

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20120316

Debbie Ann Painte,

)
)
) Appellee,)
)
)

Supreme Ct. No. 20120316

v.)
)

District Ct. No. 30-2012-CV-00317

Director, North Dakota Department
of Transportation,)
)
)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

)
) Appellant.)
)

NOV 07 2012

STATE OF NORTH DAKOTA

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

HONORABLE BRUCE B. HASKELL

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUE

Whether the Department had the authority to suspend Painte's driving privileges.

STATEMENT OF CASE

The hearing officer in this administrative proceeding issued her findings of fact, conclusions of law, and decision suspending Painte's driving privileges for a period of 180 days. (App. to Br. of Appellant ("Department's App.") 3.) Painte appealed the administrative decision to the Morton County District Court. (Id. at 16-18.) Painte alleged:

1. Hearing officer erred concluding that the chemical test was fairly administered. There was no showing that the test was administered in accordance with a method approved by the state toxicologist for the analysis of a sample of blood.

[2.] The hearing officer erred in concluding that there was probable cause to arrest Ms. Painte for Actual Physical Control of a motor vehicle as there was no showing that Ms. Painte was in a position to operate the controls of the motor vehicle.

(Id.)

The parties have briefed the respective issues raised by Painte on appeal to the district court. Painte, however, *appears* to raise an additional issue on appeal to the North Dakota Supreme Court that the Department lacked authority to suspend her driving privileges because the Report and Notice purportedly did not set forth "facts justifying the detention or the arrest for being in actual physical control." (Corrected Appellee's Brf. 1-2.) The Department submits this Reply Brief to address the substance of Painte's additional claim.

LAW AND ARGUMENT

The Department had the authority to suspend Painte's driving privileges.

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).

As applicable to this case, section 39-20-03.1(4), N.D.C.C., requires the Report and Notice “show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01.” N.D.C.C. § 39-20-03.1(4). The Supreme Court has stated “[t]he statutory provision requiring reasonable grounds . . . involves requirements that are material to the Department’s decision to suspend a person’s driving privileges and are predicates to the Department’s acting.” Aamodt, at ¶ 23. In Aamodt, “the Report and Notice Form[] stated the probable cause was an ‘odor of alcoholic beverage,’” which “[t]he Department concede[d] . . . [was] insufficient to show probable cause.” Id. at ¶ 15. The Supreme Court concluded “[w]ithout a finding of probable cause, there is no basis for taking away a person’s driving privileges . . . [and] therefore the Department had no authority to suspend Aamodt’s driving privileges.” Id. at ¶¶ 25-26.

In this case, the Report and Notice was marked as “already stopped” for the “[r]easonable suspicion to stop.” (Department’s App. 3.) The “probable

cause to arrest” section of the Report and Notice demonstrated Painte had “poor balance,” “failed field sobriety test(s),” and “failed screening test.” (Id.) It is the Department’s position that this information was sufficient to show Officer Jose had reasonable grounds to believe Painte was in actual physical control of her motor vehicle while under the influence of alcohol. The Department also argues Painte failed to make any showing that she did not know what Officer Jose was relying on. The Department, therefore, had the authority to suspend Painte’s driving privileges.

CONCLUSION

The Department respectfully requests this Court reverse the judgment of the Burleigh County District Court and reinstate the hearing officer’s decision suspending Debbie Ann Painte’s driving privileges for a period of 180 days.

Dated this 24th day of November, 2012.

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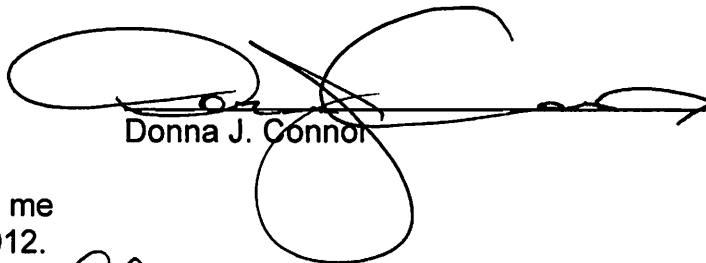
STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF BURLEIGH)

Donna J. Connor states under oath as follows:

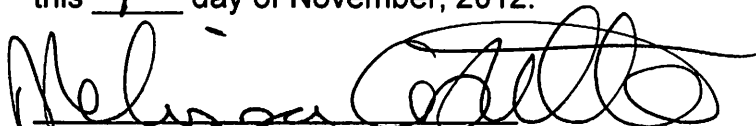
1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.
2. I am of legal age and on the 7th day of November, 2012, I served the attached **REPLY BRIEF OF APPELLANT** upon the appellee by placing a true and correct copy thereof in an envelope addressed as follows:

Thomas M. Tuntland
Tuntland & Colling
P.O. Box 1315
Mandan, ND 58554

and depositing the same, with postage prepaid, in the United States mail at
Bismarck, North Dakota.


Donna J. Connor

Subscribed and sworn to before me
this 2nd day of November, 2012.


Notary Public

