

**IN THE SUPREME COURT  
IN THE STATE OF NORTH DAKOTA**

**Jody James Jangula**

**Appellant,**

**v.**

**North Dakota Department of Transportation**

**Appellee.**

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**Appeal from the District Court  
South Central Judicial District  
Burleigh County, North Dakota  
The Honorable James S. Hill**

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**SUPREME COURT NO. 20150286  
BURLEIGH COUNTY NO. 08-2015-CV-00739**

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**BRIEF OF APPELLANT**  
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## STATEMENT OF ISSUE

**ISSUE:**     **The analytical report should not have been received into evidence because neither N.D.C.C. § 39-20-07(8) nor Rule 902, N.D.R.Evid. were complied with.**

## STATEMENT OF THE CASE

### NATURE OF CASE

[¶ 1]    The case on appeal is a civil case wherein Jody James Jangula's driving privileges were suspended for a period of two (2) years.

### COURSE OF PROCEEDINGS

[¶ 2]    Jangula was issued a Report and Notice on January 22, 2015, regarding the possible suspension of his driving privileges. (Exhibit 1(b), App. p. 2). Jangula timely requested a hearing (App. p. 10) which was held on February 19, 2015. (Tr., Doc. ID No.: 4).

[¶ 3]    At the hearing, the Department attempted to offer Exhibit 1 into evidence. (Tr. p. 18, lines 18-19). Jangula objected to Exhibit 1 being received into evidence, in that the analytical report was not certified or authenticated, and that neither N.D.C.C. § 39-20-07(8) nor Rule 902, N.D.R.Evid. were complied with. (Tr. p. 18, lines 20-25; p. 19, lines 1-5)(Doc. ID No. 5).

[¶ 4]    The hearing officer suspended Jangula's driving privileges for a period of two (2) years. (Hearing Officer's Decision, Doc. ID No.: 18). Jangula timely filed a Petition for Reconsideration, (Doc. ID No. 22), and timely filed a Notice of Appeal and Specifications of Error on April 8, 2015. (Doc. ID No.: 2, App. pp. 22-23).

## **DISPOSITION IN THE COURT BELOW**

[¶ 5] On July 24, 2015, the Hon. James S. Hill issued an Order affirming the hearing officer's decision. (Doc. ID No.: 27; App. pp. 24-29). Order for Judgment was entered on July 28, 2015, (Doc. ID No.: 31, App. p. 30), and Judgment was entered on July 30, 2015. (Doc. ID No.: 32, App. p. 31). Notice of Entry of Judgment was sent on August 4, 2015. (Doc. ID No.: 33, App. p. 32). Jangula timely filed his Notice of Appeal on September 28, 2015. (App. p. 34).

## **STATEMENT OF FACTS**

[¶ 6] On January 4, 2015, Jangula was charged with the offense of Actual Physical Control of a Vehicle while Under the Influence. (Doc. ID, No.: 18, App. p. 18). On February 19, 2015, an administrative hearing was held regarding the suspension of Jangula's driving privileges. (Tr., Doc. ID No. 4). At the hearing, the Department attempted to offer Exhibit 1 into evidence. (Tr. p. 18, lines 18-19). Jangula objected to Exhibit 1 being received into evidence, in that the analytical report was not certified or authenticated, and that neither N.D.C.C. § 39-20-07(8) nor Rule 902, N.D.R.Evid. were complied with. (Tr. p. 18, lines 20-25; p. 19, lines 1-5)(Doc. ID No. 5).

[¶ 7] Jangula further received permission to file a post hearing brief in support of his argument, (Tr. p. 19, line 8), and timely filed his supporting brief. (Doc ID No. 19). The hearing officer overruled the objection and admitted Exhibit 1 into evidence. (Tr. p. 19, lines 8-10).

## STANDARD OF REVIEW

[¶ 8] This Court's review of an administrative revocation of a driver's license is governed by the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. *Lange v. North Dakota Dept. of Transp.*, 2010 ND 201, ¶ 5, 790 N.W.2d 28. This Court reviews that record of the administrative agency as a basis for its decision rather than the district court decision." *Lamb v. Moore*, 539 N.W.2d 862, 863 (N.D.1995). However, "[I]f sound, the district court's analysis is entitled to respect." *Aamodt v. North Dakota Dept. Of Transp.*, 2004 ND 134, 682 N.W.2d 308, ¶12.

[¶ 9] This Court exercises a limited review in appeals involving driver's license suspensions or revocations, and affirms the 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.

*Lange, supra* at ¶ 5 (citing N.D.C.C. § 28-32-46).

[¶ 10] "[T]he ultimate conclusion of whether [the] facts meet the legal standard, rising to the level of a reasonable and articulable suspicion, is a question of law which is fully reviewable on appeal." *Salter v. North Dakota Dept. of Transp.*, 505 N.W.2d 111, 112 (N.D.1993).

## LAW AND ARGUMENT

**ISSUE:**     **The analytical report should not have been received into evidence because neither N.D.C.C. § 39-20-07(8) nor Rule 902, N.D.R.Evid. were complied with.**

[¶ 11] Jangula argues the analytical report should not have been received into evidence because the document was not properly certified nor was any authenticity established. N.D.C.C. § 39-20-07(8) requires that the analytical report be certified. That statute also provides that the certified copy satisfies the directives of N.D.C.C. § 39-20-05.

[¶ 12] The key word in the statutes governing the admissibility of a chemical test is the requirement that the test is “certified,” and Jangula argues that these statutes all require a “certified” copy. N.D.C.C. § 31-04-10 provides:

*Form and contents of certificate for certifying copies to be used as evidence.*—Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there is any, or if such officer is a clerk of a court having a seal, under the seal of such court.

*Id.*

[¶ 13] “Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.” *State v. Dennis*, ¶ 12, 2007 ND 87, 733 N.W.2d 241, citing N.D.C.C. § 1-02-02. “When the wording of a statute is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Dennis*, at ¶ 12, citing N.D.C.C. § 1-02-05. “[I]t is presumed that...[t]he entire statute intended to be effective.” *Dennis*, at ¶ 12, citing N.D.C.C. § 1-02-38(2). “It must be presumed that the Legislature intended all that it said, and that it



said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed.” *Dennis*, at ¶ 12.

[¶ 14] To establish that the documents are certified, the documents must be authenticated by the Department prior to being admitted into evidence. In *Peterson v. North Dakota Department of Transportation*, 518 N.W.2d 690 (N.D.1994), this Court held that the Department must establish the documents’ authenticity with extrinsic evidence under Rule 901, N.D.R.Evid., or as self-authenticating documents under Rule 902, N.D.R.Evid. Because no extrinsic evidence was offered as to the documents’ authenticity, the Court held that Rule 901 did not apply, and further held that the documents were not under seal or certified by the custodian of the records in Minnesota and therefore they were not self-authenticating under Rule 902.

[¶ 15] This Court also noted that admission of the unsigned, uncertified police records was inconsistent with *Langer v. North Dakota State Highway Commissioner*, 409 N.W.2d 635 (N.D.1987), where the Court held that an unsigned, uncertified notice of conviction from another state did not provide a proper basis for an administrative suspension of driving privileges. The Peterson Court noted that, “[I]t would be illogical to require a greater degree of evidentiary authentication when there has already been a conviction than when there is only an unsubstantiated complaint and investigatory report.” *Id.*

[¶ 16] Moreover, under Art. VI, § 3, N.D. Const., a procedural rule adopted by this Court must prevail in a conflict with a statutory procedural rule. *State v. Hanson*, 558 N.W.2d 611, 615 (N.D.1996)(finding Section 29–01–32 N.D.C.C. invalid to the extent that it requires pretrial disclosure by a defendant of the names and addresses

of persons the defendant intends to call as witnesses at trial and any statements or reports of statements of such persons). Rule 902, N.D.R.Evid. describes methods of self-authentication for domestic documents, and extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, district, commonwealth, territory, or insular possession thereof, or of the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

*Id.*

[¶ 17] In this case, the documents were not under seal, nor did the documents establish from an employee certified under seal that the signer had the official capacity and that the signature was genuine.

#### **CONCLUSION AND PRAYER FOR RELIEF**

[¶ 18] WHEREFORE, the Appellant, Jody James Jangula, by and through his attorney, Chad R. McCabe, respectfully prays that this Court will reverse the judgment affirming the administrative revocation of his driving privileges.

[¶ 19] Dated this 23<sup>rd</sup> day of November, 2015.

/s/ Chad R. McCabe  
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**CERTIFICATE OF SERVICE**

[¶ 20] A true and correct copy of the foregoing document was sent by electronic transmission on this 23<sup>rd</sup> day of November, 2015, to the following:

Michael T. Pitcher  
Asst. Attorney General  
500 N. 9<sup>th</sup> St.  
Bismarck, ND 58501-4509  
[mtpitcher@nd.gov](mailto:mtpitcher@nd.gov)

/s/ Chad R. McCabe  
**CHAD R. MCCABE**