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### STATEMENT OF THE ISSUE

- I. Whether the District Court erred as a matter of law when it determined it did not have the discretion to dismiss a charge of Driving under Suspension pursuant to N.D.C.C. § 39-06-42(3)?

### STATEMENT OF THE CASE

[¶1] Nicole Louelle Jacobson (Jacobson), appeals from an order denying a motion to dismiss in the District Court of Grand Forks County. On February 17, 2015, Jacobson was cited for Driving under Suspension/Revocation. Subsequently, Jacobson filed a Motion to Dismiss and a motion hearing was held on June 19, 2015. (Appellant's App. at 5). The District Court denied the Motion to Dismiss on June 24, 2015. (Appellant's App. at 16). Jacobson filed a notice of appeal on November 10, 2015. Jacobson now appeals the District Court's final judgment entered on November 5, 2015. (Appellant's App. at 18).

### STATEMENT OF THE FACTS

[¶2] On February 17, 2015, Jacobson was cited for driving under suspension. (Appellant's App. at 4). Jacobson's license was revoked on March 5, 2012 and the period of revocation was to expire on March 5, 2015. (Appellant's App. at 6). Jacobson's driving privileges were reinstated on April 8, 2015. (Appellant's App. at 17).

[¶3] Jacobson filed a Motion to Dismiss relying on the plain language of N.D.C.C. § 39-06-42(3). Section 39-06-42 provides a penalty for driving while a license is suspended or revoked. Section 39-06-42(3) reads:

A court may dismiss a charge under this section upon motion by the defendant if the defendant's operator's license is reinstated within sixty days of the date of the offense and the defendant provides to the court satisfactory evidence of the reinstatement.

The District Court denied the motion and stated the court "finds no such manipulative exception in our statutes, nor such specific intent in our legislative history" in using the court's discretion to dismiss the case. (Appellant's App. at 16).

### STANDARD OF REVIEW

[¶4] The issue in this case involves whether N.D.C.C. § 39-06-42 grants a court the discretion to dismiss a driving under suspension charge if a defendant reinstates his or her license within sixty days of committing the offense. Interpretation of a statute is a question of law and questions of law are reviewed de novo. State v. Rufus, 2015 ND 212, ¶ 12, 868 N.W.2d 534.

### ARGUMENT

**I. The District Court erred as a matter of law when it determined it did not have discretion to dismiss a charge of Driving under Suspension pursuant to N.D.C.C. § 39-06-42(3).**

[¶5] Section 39-06-42 of the North Dakota Century Code gives a court discretion to dismiss a driving under suspension charge if the defendant's operator's license is reinstated within sixty days of the date of the offense. *See* N.D.C.C. § 39-06-42(3). The District Court erred as a matter of law when it determined it did not have the discretion to dismiss the charge.

[¶6] The primary purpose of statutory interpretation is to determine the intention of the legislation. Nelson v. Johnson, 2010 ND 23, ¶ 12, 778 N.W.2d 773. When interpreting a statute, a court must first look at the language of the statute, giving words their plain, ordinary, and

commonly understood meaning. State v. Brossart, 2015 ND 1, ¶ 23, 858 N.W.2d 275 (citing N.D.C.C. § 1-02-02). If the language of a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit. Harter v. North Dakota Dept. of Transp., 2005 ND 70, ¶ 7, 694 N.W.2d 677 (quoting Phipps v. North Dakota Dept. of Transp., 2002 ND 112, ¶ 7, 646 N.W.2d 704). If a statute's language is ambiguous or of doubtful meaning, a court may consider extrinsic aids, including legislative history, along with the language of the statute, to ascertain legislative intent. Id. A court presumes the Legislature did not intend an absurd or ludicrous result or unjust consequences. Public Service Commission v. Wimbledon Grain Co., 2003 ND 104, ¶ 20, 663 N.W.2d 186. Therefore, if a statute's language is unambiguous, a court must not consider extrinsic aids to ascertain legislative intent because the legislative intent is presumed clear on its face. Poppe v. Stockert, 2015 ND 252, ¶ 7, 870 N.W.2d 187 (citing Western Gas Resources, Inc. v. Heitkamp, 489 N.W.2d 869 (N.D. 1987)).

[¶7] Section 39-06-42(3) is unambiguous. The City argued a court only has the discretion to dismiss a charge of driving under suspension after the period of suspension or revocation had expired and an individual failed to apply for reinstatement (Appellant's App. at 6-7). However, in reading the plain language of the statute, no such handcuff exists. Had the legislature intended to limit the judiciary's discretion to cases involving suspensions after the period of suspension ended, it would have expressly said so. A court has the discretion to dismiss a charge of driving under suspension if an individual's license is reinstated within sixty days **of the offense**. N.D.C.C. § 39-06-42(3) (emphasis added). No reference limiting a court's discretion to dismiss a charge occurring after a period of suspension lapses exists. The legislature clearly wanted to

give courts discretion in dismissing charges, regardless of why the suspension arose in the first place. The legislature didn't limit the discretion to certain categories of offenses, nor did it limit the court's discretion to apply only after a period of prior suspension lapses.

[¶ 8] Because the statute is unambiguous, the District Court should not have referenced legislative history to ascertain legislative intent. In denying Jacobson's Motion to Dismiss, the District Court did not first look to the plain language of the statute, but instead skipped straight to legislative history. (Appellant's App. at 8). "The preliminary review of the 60-day reinstatement law begins with an attempt to determine the legislative intent. The House Transportation Committee Minutes of January 11, 2013. . . ." (Appellant's App. at 8). Because the statute is unambiguous, the wording of the statute cannot be disregarded under the pretext of pursuing its spirit. N.D.C.C. 1-02-05. The plain language of the statute provides a court the discretion to dismiss a driving under suspension charge, not the requirement to dismiss as referenced by the District Court. (Appellant's App. at 16).

[¶ 9] Jacobson's reading of section 39-06-42 is not unduly restrictive, does not bring about an absurd result, nor does it require a court to dismiss her charge. Jacobson's reading simply asked the District Court to use its discretion and make finding of fact which explicitly refer to its decision to either exercise its discretion or not. However, the District Court made no mention referencing its discretionary authority to dismiss the charge and therefore erred as a matter of law in its statutory interpretation.

### CONCLUSION

[¶ 10] Jacobson respectfully requests this Court remand to the District Court with instructions

to use its discretion in determining whether to dismiss the case. Jacobson additionally requests this Court remand to a different judge because it would be nearly impossible for the present judge to remain impartial and act with objectivity in the proceedings.

Dated this 12 day of February, 2016.

**REICHERT ARMSTRONG**



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**ALEXANDER F. REICHERT**

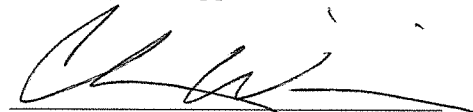
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Attorney for Appellant



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**CHALLIS WILLIAMS**

Certified Law Student



IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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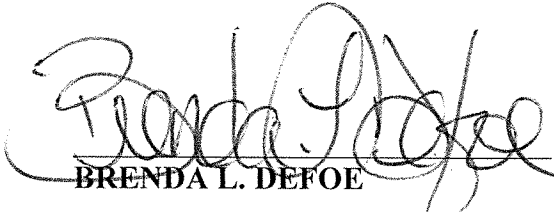
Nicole Louell Jacobson,	)	
	)	Supreme Court No. 20150326
Appellant,	)	Case No: 18-2015-CR-00453
vs.	)	
	)	
City of Grand Forks,	)	<b>AFFIDAVIT OF SERVICE</b>
	)	
Appellee.	)	

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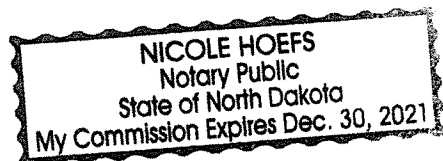
State of NORTH DAKOTA	)	
	)	ss
County of GRAND FORKS	)	

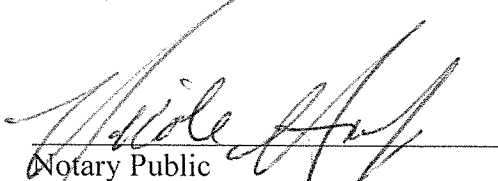
**BRENDA L. DEFOE**, being first duly sworn, says that she is 18 years of age and that on the 15 day of February, 2016 she served a copy of **BRIEF OF APPELLANT and NOTICE OF CERTIFIED STUDENT PARTICIPATION IN ORAL ARGUMENT** in the above entitled case by e-mailing to the below described people:

**Kristi Pettit**  
**CITY PROSECUTOR**  
311 4<sup>th</sup> Street, Suite 103  
PO Box 5299  
Grand Forks ND 58206-5299  
[kpettit@kalashpettitlaw.com](mailto:kpettit@kalashpettitlaw.com)

  
**BRENDA L. DEFOE**

Subscribed and sworn to before me, a Notary Public, this 15 day February, 2016.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

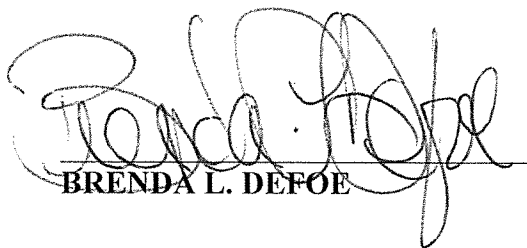
IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

City of Grand Forks,	)	
	)	Supreme Court No. 20150326
Plaintiff and Appellee,	)	Case No: 18-2015-CR-00453
vs.	)	
	)	
Nicole Louell Jacobson,	)	<b>AFFIDAVIT OF SERVICE</b>
	)	
Defendant and Appellant.	)	

State of NORTH DAKOTA	)
	) ss
County of GRAND FORKS	)

**BRENDA L. DEFOE**, being first duly sworn, says that she is 18 years of age and that on the 17 day of February, 2016 she served a copy of **requested corrections including: Appendix cover page, appendix table of contents, criminal judgment, and client's written consent to student representation** in the above entitled case by e-mailing to the below described people:

**Kristi Pettit**  
**CITY PROSECUTOR**  
311 4<sup>th</sup> Street, Suite 103  
PO Box 5299  
Grand Forks ND 58206-5299  
[kpettit@kalashpettitlaw.com](mailto:kpettit@kalashpettitlaw.com)

  
**BRENDA L. DEFOE**

Subscribed and sworn to before me, a Notary Public, this 17 day February, 2016.

**BILLY BREWITZ**  
Notary Public  
State of North Dakota  
My Commission Expires July 23, 2021

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: