

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota, )  
)  
Plaintiff and Appellee. )  
)  
- vs - )  
)  
Anthony L. Campbell, )  
)  
Defendant and Appellant.)

Supreme Court Case No. 20160197  
District Court Case No. 51-2014-CR-02238

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APPEAL FROM THE CIVIL JUDGMENTS  
NORTH CENTRAL JUDICIAL DISTRICT  
WARD COUNTY CIVIL. NO. 51-2014-CR-02238  
THE HONORABLE RICHARD L. HAGAR PRESIDING

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BRIEF

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**TABLE OF CONTENTS**

Table of Contents . . . . .	i
Table of Cases . . . . .	ii
Abbreviations . . . . .	iii
Statement of the Issues . . . . .	¶1
Nature of the Case . . . . .	¶2
Statement of Facts . . . . .	¶93

Issue Presented:

**I. Did the trial judge err when he refused to allow Ross Rolshoven, a person that the trial judge had found to be an expert witness on private investigations of criminal investigations, to give part of his testimony on his expert opinion because that part of his opinion was based on either inadmissible evidence or it involved the ultimate issue, the guilt or innocence of Mr. Campbell? . . . . . ¶1,104**

Argument . . . . .	¶105
Conclusion . . . . .	¶119
Certificate of Service . . . . .	¶121

**TABLE OF CASES, STATUTES AND OTHER AUTHORITIES**  
**TABLE OF CASES**

State vs Messner

1998 ND 151, 583 NW2d 109 . . . . . ¶105, 114

State v. Christensen.

1997 ND 57, ¶5, 561 N.W.2d 631. . . . . ¶105

United States v. Farley

992 F2d 1122, 1125 (10<sup>th</sup> cir. 1993) . . . . . ¶114

United States v Cohen

510 Fed 3<sup>rd</sup> (9<sup>th</sup> Cir Dec 26, 2007) . . . . . ¶117

29 Charles Alan Wright & Victor James Gold,  
Federal Practice and Procedure § 6273, at 317 (1997) . . . . . ¶114

**STATUTES**

NDR of Ev 702. . . . . ¶109,114  
 NDR of Ev 703. . . . . ¶110,114  
 NDR of Ev 704. . . . . ¶111,116

## ABBREVIATIONS

Transcript Day - Tr. Day

Page - P.

Line - L.

## STATEMENT OF THE ISSUES

[¶1] ISSUES:

**I. Did the trial judge err when he refused to allow Ross Rolshoven, a person that the trial judge had found to be an expert witness on private investigations of criminal investigations, to give part of his testimony on his expert opinion because that part of his opinion was based on either inadmissible evidence or it involved the ultimate issue, the guilt or innocence of Mr. Campbell?**

## NATURE OF THE CASE

[¶2] The charge in this case is murder and murder is a AA Felony. The statute under which murder is charged is 12.1-16-01(1).

[¶3] The complaint with affidavit charging the Defendant/Appellant Anthony Leon Campbell with murder was filed on September 26, 2014.

[¶4] A warrant of arrest was filed on September 26, 2014 along with a motion to seal complaint, affidavit and arrest warrant.

[¶5] A search warrant was also filed on September 26, 2014 with a motion to seal search warrants, affidavits for search warrants, return of search warrants and inventory seized from search warrants.

[¶6] Another search warrant was filed on September 30, 2014.

[¶7] Mr. Campbell made his initial court appearance on January 8, 2015.

[¶8] The scheduling order in this case was filed on January 8, 2015.

[¶9] A Rule 16 Discovery Request was filed on January 13, 2015.

[¶10] An Order to continue the preliminary was filed on January 14, 2015.

[¶11] A discovery response was filed on January 15, 2015.

[¶12] Another search warrant was filed on January 15, 2015.

[¶13] Another supplemental discovery response was filed on January 21, 2015.

[¶14] An amended scheduling order was filed on January 27, 2015.

[¶15] On February 6, 2015 a demand for change of judge was filed and an Order denying demand for change of judge was filed on February 2, 2015.

[¶16] A 2<sup>nd</sup> Supplemental discovery response was filed on February 20, 2015.

[¶17] On March 13, 2015 an expedited request for a hearing date was filed and an order on that request was filed on March 17, 2015.

[¶18] A Motion for expanded media coverage was filed March 17, 2015 and to that motion a recusal plus a response and an objection were also filed on the same date.

[¶19] A bond review was filed on March 18, 2015.

[¶20] A response to objection for expanded media covered was filed on March 18, 2015.

[¶21] The preliminary hearing and arraignment were held on March 19, 2015.

[¶22] A third and fourth supplemented discovery response was filed on March 19, 2015.

[¶23] A Bond review was granted on March 20, 2014.

[¶24] The information in this case was filed on March 20, 2015.

[¶25] A letter requesting additional discovery was filed on April 23, 2015.

[¶26] The 5<sup>th</sup> Supplemental discovery response was filed on May 4, 2015.

[¶27] The response to the change of venue motion was filed on May 4, 2015.

[¶28] A criminal filing on objections to media coverage was filed on May 8, 2015.

[¶29] The 6<sup>th</sup> Supplemental discovery response was filed on May 11, 2015.

[¶30] A pretrial conference was held on May 27, 2015.

[¶31] The notice of trial was filed on June 9, 2015.

[¶32] A motion for continuance was filed on June 11, 2015 and an order for continuance of jury trial was filed on June 25, 2015.

[¶33] The 7<sup>th</sup> Supplemental discovery response was filed on July 14, 2015.

[¶34] A notice of States conference hearing was filed on July 27, 2015.

[¶35] A bond review was filed on July 27, 2015 and an order granting bond review was filed on July 29, 2015.

[¶36] An 8<sup>th</sup> supplemental discovery request was filed on July 30, 2015.

[¶37] A 9<sup>th</sup> Supplemental Discovery request was filed on August 4, 2015.

[¶38] On August 5, 2015 a State's conference was held.

[¶39] On August 5, 2015 a notice of amended trial was filed.

[¶40] A petition to change venue with a service notation was filed on August 10, 2015.

[¶41] A 10<sup>th</sup> Supplemental discovery request was filed on August 13, 2015.

[¶42] A 11<sup>th</sup> Supplemental discovery request was filed on August 26, 2015.

[¶43] There was a request for inmate transfer filed on August 27, 2015.

[¶44] Exhibits #101 through #131 were filed on August 27, 2015.

[¶45] A 12<sup>th</sup> Supplemental discovery request was filed on August 28, 2015.

[¶46] There was a notice of additional witnesses on the information filed on September 1, 2015.

[¶47] A 13<sup>th</sup> Supplemental Discovery Request was filed on September 2, 2015.

[¶48] A Resistance to Motion to Transfer Inmate was filed on September 8, 2015.

[¶49] A 14<sup>th</sup> Supplemental Discovery Request was filed on September 8, 2015.

[¶50] Attachments of Exhibit Resisting Motion transfer was filed on September 10, 2015.

[¶51] A 15<sup>th</sup> Supplemental Discovery Request was filed on September 15, 2015.

[¶52] A 16<sup>th</sup> Supplemental Discovery Request was filed on September 22, 2015.



[¶53] There was a Supplement Request for Inmate Transfer filed on September 23, 2015 and a Response Resisting Motion for Inmate Transfer Supplemental filed on September 25, 2015.

[¶54] The jury trial that had been set was cancelled on September 28, 2015.

[¶55] An inmate letter was filed on September 29, 2015.

[¶56] A 17<sup>th</sup> Supplemental Discovery Request was filed on September 30, 2015.

[¶57] An Order Denying Inmate Transfer was filed on December 12, 2015.

[¶58] An 18<sup>th</sup> Supplemental Discovery Request was filed on December 10, 2015.

[¶59] A 19<sup>th</sup> Supplemental Discovery Request was filed on December 14, 2015.

[¶60] A 20<sup>th</sup> Supplemental Discovery Request was filed on December 14, 2015.

[¶61] A 21<sup>st</sup> Supplemental Discovery Request was filed on December 16, 2015.

[¶62] On December 22, 2015 a State's Conference was held .

[¶63] A Notice of Expert Witness with Curriculum vitae was fled on December 22, 2015.

[¶64] Proposed jury instructions and notice of alibi defense were filed on December 28, 2015.

[¶65] A 22<sup>nd</sup> Supplemental Discovery Request was filed on December 31, 2015.

[¶66] A 23<sup>rd</sup> Supplemental Discovery Request was filed on January 4, 2016.

[¶67] The States requested Jury Instructions were filed on January 5, 2016.

[¶68] The Order to Transport inmate was filed on January 5, 2016.

[¶69] An expedited request for audio/video Testimony was filed on January 5, 2016.

[¶70] A 24<sup>th</sup> Supplemental Discovery Request was filed on January 6, 2016.

[¶71] Notice of e-mail stream between attorneys and court was filed on January 6, 2016.

[¶72] The 2<sup>nd</sup> Notice of Endorsement of Additional Witnesses on State's Information was filed on January 7, 2016.

[¶73] An Order granting Defendant's Request for Audio/Visual Testimony was filed on January 7, 2016 along with a response in resistance of Defendant's Expedited Request for Audio/Video Testimony.

[¶74] A Motion to Amend Information was filed on January 8, 2016 and an Order Amending was also filed on that date.

[¶75] The jury trial began on January 11, 2016 and ended on January 21, 2016 with a guilty verdict and an Order for PSI.

[¶76] A change of venue order was entered on January 21, 2016.

[¶77] A presentence investigation and addendum was filed on March 13, 2016.

[¶78] The Notice for Hearing on Sentencing was filed on March 15, 2016.

[¶79] A criminal filing was done on May 15, 2016 and a criminal filing was done on May 12, 2016.

[¶80] The sentencing and criminal judgment took place on May 13, 2016.

[¶81] The Notice of Appeal was filed on May 26, 2016.

[¶82] A letter from the Supreme Court was filed on May 31, 2016.

[¶83] An Assignment to Appellate Attorney Sam Gereszek was filed on June 6, 2016.

[¶84] The Clerk's Certificate of Appeal was filed on June 22, 2016.

[¶85] The Notice of the Supreme Court receiving Clerks Certification of record was filed June 29, 2016.

[¶86] A letter requesting approval for extension of time to fill appeal transcript was filed on July 21, 2016 with a letter for more extension filed on August 25, 2016.

[¶87] The Clerk's Supplemental Certificate of Appeal was filed September 6, 2016.

[¶88] A letter from Supreme Court with attached Clerk's Supplemental Certificate of Appeal was filed on September 9, 2016.

[¶89] An Assignment to Appellate Attorney Benjamin C. Pulkrabek was filed on November 22, 2016.

[¶90] A Clerk's Supplemental Certificate of Appeal was filed on November 22, 2016.

[¶91] On November 29, 2016 there was filed a letter from Supreme Court with attachments.

[¶92] This case is now before the North Dakota Supreme Court.

### **STATEMENT OF FACTS**

[¶93] In September of 2014 Candice Knegge was renting an apartment and garage from the Glacial Ridge Apartments in Minot, North Dakota. The street address of the apartment she was renting was 1630 - 12<sup>th</sup> St. NW and the garage that was included with that apartment was No. 30.

[¶94] On the evening of September 14, 2014 there were three people in garage No. 30, Shannon Brunelle, Anthony Leon Campbell, and Candice Knegge. The first person to

leave garage No. 30 was Ms. Knege. The second person to leave garage No. 30 was Mr. Campbell. He left between 1:30 and 2:00 a.m. on September 15, 2014.

[¶95] Mr. Brunelle's spent most of his time on the evening of September 14, 2014 and in the early hours of September 15, 2014 on a cell phone talking to Marissa Posey. He left garage No. 30 between 2:45 a.m. and 3:15 a.m. on September 5, 2014 and went into the kitchen at Ms. Knege's apartment to get some peanut butter. That jar of peanut butter can be seen in the crime scene photos of the garage floor.

[¶96] On September 15, 2014 at about 11:00 a.m. Ms. Knege went out and opened the door to garage No. 30. When she got that door open she saw Mr. Brunelle's body on the garage floor in a pool of blood. The Minot Police were called. When they arrived they thought they would be investigating a suicide. Their thoughts about suicide changed to murder after they examined Mr. Brunelle's body.

[¶97] In the pool of blood that Mr. Brunelle's body was in the Minot Police found two different sets of shoe prints. Some of the shoe prints were made by a boot. The Minot Police never found the boot that made those prints and never found the person that was wearing the boot when the boot prints were made in the blood. The other shoe prints in the blood were made by tennis shoes. The tennis shoes that made those prints was found in garage No. 30.

[¶98] When the Minot Police examined Mr. Brunelle's body they found he only had on pants and socks. He also had an ace bandage around his upper body. Mr. Brunelle's body had seven stab wounds and each one of them would have been fatal.

[¶99] The Minot Police also determined Mr. Brunelle's body had been hit by something and that something was a golf club. That golf club was found in pieces at the

crime scene. The stab wounds in Mr. Brunelle's body were made by a knife. No knife was ever found at the crime scene or anywhere else that made the knife stab wounds in Mr. Brunelle's body.

[¶100] According to Mr. Campbell after he left garage No. 30 he went to different places in Minot, North Dakota, then to different cities in North Dakota, and then to Georgia and Pennsylvania. In Pennsylvania he was apprehended by law officers and extradited to North Dakota. Where Mr. Campbell went after he left garage 30 on September 15, 2014 isn't really disputed by the State. What the State doesn't agree with Mr. Campbell on is why he left Minot, North Dakota. The State claims Mr. Campbell fled from Minot, North Dakota because he murdered Mr. Brunelle and by fleeing Minot, North Dakota he was avoiding being arrested for Mr. Brunelle's murder. Mr. Campbell claims he left Minot, North Dakota because he had been charged with a felony burglary, he had other problems with his life and he wanted to talk to family members in Pennsylvania.

[¶101] During Mr. Campbell's murder trial, the State did its best to bolster the State's witnesses testimony and discredit Mr. Campbell's testimony and the testimony of his witnesses. Mr. Campbell during his trial did his best to bolster his testimony and the testimony of his witnesses and discredit the testimony of the State's witnesses.

[¶102] During Mr. Campbells trial the State produced:

1. DNA evidence that established that Mr. Campbell's DNA was found in the tennis shoes and on the golf club pieces.
2. Statements made and things done by Mr. Campbell that connect him to the murder of Mr. Brunelle;

3. Evidence and testimony that established that the Minot Police investigation of Mr. Brunelle's murder was carefully and fully done and that investigation established that the only person who could have murdered Mr. Brunelle was Mr. Campbell;
4. Evidence and testimony that Mr. Campbell's defense was based on speculations that weren't supported during the trial by evidence and/or testimony.
5. No evidence or testimony that established any reasons or motive that Mr. Campbell had to murder Mr. Brunelle.

[¶103] Mr. Campbell during his trial produced:

1. Testimony from himself as to what he did, what he didn't do, where he went and why after he left garage No 30 on September 15, 2014, and that he didn't murder Mr. Brunelle;
2. Testimony that there were other people after Mr. Brunelle;
3. Testimony that the Minot Police got and tested the washcloth and towel he used during a shower he took at Levi Weis's apartment after he left garage No 30 on September 15, 2014 and no blood was found on these items or on the suitcase that he got clean clothes out of on September 15, 2014.
4. Testimony that his DNA was on the golf club parts because he did touched and handled the golf club before he left garage 30 on September 15, 2014.

5. Testimony that his DNA was in the tennis shoes found by the Minot Police in garage No 30 because on a prior occasion he had worn them when his feet got wet.
6. Testimony and evidence that the Minot Police found blood about 25 feet outside of garage No 30 and a hat outside the garage and made no effort to connect either of them to the murder of Mr. Brunelle.
7. Ross Rolshoven, who the trial judge found during the trial to be an expert witness on private investigations of criminal investigations, wasn't allowed to testify about the part of his expert opinion because it was based on information not in evidence or it invaded the province of the jury.

#### ISSUE

**[¶104] ISSUE I. Did the trial judge err when he refused to allow Ross Rolshoven, a person that the trial judge had found to be an expert witness on private investigations of criminal investigations, to give part of his testimony on his expert opinion because that part of his opinion was based on either inadmissible evidence or it involved the ultimate issue, the guilt or innocence of Mr. Campbell?**

#### ARGUMENT

[¶105] A trial judge's ruling not allowing an expert witness to give testimony about his expert opinion that is based on inadmissible evidence is an evidentiary ruling.

According to State vs Messner 1998 ND 151, 583 NW2d 109:

[¶13] Messner argues A.M.'s statements to the social worker were inadmissible as hearsay. Generally, we review a trial court's evidentiary rulings under an abuse of discretion standard. State v. Christensen, 1997 ND 57, ¶5, 561 N.W.2d 631. A trial court abuses its discretion when it acts

arbitrarily, capriciously, unreasonably, or if it misinterprets or misapplies the law. Id. at ¶5.

[¶106] Therefore because of what has been said above in Messner the standard of review on an evidentiary ruling of a district judge is abuse of discretion.

[¶107] Prior to Ross Rolshoven testifying as an expert his qualifications as an expert on private investigations were testified to by Mr. Rolshoven. After that the State was allowed to cross examine him about these qualifications. Tr. Day 7, P.9.L.21 to P.17, L.18 The trial judge then made the following ruling on Mr. Rolshoven qualifying as an expert witness on private investigations. Tr. Day 7, P.17 , L.19-24.

THE COURT: The challenge is noted with regard to crime scenes. However, his documentation and his experience supports as an investigator with regard to accidents and so forth. So he may be accepted as that. Again, anything else would go to credibility or weight, I should say. So good ahead. You may proceed.

[¶108] The following are three questions asked of Expert witness Rolshoven, the answers he gave and the objections by the State and rulings of the trial judge.

Tr. Day 7, P.19, L.17 to P.20, L.9.

Q. Were you given any specific direction on how to investigate this?

A. No.

Q. As part of your investigation did you conduct any mapping, retracing of steps, verification of theories, et cetera?

A. Yes.

Q. Can you explain that to the jury?

A. Well, specifically one of the issues was that there was an attack or an attempted attack on Shannon Brunelle two or three days prior to his killing.



MS. DILLON: Objection, Your Honor, That's not in evidence.

THE COURT: Sustained.

MR. GERESZEK: Your Honor, it's actually been testified to by two witnesses that there was a chase two days prior.

THE COURT: Sustained.

Tr. Day 7 P.22, L.4-8

Q. Do you have an opinion as to the murder of Shannon Brunelle?

MS. DILLON: Objection. It goes to the province of the jury.

THE COURT: Sustained.

Tr. Day 7, P.22, L.25 to P.23, L.1-10

Q. Did injuries have anything to do with that opinion that you based?

A. I have seen a lot of murders and looked at the photographs and analyzed them, and this one was extremely violent. And it really struck me as gang related, drug related. This wasn't just a kill him - -

MS. DILLON: Your Honor, again I am going to object as invading the province of the jury. There is no evidence that there was any gang involvement here.

THE COURT: That portion would be sustained on the objection.

[¶109] Once Ross Rolshoven qualified as an expert in private investigations what he can testify to and the reasons why are set out in Rule 702 of the NDR of Ev.

**Rule 702. Testimony of expert witnesses.**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

[¶110] The basis for expert Rolshovens expert opinion is set out in NDR of Ev  
703.

**Rule 703. Bases of an expert's opinion testimony.**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury on if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

[¶111] The fact than an expert opinion can embrace the ultimate issue is set out in NDR of Ev 704.

**Rule 704. Opinion on an ultimate issue.**

An opinion is not objectionable just because it embraces an ultimate issue.

[¶112] In the case now before the court there were three questions the trial judge sustained objections to Expert Rolshoven testifying.

[¶113] The first is found in [¶108] above where the trial court sustained State's objection to Expert Rolshoven testifying and giving his opinion on an attack or attempted attack on Shannon Brunelle two or three days before his killing because no attack or attempted attack hadn't been admitted into evidence.

[¶114] There was testimony about attacks or attempted attacks on Mr. Brunelle during the trial by Mr. Campbell. Also one of the defenses witnesses Isaac Hocker testified about an attack or attempted attach: Even if there wasn't any testimony about attacks or attempted attacks from the questions asked Expert Rolshoven and the answers given the attack or attempted attack were part of his investigation that he used in forming his expert opinion. According to Messner [¶26]:

[¶26 However, under N.D.R.Ev. 703, the facts relied upon by an expert in forming an opinion need not be ones otherwise admissible in evidence.(2) In addition, most courts agree an expert should be permitted to describe otherwise inadmissible hearsay relied upon in order to give the basis for the opinion. 29 Charles Alan Wright & Victor James Gold, Federal Practice and Procedure § 6273, at 317 (1997); see also United States v. Farley, 992

hearsay statements in forming his opinions, and the court said Fed.R.Ev. 703 allowed the expert to testify about that information, even if the evidence would not otherwise have been admissible.(3)

Because of Messner expert Rolshoven should have been able to fully testify about what information he used even if it was from inadmissible evidence to reach his expert opinion and then give his opinion even

[¶115] The second and third question asked in [¶108] above to expert Rolshoven that the state objected to and the trial judge sustained were if he had an opinion as to the murder of Shannon Brunelle. Expert Rolshoven had many opinions about Mr. Brunelle's murder and he should have been allowed to testify fully about all of them. The reason expert Rolshoven should have been allowed to fully testify is that the questions asked expert Rolshoven didn't ask him if you had an opinion as to who the murderer of Shannon Brunelle was, but only asked him if he had opinions about Mr. Brunelle's murder.

[¶116] How close can an expert opinion get to the province of the jury on the ultimate issue of the guilt or innocence of the defendant? According to NDRofEv 704. Opinion on an ultimate issue. An opinion is not objectionable just because it embraces an ultimate issue.

[¶117] In United States v Cohen, 510 Fed 3<sup>rd</sup> (9<sup>th</sup> Cir Dec 26, 2007) an expert was allowed to testify what impact if any a defendant's mental condition might have on a defendant's ability to form the requisite mens rea-the intent to evade tax laws. Such testimony in Cohen comes much closer to the ultimate issue of the guilt or innocence of a Defendant than any of the answers that expert Rolshoven would have given to the questions he was asked when he was testifying.

[¶118] Expert Rolshoven when he testified should have been allowed to give all his expert opinions on the Minot police investigation of Mr. Brunelle's murder. Instead expert Rolshoven expert testimony was limited because the trial judge sustained State's objections to inadmissible evidence and to the province of the jury. Both of these objections should of been overruled.

### CONCLUSION

[¶119] In this case Ross Rolshoven was determined by the trial judge to be an expert in private investigations of police investigations. Such an expert determination by the trial judge indicated that the trial judge had decided that Mr. Rolshoven had sufficient knowledge, skill and experience training and education to synthesize his research and render an opinion on the private investigations of police investigations and that expert opinion could assist the jury in this case. Therefore after the trial judge found Mr. Rolshoven to be an expert on private investigations of police investigations Mr. Rolshoven should have been allowed to fully express his expert opinion on the Minot police's investigation of Mr. Brunelle's murder. Then after Mr. Rolshoven expressed that expert opinion it would be up to the jury to determine what weight and credibility should be given to Mr. Rolshoven's expert opinion.

[¶120] In this case the trial judge while Mr. Rolshoven was testifying as an expert made a number of rulings on Mr. Rolshoven's expert testimony that only allowed Mr. Rolshoven to partially express his expert opinion on the Minot police's investigation of Shannon Brunelle's murder. Anthony Campbell's defense was entitled to have all of Mr. Rolshoven's expert opinion on the Minot polices investigation of Mr. Brunelle's murder presented to the jury. Because the trial court only allowed Mr. Rolshoven to partially

express his expert opinion this case should be remanded the District Court with an order requiring that Mr. Campbell be given a new trial and at that new trial Mr. Rolshoven should be allowed to fully state his expert opinion on the Minot polices investigation of Mr. Brunelle's murder.

DATED this 17 day of January, 2017.

Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek, ID #02908

**CERTIFICATE OF SERVICE BY MAIL**

[¶121] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

That on January 17<sup>th</sup>, 2017, she served, by e-mail and mailed a copy of the following:

**APPELLANTS APPENDIX AND BRIEF**

to: Kelly Dillon  
Ward Co. States Attorneys Office  
51wardsa@wardnd.com

Mailed to: Anthony L. Campbell  
NDSP - #44629  
P.O. Box 5521  
Bismarck, ND 58506

The undersigned further certifies that on January 17<sup>th</sup>, 2017, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS APPENDIX AND BRIEF.

Sharon Renfrow  
Sharon Renfrow, Admin. Legal Assistant  
Pulkrabek Law Office