

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff and Appellee,)	
)	Supreme Court No. 20140344
vs.)	
)	
Michael Dale Filkowski,)	McKenzie Co. No. 27-2013-CR-01349
)	
Defendant and Appellant.)	
)	
)	
)	
)	

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM CRIMINAL JUDGMENT

McKENZIE COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT
HONORABLE ROBIN A. SCHMIDT, PRESIDING

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TABLE OF AUTHORITIES

Cases

Frank v. Director, N.D. Dept. of Transp., 2014 ND 158, 849 N.W.2d 248..... ¶ 6

State v. Keller, 2013 ND 122, 833 N.W.2d 486..... ¶ 4

State v. Muhle, 2007 ND 131, 737 N.W.2d 636..... ¶ 4

Statutes

N.D.C.C. § 39-20-07..... ¶ 5, 6, 8

N.D.R.Ev. 707..... ¶ 7

STATEMENT OF THE ISSUES

[¶1] Was the district court correct when it found that the State had laid the proper foundation for the blood alcohol results in this case?

STATEMENT OF THE CASE

[¶2] The State would agree with the Statement of the Case as laid out by Respondent-Defendant.

STATEMENT OF THE FACTS

[¶3] The State would agree with the Statement of Facts as laid out by the Respondent-Defendant.

STANDARD OF REVIEW

[¶4] This Court uses an abuse-of-discretion standard when reviewing a district court's evidentiary ruling. State v. Keller, 2013 ND 122, ¶ 6, 833 N.W.2d 486. "A district court abuses its discretion when it acts arbitrarily, capriciously, or unreasonably or when it misinterprets or misapplies the law." Id (citing to State v. Muhle, 2007 ND 131, ¶ 7, 737 N.W.2d 636.

ARGUMENT

[¶5] The North Dakota Legislature has created a shortcut method for introducing blood alcohol test results in criminal cases in North Dakota. N.D.C.C. § 39-20-07 governs the process of introducing chemical test results in court proceedings. Specifically, N.D.C.C. § 39-20-07(5) states that:

The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the individual requested to take the chemical test.

Copies of such documents can be electronically posted on the Attorney General's website must be admitted as prima facie evidence. N.D.C.C. § 39-20-07(7). Such documents were used in this case. N.D.C.C. § 39-20-07(8) states that a certified copy of the analytical report of the blood analysis, issued by the director of the state crime lab or the director's designee, satisfies the directives of subsection 5 and is prima facie evidence of the results of a chemical analysis performed under chapter 39-20.

[¶6] In this case, the State first introduced State's Exhibit 3 (Ap. 13), which is a certified copy of a memo from the Director of the State Crime Laboratory

designating certain individuals as designees of the Director of the State Crime Laboratory. This was done in response to this Court's decision in Frank v. Director, North Dakota Dept. of Transp., 2014 ND 158, 849 N.W.2d 248, which stated that with the change in the law, the State Toxicologist could not certify such documents unless such person was designated by the Director of the State Crime Laboratory. Such exhibit was entered with no objection. This document established Charles Eder, the State Toxicologist, and Kali Hieb, a forensic scientist at the North Dakota Crime Laboratory, as designees of the Director of the State Crime Laboratory, in accordance with N.D.C.C. chapter 39-20. As such, Charles Eder is a statutorily authorized designee for authorization.

State's Exhibits 4, 5, and 6 (Ap. 15-20), were all offered and accepted by the district court into evidence over the objection of the Defendant. State's Exhibit 4, 5, and 6 were documents that were certified by Charles Eder as a designee of the Director of the State Crime Laboratory. As certified by the State Toxicologist and a designee of the Director of the State Crime Laboratory, these documents under the statutory scheme should be accepted as prima facie evidence. The Defendant doesn't object to State's Exhibit 7 (Ap. 21) because the Director of the State Crime Laboratory signed the document. The same document is signed by Charles Eder, one of the appointed designees of the State Crime Laboratory.

[¶7] State's Exhibit 8 (Ap. 37) is the certified copy of the blood alcohol results for the Defendant. The test was performed by Kali Hieb, a forensic scientist with

the State Crime Lab and a designee of the Director of the State Crime Laboratory. She also certified the results. As such, considering it is a testimonial document and the Defendant objected under N.D.R.Ev. 707, the State produced said witness for trial. She was able to testify to use of State's Exhibits 4-7 in producing a fairly administered test which produced State's Exhibit 8. She testified that Charles Eder certified each of those exhibits based off the documents themselves. She testified that the test was performed in the usual manner and produced a result of over .16 blood alcohol content.

[¶8] Despite the Defendant's argument, the State complied with the statutory shortcut in this case. It produced the memo that designated the designees of the Director of the State Crime Laboratory. This designation was done in accordance with N.D.C.C. chapter 39-20. One such designee was Charles Eder, who certified the documents that laid the foundation for the approved test in this case. All the State must do is provide that a designee of the Director of the State Crime Laboratory certified the records for proper foundation. Once done, they are prima facie evidence to be used in court. This is exactly what the State did when introducing certified documents that were found on the North Dakota Attorney General's website and produced a witness who could testify to those documents and how they created a fairly administered test.

CONCLUSION

[¶9] The State met their burden in laying the proper foundation for the documents in

question. The State introduced the necessary certified documents under the statutory scheme. These documents were certified by a designee of the Director of the North Dakota Crime Laboratory. They were properly admitted into evidence as prima facie evidence of a fairly administered test. Such a test was certified by a different designee of the Director of the North Dakota Crime Laboratory. She testified that she followed the standard procedure and came to the certified result. The trial court's rulings should be upheld and the verdict of the jury let stand.

[¶10] Dated this 6th day of April, 2015.

/s/ Charles B. Neff Jr.
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