IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Tyler Scott Dawson,	)	
	)	
Appellant,	)	**Supreme Ct. No. 20120417**
	)	
v.	)	
	)	**District Ct. No. 08-2012-CV-01479**
North Dakota Department of Transportation,	)	
	)	
Appellee.	)	

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

HONORABLE GAIL HAGERTY

BRIEF OF APPELLEE

State of North Dakota
Wayne Stenehjem
Attorney General

By: Douglas B. Anderson
Assistant Attorney General
State Bar ID No. 05072
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300

Attorneys for Appellee.

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STATEMENT OF ISSUES

I. Whether the preponderance of the evidence, even without regard to Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses, supports the hearing officer's finding that Dawson's blood draw occurred within two hours after he had been driving his vehicle.

II. Whether the hearing officer abused her discretion by admitting into evidence Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses under the present sense impression exception to the hearsay rule.

STATEMENT OF CASE

Burleigh County Deputy Sheriff Joseph Van Inwagen ("Deputy Van Inwagen") arrested Dawson on June 17, 2012, for the offense of driving a vehicle while under the influence of intoxicating liquor. (Appendix of Brief of Appellee ("Department's App.") 1.) Dawson requested a hearing in accordance with N.D.C.C. § 39-20-05. (Id. at 7.) At the August 2, 2012, administrative hearing, the hearing officer considered the following issues:

> (1) [w]hether 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. section 39-08-01 or equivalent ordinance;
>
> (2) [w]hether the person was placed under arrest;
>
> (3) [w]hether the person was tested in accordance with N.D.C.C. section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and

(4) [w]hether the test results show the person had an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

(Id. at 8.)

Following the hearing, the hearing officer issued her findings of fact, conclusions of law, and decision suspending Dawson's driving privileges for a period of two years. (Appendix ("Dawson's App.") 14.) Dawson requested judicial review of the hearing officer's decision. (Id. at 3-4.)

STATEMENT OF FACTS

On June 17, 2012, at approximately 3:12 p.m., Deputy Van Inwagen received a report through dispatch of a boat that had fallen off of a trailer being pulled by a vehicle, which, in turn, had continued onward without stopping at the scene of the accident. (Tr. 4, ll. 5-7; 19-23.) In response to the dispatch report, Deputy Van Inwagen "went to the area of 62nd Avenue Southwest, near Derrick Drive." (Tr. 4, l. 24 – 5, l. 2.) Deputy Van Inwagen testified:

> Upon arrival there I did observe a boat that was upside down in the south ditch of 62nd Avenue. There was pretty serious skid marks in the gravel and dirt surface of the roadway, as well as the ditch, and debris that was littering the area.

(Tr. 6, ll. 19-25.)

Deputy Van Inwagen stated "[he] was simply looking for the vehicle at this time since it did continue away from the scene of the accident." (Tr. 6, ll. 5-9.) Deputy Van Inwagen stated he checked the area and then received "another call that he ... a person that was driving the pickup did return to the area." (Tr. 6, ll. 10-14.) Deputy Van Inwagen stated "[a]nd at that point is when we located him at 62nd Avenue Southeast and Derrick Drive." (Tr. 6, ll. 14-16.)

Deputy Van Inwagen testified that upon returning to the scene:

> I observed a small group of people, and then I observed near the boat a male individual, who was later identified by me as Tyler Dawson, in the ditch, going through the debris, picking up some of the debris, and ...
> . . .
>
> Further down the road to the east at 66th Street and 62nd Avenue was where Mr. Dawson had parked his pickup, and actually one of the witnesses had taken the keys away from him so he couldn't drive, and then gave him a ride, on their 4 wheeler, to where the boat was located.

(Tr. 7, ll. 1-12.)

Dawson admitted to Deputy Van Inwagen he was driving the vehicle when "he had lost control and that he had ... and had been eastbound on 62nd Avenue that he lost control of the vehicle and went in the ditch." (Tr. 7, ll. 16-21.) Dawson admitted "he had been drinking beer." (Tr. 8, ll. 12-15.) Deputy Van Inwagen observed Dawson "had slurred speech" and "a strong odor of alcoholic beverages coming from his person." (Tr. 8, ll. 16-17.)

After administering a series of field sobriety tests, Deputy Van Inwagen "placed [Dawson] under arrest for driving under the influence of alcoholic beverages" at 3:47 p.m. (Tr. 10, l. 14 - 13, l. 15; Department's App. 1.) Deputy Van Inwagen transported Dawson to St. Alexius Hospital where a sample of his blood was drawn at 4:45 p.m. (Tr. 13, l. 16 – 14, l. 10; Department's App. 3, 6.) The results of the blood test established Dawson had blood alcohol concentration of 0.184% by weight. (Tr. 17, ll. 5-8; Department's App. 4-5.)

Deputy Van Inwagen testified Dawson did not inform him of the time when his vehicle went into the ditch. (Tr. 7, ll. 22-24; 17, 9-12.) Instead, Deputy Van

Inwagen explained he based his estimation of the time of the accident on the time of the dispatch report at 3:12 p.m. and the statements of three witnesses he interviewed after he placed Dawson under arrest and at approximately 4:00 p.m. (Tr. 8, l. 24 – 10, l. 13.) Deputy Van Inwagen testified:

> I would like to point out that the ... the time of call was made by witnesses at about 1510 to 1512 which is the time the accident occurred.'"
> . . .
>
> That's knowledge based off the call from dispatch and speaking with witnesses and their written statements.

(Tr. 5, ll. 16-23.) Deputy Van Inwagen stated "[he] was given a window of 15 minutes, which was within the time of call was within that 15-minute window." (Tr. 18, ll. 18-21.)

Deputy Van Inwagen stated he spoke to the witnesses approximately "a half-hour, 45 minutes," after the estimated time of the accident. (Tr. 19, ll. 1-5.) Deputy Van Inwagen described the witnesses' demeanor as:

> . . . [N]ormal citizens that observed something that they don't normally observe, and then talk to the police about it, I suppose, were a little bit excited, you know, just you know talking amongst themselves, you know, as far as ... I ... I guess what I would consider normal behavior.
> . . .
>
> . . . They were absolutely excited. And I could add that one witness was at a house that was close by, looking out the window. Another observed it in their mirror, and the third one, I believe, was behind the suspect vehicle when this crash occurred.

(Tr. 19, ll. 6-21.)

PROCEEDINGS ON APPEAL TO DISTRICT COURT

At the administrative hearing, Dawson focused on the single issue of whether, in accordance with section 39-20-04.1(1), N.D.C.C., the evidence demonstrated his blood sample was drawn within two hours of when he had been driving his vehicle. In this regard, Dawson objected to the admissibility of Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses as being hearsay. (See Tr. 5, ll. 7-8; 9, ll. 5-8; 16, ll. 15-17; 18, ll. 22-23.) The hearing officer allowed the testimony explaining:

> I am going to allow the information with regard to the approximate time of this accident. On ... consider using the exceptions to the hearsay rule both for present sense impression and for excited utterance, either of which would allow this ... these statements to be considered.
>
> We do not have, however, a precise time on the record. . . .

(Tr. 20, ll. 4-9.)

During closing argument, Dawson disagreed with the hearing officer's ruling that the statements fell within either the present sense exception or the excited utterance exception to the hearsay rule, and therefore:

> With that being the case, there has been no evidence, other than the hearsay testimony presented, and other than testimony from witnesses that were not present today, that would indicate the actual time of driving which is necessary in this case to determine if it ... if Mr. Dawson was actually tested within the two hour time period as required by statute. As that is the case, we would again object, and we would ask for a dismissal in this action.

(Tr. 21, l. 22 – 22, l. 5.)

Based upon the evidence, the hearing officer, in relevant part, found:

> Deputy Joseph Van Inwagen received a call from dispatch at about 3:12 p.m. concerning an accident that had just been reported by

> witnesses to the accident. The callers had reported that a pickup was towing a trailer with a boat on it, that the boat fell off the trailer and ended up in the ditch, and that the pickup continued forward and left the area. Deputy Van Inwagen arrived at the accident scene, then left shortly after he arrived. He returned a short time later, after he received a report that the pickup had returned to where the boat was upside down in the ditch. Deputy Van Inwagen observed that the boat was damaged, possibly totaled. Deputy Van Inwagen talked with the driver of the pickup, Tyler Scott Dawson. Mr. Dawson had slurred speech and had a strong odor of an alcoholic beverage. Mr. Dawson admitted that he was the one who was driving the pickup, and he admitted drinking. Even if the exact time of the accident was not determined, clearly Mr. Dawson was driving after 3:15 p.m.; he was driving when he returned to the accident scene. . . . Deputy Van Inwagen arrested Tyler Scott Dawson for DUI. Mr. Dawson consented to blood testing to determine his alcohol concentration after the arrest. Blood was drawn by an R.N., in accordance with the state toxicologist's directions on Form 104, at 1645 or 4:45 p.m., which was within two hours of the time that Tyler Scott Dawson was driving the pickup. . .
>
> After the arrest, but before taking Mr. Dawson to the St. Alexius emergency room for blood drawing, Deputy Van Inwagen talked with the three witnesses who had seen the accident and who were still present at the accident scene. This discussion was less than an hour after the accident had been reported, and the witnesses appeared to be still excited by what they had seen. Information concerning witnesses statements about the time of the accident was admitted under Rules 803(1) and 803(2) of the North Dakota Rules of Evidence.

(Dawson's App. 14.) The hearing officer concluded Dawson "was properly tested to determine his alcohol concentration after the arrest, and had an alcohol concentration of at least .18% within two hours of the time he was driving." (Id.)

Dawson appealed the administrative decision to the Burleigh County District Court. (Id. at 3-4.) Dawson alleged:

> 1. The hearing officer erroneously determined that hearsay testimony could be received over objection. Specifically the hearing officer that testimony from witness statements could be heard over objection when an objection on grounds of hearsay and lack of ability to cross-examine and confront

witnesses was made on behalf of the petitioner. The hearing officer found that either exception 803(1) or 803(2) could apply to statements made to an officer investigating the matter 30-45 minutes after the police arrived on the scene. As neither exception relied upon by the hearing officer could fit such circumstances, it was error for the officer to consider such testimony.

2. That without such testimony, the evidence presented could not establish that the blood alcohol test obtained in this matter was obtained in the approved method as the evidence could not establish the time of driving or actual physical control to determine if the test had been administered within two hours as required by statute and the approved method.

3. The hearing officer's decision was based on reversible error and should be overturned.

(Id.)

Judge Gail Hagerty issued an Order on October 26, 2012, in which she affirmed the hearing officer's decision. (Id. at 5-8.) Judge Hagerty ruled:

> The hearing officer accepted into evidence testimony from Deputy Van Inwagen. A portion of his testimony consisted of witnesses' statements. No witnesses testified at Dawson's administrative hearing. Deputy Van Inwagen used the time of dispatch and the witnesses' statement to establish that Dawson's driving occurred at 3:12 p.m., because he did not have personal knowledge to make this determination. Dawson objected to the testimony on hearsay grounds. The hearing officer admitted the hearsay testimony pursuant to the present sense impression and excited utterance exceptions to the hearsay rule.
>
> . . .
>
> Deputy Van Inwagen was dispatched to 62nd Avenue Southeast at approximately 3:12 p.m. for a reported accident. Eventually he spoke with Dawson, who was collecting debris from around the boat. Dawson indicated he had been driving the vehicle when the boat was ejected into the ditch. Dawson did not tell Deputy Van Inwagen when the accident occurred. Deputy Van Inwagen placed Dawson under arrest for driving under the influence. Afterward Deputy Van Inwagen spoke with several witnesses. Approximately 45 minutes elapsed before Deputy Van

Inwagen spoke with them. Dawson submitted to a blood draw at 4:45 p.m.

A significant amount of time elapsed before Deputy Van Inwagen spoke with any witnesses. All of the witnesses had a sufficient amount of time to reflect on the accident before they provided written statements to Deputy Van Inwagen. Their statements do not qualify as a present sense impression, because they were not substantially contemporaneous with the accident. Their statements were not excited utterances because they were not the product of the "stress or excitement resulting from the startling event or conditions." *State v. Whalen*, 520 N.W.2d 830, 832 (N.D. 1994). The witnesses' statements testified to by Deputy Van Inwagen were inadmissible hearsay. Without this information the hearing officer could not reasonably conclude that a chemical test occurred within two hours of Dawson driving the vehicle.

The hearing officer relied on additional information in her decision, noting that the driver had returned to the scene of the accident after 3:15 p.m. When Deputy Van Inwagen first arrived the vehicle involved in the accident was not present at the scene or in the surrounding area. Dispatch then informed Deputy Van Inwagen that the driver of the vehicle had returned to the scene. Deputy Van Inwagen located Dawson near the boat picking up debris. Deputy Van Inwagen noticed Dawson's vehicle parked further down the road at 66th Street and 62nd Avenue. Based on these facts the hearing officer could have reasonable concluded that Dawson's blood sample was taken within two hours of his driving or actual physical control behavior.

(Id. 6-8.)

Judgment was entered on October 31, 2012. (Id. at 10-11.) Dawson appealed the Judgment to the North Dakota Supreme Court. (Id. at 12.) On appeal, the Department requests this Court affirm the judgment of the Burleigh County District Court and the administrative suspension of Dawson's driving privileges for a period of two years.

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. The Court reviews "the agency's findings and decisions, and not those of the district court, though the district court's analysis is entitled to respect if its reasoning is sound." Hawes v. N.D. Dep't of Transp., 2007 ND 177, ¶ 13, 741 N.W.2d 202.

Section 28-32-46, N.D.C.C., provides 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.

N.D.C.C. § 28-32-46.

"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, at ¶ 5.

LAW AND ARGUMENT

I. The preponderance of the evidence, even without regard to Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses, supports the hearing officer's finding that Dawson's blood draw occurred within two hours after he had been driving his vehicle.

Section 39-20-04.1(1), N.D.C.C., authorizes the Department to suspend a person's operator's license, if the findings, conclusion, and decision from an administrative license suspension hearing confirm that the "test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight." N.D.C.C. § 39-20-04.1(1). "In order to rely upon the chemical test results, the test must have been performed within two hours of either driving or actual physical control." Knudson v. Dir., N.D. Dep't of Transp., 530 N.W.2d 313, 318 (N.D. 1995).

Circumstantial evidence and reasonable inferences, as well as the lack of contrary evidence, including a driver's failure to testify at the administrative

hearing, are appropriate means to establish the two-hour timeframe. In Dettler v. Sprynczynatyk, the Supreme Court addressed the issue of whether "the hearing officer's factual determination that Dettler had driven a vehicle within the two hours prior to his taking an Intoxilyzer test was not against the greater weight of the evidence." 2004 ND 54, ¶ 1, 676 N.W.2d 799. After a law enforcement officer observed an unoccupied vehicle in a ditch "at approximately 1:15 a.m.," he located the vehicle's registered owner in a nearby restaurant. Id. ¶ 2. "The officer testified that when he approached [him] Dettler did not yet have his food." Id. at ¶ 3. "The officer testified they were on the side of Hardee's where they could see the vehicle through the window." Id.

At the hearing, Dettler "argued he was not tested for intoxication in accordance with chapter 39-20 of the North Dakota Century Code, because it could not be established that he had been driving within the two hours prior to his being given an Intoxilyzer test to measure his blood alcohol level." Id. at ¶ 7. In reaching the conclusion that the chemical test was performed within two hours of driving, the Supreme Court stated:

> As to whether he had been driving the vehicle within two hours of taking the Intoxilyzer test, the evidence demonstrates the test was administered at 2:17 a.m. The officer testified he determined the time of driving from Dettler's statement that he left the bar at closing time, which the officer stated was 1:00 in the morning. The time of driving on his report indicates 1:15 a.m. The officer testified that was the time he saw the vehicle. Dettler presented no contrary testimony. This evidence supports a finding that the Intoxilyzer test was conducted within two hours from the time Dettler had been driving the vehicle. We conclude the evidence supports the hearing officer's finding that Dettler had driven the vehicle within the two hours prior to the administration of the test.

Id. ¶ 24 (emphasis added).

In this case, Dawson's blood draw occurred at 4:45 p.m. ("Department's App." 2-3.) For the results of Dawson's test to be valid for purposes of this implied consent proceeding, the preponderance of the evidence must show Dawson had been driving his vehicle no earlier than 2:45 p.m. -- i.e., two hours prior to the blood draw.

The evidence established Deputy Van Inwagen received a report of the accident at 3:12 p.m., which had occurred on a rural Bismarck road on a summer weekend afternoon. The evidence further established there was at least one residence in close proximity to the scene of the accident and three persons at the scene when Deputy Van Inwagen arrived. It also is doubtful Dawson would have left his boat in such a damaged condition for an extended period of time. Under the circumstances, it is more likely than not the accident would have been reported to authorities within no more than 27 minutes after its occurrence – i.e., the time period between 2:45 p.m., until 3:12 p.m. Significantly, Dawson did not present any evidence to dispute Deputy Van Inwagen's determination of the time of the crash. 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. . . . [T]he hearing officer could also consider the lack of contrary evidence").

Dawson notes on appeal the evidence does not support the hearing officer's finding "Dawson was driving after 3:15 p.m.; he was driving when he returned to the accident scene." (Dawson's App. 14.) Rather, the evidence established Dawson returned to the scene on a four-wheeler driven by another

person. (Tr. 7, ll. 1-12.) Such a finding by the hearing officer is not fatal to her decision.

The preponderance of the evidence, even without regard to Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses, supports the hearing officer's finding that Dawson's blood draw occurred within two hours after he had been driving his vehicle.

II. The hearing officer did not abuse her discretion by admitting into evidence Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses under the present sense impression exception to the hearsay rule.

"The admissibility of evidence at an adjudicative hearing before an administrative agency is governed by the North Dakota Rules of Evidence, unless application of the Rules is expressly waived by the hearing officer." May v. Sprynczynatyk, 2005 ND 76, ¶ 24, 695 N.W.2d 196. "A hearing officer is afforded broad discretion to control the admission of evidence at the hearing, and the decision to admit or exclude evidence will only be reversed on appeal if the hearing officer abused his discretion." Id. "Hearing officers, like trial courts, abuse their discretion when they act in an unreasonable, capricious manner, or misapply or misinterpret the law." Maher v. N.D. Dep't of Transp., 539 N.W.2d 300, 303 (N.D. 1995).

Rule 803, N.D.R.Ev., provides exceptions to the hearsay rule. Rule 803(1), N.D.R.Ev., excludes from the hearsay rule, "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." The North Dakota Supreme Court has stated:

> . . . The Federal Advisory Committee Note to Rule 803 of the Federal Rules of Evidence states as follows:
>
> > "The underlying theory of Exception . . . (1) is that substantial contemporaneity of event and statement negative the likelihood of deliberate or conscious misrepresentation. . . ."
>
> Accordingly, the present sense impression exception is limited to statements made while an event or condition is perceived or immediately thereafter. Rule 803(1), N.D.R.Ev. Furthermore, the theory supporting the present sense impression exception is that substantial contemporaneity of the event and the statement negate the likelihood of memory deficiencies and deliberate misstatements.

State v. Jensen, 418 N.W.2d 776, 779-80 (N.D. 1988). "In addition to contemporaneity of the event and the statement, the circumstances surrounding the statement should demonstrate that it is trustworthy and hence, consistent with the rationale of the exception." Knudson v. Dir., N.D. Dep't of Transp., 530 N.W.2d 313, 317 (N.D. 1995).

"There is no per se rule indicating what interval is too long between a person's perception of an event and the person's subsequent statement describing that event." Id. "The proper inquiry is 'whether sufficient time elapsed to have permitted reflective thought.'" Id. (quoting 2 McCormick on Evidence, Practitioner Treatise Series § 271, at 214 (4th ed. 1992)). "Ordinarily, whether a statement is substantially contemporaneous with an event is a fact question." Id. "However, when the evidence is such that reasonable minds can draw but one conclusion, the issue becomes one of law." Id.

In this case, Dawson revisits the issue of the hearing officer's admission of Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses despite the district court's ruling in his favor on the evidentiary

objection. Deputy Van Inwagen stated he spoke to the witnesses approximately "a half-hour, 45 minutes," after the estimated time of the accident. (Tr. 19, ll. 1-5.) Where, as in this case, the circumstantial evidence independently corroborates the accuracy of the hearsay, the length of time should not be a *per se* bar to admissibility of the testimony.

In United States v. Blakey, 607 F.2d 779, 785 (7th Cir. 1979), the federal court noted "the admissibility of statements under hearsay exceptions depends upon the facts of the particular case." The appellate court ruled "the trial court was justified in finding that the [23-minute] time interval was not so great as to render Rule 803(1) inapplicable to [the] statements," and "[that] finding, coupled with the substantial circumstantial evidence corroborating the statements' accuracy, indicate that the trial court acted properly in admitting these statements." Id. at 786.

In this case, Deputy Van Inwagen observed the accident reported by the witnesses upon arriving at the scene. The circumstantial evidence regarding the probable time of the accident independently corroborated the reasonableness of the statements made by the witnesses. Under the facts of this case, the hearing officer did not abuse her discretion by admitting into evidence Deputy Van Inwagen's testimony regarding the statements made to him by the witnesses under the present sense impression exception to the hearsay rule.

CONCLUSION

The Department respectfully requests this Court affirm the judgment of the Burleigh County District Court and the Department's decision suspending Tyler Scott Dawson's driving privileges for a period of two years.

Dated this 29th day of January, 2013.

State of North Dakota
Wayne Stenehjem
Attorney General

By: _____

Douglas B. Anderson
Assistant Attorney General
State Bar ID No. 05072
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
dbanders@nd.gov

Attorneys for Appellee.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Tyler Scott Dawson, Appellee, v. Director, North Dakota Department of Transportation, Appellant.	)	**Supreme Ct. No. 20120417** **District Ct. No. 08-2012-CV-01479** **AFFIDAVIT OF SERVICE BY MAIL**

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

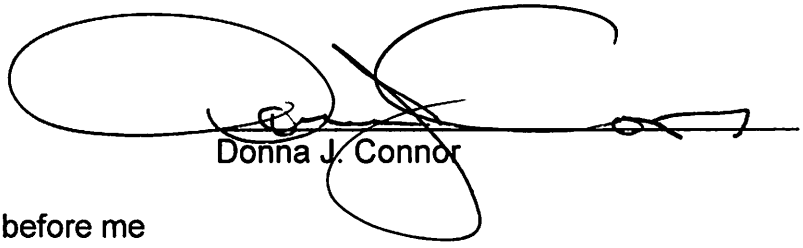
Donna J. Connor states under oath as follows:

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 29th day of January, 2013, I served the attached **BRIEF OF APPELLEE and APPENDIX TO BRIEF OF APPELLEE** upon the appellant by placing true and correct copies thereof in an envelope addressed as follows:

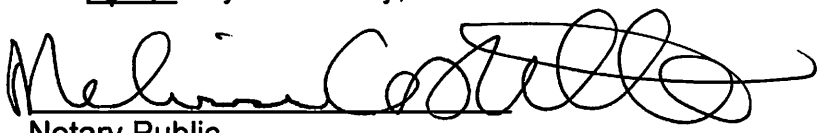
Justin D. Hagar
Attorney at Law
Justin D. Hager, P.C.
1110 College Drive, Suite 211
Bismarck, ND 58501

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 29th day of January, 2013.



Notary Public