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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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| Kyle Al Christianson,<br><br>Appellant,<br><br>v.<br><br>Ronald Henke, Interim Director, Department of Transportation,<br><br>Appellee. | **Supreme Ct. No. 20190348**<br><br>**District Court No. 08-2019-CV-02172**<br><br>**ORAL ARGUMENT REQUESTED** |

**APPEAL FROM THE SEPTEMBER 16, 2019,**
**JUDGMENT OF THE DISTRICT COURT**
**BURLEIGH COUNTY, NORTH DAKOTA**
**SOUTH CENTRAL JUDICIAL DISTRICT**

**HONORABLE JOHN GRINSTEINER**

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# BRIEF OF APPELLEE

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

[¶1] Whether the hearing officer properly admitted the Department's regularly kept records comprising Exhibits 1 into evidence under N.D.R.Ev. 902(4)(A).

[¶2] Whether Christianson's Driver License Suspension (Notice of Suspension) from the province of Saskatchewan, Canada, met the requirements of N.D.C.C. §§ 39-06-32(4) and 39-06.2-10(8).

[¶3] Whether Christianson was denied due process during the administrative hearing and whether the hearing officer provided Christianson with a fair and impartial hearing.

[¶4] Whether Christianson is entitled to an award of attorney fees and costs under N.D.C.C. § 28-32-50(1).

## STATEMENT OF FACTS AND CASE BEFORE THE ADMINISTRATIVE HEARING OFFICER

### I. Orders of Suspension and Requests for Hearings.

[¶5] On April 9, 2019, the Department issued an Order of Suspension in which the Department stated its intention to suspend Christianson's non-commercial driving privileges for a period of 91 days based on "an administrative decision in another state or jurisdiction suspending or revoking driving privileges because of a violation of that state or jurisdiction's law forbidding motor vehicle operation with an alcohol concentration of at least .08." Appendix to Brief of Appellant ("App.") at 6. On April 9, 2019, the Department also issued an Order of Disqualification in which the Department stated its intention to disqualify Christianson from operating a commercial motor vehicle for a period of one year based on "one disqualifying offense under NDCC 39-06.2-10." Id. at 55. That administrative decision/

disqualifying offense was based on a Driver Licence Suspension (Notice of Suspension) record received by the Department from the licensing authority in Canada and further reported on Christianson's North Dakota driver's license record. Id. at 5, 7, 54, & 56.

**II. Christianson's hearing regarding the proposed suspension of his non-commercial driving privileges.**

[¶6] Christianson requested administrative hearings under N.D.C.C. §§ 39-06-33 and 39-06.2-10.6 with respect to the two proposed administrative sanctions, which were consolidated for hearing on May 21, 2019. Id. at 4, 53; Transcript ("Tr.") at 1, ll. 16-19. With respect to Christianson's hearing regarding the proposed suspension of his non-commercial driving privileges, the hearing officer admitted five exhibits offered by Christianson and consisting of:

> Exhibit 3 purporting to be an April 8, 2019, "Final Report to Director" regarding allegations made by the Department's employees concerning the workplace conduct of Glenn Jackson while he served as the Director of the Department's Driver's License Division. App. at 9-28.
>
> Exhibit 4 purporting to be a May 1, 2019, Associated Press news article entitled "DOT's driver's license chief under 'workplace investigation.'" App. at 29.
>
> Exhibit 5 purporting to be a May 8, 2019, Grand Forks Herald news article entitled "Top NDDOT official resigns after stinging workplace investigation." App. at 30-33.
>
> Exhibit 6 being the Office of Attorney General's Approved Method to Conduct Breath Tests with the Intoxilyzer® 8000. App. at 34-43.
>
> Exhibit 7 purporting to a publication by the Canadian Department of Justice entitled "Frequently Asked Questions, Alcohol, Impaired Driving." App. at 44-49.

Tr. at 2, l. 4 – 3, l. 23.

[¶7] The hearing officer then offered into evidence a series of documents relating to Christianson's non-commercial driving privileges and marked for identification as Exhibit 1, which consisted of:

> Page 1, Exhibit 1 is a certification page signed by Glenn Jackson, Division Director, Driver's License Division, DOT, Bismarck, North Dakota. Page 2, Exhibit 1 is a copy of the email, request for hearing submitted by Mr. Christianson and dated April 16, 2019. Page 3, Exhibit 1 is information received by the department from the licensing authority in the state of Canada. Page 4, Exhibit 1 is a copy of the Order of Suspension mailed to Mr. Christianson on April 9, 2019. And page 5, Exhibit 1, is a copy of the Driver's License Division Central Record, Mr. Christianson's driving record. And again Exhibit 2 is the notice I prepared and mailed to Mr. Justinger and Mr. Christianson on April 25, 2019.

Id. at 4, ll. 10-22.

[¶8] Christianson objected to the admission of Exhibit 1 based on the content of his Exhibits 3, 4, and 5, regarding the purported employment status of Glenn Jackson during the relevant time period and the certification of the Department's records.[1] Id. at 4, l. 23 – 9, l. 22. First, Christianson stated:

> The first thing I would like to happen is, was hoping we could take judicial notice under 201 of North Dakota Rules of Evidence that Mr. Glenn Jackson has been on administrative leave since 2000 … or since February 12, 2019. The hearing officer in this case works for the department and this is something that they can take judicial notice of.

Id. at 4, l. 23 – 5, l. 5. The hearing officer overruled Christianson's objection stating:

---

[1]Christianson's arguments on appeal are based on the incorrect factual claim that Exhibits 3, 4, and 5 conclusively established that "[o]n February 12, 2019, the Department placed Glenn Jackson (Mr. Jackson) on administrative leave" and that "Mr. Jackson remained on administrative leave until his resignation on Friday, May 3, 2019." Appellant's Br. at ¶ 17, see also id. at ¶¶ 20, 33, 34, 43, 44, 46, 50, 55, 56, 59, 62, 76, 88, 90, 91, 92, & 93. However as will be further discussed, both the hearing officer and the District Court declined to take the requested judicial notice of Christianson's claim regarding Jackson's employment status. App. at 50, 58, & 69-70.

> You know, I don't think I'm going to take judicial notice or official notice of that situation. I'm not going to do an independent investigation and I don't know that … I don't have specific knowledge of the circumstances of that situation so I'm not going to take official notice so, I'll deny that.

Id. at 5, ll. 6-10.

[¶9] Each of Christianson's subsequent objections, in turn, were dependent upon his claims regarding Jackson's employment status, including that:

> (1) "Exhibit 1 is not authentic under Rule 901 of the North Dakota Rules of Evidence because the hearing officer here failed to call Mr. Jackson as a witness to authenticate the document."
>
> (2) "Exhibit 1 is not a self-authenticating document under Rule 902 of the North Dakota Rules of Evidence because it was fraudulently certified by the North Dakota Department of Transportation . . . [because Glenn Jackson] was on administrative leave and not present in the office."
>
> (3) Exhibit 1 "is hearsay that's being offered to prove that there was a suspension in the state of Saskatchewan in Canada . . . . [in part, because] Glenn Jackson has been on administrative leave."
>
> (4) Exhibit 1 "does not comply with North Dakota Century Code 31-04-10 . . . . [because] it's impossible for Exhibit 1 to be under the official seal of the certifying officer, in this case, Mr. Jackson, because Mr. Jackson has been on administrative leave since February 12, 2019."

Id. at 5, l. 11 -- 9, l. 22. The hearing officer overruled Christianson's objections. Id.

[¶10] During closing argument, Christianson renewed his previous objections to the admissibility of Exhibit 1 and claimed that "[w]ithout Exhibit 1 the department does not have the authority or jurisdiction to suspend Mr. Christianson's license." Id. at 10, ll. 5-24. Christianson further argued that:

(1) Christianson's due process were violated and he was not afforded a fair hearing because of the admission of an alleged "forged and a fraudulent document."

(2) "[T]here's not a showing that Mr. Christianson was afforded a fair hearing which would violate his due process rights in the Canadian jurisdiction . . . [and] the department cannot show that Mr. Christianson was afforded due process in his administrative or criminal proceedings in Canada."

(3) The hearing officer allegedly did not conduct the hearing in a fair and impartial manner because "the hearing officer admitted Exhibit 1 into evidence even though as stated before it was a fraudulent document, that in some way was forged whether by signature on certification page itself."

(4) "There's been no evidence to show that Mr. Christianson's alcohol concentration was above eight one hundredths of one percent by weight which is required by 39-06-32."

Id. at 10, l. 25 – 13, l. 4.

**III. Christianson's hearing regarding the proposed disqualification of his commercial driving privileges.**

[¶11] During the hearing regarding the proposed disqualification of Christianson's commercial driving privileges, the hearing officer and Christianson agreed to incorporate the previous arguments and objections that Christianson made regarding the proposed suspension of his non-commercial driving privileges. Id. at 13, ll. 15-20.

[¶12] After admitting the previous Exhibits 3, 4, 5, 6, and 7 that had been offered by Christianson, the hearing officer offered into evidence a second Exhibit 1 regarding Christianson's commercial driving privileges and inclusive of:

> Exhibit 1 page 1 is the certification page signed by Glenn Jackson, Division Director, Driver's License Division, DOT, Bismarck, North Dakota. It indicates that it's signed by Glenn Jackson, Division Director, Driver's License Division, DOT, Bismarck, North Dakota.

> Page 2, Exhibit 1 is a copy of the email request for hearing submitted by Mr. Christianson and dated April 16, 2019. Page 3, Exhibit 1 is information the DO … the Department of Transportation of North Dakota have received from the licensing authority in the state of Canada. Page 4, Exhibit 1 is a copy of the Order disqualification mailed to Mr. Christianson on April 9, 2019. Page 5, Exhibit 1 is a copy of the Driver's License Division Central Record, it's Mr. Christianson's driving record.

Id. at 16, l. 13 – 17, l. 2.

[¶13] Again, Christianson requested the hearing officer "take judicial notice that Glenn Jackson has been on administrative leave since February 12, 2019." Id. at 17, ll. 7-9. The hearing officer again denied Christianson's request stating "I'm not going to take official notice or judicial notice of that fact. I'm not aware of that. As far as I know I was not apprised of exactly what was happening in that situation." Id. at 17, ll. 10-13. The hearing officer continued:

> And, let me just clarify, by that situation I mean the extent of the administrative leave. I may have heard … may have been aware of that there was an administrative leave. I'm not sure of the circumstances of it in its entirety or the specifics or the extent of the leave. And what exactly, what that meant as far as his role with the division. All right, so.

Id. at 17, ll. 17-22.

[¶14] Christianson continued with his objections that (1) Exhibit 1 was not authenticated under Rule 901; (2) Exhibit 1 was not self-authenticating under Rule 902; (3) Exhibit 1 was hearsay and did not fall within an exception to the hearsay rule; (4) Exhibit 1 was not certified in accordance with N.D.C.C. 31-04-10; and (5) Exhibit 1 should be excluded under the best evidence rule. Id. at 18, l. 9 – 19, l. 7. The hearing officer overruled Christianson's additional objections. Id.

[¶15] During closing argument, Christianson "incorporate[d] all of the reasons that

[he] previously mentioned in the non-commercial matter as a reason to not suspend Mr. Christianson's commercial driving privileges." Id. at 19, ll. 13-16. Christianson further argued:

> (1) "[T]he North Dakota Department of Transportation lacks the authority and jurisdiction to suspend Mr. Christianson's driving privileges under 39-06.2-10 . . . [because] there's been no evidence presented by the North Dakota Department of Transportation that Mr. Christianson was convicted of a DUI."
>
> (2) Further, there's been no evidence presented today that shows there was a determination that Mr. Christianson violated or failed to comply with the law in a court or administrative tribunal. . . . There's no evidence in the record that this decision was before a court or administrative tribunal."

Id. at 19, l. 19 – 21, l. 9.

## IV. The Hearing Officer's Recommended Decisions.

### A. Christianson's non-commercial driving privileges.

[¶16] With respect to Christianson's non-commercial driving privileges, the hearing officer concluded:

> (1) "The evidence indicates Mr. Jackson was the Director of the Department's Driver's License Division on April 17, 2019. There is no evidence the Department had made an official announcement regarding Mr. Jackson's leave status, or the terms and conditions, if any, of his leave status, prior to his resignation."
>
> (2) "The undersigned finds Exhibit 1, pages 1-5 are regularly kept records of the Department and are therefore admissible as provided under section 39-06-33(2) of the North Dakota Century Code and Rule 902 of the North Dakota Rules of Evidence."
>
> (3) "The undersigned finds the requirements of Section 39-06-32(4) have been established. The evidence establishes that a licensing authority in Canada has made an 'administrative decision' to suspend Mr. Christianson's privilege to drive in Canada because of a violation of Canada's law forbidding

> motor vehicle operation with an alcohol concentration of at least eight one-hundredths of one percent by weight. Exhibit 1, page 5 shows Mr. Christianson's blood alcohol concentration was at least ('.08BAC')."

App. at 50-51. The hearing officer determined that "[t]he proposed period of suspension stated in the Department's Order is supported by the evidence and is in accordance with North Dakota Century Code Section 39-20-04.1." Id. at 51.

**B. Christianson's commercial driving privileges.**

[¶17] With respect to Christianson's commercial driving privileges, the hearing officer similarly concluded:

> (1) "The undersigned finds Exhibit 1, page 1 is not forged or fraudulent. The evidence indicates Mr. Jackson was the Director of the Department's Driver's License Division on April 17, 2019. There is no evidence the Department had made an official announcement regarding Mr. Jackson's leave status, or the terms and conditions, if any, of his leave status, prior to his resignation."
>
> (2) "The undersigned finds Exhibit 1, pages 1-5 are regularly kept records of the Department and are therefore admissible as provided under section 39-06-33(2) of the North Dakota Century Code and Rule 902 of the North Dakota Rules of Evidence."
>
> (3) "The undersigned finds the record is sufficient to establish that Mr. Christianson was convicted of driving while under the influence of alcohol as required by section 39-06.2-10(8) of the Century Code. The evidence establishes that an authorized administrative tribunal – a licensing authority in Canada – has made a determination to suspend Mr. Christianson's privilege to drive in Canada because of a violation of Canada's law forbidding motor vehicle operation with an alcohol concentration of at least eight one-hundredths of one percent by weight. Exhibit 1, page 5 shows Mr. Christianson's blood alcohol concentration was at least ('.08BAC')."

Id. at 58-59. The hearing officer determined that "[t]he proposed one-year

disqualification of commercial driving privileges is in accordance with section 39-06.2-10 of the North Dakota Century Code." Id. at 59.

## V. The Department's Adoption of the Hearing Officer's Recommended Decisions.

[¶18] On June 5, 2019, the Department issued its Orders adopting the hearing officer's proposed findings of fact and conclusions of law suspending Christianson's non-commercial driving privileges for a period of 91 days and disqualifying Christianson from operating a commercial motor vehicle for a period of one year. Register of Actions at Index #s 4 & 5.

## STATEMENT OF PROCEEDINGS ON APPEAL BEFORE THE DISTRICT COURT

[¶19] Christianson requested judicial review of the Hearing Officer's Recommended Decisions and the Department's Orders by the District Court. App. at 60-64. On September 13, 2019, the District Court issued its Memorandum and Order Affirming Hearing Officer's Decision. Id. at 65-70. The District Court ruled:

> [¶15] In this case, Mr. Jackson was the current Director of the Department's Driver's License Division on April 17, 2019. There has been no evidence offered to rebut that nor has there been evidence offered to show it was generally known in the NDDOT that Mr. Jackson was on administrative leave and/or the parameters of Mr. Jackson's administrative leave. Christianson offered a news article regarding Mr. Jackson's administrative leave and requested the hearing officer take judicial notice of the fact that Mr. Jackson was on administrative leave at the time Exhibit 1 was signed. However, [c]ourts may properly take judicial notice of newspapers and other publications as evidence of what was in the public realm at the time, but not as evidence that the contents in the publication were accurate…" *Cheval Intern. v. SmartPak Equine, LLC*, No. CIV. 14-5010-JLV, 2015 WL 798968, *3. The Administrative Hearing officer properly did not take judicial notice of the news article.
>
> [¶16] The citation from Canada was a regularly kept record of the NDDOT and therefore established a prima facie case of its contents without the need for further foundation. Also, because this was a

> regularly kept record, the specific requirements for establishing the violation in Canada are not considered by the NDDOT and Canada's driver's licensing authority is sufficient evidence of the violation in Canada. Therefore, Christianson's argument regarding the process Canada used in suspending Christianson's driving privileges under its laws will not be considered here.

Id. at 69-70.

[¶20] Judgment was entered on September 16, 2019. Id. at 71. Christianson appealed the Judgment to the North Dakota Supreme Court. Id. at 72-74. The Department requests this Court affirm the Judgment of the Burleigh County District Court and affirm the Department's Orders adopting the hearing officer's proposed findings of fact and conclusions of law suspending Christianson's non-commercial driving privileges for a period of 91 days and disqualifying Christianson from operating a commercial motor vehicle for a period of one year.

## REQUEST FOR ORAL ARGUMENT

[¶21] The Department requests the Court schedule oral argument in this case under N.D.R.App.P. 28(h). This matter involves significant questions applicable to non-commercial and commercial driver's license cases regarding the requirements for judicial notice under N.D.R.Ev. 201; the requirements for the authentication and admissibility of documents under N.D.R.Ev. 902(4)(A) with respect to the Department's regularly kept records; and the requirements for imposing administrative sanctions under N.D.C.C. §§ 39-06-32(4) and 39-06.2-10(8) based upon a foreign administrative decision and/or conviction. Oral argument would be helpful in the Court's review of the Hearing Officer's Recommended Decisions, the Department's Orders adopting the Hearing Officer's Recommended Decisions, and the District Court's decision affirming the administrative decisions.

## STANDARD OF REVIEW

[¶22] "The Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, governs the review of a decision to [suspend or disqualify] driving privileges." Haynes v. Dir., Dep't of Transp., 2014 ND 161, ¶ 6, 851 N.W.2d 172. The Court must affirm an administrative agency's order unless one of the following is present:

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.

N.D.C.C. § 28-32-46.

[¶23] "In an appeal from a district court's review of an administrative agency's decision, [the Court] review[s] the agency's decision." Haynes, 2014 ND 161, ¶ 6, 851 N.W.2d 172. The Court "do[es] not make independent findings of fact or substitute [its] judgment for that of the agency; instead, [it] determine[s] whether a

reasoning mind reasonably could have concluded the findings were supported by the weight of the evidence from the entire record." Id.

[¶24] "Statutory interpretation is a question of law, fully reviewable on appeal." DeForest v. N.D. Dep't of Transp., 2018 ND 224, ¶ 8, 918 N.W.2d 43 (quoting Teigen v. State, 2008 ND 88, ¶ 19, 749 N.W.2d 505). The Court "construe[s] statutes to avoid absurd or illogical results." Id. at ¶ 9 (quoting State v. Stegall, 2013 ND 49, ¶ 16, 828 N.W.2d 526 (quoting Mertz v. City of Elgin, 2011 ND 148, ¶ 7, 800 N.W.2d 710); citing N.D.C.C. § 1-02-38(4) ("In enacting a statute, it is presumed that: ... [a] result feasible of execution is intended.")).

## LAW AND ARGUMENT

### I. The hearing officer properly admitted the Department's regularly kept records comprising Exhibits 1 into evidence under N.D.R.Ev. 902(4)(A).

#### A. The abuse of discretion standard.

[¶25] "Generally, [the Court] review[s] a trial court's evidentiary ruling under an abuse of discretion standard." Knudson v. Dir., N.D. Dep't of Transp., 530 N.W.2d 313, 316 (N.D. 1995) (citing Crowston v. Goodyear Tire & Rubber Co., 521 N.W.2d 401 (N.D. 1994); State v. Whalen, 520 N.W.2d 830 (N.D. 1994)). "A trial court abuses its discretion when it acts in an arbitrary, unreasonable or capricious manner or misinterprets or misapplies the law." Knudson, 530 N.W.2d at 316 (internal and external citations omitted). "The basis of this deferential review is the wide discretion afforded to trial courts to control the introduction of evidence at trial." Id. (citing Williams Cty. Soc. Serv. Bd. v. Falcon, 367 N.W.2d 170, 176 (N.D. 1985)).

[¶26] "Ordinarily, [the court] do[es] not reverse an evidentiary miscue, particularly, in a nonjury case, when that error causes no prejudice." Madison v. N.D. Dep't of Transp., 503 N.W.2d 243, 246 (N.D. 1993) (citing Domres v. Backes, 487 N.W.2d 605 (N.D. 1992)). "An appealing party has the burden 'of establishing not only that the trial court erred but that such error was highly prejudicial to his cause.'" Olander Contracting Co. v. Gail Wachter Invs., 2002 ND 65, ¶ 26, 643 N.W.2d 29 (quoting Filloon v. Stenseth, 498 N.W.2d 353, 356 (N.D. 1993) (quoting Allen v. Kleven, 306 N.W.2d 629, 634 (N.D. 1981))).

[¶27] Christianson raises numerous arguments regarding the admissibility of the Department's regularly kept records comprising Exhibits 1, which, in turn, rely on his argument that "[t]he hearing officer failed to take judicial notice that Mr. Jackson was on administrative leave." Appellant's Br. at ¶¶ 88-93. Because the hearing officer properly declined to take the requested notice, Christianson's arguments lack merit.

### B. The Department's regularly kept records comprising Exhibits 1 were properly authenticated under N.D.R.Ev. 902(4)(A).

[¶28] "Generally, before documentary evidence is admissible it must be authenticated." Frost v. N.D. Dep't of Transp., 487 N.W.2d 6, 8 (N.D. 1992) (citing R & D Amusement Corp. v. Christianson, 392 N.W.2d 385, 386 (N.D. 1986)). "Issues regarding authentication are 'primarily within the discretion of the district court, and [the appellate court] will not reverse the [trial] court's decision absent an abuse of discretion." State v. Carlson, 2016 ND 130, ¶ 13, 881 N.W.2d 649 (quoting State v. Thompson, 2010 ND 10, ¶ 23, 777 N.W.2d 617).

[¶29] "Authentication is simply identification." Frost, 487 N.W.2d at 8 (citing Black's Law Dictionary 671 (5th ed. 1978)). "Identification 'as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.'" (citing N.D.R.Ev. 901(a)). "Evidence that a purported public record is from the public office where items of that nature are kept, and methods of identification authorized by statute conform with Rule 901(a)." (citing N.D.R.Ev. 901(b)(7) and (10)). "Additionally, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to signatures, documents, or other matters declared by statute to be presumptively or prima facie genuine or authentic." Frost, 487 N.W.2d at 8-9 (citing N.D.R.Ev. 902(10)).

[¶30] At an administrative hearing under section 39-06-33, "the regularly kept records of the director may be introduced and are prima facie evidence of their content without further foundation." N.D.C.C. § 39-06-33(2). In a similar manner, at an administrative hearing under 39-06.2-10.6, "the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation." N.D.C.C. § 39-06.2-10.6(4).

[¶31] "[I]n order to be admissible as 'regularly kept records of the director,' a document must bear some reliable, verifiable indicia that the document is in fact what it purports to be." Peterson v. N.D. Dep't of Transp., 518 N.W.2d 690, 694 (N.D. 1994). "If the documents are not admissible as 'regularly kept records,' DOT must establish their authenticity with extrinsic evidence under Rule 901, N.D.R.Evid., or as self-authenticating documents under Rule 902, N.D.R.Evid." Id.

at 695.

[¶32] Under Rule 902(4)(A), "[a] copy of an official record, or a copy of a document that was recorded or filed in a public office as authorized by law, if the copy is certified as correct by . . . (A) *the custodian or another person authorized to make the certification*." N.D.R.Ev. 902(4)(A) (emphasis added). See also City of Jamestown v. Neumiller, 2000 ND 11, ¶ 7, n.1, 604 N.W.2d 441 ("The record [] certified by a Department of Transportation employee charged with the control of such records . . . . satisfie[d] the authenticity requirement of N.D.R.Ev. 902(4).").

[¶33] "Generally, in the absence of a statute providing otherwise, a signature may be affixed to a document by writing by hand, by printing, by stamping, or by other means." State v. Obrigewitch, 356 N.W.2d 105, 108 (N.D. 1984) (citations omitted). "The evidentiary rule requiring authentication and certification of records is designed to avert the inconvenience and occasional impossibility of producing original documents in court." Id. "North Dakota does not have a specific statute requiring signatures to be made in any certain form." Id. The Court "conclude[d] that the rubber-stamp certification and signature as used . . . [was] sufficient to meet the evidentiary requirements of Rule 902, N.D.R.Ev." Id. "By so concluding [the Court] intend[ed] to further the policy of avoiding waste of time and money that would result in requiring manual signing of every record certified from the Drivers License Division." Id.

[¶34] Furthermore, in a case that cited Obrigewitch, the Indiana Court of Appeals stated that such a "*signature, however affixed, is clothed with a presumption the certifying officer stamped it as his signature or that it was stamped with his authority*

*. . . unless the record affirmatively shows evidence to the contrary*." James v. State ex rel. Comm'r of Motor Vehicles, 475 N.E.2d 1164, 1166 (Ind. Ct. App. 1985) (citations omitted) (emphasis added). "[A]bsent evidence to the contrary, the trial court should presume that what purports to be an official signature certifying a document is in fact a valid signature even if the signature is a stamped facsimile." Id.

[¶35] In addition, in State v. Verdirome, the Connecticut Court of Appeals held that "[t]he certification of a copy [of motor vehicle records] is not a 'peculiarly personal' act required to be performed by the designated individual or official himself, such as taking an oath or the performance of a quasi-judicial duty. 421 A.2d 563, 566 (Conn. Super. Ct. 1980). "The state was entitled to rely upon this presumption as establishing prima facie that the certification had been made by the commissioner, and was not bound to offer testimony to such effect." Id. "This presumption permits the inference that the rubber-stamp signature of the commissioner was placed on the certification by an employee of the motor vehicle department duly authorized by the commissioner to perform that function." Id.

[¶36] In this case, Christianson challenges the admissibility the Department's regularly kept records comprising Exhibits 1 based on the incorrect factual claim that Exhibits 3, 4, and 5 conclusively established that "[o]n February 12, 2019, the Department placed Glenn Jackson (Mr. Jackson) on administrative leave" and that "Mr. Jackson remained on administrative leave until his resignation on Friday, May 3, 2019." Appellant's Br. at ¶ 17, see also id. at ¶¶ 20, 33, 34, 43, 44, 46, 50, 55, 56, 59, 62, 76, 88, 90, 91, 92, & 93. Christianson then alleges that "[t]he hearing

officer erred by not taking judicial notice that Mr. Jackson was on administrative leave on April 17, 2019." Id. at ¶ 90.

[¶37] "A trial court's power to take judicial notice of adjudicated facts is governed by Rule 201, N.D.R.Evid." Opp v. Matzke, 1997 ND 32, ¶ 9, n.1, 559 N.W.2d 837. Rule 201(b) provides that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." N.D.R.Ev. 201(b). "[A] trial court's decision to take judicial notice of evidence presented [is reviewed] under an abuse of discretion standard." Opp, at ¶ 9 (quoting Gronneberg v. Hoffart, 466 N.W.2d 809, 811 (N.D. 1991)).

[¶38] Without providing any evidentiary basis for his position, Christianson first claims that "[t]he hearing officer should have known, or reasonably could have found out that Mr. Jackson was on administrative leave." Appellant's Br. at ¶ 90. The hearing officer, however, dispelled the underlying premise of Christianson's claim when he stated:

> I'm not going to take official notice or judicial notice of that fact. I'm not aware of that. As far as I know I was not apprised of exactly what was happening in that situation.
> . . .
>
> And, let me just clarify, by that situation I mean the extent of the administrative leave. I may have heard … may have been aware of that there was an administrative leave. I'm not sure of the circumstances of it in its entirety or the specifics or the extent of the leave. And what exactly, what that meant as far as his role with the division.

Tr. at 17, ll. 10-22.

[¶39] Next, Christianson claims "the court or hearing officer must take judicial notice if a party requests it and the court is supplied with the necessary information." Appellant's Br. at ¶ 92 (citing N.D.R.Ev. 201(c)(2)). Christianson claims "[he] supplied accurate information from sources whose accuracy cannot reasonably be questioned." Id. Christianson *incorrectly* claims that Exhibit 3 – the April 8, 2019, "Final Report to Director" – "indicates that Mr. Jackson was on administrative leave." Id.; App. at 9-28. Exhibit 3 contains no such representation on its face that supports Christianson's claim, *nor does the April 8th document address Jackson's employment status as of the later date of April 17th – i.e., the date of the certification.* App. at 9-28. In fact, the document identifies Jackson as being an employee in his capacity as the "Director, Drivers License Division," and having been interviewed during the workplace investigation. Id. at 10

[¶40] In further support of his request for judicial notice, Christianson claims "[he] supplied the hearing officer with Exhibit 4 and 5. Both of which are published articles from reputable news sources." Appellant's Br. at ¶ 92. Christianson cites N.D.R.Ev. 902(6) for the proposition that "[n]ewspapers and periodicals are self-authenticating documents and require no extrinsic evidence to be admitted." Id.

[¶41] Christianson overlooks the fact that "[w]hile it is true that newspaper articles do not require extrinsic evidence of authenticity prior to admissibility, there may still remain the questions of authority and responsibility for statements contained therein." In re Application of Bloomberg, No. CIV. A. 97-227, 1998 WL 42252, at *2 (E.D. Pa. Jan. 8, 1998). See also Sec. and Data Techs., Inc. v. Sch. Dist. of Phila., 145 F. Supp. 3d 454, 463 (E.D. Pa. 2015) ("[G]enerally, newspaper articles

and television programs are considered hearsay under Rule 801(c) when offered for the truth of the matter asserted and statements in newspapers by individuals other than the article's author often constitute double hearsay."); United States v. Taylor, Criminal Action No. 2:10cr192, 2011 WL 13195944, at *3 (E.D. Va. March 3, 2011) ("[T]he fact that Rule 902 makes it unnecessary to call a witness to testify about the authenticity of a newspaper is a different question entirely from determining whether the statements contained within such newspaper story, article, or obituary, are inadmissible hearsay.") (citing 29A Am. Jur. 2d Evidence § 1196 ("explaining that the self-authentication rule 'does not confer admissibility upon all official publications, but merely provides a means whereby their authenticity may be taken as established' and that authentic documents may still be deemed 'inadmissible as not sufficiently probative' or 'excludable as hearsay'"); Fed.R.Ev. 902 (1972 Advisory Committee Note) ("Establishing the authenticity of the publication may, of course, leave still open questions of authority and responsibility for items therein contained.")).

[¶42] "Courts may properly take judicial notice of newspapers and other publications as evidence of what was in the public realm at the time, but not as evidence that the contents in the publication were accurate." Barron v. South Dakota, No. Civ. 09-4111, 2010 WL 9524819, at *3 (D.S.D. Sept. 30, 2010) aff'd sub nom. Barron ex rel. D.B. v. South Dakota Bd. of Regents, 655 F.3d 787 (8th Cir. 2011) ((citing Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010); Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P., 435 F.3d 396, 401, n.15 (3d Cir. 2006)). "Unless the newspaper

articles contain matter that has not been disputed or that has been presented in other admissible evidence, the newspaper articles which [a party requests a court] to take judicial notice, will be considered only for the limited purpose of what was in the public realm at the time." Id. See also U.S. ex rel. Osheroff v. Humana Inc., 776 F.3d 805, 811, n.4 (11th Cir. 2015) ("[C]ourts may take judicial notice of documents such as the newspaper articles at issue here for the limited purpose of determining which statements the documents contain (but not for determining the truth of those statements).").

[¶43] The newspaper articles offered by Christianson only serve as evidence of what was in the public realm on May 1st and May 3rd – i.e., dates following the April 17th certifications – but not as evidence for the truth of matters asserted in those articles. Christianson's Exhibits 3, 4, & 5 were an insufficient means for the hearing officer to take judicial notice of Christianson's claim regarding Jackson's employment status as of April 17th.

[¶44] The regularly kept records of the Department relating to Christianson's driving privileges bear the rubber-stamp certification and signature of Glenn Jackson in accordance with the evidentiary requirements of Rule 902 and Obrigewitch. Christianson failed to present evidence to overcome the disputable presumption that the certification was made by Jackson or that it was stamped with his authority. See N.D.C.C. § 31-11-03(15) (a disputable presumption is made "[t]hat official duty has been performed regularly."); cf. Bieber v. N.D. Dep't of Transp. Dir., 509 N.W.2d 64, 68 (N.D. 1993) ("The official acts of the State Toxicologist are entitled to a disputable presumption of regularity."); State v.

VandeHoven, 388 N.W.2d 857, 859 (N.D. 1986) ("The disputable presumption of regularity pursuant to § 31-11-03(15), N.D.C.C., applies to the official acts of the State Toxicologist; and because no evidence that would contradict this presumption was introduced, the presumption stands.").

[¶45] The Department's regularly kept records comprising Exhibits 1 were properly authenticated under N.D.R.Ev. 902(4)(A).

## II. Christianson's Driver Licence Suspension (Notice of Suspension) from the province of Saskatchewan, Canada, met the requirements of N.D.C.C. §§ 39-06-32(4) and 39-06.2-10(8).

[¶46] Christianson's non-commercial driving privileges were suspended for a period of 91 days based on the requirements of N.D.C.C. § 39-06-32(4). That statute provides the Department with the authority to suspend an individual's operator's non-commercial license based upon:

> An *administrative decision* . . . in *another state* that the licensee's privilege to drive . . . in that state is suspended or revoked because of a *violation* of that . . . state's law forbidding motor vehicle operation with an alcohol concentration of at least eight one-hundredths of one percent by weight . . . .

N.D.C.C. § 39-06-32(4) (emphasis added).

[¶47] The word "state" includes "a province of the Dominion of Canada." N.D.C.C. § 39-01-01(85). The term "administrative decision" has been held to be compatible with the word "conviction." See Holen v. Hjelle, 396 N.W.2d 290, 293 (N.D. 1986) ("By its own terms Section 39-06-27, N.D.C.C., deals with 'convictions ... in another state' and Section 39-06-32(7), N.D.C.C., deals with 'administrative decision[s] in another state.' We believe that those two statutory provisions are compatible because one is concerned with convictions in other States and the other is concerned with administrative decisions in other States.").

[¶48] Furthermore the Court has "recognized that the minimal due process before an administrative agency [is] not synonymous with the minimal requirements of due process in a court of law, but that due process in an administrative hearing requires procedural fairness." Holen, 396 N.W.2d. at 294 (citing Kobilansky v. Liffrig, 358 N.W.2d 781, 787 (N.D. 1984)). "License suspension proceedings are an exercise of the police power for the protection of the public and not for punishment [State v. Brude, 222 N.W.2d 296 (N.D. 1974)], and, generally, the wide range of constitutional protections afforded in a criminal proceeding are not applicable to those civil proceedings." Holen, 396 N.W.2d at 294 (citing Pladson v. Hjelle, 368 N.W.2d 508 (N.D. 1985); Asbridge v. N.D. State Highway Comm'r, 291 N.W.2d 739 (N.D. 1980)). See Holen, 396 N.W.2d at 295 ("We conclude that the use of the Montana conviction as a basis for increasing the length of [an administrative] license suspension did not violate Holen's due process rights.")

[¶49] Section 39-06-32(4) further provides:

> *The specific requirements for establishing the violation . . . in the other state may not be considered* and certified copies of the records of the . . . other state's driver's licensing authority are sufficient evidence of the violation. . . . For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether they are certified copies.

N.D.C.C. § 39-06-32(4) (emphasis added).

[¶50] Christianson's commercial driving privileges were disqualified for a period of one year based on the requirements of N.D.C.C. § 39-06.2-10(8). That statute provides the Department with the authority to disqualify an individual from operating a commercial motor vehicle based upon:

> For a first *conviction* of driving while under the influence of alcohol or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for one year.

N.D.C.C. § 39-06.2-10(8) (emphasis added). "Section 39-06.2-02(8), N.D.C.C. (2011), includes as 'convictions' an administrative tribunal determination that a person violated or failed to comply with the law." Hamre v. N.D. Dep't of Transp., 2014 ND 23, ¶ 12, 842 N.W.2d 865.

[¶51] In this case, the "administrative decision" and the "conviction" used for the suspension of Christianson's non-commercial driving privileges and the disqualification of his commercial driving privileges were based on a Driver Licence Suspension (Notice of Suspension) record that had been received by the Department from the licensing authority in Canada and further reported on Christianson's North Dakota driver's license record. App. at 5 & 7.

[¶52] The Notices informed the Department that the suspension was an "*Indefinite Administrative Licence Suspension* (suspended until charge is disposed of in Court) s.148 TSA." Id. (emphasis added). The Department requests the Court take notice of Saskatchewan's Traffic Safety Act, including the provisions prescribing "roadside" indefinite suspensions for certain alcohol-related traffic offenses, the subsequent eligibility requirements to apply for a driver's license following such a suspension, and the comparable form for the notice of suspension.[2]

[2]See SGI -- Saskatchewan driver's licensing and vehicle registration website at https://publications.saskatchewan.ca/#/products/12310:

[¶53] The Notices also informed the Department that Christianson was arrested for a violation of the Criminal Code of Canada and having a blood alcohol concentration of ".160 mgs% or greater." Id. at 5. The concentration is significant in that, under Saskatchewan law, "the venous blood of the driver [that] is equal to or exceeds 160 milligrams of alcohol per 100 millilitres of blood" results in enhanced sanctions.[3] "Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine." N.D.C.C. § 39-24.1-08(2). Consequently, a blood alcohol concentration of ".160 mgs% or greater" under Saskatchewan law, equates to a blood alcohol concentration of sixteen one-hundredths of one percent by weight or greater– i.e., twice the legal limit of at least eight one-hundredths of one percent by weight allowed under North Dakota law.

[¶54] Based upon its interpretation of the Notices, the Department noted the following entries on Christianson's driver's license record:

VIOLATIONS/CONVICTIONS

| | | | | | | |
|---|---|---|---|---|---|---|
| CONV | 02/16/19 | OFF | 02/16/19 | A98 | ADMIN .08 BAC* | CMV: N HAZ: N |
| | JUR: | SK | | | | |

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Sections 36 & 37 of The Traffic Safety Act being Ch. T-18.1 of the Statutes of Saskatchewan, 2004 (effective July 1, 2006) -- T-18.1 Reg. 2 The Driver Licensing and Suspension Regulations, 2006

T-18.1 Reg 2 Form NOS-NOSII - Notice of Suspension/Notice of Suspension and Immobilization or Impoundment.

[3]See SGI -- Saskatchewan driver's licensing and vehicle registration website at https://publications.saskatchewan.ca/#/products/12310:

Section 148(5)(b)(iv) of The Traffic Safety Act being Ch. T-18.1 of the Statutes of Saskatchewan, 2004 (effective July 1, 2006) -- T-18.1 Reg. 2 The Driver Licensing and Suspension Regulations, 2006

SUSPENSIONS/REVOCATIONS/CANCELLATIONS

HEARING NOTICES

| | | | |
|---|---|---|---|
| HEAR | 5 | 04/09/19 | AWAITING HEARING OUTCOME BAC OVER LEGAL LIMIT O/S PER 91 D |
| HEAR | 6 | 04/09/19 | AWAITING HEARING OUTCOME 1ST COMM DISQ OFFENSE PER 001 Y |

App. at 7, 56.

[¶55] "[T]he director has a statutory obligation [under N.D.C.C. § 39-06-22] to regularly keep driving records," and "[a]ccordingly, [an individual's] driving record is a regularly kept record, and establishes prima facie its contents." Isaak v. Sprynczynatyk, 2002 ND 64, ¶ 9, 642 N.W.2d 860. Consequently, a driver has the burden to rebut the presumption under N.D.C.C. § 31-11-03(15) that the contents of the record are correct. French v. Dir., N.D. Dep't of Transp., 2019 ND 172, ¶ 16, 930 N.W.2d 84 ("At the administrative hearing, French did not provide any evidence to rebut the content of the driving record as construed by the hearing officer. As a rebuttable presumption under N.D.C.C. § 31-11-03(15), had French intended to contest the Department's interpretation of the record, he could have testified at the administrative hearing or otherwise challenged the Department's record indicating his license had been previously suspended.").

[¶56] Christianson did not testify that the information contained in the Notices was inaccurate or that he was denied adequate due process following the roadside suspension of his driving privileges under Saskatchewan regulations. See Geiger v. Hjelle, 396 N.W.2d 302, 303 (N.D. 1986) ("[f]ailure of a party to testify permits an unfavorable inference in a civil proceeding" and "the hearing officer could also consider the lack of contrary evidence"). Christianson also failed to rebut the prima facie evidence on his driver's record, which was based upon the Department's

interpretation of the Notices. See Gillmore v. Levi, 2016 ND 77, ¶ 12, 877 N.W.2d 801 ("Gillmore had the burden to rebut the prima facie evidence contained in the report and notice form.).

[¶57] Christianson's Driver Licence Suspension (Notice of Suspension) from the province of Saskatchewan, Canada, met the requirements of N.D.C.C. §§ 39-06-32(4) and 39-06.2-10(8).

**III. Christianson was not denied due process during the administrative hearing nor did the hearing officer fail to provide Christianson with a fair and impartial hearing.**

[¶58] Section 28-32-31(3), N.D.C.C., provides that hearing officers shall "[a]ssure that all hearings and related proceedings are conducted in a fair and impartial manner." N.D.C.C. § 28-32-31(3). In a related manner, "[d]ue process of law presupposes a fair and impartial hearing before a fair and impartial tribunal." First Am. Bank & Trust Co. v. Ellwein, 221 N.W.2d 509, 513 (N.D. 1974).

[¶59] "In reviewing the challenged lack of due process at [an] administrative hearing . . . [*the court must] begin with the presumption that the [agency] regularly performed its duty and accordingly afforded [the litigant] due process at the hearing* . . ." Froysland v. N.D. Workers Comp. Bur., 432 N.W.2d 883, 893 (N.D. 1988) (citing First Am. Bank, 221 N.W.2d at 515; N.D.C.C. § 31-11-03(15) (presumption that official duty has been performed regularly.)) (emphasis added). See also Farm Credit Bank of St. Paul v. Brakke, 512 N.W.2d 718, 720 (N.D. 1994) ("The law presumes a judge is unbiased and not prejudiced.") (quoting Terry v. State, 602 N.E.2d 535, 540 (Ind. Ct. App. 1992)). Consequently, the appellant "carr[ies] the burden of proving that the hearing process was not fair and impartial." Kuklok

v. N.D. Workers' Comp. Bur., 492 N.W.2d 572, 576 (N.D. 1992).

[¶60] "It is well settled that the combination of investigative, accusative and adjudicative functions in one board or person does not in itself result in a due process violation." Ertelt v. N.D. Dep't of Transp., 491 N.W.2d 736, 740 (N.D. 1992) (citing First Am. Bank, 221 N.W.2d at 513). "A disagreement on legal questions does not evidence bias." Sargent Cty. Bank v. Wentworth, 500 N.W.2d 862, 879, n.10 (N.D. 1993) (citing Ireland's Lumber Yard v. Progressive Contractors, 122 N.W.2d 554, 562 (N.D. 1963)). "Adverse rulings alone are not evidence of judicial bias or partiality." Lucas v. Riverside Park Condominiums Unit Owners Ass'n, 2009 ND 217, ¶ 12, 776 N.W.2d 801 (citing Reems v. St. Joseph's Hosp. and Health Ctr., 536 N.W.2d 666, 671 (N.D. 1995)).

[¶61] In this case, Christianson alleges he was denied his rights of due process because "when the hearing officer allowed the foreign suspension into evidence without a proper certification, he blatantly disregarded the North Dakota Rules of Evidence, and did not provide a fair and impartial hearing." Appellant's Br. at ¶ 73. Christianson further alleges "the hearing officer provided an unfair advantage to the Department by completely ignoring any and all relevant evidence that was presented as it pertained to one of his superiors." Id. at ¶ 75.

[¶62] As argued above, the Department's regularly kept records were properly authenticated under Rule 902(4)(A). Christianson's reliance on adverse rulings alone are not evidence of judicial bias or partiality. Christianson was not denied due process during the administrative hearing nor did the hearing officer fail to provide Christianson with a fair and impartial hearing.

## IV. Christianson is not entitled to an award of attorney fees and costs under N.D.C.C. § 28-32-50(1).

[¶63] "[Section 28-32-50, N.D.C.C.,] sets forth a two-part test which must be met in order to properly award attorney fees: first, the nonadministrative party must prevail, and second, the agency must have acted without 'substantial justification.'" Kroschel v. Levi, 2015 ND 185, ¶ 35, 866 N.W.2d 109 (quoting Lamplighter Lounge, Inc. v. State, 523 N.W.2d 73, 75 (N.D. 1994)) (alteration in Kroschel). As "summarized in Lamplighter Lounge, Inc. v. State:

> . . . The second requirement is shaped by our definition of substantial justification. In defining this term we have been guided by the United States Supreme Court's definition of the term 'substantially justified.' There it was said that substantially justified means 'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person. A position may be justified, despite being incorrect, so long as a reasonable person could think that it has a reasonable basis in law and fact. Substantial justification represents a middle ground between the automatic award of fees to the prevailing party on one side, and awarding fees only when a position is frivolous or completely without merit on the other."

Id. (quoting Lamplighter Lounge, 523 N.W.2d at 75 (original internal citations and quotation marks omitted in Kroschel). "Merely because an administrative agency's actions are not upheld by a court does not mean that the agency's action was not substantially justified." Id. (quoting Tedford v. Workforce Safety & Ins., 2007 ND 142, ¶ 25, 738 N.W.2d 29).

[¶64] In this case, Christianson did not prevail before the hearing officer, the Department, or the District Court. On appeal, the Department has presented good faith arguments supported by caselaw in opposing Christianson's claims. Christianson is not entitled to an award of attorney fees and costs under N.D.C.C. § 28-32-50(1).

## CONCLUSION

[¶65] The Department requests this Court affirm the Judgment of the Burleigh County District Court and affirm the Department's Orders adopting the hearing officer's proposed findings of fact and conclusions of law suspending Christianson's non-commercial driving privileges for a period of 91 days and disqualifying Christianson from operating a commercial motor vehicle for a period of one year.

Dated this 21st day of January, 2020.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

| | |
|---|---|
| Kyle Al Christianson,<br><br>Appellant,<br><br>v.<br><br>Ronald Henke, Interim Director, Department of Transportation,<br><br>Appellee. | **CERTIFICATE OF COMPLIANCE**<br><br>**Supreme Ct. No. 20190348**<br><br>**District Court No. 08-2019-CV-02172** |

[¶1] The undersigned certifies pursuant to N.D.R.App.P. 32(a)(8)(A), that the Brief of Appellee contains 38 pages.

[¶2] This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 word processing software in Arial 12 point font.

Dated this 21st day of January, 2020.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

| | |
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| Kyle Al Christianson,<br><br>Appellant,<br><br>v.<br><br>Ronald Henke, Interim Director, Department of Transportation,<br><br>Appellee. | **CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**<br><br>**Supreme Ct. No. 20190348**<br><br>**District Court No. 08-2019-CV-02172** |

[¶1] I hereby certify that on January 21, 2020, the following documents: **BRIEF OF APPELLEE and CERTIFICATE OF COMPLIANCE** were filed electronically with the Clerk of Supreme Court. Service is being accomplished upon Kyle Al Christianson, by and through his attorney, Adam Justinger, at adam.justinger@swlattorneys.com.

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