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May 22, 2014
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Steve Michael Beylund, Appellant, v. Grant Levi, Director of the North Dakota Department of Transportation, Appellee.	Supreme Court Case No. 20140133 District Court Case No. 06-2013-CV-00095 **APPELLANT'S BRIEF** **APPEAL FROM THE JUDGMENT OF THE BOWMAN COUNTY DISTRICT COURT, THE HONORABLE WILLIAM HERAUF, AFFIRMING AN ADMINISTRATIVE DECISION OF THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

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[¶3] **JURISDICTIONAL STATEMENT**

[¶4] The district court had jurisdiction over this case pursuant to N.D. Const. art. VI § 8, N.D.C.C. § 27-05-06(4) and N.D.C.C. § 39-20-06. The North Dakota Supreme has jurisdiction over this appeal under N.D. Const. art. VI § 6, N.D.C.C. § 28-27-01 and N.D.C.C. § 28-27-02. This appeal is timely under N.D.R.App.P. 4(a)(1).

[¶5] **STATEMENT OF THE ISSUES ON APPEAL**

I. Was the stop of the Appellant, Mr. Beylund, legal?

II. Did the Administrative Hearing Officer err in the Conclusions of Law because the blood test taken by law enforcement was a warrantless search and the Department failed to establish an exception to the warrant requirement and therefore, the Hearing Officer's decision violated the Appellant's constitutional rights under the Fourth Amendment of the United States Constitution and Article I Section 8 of the Constitution of the State of North Dakota?

[¶6] **STATEMENT OF THE CASE**

[¶7] Appellant, Steve Michael Beylund, appeals from the North Dakota Department of Transportation's September 18, 2013 decision suspending his North Dakota driving privileges for 2 years, and the District Court's February 3, 2014 Memorandum and February 10, 2014 Judgment affirming that decision. Appendix 4, 16, 32.

[¶8] **STATEMENT OF THE FACTS**

[¶9] On August 10, 2013 law enforcement did not observe illegal driving conduct by Mr. Beylund but stopped the vehicle driven by Mr. Beylund and detained him. Transcript page 5 lines 18-20; page 7 line 11 to page 8 line 9; page 24 lines 1-6, 10-11, 17-25 (T. 5:18-20; 7:11 to 8:9; 24:1-6, 10-11, 17-25).

[¶10] Law enforcement was unable to perform field sobriety tests on Mr. Beylund. T. 27:3-6. Law enforcement attempted to search Mr. Beylund by conducting a screening

test on him. T. 13:16 to 14:14. Prior to conducting the search with the screening test law enforcement read Mr. Beylund the North Dakota implied consent advisory. T. 13:21-25.

[¶11] Mr. Beylund failed to blow a proper air sample for the screening test and was arrested. T. 14:10-14.

[¶12] Law enforcement read the North Dakota implied consent advisory to Mr. Beylund after his arrest and requested a blood test. T. 16:2-7. Mr. Beylund agreed to take the test. Id.

[¶13] Law enforcement did not obtain a warrant to search Mr. Beylund. T. 29:9-10.

[¶14] **LAW AND ARGUMENT**

[¶15] **Standard of Review**

[¶16] "The [North Dakota Department of Transportation's] authority to suspend driving privileges is governed by statute, and the Department must meet basic and mandatory statutory requirements to have the authority to suspend driving privileges. Schaaf v. N.D. Dep't of Transp., 2009 ND 145, ¶ 9, 771 N.W.2d 237." Landsiedel v. Director Dept. of Transp., 2009 ND 196 ¶6, 774 N.W.2d 645, 647.

[¶17] "[R]eview of an administrative agency's suspension of a driver's license is governed by the Administrative Agencies Practice Act, N.D.C.C. ch. 28–32." Richter v. N.D. Dep't of Transp., 2010 ND 150, ¶ 6, 786 N.W.2d 716.

[¶18] The North Dakota Supreme Court exercises

> limited review of the administrative revocation of driving privileges under the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. Wetzel v. N.D. Dep't of Transp., 2001 ND 35, ¶ 9, 622 N.W.2d 180. [The North Dakota Supreme Court's] standard of review is the same standard applied by the district court. N.D.C.C. § 28-32-49. [The court] must affirm the administrative agency's decision unless:
>
> 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.

Bell v. North Dakota Dep't of Transp., 2012 ND 102 ¶8, 816 N.W.2d 786.

[¶19] **Analysis**

I. Mr. Beylund was illegally stopped.

[¶20] **Standard of Review**

> [¶21] "All searches and seizures must be reasonable, under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the North Dakota Constitution." State v. Haibeck, 2004 ND 163, ¶ 9, 685 N.W.2d 512. A traffic stop temporarily restrains a person's freedom, resulting in a seizure within the meaning of the Fourth Amendment. State v. Sarhegyi, 492 N.W.2d 284, 285-86 (N.D. 1992). A traffic stop, under the facts of this case, is analogous to a "Terry" stop and must be analyzed under its test. Id. at 286. In reviewing a Terry stop, a court must "(1) determine whether the facts warranted the intrusion of the individual's Fourth Amendment rights, and if so, (2) determine whether the scope of the intrusion was reasonably related to the circumstances which justified the interference in the first place." Id. To minimize governmental confrontation with individuals, as required by the Fourth Amendment, an investigating officer must have a reasonable suspicion that a law has been or is being violated. Id.

State v. Smith, 2005 ND 21, ¶12, 691 N.W.2d 203, 208.

[¶22] **Argument**

[¶23] Law enforcement did not have a reasonable articulable suspicion to stop Mr.

Beylund and therefore any evidence obtained subsequent to the stop should be suppressed. The District Court in its opinion justifies the stop of Mr. Beylund based on the community caretaker function. All of the cases cited by the District Court to invoke the community caretaker function however involve activity of the suspect independent from and not caused by law enforcement.

[¶24] Law enforcement created the circumstances that resulted in the stop of Mr. Beylund. Mr. Beylund made a right hand turn into a driveway. Mr. Beylund's turn was not illegal and the law enforcement officer testified that Mr. Beylund did nothing illegal. T. 24:7-11. As Mr. Beylund made the right hand turn law enforcement pulled in behind him in a marked squad car and Mr. Beylund stopped as the law enforcement officer expected him to. T. 24:14 to 25:9. Mr. Beylund's stopping position was based on his encounter with law enforcement it should not be used to articulate the reasonableness of the stop or to justify the invocation of the community caretaker function. T. 25:6-9. Therefore the stop of Mr. Beylund was illegal and any evidence obtained therefrom should be suppressed.

[¶25] **Analysis**

II. The Administrative Hearing Officer erred in the Conclusions of Law because the blood test taken by law enforcement was a warrantless search and the Department failed to establish an exception to the warrant requirement and therefore, the Hearing Officer's decision violated the Appellant's constitutional rights under the Fourth Amendment of the United States Constitution and Article I Section 8 of the Constitution of the State of North Dakota.

[¶26] **Argument**

[¶27] "[E]ver since Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), evidence obtained by search and seizure violative of the Fourth Amendment is, by virtue of the Due Process Clause of the Fourteenth Amendment, inadmissible in State courts.

State v. Manning, 134 N.W.2d 91 (N.D. 1965)." State v. Matthews, 216 N.W.2d 90, 99 (N.D. 1974). Because Mr. Beylund's test results were obtained without a warrant and in the absence of any valid exception to the warrant requirement of the Fourth Amendment to the United States Constitution or Article I Section 8 of the Constitution of the State of North Dakota the test results should be suppressed as the fruit of an illegal search.

[¶28] On April 17, 2013, the United States Supreme Court affirmed Missouri's Supreme Court ruling in McNeely v. Missouri, 569 U.S. ___, 133, S.Ct. 1552, 2013 WL 1628934 (U.S. 4-17-13). In McNeely, the U.S. Supreme Court held that the natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the Fourth Amendment's search warrant requirement for nonconsensual blood testing in all drunk-driving cases, and instead, exigency in this context must be determined case by case based on the totality of the circumstances.

[¶29] McNeely clarified the concepts of exigent circumstances as they relate to search incident to arrest as an exception to the warrant requirement that was articulated in Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). Essentially, McNeely explains that there are no single factor exigencies and in an alcohol case the analysis to apply the exception includes not only the evanescent nature of the evidence but also an analysis of why it was not possible to obtain a search warrant. The United States Supreme Court's clarification of Schmerber in McNeely affects North Dakota's implied consent law because it appears that law allows for a warrantless search based solely on an arrest.

[¶30] It appears from a review of North Dakota case law that North Dakota's implied consent law was considered constitutional because it was at that time thought that

Schmerber allowed the warrantless search for alcohol as a search incident to arrest. Cf. State v. Anderson, 336 N.W.2d 634, 639-640 (N.D. 1983)("The issue in Schmerber was whether or not drawing blood from a nonconsenting individual violated the guarantees of the Fourth Amendment against unreasonable searches and seizures. The court stated that the act of drawing blood constitutes a search within the meaning of the Fourth Amendment, but it went on to say that so long as the person from whom the blood is drawn is first placed under arrest and administration of the blood test is justified in the circumstances and performed in a reasonable manner, the person's right to be free of unreasonable searches and seizures is not violated."). In Mr. Beylund's case, because law enforcement made no attempt to get a search warrant and because there are no exigent circumstances the search incident to arrest exception to the warrant requirement does not apply.

[¶31] Another exception to the warrant requirement is that the person consented to the search. State v. Swenningson, 297 N.W.2d 405 (N.D. 1974). The Fourth Amendment requires that consent to a search be voluntary. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); State v. Page, 277 N.W.2d 112 (N.D. 1979). To determine what constitutes "voluntary consent" the court considers the totality of the circumstances at the time that consent was given. State v. Metzner, 244 N.W.2d 215 (N.D. 1976). Consent must be the product of an essentially free and unconstrained choice; it cannot be the product of coercion. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). However, if in seeking consent law enforcement makes a claim of lawful authority to search then the totality of the circumstances standard does not apply. See Bumper v. North Carolina, 391 U.S. 543, 548-49 (1968); Florida v.

Royer, 460 U.S. 491 (1983).[1]

[¶32] The facts of this case demonstrate that Mr. Beylund was coerced into giving his consent by the reading of the Implied Consent Advisory which included the threat of criminal charges. Essentially, Mr. Beylund was allowed the privilege to drive and to not be charged criminally in return for the surrender of his rights under the Fourth Amendment of the United States Constitution and Article I Section 8 of the North Dakota Constitution. Mr. Beylund was not presented a free and unconstrained choice.

[¶33] Consent is voluntary if it is "the product of an essentially free and unconstrained choice by its maker, rather than the product of duress or coercion, express or implied." Schneckloth, 412 U.S. at 222. Consent is involuntary if it results from circumstances that overbear the consenting party's will and impairs his or her capacity for self-determination. Id. at 233.

[¶34] The Department cannot prove consent simply by showing an individual acquiesced to a claim of lawful authority or submitted to a show of force. Bumper v. North Carolina, 391 U.S. 543, 548 (1968). Fourth Amendment consent does not lie

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1 The Minnesota Supreme Court has seriously considered the complete elimination of the "consent" exception to warrantless searches because the entire process is inherently coercive. State v. George, 557 N.W.2d 575, 580 (Minn. 1997). Rather than take the drastic step of discarding the concept of consensual searches, the Court stated, "Short of rejecting the concept of consent to search in the context of routine traffic stops, courts can and should demand sufficient proof in an individual case that the consent to search was truly express, clear and voluntary." Id. These concerns with consent were amplified in the special concurrence penned by Justice Tomljanovich, who noted that the courts will continue to face, "an ongoing attempt to come to grips with the increasing use by state troopers and police officers of subtle tactics to get motorists and others to 'consent' to searches." Id. at 581. She went on to add that, "[w]e are not dealing with vacuum cleaners in this case but with the liberty and privacy interests of all the people of the State of Minnesota, and we have an obligation to ourselves and to the Constitution of this State to do what we can, in our limited role as a court of last resort, to provide reasonable protection to those interests." Id.

where the police claim to have a right to the result. Bumper at 550. In Bumper, the police showed up at the defendant's home with a search warrant, and upon showing it to the defendant's grandmother, she consented to allow them to search the defendant's home. The Court in Bumper said:

> One is not held to have consented to the search of his premises where it is accomplished pursuant to an apparently valid search warrant. On the contrary, the legal effect is that consent is on the basis of such a warrant and his permission is construed as an intention to abide by the law and not resist the search under the warrant rather than an invitation to search.
>
> One who, upon the command of an officer authorized to enter and search and seize by search warrant, opens the door to the officer and acquiesces in obedience to such a request, no matter by what language used in such acquiescence, is but showing a regard for the supremacy of the law …. The presentation of a search warrant to those in charge at the place to be searched, by one authorized to serve it, is tinged with coercion, and submission thereto cannot be considered an invitation that would waive the constitutional right against unreasonable searches and seizures, but rather is to be considered a submission to the law. (Citations omitted).

Bumper at 549, fn. 14.

[¶35] Mr. Beylund's's case is analogous to Bumper because law enforcement informs him that North Dakota law requires that he consent to a test just, like the presentation of a search warrant stating that the court requires a search. Under these rules, the Department has the burden to prove that consent was freely and voluntarily given. Bumper, 391 U.S. at 548. But to do so the standard is NOT the totality of the circumstances from Schneckloth but rather because Mr. Beylund acquiesced to the lawful authority invoked against him "submission thereto cannot be considered an invitation that would waive the constitutional right against unreasonable searches and seizures, but rather is to be considered a submission to the law." Bumper at 549, fn. 14. Law enforcement in this case used North Dakota's implied consent law and the threat of the crime of test refusal

to circumvent the warrant requirement. Mr. Beylund had two choices when he was asked to consent to a test: consent to a warrantless search or lose his privilege to drive and be charged with a crime.

[¶36] "[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." Camara v. Municipal Ct. of San Francisco, 387 U.S. 523, 528-29 (1967). Searches that impose "significant intrusions upon the interests protected by the Fourth Amendment," and are "authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual." Id. at 534. It is unconstitutional to require 'consent' to such searches by imposing criminal sanctions for refusal. Camara, 525-534.

[¶37] In Camara, the United States Supreme Court analyzed a housing code which required an occupant to allow a city inspector to enter the occupant's building, without a warrant. Id. at 526. The defendant refused to allow a warrantless inspection, and was charged with a misdemeanor for such refusal. Id. at 526-527. The Court, overruling its own precedent, held that such searches were a significant invasion of privacy, requiring Fourth Amendment protections. Id. at 525-34. The Court reasoned that the defendant should not be subject to criminal sanctions for requiring a warrant as was Defendant's Fourth Amendment right. Id. at 531-534. Like the administrative code in Camara, North Dakota's implied consent law and criminal statute making refusal a crime are unconstitutional.

[¶38] Law enforcement used the threat of a loss of license and a crime to coerce Mr. Beylund to consent to a search. The North Dakota Supreme Court has stated that the

"purpose of the implied consent law is to discourage individuals from driving an automobile while under the influence of intoxicants; to revoke the driving privileges of those persons who do drive while intoxicated; and to provide an efficient means of gathering reliable evidence of intoxication or nonintoxication." Asbridge v. North Dakota State Highway Commissioner, 291 N.W.2d 739, 750 (N.D. 1980). The implied consent law gathers evidence by coercing drivers to consent to a search. See Prideaux v. State Department of Public Safety, 247 N.W.2d 385, 388 (Minn. 1976)("The obvious and intended effect of the implied-consent law is to coerce the driver suspected of driving under the influence into 'consenting' to chemical testing, thereby allowing scientific evidence of his blood-alcohol content to be used against him in a subsequent prosecution for that offense."); Rodewald v. Kan. Dep't of Revenue, 297 P.3d 281, 287 (Kan. 2013)("the purpose of the implied consent law is to coerce a driver's submission to chemical testing through the threat of statutory penalties, including license revocation for refusing the test"); People v. Superior Court (Hawkins), 493 P.2d 1145, 1149 (Cal. 1972)("the Legislature devised an additional or alternative method of compelling a person arrested for drunk driving to submit to a test for intoxication, by providing that such person will lose his automobile driver's license for a period of six months if he refuses to submit to a test for intoxication."); Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967)("The choice imposed . . . was one between self-incrimination or job forfeiture. Coercion that vitiates a confession under Chambers v. State of Florida, 309 U.S. 227 . . . can be 'mental as well as physical'; 'the blood of the accused is not the only hallmark of an unconstitutional inquisition.' Blackburn v. State of Alabama, 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242. Subtle pressures (Leyra

v. Denno, 347 U.S. 556, 74 S.Ct. 716, 98 L.Ed. 948; Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513) may be as telling as coarse and vulgar ones.").

[¶39] In Schneckloth, the United States Supreme Court warned us about the consequences of attempting to bypass constitutional commands by creating or relying on a legal fiction when it wrote that

> the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed. In the words of the classic admonition in Boyd v. United States, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed. 746:
>
> > 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.'

Schneckloth v. Bustamonte, 412 U.S. at 228 – 29.

[¶40] North Dakota's "implied consent" cannot substitute for the consent necessary for an exception to the warrant requirement because such implied consent is coercive and any consent obtained therefrom is involuntary. See State v. Hayes, 2012 ND 9, ¶39, 809 N.W.2d 309 ("Hayes had two choices when confronted by the officers asking whether they could search her residence: consent to a warrantless search or violate her release conditions and be subject to an arrest warrant for failing to comply with the district court's order. Consent based upon duress or coercion is not voluntary. Id. Under the

circumstances, Hayes did not provide voluntary consent to search 210 Adams Street."); Weems v. State, 04-13-00366-CR, at page 14 (Tex. App. May 14, 2014)("[W]e hold that the implied consent and mandatory blood draw statutory scheme found in the Transportation Code are not exceptions to the warrant requirement under the Fourth Amendment. To be authorized, the State's warrantless blood draw of Weems must be based on a well-recognized exception to the Fourth Amendment."); Holidy v. State, 06-13-00261-CR, at page 2-3 (Tex. App. 2014) (In declaring the Texas implied consent statute unconstitutional the court stated that "[f]rom Holidy's interaction with officers, Holidy believed he had no choice but to submit to their directives of having his blood drawn and tested for alcohol."). Like the appellant in Hayes Mr. Beylund was coerced into giving his consent to a search. In Hayes it was the threat of violating a condition of release and in Mr. Beylund's case it was the threat of violating North Dakota law that caused him to consent to the search. Under the circumstances of this case the Department cannot prove that Mr. Beylund freely and voluntarily consented to what would otherwise be an unconstitutional warrantless search.

[¶41] In Frost v. R.R. Comm'n, 271 U.S. 583, 593-94 (1926) the United States Supreme Court explained that

> as a general rule, the state, having the power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution * * * may thus be manipulated out of existence.

[¶42] Because this doctrine of unconstitutional conditions applies in North Dakota Mr. Beylund should not have to relinquish a Constitutional Right in order to obtain a

privilege. But North Dakota's implied consent law does just that by conditioning the grant of the privilege to drive upon a driver's surrender of his Constitutional right to be secure against unreasonable searches by requiring that the driver submit to a test without a warrant. The condition becomes even more egregious when the State threatens to charge a crime for failure to consent to a warrantless search.

[¶43] **CONCLUSION**

[¶44] Although McNeely dealt with a forced blood draw, the question presented is not limited to those specific facts. Rather, McNeely is about whether the Fourth Amendment's warrant requirement may be ignored in a DWI investigation because of alcohol's inherent evanescence in the body. The practical holding of McNeely is that the current methods used by law enforcement officers to investigate DWI offenses are unconstitutional under the Fourth Amendment. Here, Mr. Beylund's test result was obtained illegally because it was obtained without a warrant and in the absence of a valid exception to the warrant requirement under either the Federal or the North Dakota Constitutions.

[¶45] In his concurring opinion in Sargent Cnty. v. State, 47 N.D. 561, 182 N.W. 270, 293 (N.D. 1921) North Dakota Supreme Court Justice Bronson wrote that

> [u]pon this court is imposed the sworn duty to uphold the Constitution of this state, as well as its laws, not one constitutional provision, not one law, but all of them. The same sovereign power, the people, that have sanctioned the Constitution, and the laws thereunder, imposed this duty upon the court. Amidst the turmoil and strife of partisan controversy in this state, the noise and rumble of which are heard within and without the state, the judiciary, if it shall perform its sworn duty, fearlessly and independently, must determine legal controversies upon the law and legal issues. The law is the Constitution, paramount, the statute, subordinate; all, the law when harmonious and consistent. The latter must be upheld when, upon interpretation, it may be rendered harmonious and consistent with the Constitution. Otherwise, it must yield to the paramount law.

Because North Dakota's implied consent law violates the doctrine of unconstitutional conditions articulated in Frost v. Railroad Comm'n, 271 U.S. 583, 593-94 (1926) it must yield.

[¶46] Based on the illegal stop and illegal search, Mr. Beylund respectfully requests that the decision to suspend his driving privileges for 2 years be reversed.

Dated: May 21, 2014

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Steve Michael Beylund, Appellant, v. Grant Levi, Director of the North Dakota Department of Transportation, Appellee.	Supreme Court Case No. 20140133 District Court Case No. 06-2013-CV-00095 **CERTIFICATE OF SERVICE FOR APPELLANT'S BRIEF** **APPEAL FROM THE JUDGMENT OF THE BOWMAN COUNTY DISTRICT COURT, THE HONORABLE WILLIAM HERAUF, AFFIRMING AN ADMINISTRATIVE DECISION OF THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

[¶1] Thomas F. Murtha IV is an attorney licensed in good standing in the State of North Dakota, Attorney ID 06984 and states that on May 21, 2014 he electronically served the following on Douglas Anderson, Assistant North Dakota Attorney General representing the North Dakota Department of Transportation:

APPELLANT'S BRIEF

APPELLANT'S APPENDIX

by sending an electronic copy to the email address dbanders@nd.gov.

Dated: May 21, 2014

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