

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Justin James Kapple,

Appellee,

v.

Supreme Court No. 20160029
District Court No. 08-2015-CV-01638

Director, North Dakota
Department of Transportation,

Appellant.

BRIEF OF APPELLEE

Appeal from the District Court Judgment dated January 4, 2016
Burleigh County District Court
South Central Judicial District
Honorable Bruce B. Haskell, District Judge

MICHAEL R. HOFFMAN
Attorney for Appellee
P.O. Box 1056
Bismarck, ND 58502-1056
(701) 355-0900
Bar ID 04366
hoffmanmike@yahoo.com

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Issues	1
Issue for Review:	
Whether the Report and Notice (Exhibit 1b) (App. 28) gave the Department jurisdiction to proceed against Kapple’s driving privileges.	
	<u>Paragraph</u>
Statement of the Case	1
Argument	3
Conclusion	17
Certificate of Service	20

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph</u>
<u>Aamodt v. ND Dep't of Transp.</u> , 2004 ND 134, 682 N.W.2d 308	12
<u>Olson v. Levi</u> , 2015 ND 250, 870 N.W.2d 222	13, 15
 <u>Other</u>	
N.D.C.C. § 39-20-04	6, 11

STATEMENT OF THE ISSUES

Issue for Review

Whether the Report and Notice (Exhibit 1b) (App. 28) gave the Department jurisdiction to proceed against Kapple's driving privileges.

[¶1] STATEMENT OF THE FACTS

[¶2] The Report and Notice (Exhibit 1b (App. 28) under Officer's Statement of Probable Cause states that the "Reasonable suspicion to stop or reason to lawfully detain" is that Kapple was "already stopped" and "driver noticed squad car, stopped and exited immediately; deputy witnessed male in driver seat driving before it came to a stop".

[¶3] ARGUMENT

[¶4] Issue for Review

[¶5] Whether the Report and Notice (Exhibit 1b) (App. 28) gave the Department jurisdiction to proceed against Kapple's driving privileges.

[¶6] N.D.C.C. § 39-20-04(1) provides the Report and Notice must show that Kapple was "lawfully arrested."

[¶7] That subsection also requires the Report and Notice be in the form" required by the director."

[¶8] The Report and Notice requires "Reasonable suspicion to stop or reason to lawfully detain" (App. 28).

[¶9] Here, although the arresting officer marked the box "already stopped", he then specifically writes that Kapple "noticed squad car, stopped and exited immediately."

[¶10] The Report and Notice does not give any “Reasonable suspicion to stop or reason to lawfully detain” Kapple’s person.

[¶11] Therefore, the form does not show that Kapple was lawfully arrested. N.D.C.C. § 39-20-04(1).

[¶12] For these failures, the Department did not have jurisdiction to proceed against Kapple’s driving privileges. Aamodt v. ND Dep’t of Transp., 2004 ND 134, ¶ 26, 682 N.W.2d 308.

[¶13] Olson v. Levi, 2015 ND 250, ¶ 9, 870 N.W.2d 222, is distinguishable. Unlike Olson v. Levi, the case at bar is not a case of simply “already stopped”. Here, Kapple “noticed squad car, stopped and exited immediately.”

[¶14] The Report and Notice then fails to state the “Reasonable suspicion to stop or reason to lawfully detain” Kapple’s person.

[¶15] Whereas a “law enforcement officer does not need reasonable suspicion to approach an already stopped vehicle”, Olson v. Levi, there must be legal justification to stop Kapple’s person in this case. This was not shown.

[¶16] The Department did not have jurisdiction to proceed against Kapple’s driving privileges.

[¶17] CONCLUSION

[¶18] Kapple requests the Court to affirm the district court.

[¶19] Respectfully submitted April 4, 2016.

MICHAEL R. HOFFMAN
North Dakota Bar ID 04366
P. O. Box 1056
120 N. 3rd St., Ste. 100
Bismarck, ND 58502-1056
701-355-0900

/s/Michael R. Hoffman
Michael R. Hoffman

[¶20] CERTIFICATE OF SERVICE

I hereby certify that I filed the Brief of Appellee in PDF and Microsoft Word format, by email, on April 4, 2016, with North Dakota Supreme Court @ supclerkofcourt@ndcourts.gov, and made service of a true copy of the foregoing Brief of Appellee in PDF and Microsoft Word format, by email, on April 4, 2016, on:

Michael Pitcher, Assistant Attorney General @ mtpitcher@nd.gov

MICHAEL R. HOFFMAN
North Dakota Bar ID 04366
P. O. Box 1056
120 N. 3rd St., Ste. 100
Bismarck, ND 58502-1056
701-355-0900

/s/Michael R. Hoffman
Michael R. Hoffman
hoffmanmike@yahoo.com