable probability that the Report and Notice admitted into evidence was a duplicate copy of the Report and Notice that Deputy Mehlhoff issued to Landsiedel.

This Court has summarized the scope of reviewing an administrative hearing officer's evidentiary ruling as follows:

> According to N.D.C.C. § 28-32-24(1), the admissibility of evidence in administrative hearings is to be determined in accordance with the North Dakota Rules of Evidence. The appropriate standard of review for evidentiary rulings in an administrative hearing is an abuse of discretion standard. See Knudson v. Director, North Dakota Dep't of Transp., 530 N.W.2d 313, 316 (N.D. 1995). An abuse of discretion occurs if a hearing officer acts in an arbitrary, unreasonable, or capricious manner of if the hearing officer misinterprets or misapplies the law. See id.

Sonsthagen v. Sprynczynatyk, 2003 ND 90, ¶ 9, 663 N.W.2d 161. Landsiedel's authentication argument is meritless for at least two reasons.

First, this Court has noted that "extrinsic evidence of authentication as a condition precedent to admissibility is not required with respect to signatures, documents, or other matters declared by statute to be presumptively or prima facie genuine or authentic. NDREv 902(10)." Frost v. N.D. Dep't of Transp., 487 N.W.2d 6, 8-9 (N.D. 1992). N.D.C.C. § 39-20-05(4) states, in part, as follows: "At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation."

This Court has observed as follows: "The [Report and Notice] becomes a regularly kept record of the Department, and is admissible as prima facie evidence of its contents once it is forwarded to the director of the Department. That report is received as prime [sic] facie evidence of its contents without further

foundation. N.D.C.C. § 39-20-05(4)." Maher v. N.D. Dep't of Transp., 539 N.W.2d 300, 303 (N.D. 1995) (internal citations omitted.)

The Report and Notice which the hearing officer admitted into evidence states that Deputy Mehlhoff issued the document to Landsiedel on June 14, 2008, which was the date of his arrest. (Department's Exhibit.) A stamp in the upper right corner of the Report and Notice indicates that the Department received the document on June 18, 2008. (Id.) Hence, the Report and Notice was properly admitted into evidence as a regularly kept record of the Department under N.D.C.C. § 39-20-05(4).

In the alternative, there is sufficient extrinsic evidence of authentication to uphold the hearing officer's admission of the Report and Notice into evidence under N.D.R.Ev. 901(a), which states as follows: "The 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." Landsiedel essentially argues that the Department failed to establish through extrinsic evidence that the Report and Notice admitted into evidence was a duplicate copy of the Report and Notice that Deputy Mehlhoff issued to Landsiedel. (Landsiedel's Brief at 12-13.)

This Court has noted that "[w]here a state rule is derived from a federal rule, any interpretation or construction given to identical or similar language by the federal courts, while not binding on this Court, are persuasive." State v. Jenkins, 326 N.W.2d 67, 69 n. 4 (N.D. 1982). One federal court observed that, "[u]nder Rule 901(a), the court may admit evidence so long as there is a reasonable probability that the evidence is what it purports to be." Fiordalisi v. Zubek, 342 F. Supp. 2d 737, 742 (N.D. Ohio 2004). See also United States v. Elkins, 885 F.2d 775, 785 (11th Cir. 1989) ("Fed.R.Evid. 901(a) requires only some competent evidence in the record to support authentication.")

In this case, Deputy Mehlhoff testified that he had in his possession at the McLean County Courthouse a copy of the Report and Notice that he had issued to Landsiedel. (App. 27, ll. 23-25.) Deputy Mehlhoff testified that the citation number appearing in the upper right corner of the copy Report and Notice in his possession was 4796407. (App. 28, ll. 11-13.) That citation number matched the citation number on the copy of the Report and Notice offered into evidence by the hearing officer. (Department's Exhibit.) Deputy Mehlhoff testified that Landsiedel's name appeared on the second line of the copy of the Report and Notice in his possession. (App. 28, ll. 14-15.) Likewise, Landsiedel's name appears on the second line of the copy of the Report and Notice admitted into evidence by the hearing officer. (Department's Exhibit.)

Deputy Mehlhoff also testified that he had provided a copy of the Report and Notice in his possession to Landsiedel. (App. 28, ll. 21-22.) There was no testimony that Deputy Landsiedel provided more than one Report and Notice to Landsiedel. As a result, a reasoning mind reasonably could have concluded that there was a reasonable probability that the copy of the Report and Notice admitted into evidence was a duplicate copy of the copy of the Report and Notice issued to Landsiedel. Therefore, the hearing officer did not abuse his discretion by admitting the Report and Notice into evidence.

B. N.D.C.C. § 28-32-35 did not require the hearing officer to fax a copy of the Report and Notice to Deputy Mehlhoff during the administrative hearing.

In an abbreviated final argument of sorts, Landsiedel asserts that, "[u]nder N.D.C.C. § 28-32-35, the Hearing Officer may have been able to make use of facsimile services to provide [Deputy] Mehlhoff with a copy of [the Report and Notice marked as] Exhibit 1b." (Landsiedel's Brief at 13.) For what it is worth, Landsiedel failed to raise this particular point at either the administrative hearing

or on appeal to the district court. In any event, the Department's response to this point can be quickly said.

Landsiedel apparently is referencing the portion of N.D.C.C. § 28-32-35 stating that "[a] hearing may be conducted in total or in part by making use of telephone, television, facsimile services, or other electronic means . . . ." (Emphasis added.) However, the plain language of a statute simply permitting the use of "facsimile services" cannot reasonably be construed under the circumstances of this hearing as requiring the faxing of an exhibit to a witness participating telephonically in order to authenticate the exhibit.

The Report and Notice was properly authenticated under operation of either N.D.C.C. § 39-20-05(4) or N.D.R.Ev. 901(a). As a result, Landsiedel's rights and interests were not substantially prejudiced or infringed as a result of the hearing officer not faxing a copy of the Report and Notice to Deputy Mehlhoff during the administrative hearing.

CONCLUSION

The Department respectfully requests that this Court affirm the judgment of the McLean County District Court and the Department's decision revoking Landsiedel's driving privileges for one year.

Dated this 9 day of April, 2009.

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