

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

Kyle Al Christianson,)	
)	
Appellant,)	Supreme Court No.
)	20190348
vs.)	
)	
Ronald Henke, Interim Director,)	Burleigh County Case No.
Department of Transportation,)	08-2019-CV-02172
)	
Appellee.)	

ON APPEAL FROM A JUDGMENT ENTERED SEPTEMBER 16, 2019 AFFIRMING THE DECISION OF THE DEPARTMENT OF TRANSPORTATION SUSPENDING THE APPELLANT'S NON-COMMERCIAL AND COMMERCIAL DRIVING PRIVILEGES FROM THE DISTRICT COURT FOR THE SOUTH CENTRAL JUDICIAL DISTRICT BURLEIGH COUNTY, NORTH DAKOTA, THE HONORABLE JOHN GRINSTEINER, PRESIDING.

**BRIEF OF APPELLANT
ORAL ARGUMENT REQUESTED**

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[¶A] TABLE OF CONTENTS

Table of Contents ¶ A

Table of Authorities ¶ B

Statement of the Issues ¶ 1

Statement of the Case ¶ 12

Statement of the Facts ¶ 16

Jurisdiction ¶ 22

Standard of Review ¶ 24

Request for Oral Argument ¶ 26

Argument ¶ 28

 I. The Department lacks authority and jurisdiction to suspend Mr. Christianson’s non-commercial driving privileges and disqualify his commercial driving privileges because Exhibit 1 is not a certified copy as required by N.D.C.C. § 39-06-32(4). ¶ 30

 II. The hearing officer erred in admitting Exhibit 1 into evidence because it is an inaccurate document. ¶ 36

 A. Exhibit 1 is not authentic under Rule 901 or 902 of the North Dakota Rules of Evidence which makes it inadmissible ¶ 38

 1. Exhibit 1 was not self authenticating under Rule 902 of the North Dakota Rules of Evidence because the certification page was either fraudulent, forged or inaccurate. ¶ 40

 2. Exhibit 1 was not authentic under Rule 901 of the North Dakota Rules of Evidence because the hearing officer failed to call Mr. Jackson as a witness to authenticate the document.. ¶ 47

 B. Exhibit 1 is hearsay that does not fall under one of the exceptions to the hearsay requirements which makes it inadmissible ¶ 52

 C. Exhibit 1 does not comply with N.D.C.C. § 31-04-10 which makes it inadmissible ¶ 57

 D. Under Rule 1002 of the North Dakota Rules of Evidence, because Exhibit 1 was not properly certified and therefore inadmissible, the

Department was required to produce the original document which they failed to do	¶ 60
III. The Department lacked authority to suspend Mr. Christianson’s license because there was not an administrative decision as required by N.D.C.C. § 39-06-32.	¶ 63
IV. Mr. Christianson was denied due process during the administrative hearing for his non-commercial and commercial driving privileges.. . . .	¶ 66
V. Even if the court determines there is not a due process violation, the hearing officer violated the Administrative Agencies Practice Act by failing to provide a fair and impartial hearing	¶ 74
VI. There was no evidence presented that indicated Mr. Christianson’s alcohol concentration was above a .08 as required by N.D.C.C. § 39-06-32.	¶ 77
VII. The Department cannot disqualify Mr. Christianson’s commercial driving privileges because they failed to establish that Mr. Christianson was convicted of driving under the influence as required by statute	¶ 81
VIII. Mr. Christianson was denied due process in Canada when a peace officer suspended his driving privileges without a hearing	¶ 85
IX. The hearing officer failed to take judicial notice that Mr. Jackson was on administrative leave which was highly prejudicial to Mr. Christianson.. . . .	¶ 88
X. Mr. Christianson is entitled to reasonable attorney fees and costs	¶ 94
Conclusion	¶ 97
Certificate of Compliance	¶ 100

[¶B] TABLE OF AUTHORITIES

North Dakota Constitution

N.D. Const. Art. VI, §§ 2 and 6. ¶ 23

Federal Circuit Court Cases

United States v. Buchanan, 604 F.3d 517, 522 (8th Cir. 2010). ¶ 61

North Dakota State Cases

Dawson v. North Dakota Dep't of Transp., 2013 ND 62, ¶ 12, 830 N.W.2d 221. . . ¶ 37

DeForest v. North Dakota Dep't of Transp., 2018 ND 224, ¶ 5, 918 N.W.2d 43.
. ¶¶ 31, 58

Frost v. North Dakota Dep't of Transp., 487 N.W.2d 6, 9 (N.D. 1992). ¶¶ 41, 48

Jangula v. North Dakota Dep't of Transp., 2016 ND 116, ¶ 11, 881 N.W.2d 639. . . ¶ 31

Knudson v. Director, N. Dakota Dep't of Transp., 530 N.W.2d 313, 316
(N.D. 1995). ¶¶ 53, 61

Kobilansky v. Liffrig, 358 N.W.2d 781, 790 (N.D. 1984). ¶¶ 29, 69

Kroschel v. Levi, 2015 ND 185, ¶ 35, 866 N.W.2d 109. ¶ 95

Lamplighter Lounge, Inc. v. State ex rel. Heitkamp, 523 N.W.2d 73, 75
(N.D.1994). ¶ 95

Malchose v. Kalfell, 2003 ND 75, ¶ 5, 664 N.W.2d 508. ¶ 39

Morrell v. North Dakota Dep't of Transp., 1999 ND 140, ¶ 8, 598 N.W.2d 111.
. ¶¶ 67, 86

Municipal Servs. Corp. v. State By & Through N. Dakota Dep't of Health & Consol.
Labs., 483 N.W.2d 560, 562 (N.D. 1992) ¶ 86

<u>Nelson v. Director, N. Dakota Dep't of Transp.</u> , 1997 ND 81, ¶ 7, 562 N.W.2d 562.....	¶ 25
<u>Opp v. Matzke</u> , 1997 ND 32, ¶ 9, 559 N.W.2d 837.....	¶ 89
<u>Peterson v. North Dakota Dep't of Transp.</u> , 518 N.W.2d 690, 693 (N.D. 1994).....	¶¶ 45, 46
<u>Ruldoph v. North Dakota Dept. of Transportation</u> , 539 N.W.2d 63, 65 (N.D. 1995)	¶ 29
<u>Samdahl v. North Dakota Dep't of Transp. Dir.</u> , 518 N.W.2d 714, 718 (N.D. 1994)	¶ 98
<u>Schlittenhart v. North Dakota Dep't of Transp.</u> , 2015 ND 179, ¶ 27, 865 N.W.2d 825.....	¶ 73
<u>Schock v. North Dakota Dep't of Transp.</u> , 2012 ND 77, ¶ 17, 815 N.W.2d 255.....	¶¶ 89, 90
<u>State v. Grant</u> , 2009 ND 210, ¶ 12, 776 N.W.2d 209.....	¶¶ 53, 54
<u>State v. Ghylin</u> , 222 N.W.2d 864, 869 (N.D. 1974).....	¶ 53
<u>State v. Jaster</u> , 2004 ND 223, ¶ 13, 690 N.W.2d 213.....	¶ 53
<u>State v. Moore</u> , 286 N.W.2d 274, 282 (N.D. 1979).....	¶ 49
<u>Thorsrud v. Director, N. Dakota Dep't of Transp.</u> , 2012 ND 136, ¶ 10, 819 N.W.2d 483.....	¶ 34
<u>Whitecalfe v. North Dakota Dep't of Transp.</u> , 2007 ND 32, ¶ 20, 727 N.W.2d 779.....	¶¶ 67, 68
<u>Zietz v. Hjelle</u> , 395 N.W.2d 572, 574 (N.D. 1986)	¶25

Statutes

N.D.C.C. § 20.1–13.1–08..... ¶ 45

N.D.C.C. § 20.1–15–08..... ¶ 45

N.D.C.C. § 28-27-01..... ¶ 23

N.D.C.C. § 28-27-02..... ¶ 23

N.D.C.C. § 28-32-24..... ¶ 70

N.D.C.C. § 28-32-31..... ¶¶ 70, 75

N.D.C.C. § 28-32-46..... ¶ 29

N.D.C.C. § 28-32-50..... ¶ 95

N.D.C.C. § 31-04-10..... *passim*

N.D.C.C. § 39-06-32..... *passim*

N.D.C.C. § 39-06-33..... ¶ 53

N.D.C.C. § 39-06.1-10..... ¶ 53

N.D.C.C. § 39-06.2-02..... ¶ 82

N.D.C.C. § 39–06.2–10..... ¶ 82

N.D.C.C. § 39–06.2–10.6..... ¶ 45

N.D.C.C. § 39-08-01..... ¶ 78

N.D.C.C. § 39-20-04.1..... ¶ 78

N.D.C.C. § 39–20–05..... ¶ 45

N.D.C.C. 39-20-07..... ¶ 79

Federal Rules

Fed.R.Ev. 1002..... ¶ 61

North Dakota Rules

N.D.R.App.P. 28(h) ¶ 27

N.D.R.Ev. 201 ¶¶ 89, 92, 93

N.D.R.Ev. 801 ¶ 53

N.D.R.Ev. 802 ¶ 53

N.D.R.Ev. 803 ¶¶ 53, 54, 55, 56

N.D.R.Ev. 901 ¶¶ 48, 51

N.D.R.Ev. 902 ¶¶ 41, 42, 92

N.D.R.Ev. 1002 ¶¶ 61, 62

[¶1] STATEMENT OF THE ISSUES

[¶2] I. The Department lacks authority and/or jurisdiction to suspend Mr. Christianson's non-commercial driving privileges and disqualify his commercial driving privileges because Exhibit 1 is not a certified copy as required by N.D.C.C. § 39-06-32(4).

[¶3] II. The hearing officer erred in admitting Exhibit 1 into evidence because it is an inaccurate document.

[¶4] III. The Department lacked authority to suspend Mr. Christianson's license because there was not an administrative decision as required by N.D.C.C. § 39-06-32.

[¶5] IV. Mr. Christianson was denied due process during the administrative hearing for his non-commercial and commercial driving privileges.

[¶6] V. Even if the court determines there is not a due process violation, the hearing officer violated the Administrative Agencies Practice Act by failing to provide a fair and impartial hearing.

[¶7] VI. There was no evidence presented that indicated Mr. Christianson's alcohol concentration was above a .08 as required by N.D.C.C. § 39-06-32.

[¶8] VII. The Department cannot disqualify Mr. Christianson's commercial driving privileges because they failed to establish that Mr. Christianson was convicted of driving under the influence as required by statute.

[¶9] VIII. Mr. Christianson was denied due process in Canada when a peace officer suspended his driving privileges without a hearing.

[¶10] IX. The hearing officer failed to take judicial notice that Mr. Jackson was on administrative leave.

[¶11] X. Mr. Christianson is entitled to reasonable attorney fees and costs.

[¶12] STATEMENT OF THE CASE

[¶13] On April 9, 2019, Kyle Al Christianson (Mr. Christianson) was sent a letter from the North Dakota Department of Transportation (Department) notifying him of the Department's intent to suspend his noncommercial driving privileges for ninety-one (91) days. Register of Actions Index # 9, Appendix, 6. Mr. Christianson was

sent another letter on April 9, 2019 by the Department, notifying him of the Department's intent to disqualify his commercial driving privileges for one (1) year. Register of Actions Index # 18, Appendix, 55. These letters were based upon an alleged license suspension that occurred in Canada. Register of Actions Index # 9, 18; Appendix, 5, 54.

[¶14] On May 21, 2019, an administrative hearing was held on behalf of Mr. Christianson's noncommercial and commercial driving privileges. Register of Actions Index # 10, 19; Appendix, 8, 57. The hearing was before Department hearing officer Paul Seado (Mr. Seado). Id. On June 5, 2019, Mr. Seado issued a decision suspending Mr. Christianson's driving privileges for ninety-one (91) days and disqualifying his commercial driving privileges for one (1) year. Register of Actions Index # 17, 26; Appendix, 50-51, 58-59.

[¶15] On June 28, 2019, Mr. Christianson appealed the decision to the district court by filing a Notice of Appeal and Specifications of Error, and Request for Attorney Fees alleging numerous errors in the Department's administrative proceeding. Register of Actions Index # 2, Appendix, 60-64. The district court affirmed the hearing officers decision and upheld both the suspension and disqualification of Mr. Christianson's driving privileges. Register of Actions Index # 33, Appendix, 65-70. Mr. Christianson now appeals the district court's decision to this Court. Register of Actions Index # 41.

[¶16] **STATEMENT OF THE FACTS**

[¶17] On February 12, 2019, the Department placed Glenn Jackson (Mr. Jackson) on administrative leave. Register of Actions Index # 11, 20; Appendix, 9-28 (“**Exhibit 3**”); Register of Actions Index # 12, 21; Appendix, 29 (“**Exhibit 4**”); Register

of Actions Index # 13, 22; Appendix, 30-33 (“**Exhibit 5**”). Mr. Jackson was previously the Director of the Driver’s License Division of the North Dakota Department of Transportation. Id. Mr. Jackson remained on administrative leave until his resignation on Friday, May 3, 2019. Exhibit 5, Appendix 30-33.

[¶18] On April 9, 2019, Mr. Christianson received an Order of Suspension for his non commercial driving privileges and an Order of Disqualification for his commercial driving privileges. Register of Actions Index # 9, 18; Appendix, 6, 55. As a result, Mr. Christianson timely requested an administrative hearing on April 16, 2019. Id., Appendix, 4, 53. On May 21, 2019 two administrative hearings were held. Register of Actions Index # 10, 19; Appendix, 8, 57. The first hearing was to determine whether Mr. Christianson’s non-commercial driving privileges would be suspended for ninety one (91) days. Register of Actions Index # 10, Appendix, 8. The second hearing was to determine whether Mr. Christianson’s commercial driving privileges would be disqualified for one (1) year. Register of Actions Index # 19, Appendix, 57. Both of the hearings stemmed from a notice of suspension from “the state of Canada”, which suspended Mr. Christianson’s driving privileges from an alleged violation of that jurisdiction's law preventing motor-vehicle operation with an alcohol concentration of at least .08. Register of Actions Index # 9, 18; Appendix, 5, 54.

[¶19] During both of the hearings, Mr. Christianson offered several different exhibits. Transcript of Proceedings, May 21, 2019 (“**Tr.**”), at 2:4-3:25 The first exhibit he offered was a final investigative report from the Department to then director, Tom Sorel. *See* Exhibit 3, Appendix, 9-28. The next exhibit Mr. Christianson offered was an

Associated Press article that was titled “Department of Transportation’s Driver’s License Chief Under Workplace Investigation.” *See* Exhibit 4, Appendix, 29. Mr. Christianson also offered a second newspaper article from the Grand Forks Herald titled “Top NDDOT official resigns after stinging workplace investigation.” *See* Exhibit 5, Appendix, 30-33. Additionally, Mr. Christianson offered the North Dakota Approved Method to Conduct Breath Tests with the Intoxilyzer 8000 into the record. Register of Actions Index # 14, 23; Appendix, 34-43 (“**Exhibit 6**”). The final exhibit Mr. Christianson offered was a “Frequently Asked Questions” section from the Canadian Department of Justice. Register of Actions Index # 15, 24; Appendix, 44-49 (“**Exhibit 7**”). All of Mr. Christianson’s exhibits were admitted into evidence without objection. Tr., at 2:4-3:25.

[¶20] After accepting Mr. Christianson’s exhibits, the hearing officer offered Exhibit 1 into the record. Register of Actions Index # 9, 18; Appendix, 3-7, 52-56 (“**Exhibit 1**”); Tr., at 4:1-4:24. The hearing officer claimed that the Department sent him Exhibit 1 for the hearings. Tr., at 4:2-4:4. Exhibit 1 contained five (5) pages. Tr., at 4:9-4:20. The first page was a certification page dated April 17, 2019 and alleged that Mr. Jackson had signed and certified Exhibit 1; even though he was on administrative leave. Exhibit 1, pg. 1; Appendix, 3, 52; Exhibit 3-5. The second page of Exhibit 1 was Mr. Christianson’s request for an administrative hearing. Exhibit 1, pg. 2; Appendix, 4, 53. The third page contained a notice of suspension from the “state of Canada.” Exhibit 1, pg. 3; Appendix, 5, 54. The fourth page of Exhibit 1 contained an order of suspension/disqualification. Exhibit 1, pg. 14; Appendix, 6, 55. The final page of Exhibit 1 contained Mr. Christianson’s driving record. Exhibit 1, pg. 5; Appendix, 7, 56.

[¶21] Mr. Christianson objected to the exhibit on several grounds. Tr., at 4:23-9:24. Specifically, Mr. Christianson objected to Exhibit 1 for lack of authentication, lack of foundation, hearsay, failure to comply with N.D.C.C. § 31-04-10, and under the best evidence rule. Id. The hearing officer overruled all of Mr. Christianson’s objections and admitted Exhibit 1. Id. The Department did not call any witnesses during the hearing. *See* Tr., at 1:1-10:4. Instead, the Department relied solely upon the notice of driver license suspension received from the “state of Canada.” Register of Actions Index # 17, 26; Appendix, 50-51, 58-59. Following the hearing, the hearing officer issued a decision suspending Mr. Christianson’s non-commercial driving privileges for ninety one (91) days and disqualifying his commercial driving privileges for one (1) year. Id. The district court affirmed and Mr. Christianson appealed to the North Dakota Supreme Court. Register of Actions Index # 33, 38, 41; Appendix, 65-76.

[¶22] **JURISDICTION**

[¶23] The Supreme Court has jurisdiction over this matter under N.D. Const. Art. VI, §§ 2 and 6, and N.D.C.C. §§ 28-27-01 and 28-27-02.

[¶24] **STANDARD OF REVIEW**

[¶25] “The hearing officer's findings of fact must be supported by a preponderance of the evidence.” Nelson v. Director, N. Dakota Dep't of Transp., 1997 ND 81, ¶ 7, 562 N.W.2d 562. “In determining whether an agency's findings of fact are supported by a preponderance of the evidence, the standard of review is whether a reasoning mind could reasonably have determined the factual conclusions were supported

by the weight of the evidence.” *Id.* The reviewing court must look to the record compiled before the hearing officer. *See Zietz v. Hjelle*, 395 N.W.2d 572, 574 (N.D. 1986).

[¶26] **REQUEST FOR ORAL ARGUMENT**

[¶27] Oral argument will be helpful to the Court in this matter. The first issue presented involves whether the Department has the authority and/or jurisdiction to suspend/disqualify Mr. Christianson’s driving privileges based on an exhibit that was not properly certified as required by statute. The second issue involves whether Exhibit 1 was admissible under the North Dakota Rules of Evidence or a North Dakota Statute. The third issue presented is whether a notice of suspension by a law enforcement officer qualifies as an administrative decision. The fourth issue is whether Mr. Christianson was denied due process during his administrative hearing before the Department. The fifth issue is whether Mr. Christianson’s administrative hearing was fair and impartial. The sixth issue is whether a foreign states law is equivalent to North Dakota law warranting a suspension. The seventh issue is whether a notice of suspension by a peace officer qualifies as a conviction. The eighth issue is whether Mr. Christianson was denied due process in Canada when a peace officer suspended his license without a hearing. The ninth issue involves whether the hearing officer erred in taking judicial notice during the administrative hearing. The final issue is whether the hearing officer acted without substantial justification which warrants reasonable attorney’s fees in this matter. Each of these issues are novel and unique and oral argument would be helpful in addressing each of them individually. This request for oral argument is made under N.D.R.App.P. 28(h).

[¶28] **ARGUMENT**

[¶29] In administrative hearings, the burden of proof rests with the Department of Transportation. See Kobilansky v. Liffrig, 358 N.W.2d 781, 790 (N.D. 1984). The Administrative Agencies Practice Act, N.D.C.C. § 28-32, governs administrative hearings and administrative appeals. Ruldoph v. North Dakota Dept. of Transportation, 539 N.W.2d 63, 65 (N.D. 1995). A decision of the Department of Transportation will be reversed if the Court finds one of the subsections in N.D.C.C. § 28-32-46. N.D.C.C. §28-32-46. Pursuant to N.D.C.C. § 28-32-46, the decision of the North Dakota Department of Transportation should be reversed for the reasons briefed below.

[¶30] **I. The Department lacks authority and/or jurisdiction to suspend Mr. Christianson’s non-commercial driving privileges and disqualify his commercial driving privileges because Exhibit 1 is not a certified copy as required by N.D.C.C. § 39-06-32(4).**

[¶31] Under North Dakota law, the director has the authority to suspend an individual's non-commercial and commercial driving privileges based on an administrative decision revoking or suspending an individual's driving privileges on an Indian reservation or in another state. N.D.C.C. § 39-06-32(4). The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered. Id. “[C]ertified copies of the records of the Indian reservation's or other state's driver's licensing authority are sufficient evidence of the violation.” Id. “Once the facts are established, their significance presents a question of law, which we review de novo.” DeForest v. North Dakota Dep't of Transp., 2018 ND 224, ¶ 5, 918 N.W.2d 43. Questions of law are fully reviewable on appeal from an administrative decision. Jangula v. North Dakota Dep't of Transp., 2016 ND 116, ¶ 11, 881 N.W.2d 639.

[¶32] In the present case, Exhibit 1 was not properly certified as required by N.D.C.C. § 39-06-32(4). While N.D.C.C. § 39-06-32(4) does not necessarily require the foreign suspension or revocation to be certified, that does not negate the Department's requirement to properly certify the exhibit. In order for the exhibit to be admitted as a regularly kept record without further foundation, the Department must provide a proper certified copy of the record. *See* N.D.C.C. § 39-06-32(4).

[¶33] In both Mr. Christianson's non-commercial and commercial hearings, the Department offered and accepted Exhibit 1, over objection, into the record. Tr., at 4:5-9:24. Exhibit 1 contained five pages. *See* Appendix, at 3-7, 52-56. The first page of Exhibit 1 was a certification page. Appendix, at 3, 52. This certification page is required by N.D.C.C. § 39-06-32(4) to properly prove that the foreign suspension/revocation was received by the Department. The certification page in this case was purportedly signed by Mr. Jackson on April 17, 2019. *See* Appendix, at 3, 52. The certification page of Exhibit 1 proclaims that Mr. Jackson is the Division Director of the Drivers License Division for the Department of Transportation as of April 17, 2019. *Id.* However, Mr. Jackson was on administrative leave from February 12, 2019 until his resignation on May 3, 2019. Exhibit 3, 4, 5; Appendix, 9-33. Because Mr. Jackson was on administrative leave on April 17, 2019, he could not have physically signed and certified Exhibit 1 in his official capacity. Instead, Exhibit 1 was either a fraudulent or forged document that purported that Mr. Jackson certified the exhibit.

[¶34] Additionally, the Department failed to call Mr. Jackson as a witness in the present case and did not call any other individual from the Department who could attest

to the certification page. Mr. Christianson supplied the hearing officer with numerous exhibits that indicated Mr. Jackson was on administrative leave. The evidence presented by Mr. Christianson did more “than raise the mere possibility of error.” Thorsrud v. Director, N. Dakota Dep't of Transp., 2012 ND 136, ¶ 10, 819 N.W.2d 483. Instead, Mr. Christianson provided the hearing officer with sufficient information showing Mr. Jackson was in fact on administrative leave. As a result, Mr. Jackson could not have certified Exhibit 1 as required under N.D.C.C. § 39-06-32(4).

[¶35] Exhibit 1 is not a certified copy and was improperly admitted. Therefore, pursuant to N.D.C.C. § 39-06-32(4), without a properly certified record of the suspension from the foreign state, the Department does not have the authority or the jurisdiction to suspend Mr. Christianson’s non-commercial driving privileges or disqualify his commercial license.

[¶36] II. The hearing officer erred in admitting Exhibit 1 into evidence because it is an inaccurate document.

[¶37] During the administrative hearing, the hearing officer offered Exhibit 1 into evidence, which was admitted over multiple objections. Exhibit 1 was improperly admitted into evidence because it is not authentic, it is hearsay that does not fall within one of the exceptions, it does not comply with N.D.C.C. § 31-04-10, and it is not the original document. “The admissibility of evidence at an adjudicative hearing before an administrative agency is governed by the North Dakota Rules of Evidence.” Dawson v. North Dakota Dep't of Transp., 2013 ND 62, ¶ 12, 830 N.W.2d 221.

[¶38] A. Exhibit 1 is not authentic under Rule 901 or 902 of the North Dakota Rules of Evidence which makes it inadmissible.

[¶39] “[The North Dakota Supreme Court applies] an abuse of discretion standard when reviewing whether a trial court should have excluded evidence for lack of authentication.” Malchose v. Kalfell, 2003 ND 75, ¶ 5, 664 N.W.2d 508.

[¶40] *1. Exhibit 1 was not self authenticating under Rule 902 of the North Dakota Rules of Evidence because the certification page was either fraudulent, forged, or inaccurate.*

[¶41] Exhibit 1 is not self authenticating under N.D.R.Ev. 902. Rule 902 of the North Dakota Rules of Evidence lists items of evidence that are self-authenticating. N.D.R.Ev. 902. Self authenticating documents require no extrinsic evidence of authenticity in order to be admitted. Id. “While use of self-authenticated documents expedites a trial or hearing, that does not foreclose other evidence to discredit or refute the authenticity of a particular document.” Frost v. North Dakota Dep't of Transp., 487 N.W.2d 6, 9 (N.D. 1992). For an administrative hearing on a license suspension, the Legislature has sought to maximize the use of documentary evidence to simplify and expedite those proceedings, while preserving a driver's right to dispute the fair administration of a chemical test. Id.

[¶42] Certified domestic records of a regularly conducted activity are considered self authenticating. N.D.R.Ev. 902(11). The Rule states: “The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person in the form of an affidavit made under penalty of perjury.” Id.

[¶43] In the present case, page 1 of Exhibit 1, is a certification page. It states “The undersigned, having legal custody, certifies that the information contained herein,

consisting of 5 pages (including this page), is a true and correct copy of the original as appears in the files and records of this division as of 4/17/19.” Exhibit 1, pg. 1; Appendix, 3, 52. The document is then allegedly signed and certified by Glenn Jackson, Division Director of the Drivers License Division. Id. However, on April 17, 2019, Mr. Jackson was on administrative leave from the Department. Exhibit 3-5. Thus, Mr. Jackson could not have signed and certified Exhibit 1 as the certification purports. Nowhere on the certification page, or anywhere else in Exhibit 1, does it indicate that another qualified individual certified Exhibit 1.

[¶44] Instead, the Department either forged Mr. Jackson’s signature onto the certification or the Department fraudulently placed Mr. Jackson’s signature onto the certification page. In either instance, the Department was claiming that Mr. Jackson reviewed Exhibit 1 and certified that it was a true and correct copy of the original. However, Mr. Jackson could not have certified Exhibit 1 because he was on administrative leave. Exhibit 1 is not a certified domestic record of a regularly conducted activity. Therefore, Exhibit 1 cannot be a self-authenticating documents under Rule 902.

[¶45] Further, the Department may try to argue that Exhibit 1 is a regularly kept record of the director under Rule 902(4)(A). However, Exhibit 1 is not self authenticating under Rule 902(4)(A). 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.Evid 902(4)(A). “The phrase ‘regularly kept records of the director’ is not statutorily defined.” Peterson v. North Dakota Dep’t of Transp., 518

N.W.2d 690, 693 (N.D. 1994). However, some statutes do reference “copies of certified copies of various documents are declared to be regularly kept records of the director.” Id. (Citing N.D.C.C. § 39-20-05(4), N.D.C.C. § 39-06.2-10.6(4), N.D.C.C. § 20.1-15-08(5) N.D.C.C. § 20.1-13.1-08(4). The North Dakota Supreme Court has stated that it is unaware of any “statute defining unsigned, uncertified documents as ‘regularly kept records of the director.’” Id., at 694. The Court continued: “There must be a prima facie showing, in the form of a certification, that the document is what it purports to be.” Id.

[¶46] Here, the hearing officer admitted Exhibit 1 over objection. On its face, the certification seems to be signed by the custodian, Mr. Jackson. However, Mr. Jackson did not certify Exhibit 1 because he was on administrative leave, as documented by the evidence presented to the hearing officer. Further, there was no evidence presented that another person from the Department’s office was authorized by law to certify the document as correct. Thus, the certification page of Exhibit 1 was inaccurate because it was either forged or fraudulently attached to the exhibit in some way without Mr. Jackson’s review. Exhibit 1 was not admissible as a regularly kept record of the director because it did not “bear some reliable, verifiable indicia that [Exhibit 1 was] in fact what it purports to be.” Peterson, 518 N.W.2d at 694. As a result, the hearing officer erred in admitting Exhibit 1 and the hearing officer's decision should be reversed.

[¶47] 2. *Exhibit 1 was not authentic under Rule 901 of the North Dakota Rules of Evidence because the hearing officer failed to call Mr. Jackson as a witness to authenticate the document.*

[¶48] Generally, before documentary evidence is admissible it must be authenticated. Frost, 487 N.W.2d at 8. Authentication is simply identification. Id. In

general, to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it to be. N.D.R.Ev. 901. Id.

[¶49] Exhibit 1, in both the non-commercial and commercial hearings, contained five pages. The exhibit included an inaccurate certification on page 1, a copy of a hearing request submitted by Mr. Christianson on page 2, a copy of the notice of suspension from Canada on page 3, a copy of an order of suspension/disqualification on page 4, and a copy of Mr. Christianson's driving record on page 5. Exhibit 1, Appendix, 3-7, 52-56. The North Dakota Supreme Court has recognized that discrediting evidence can be offered to refute the authentication of an exhibit. State v. Moore, 286 N.W.2d 274, 282 (N.D. 1979). Although self-authenticating documents are presumptively authentic, it does not preclude any evidentiary challenge of the genuineness of the offered writing. Id.

[¶50] In the present case, Mr. Christianson offered several exhibits which discredited and refuted the authentication of Exhibit 1. Each of the exhibits offered by Mr. Christianson were admitted without objection. The exhibits offered by Mr. Christianson established Mr. Jackson was on administrative leave and could not have certified the exhibit. Thus, the authentication of the evidence was discredited and the Department had to establish that the exhibit was what the Department claimed it was.

[¶51] Because there was evidence that discredited Exhibit 1, in order for the exhibit to be authenticated in its entirety, the Department would need to call Mr. Jackson as a witness during the administrative hearing because he was the individual who allegedly prepared Exhibit 1. However, the hearing officer failed to call Mr. Jackson, or

any other representative involved in preparing Exhibit 1, as a witness during either of the administrative hearings. As a result, Exhibit 1 was not properly authenticated. Therefore, Exhibit 1 was inadmissible pursuant to N.D.R.Ev. 901 and the hearing officer's decision should be overturned.

[¶52] B. Exhibit 1 is hearsay that does not fall under one of the exceptions to the hearsay requirements which makes it inadmissible.

[¶53] “Hearsay is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” State v. Jaster, 2004 ND 223, ¶ 13, 690 N.W.2d 213 (citing N.D.R.Ev. 801(c)). “The rule excluding hearsay applies to written as well as oral statements.” State v. Ghylin, 222 N.W.2d 864, 869 (N.D. 1974). “Generally, hearsay evidence is inadmissible.” Id. (citing N.D.R.Ev. 802). However, N.D.R.Ev. 803 provides several exceptions to the general rule of hearsay. State v. Grant, 2009 ND 210, ¶ 12, 776 N.W.2d 209. One exception to the rule against hearsay is for records of regularly conducted activity. N.D.R.Ev. 803(6). The regularly kept records of the director may be introduced and are prima facie evidence of their content without further foundation at a hearing conducted for a suspension or revocation under 39-06-32 or 39-06.1-10. N.D.C.C. § 39-06-33. The Court applies an abuse of discretion standard when reviewing an evidentiary ruling by an administrative agency hearing officer. Knudson v. Director, N. Dakota Dep't of Transp., 530 N.W.2d 313, 316 (N.D. 1995).

[¶54] “A record does not qualify for admission under the rule simply because the author created it during the ordinary course of business.” Grant, 2009 ND at ¶ 13. “To satisfy the business records exception, each participant in the creation of the record must

be acting in the course of regularly conducted business to ensure the trustworthiness and reliability of the information.” Id. For a document to be considered a record of a regularly conducted activity it must show that:

(A) the record was made at or near the time by, or from information transmitted by, someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12); **and**

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

N.D.R.Ev. 803(6)(Emphasis added).

[¶55] Exhibit 1 is hearsay and does not fall under the records of a regularly conducted activity exception. Exhibit 1 contains either a forged signature or was fraudulently certified by the department because Mr. Jackson was on administrative leave and could not have certified the exhibit. Because of the improper certification, Exhibit 1 does not comply with Rule 902(11) or (12) of the North Dakota Rules of Evidence. Therefore, under N.D.R.Ev. 803(6)(D), Exhibit 1 does not qualify as a record of a regularly conducted activity.

[¶56] Furthermore, even if the court determines that Exhibit 1 is authentic, it is still hearsay because it does not meet the requirements in N.D.R.Ev. 803(6)(E). Here, Mr. Christianson has adequately shown that the source of information or the circumstances of preparation indicate a lack of trustworthiness. According to the final report issued to Tom

Sorel, the director of the Department, and several news articles, Mr. Jackson was on administrative leave beginning in the middle of February until he resigned on May 3, 2019. Exhibit 3-5, Appendix, 9-33. Because he was on administrative leave, Mr. Jackson could not have certified Exhibit 1. Nor could he attest that Exhibit 1 was a true and correct copy of the documents the Department possessed as they pertained to Mr. Christianson. Instead, the Department either forged Mr. Jackson's signature on the certification document or the certification page was fraudulently attached to Exhibit 1 claiming that it was a true and correct copy of the regularly kept records by the Department. Exhibit 1 clearly lacks trustworthiness under N.D.R.Ev. 803(6)(E). Therefore, Exhibit 1 is hearsay that does not fall under any exception, which makes it inadmissible into evidence. As a result, Exhibit 1 was improperly admitted and this Court should reverse the hearing officer's decision.

[¶57] C. Exhibit 1 does not comply with N.D.C.C. § 31-04-10 which makes it inadmissible.

[¶58] “Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be.” N.D.C.C. § 31-04-10. The statute goes on to state: “**The certificate must be under the official seal of the certifying officer**, if there is any, or if such officer is a clerk of a court having a seal, under the seal of such court.” Id. (Emphasis added). Questions of law are reviewed de novo. DeForest, 2018 ND at ¶ 5.

[¶59] In the present case, the Department offered Exhibit 1, which was a certified copy, for the purpose of evidence in both of Mr. Christianson's administrative hearings. The Department alleged that Exhibit 1 was a correct copy of the original.

However, Exhibit 1 was not under the official seal of the certifying officer, Mr. Jackson. This is because Mr. Jackson was on administrative leave since February 12, 2019. Mr. Jackson could not have certified the document. Instead, the Department either forged Mr. Jackson's signature or the Department created a fraudulent certification page proclaiming that Exhibit 1 was a true and correct copy as certified by Mr. Jackson. Because the certification was either forged or fraudulent, Exhibit 1 was not a properly certified copy under N.D.C.C. § 31-04-10. Therefore, the Court should reverse the hearing officer's decision because Exhibit 1 is inadmissible.

[¶60] D. Under Rule 1002 of the North Dakota Rules of Evidence, because Exhibit 1 was not properly certified and therefore inadmissible, the Department was required to produce the original document which they failed to do.

[¶61] Rule 1002 of the North Dakota Rules of Evidence, commonly referred to as the “best evidence rule,” states: “An original writing, recording, or photograph is required in order to prove its content unless these rules, another rule adopted by the North Dakota Supreme Court, or a statute provides otherwise.” N.D.R.Ev. 1002. Rule 1002 of the Federal Rules of criminal procedure contains the exact same language as N.D.R.Ev. 1002. Fed.R.Ev. 1002. “The [best evidence rule] as it exists today may be stated as follows: [I]n proving the terms of a writing, where such terms are material, the original writing must be produced, unless it is shown to be unavailable for some reason other than the serious fault of the proponent.” United States v. Buchanan, 604 F.3d 517, 522 (8th Cir. 2010). The Court applies an abuse of discretion standard when reviewing an evidentiary ruling by an administrative hearing officer. Knudson, 530 N.W.2d at 316.

[¶62] In the present case, Exhibit 1 is alleged to be a certified copy. However, the Department either forged Mr. Jackson's signature onto the certification page or the Department attached a fraudulent certification page stating that Mr. Jackson certified the exhibit. In any event, it is clear that the certification is inaccurate because Mr. Jackson was on administrative leave from February 12, 2019 until May 3, 2019. Exhibit 3-5, Appendix, 9-33. Because Exhibit 1 contains an inaccurate certification, it is not admissible under the North Dakota Rules of Evidence, a rule adopted by the North Dakota Supreme Court, or any statute contained in the North Dakota Century Code. Thus, under N.D.R.Ev. 1002 the hearing officer was required to provide the original writing for each of the documents contained within Exhibit 1. This would include the original request for hearing submitted by Mr. Christianson, the original notice of suspension from Canada, the original letter from the Department regarding Mr. Christianson's non-commercial and commercial driving privileges, and the original of Mr. Christianson's driving record. During Mr. Christianson's administrative hearing, the hearing officer only offered copies of each of these documents. All of which, were falsely certified. Therefore, the Court should reverse the decision of the hearing officer because Exhibit 1 was inadmissible.

[¶63] **III. The Department lacked authority to suspend Mr. Christianson's license because there was not an administrative decision as required by N.D.C.C. § 39-06-32.**

[¶64] N.D.C.C. § 39-06-32 gives the Department the authority to suspend an individual's driving privileges. The statute states:

The director may suspend the operator's license of an individual, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

4. **An administrative decision** on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or 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 (Emphasis added).

[¶65] In the present case, there was never an administrative decision to suspend Mr. Christianson's license. Instead, the only document that was offered by the department was a Notice of Suspension that was issued by a peace officer named "Sham Dham" (Ofc. Dham) who is apart of the Yorkton Detachment (similar to a North Dakota city police force). Ofc. Dham is not a hearing officer nor is there any evidence in the record that a hearing was conducted to determine whether Mr. Christianson's license would be suspended. Thus, the decision of Ofc. Dham, a licensed peace officer in Yorkton, Saskatchewan, would not rise to the level of an administrative decision under North Dakota law. Therefore, because there was not a valid administrative decision from a foreign state, the Court should reverse the decision of the hearing officer.

[¶66] **IV. Mr. Christianson was denied due process during the administrative hearing for his non-commercial and commercial driving privileges.**

[¶67] "Unlike some other legal rules, due process, is not a technical conception with a fixed content unrelated to time, place and circumstances." Whitecalfe v. North Dakota Dep't of Transp., 2007 ND 32, ¶ 20, 727 N.W.2d 779. "Due process is flexible and must be considered on a case-by-case basis." Id. "The inquiry in resolving a due process claim is twofold: Whether a constitutionally protected property or liberty interest is at stake and, if so, whether minimum procedural due process requirements were met."

Morrell v. North Dakota Dep't of Transp., 1999 ND 140, ¶ 8, 598 N.W.2d 111. “It is well settled that a driver's license is a protectable property interest that may not be suspended or revoked without due process.” Id.

[¶68] Procedural due process is analyzed by applying a balancing test.

Whitecalfe, at ¶ 20. There are three factors to be considered:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id.

[¶69] First, the private interest in this case involves Mr. Christianson’s license to drive a non-commercial and commercial vehicle. By losing his driving privileges, Mr. Christianson not only faces possible economic hardships, such as losing his job or not being able to commercially drive for work, but also suffers personal inconveniences. *See Kobilansky v. Liffrig*, 358 N.W.2d 781, 787 (N.D. 1984). Additionally, Mr. Christianson cannot be retroactively compensated or made whole if his suspension/disqualification is later reversed and vacated. Id. Mr. Christianson has a private interest that will be affected by this action.

[¶70] As to the second prong, there is a high risk of erroneous deprivation of such interest through the procedures used by the Department to suspend/disqualify an individual's driving privileges based on a foreign notice of suspension. For the Department to suspend/disqualify an individual for a foreign suspension, the Department must provide a certified copy of the records from the foreign state. The hearing officer

must also follow the North Dakota Rules of Evidence and has a duty to be fair and impartial. *See* N.D.C.C. § 28-32-24(1); N.D.C.C. § 28-32-31(3).

[¶71] However, this case is evident that the procedure used by the Department is flawed and there is a high risk of erroneous deprivation. In this case, the Department failed to offer a properly certified notice of suspension of a foreign state. As a result, the matter should have been dismissed. Instead, the hearing officer, whose employed by the Department, ignored the requirement and allowed the hearings to proceed. Nonetheless, without the proper certification, the hearing officer was bound by the North Dakota Rules of Evidence to determine whether the foreign suspension was admissible. The hearing officer disregard the North Dakota Rules of Evidence and allowed Exhibit 1 into the record without any authentication or foundation. Evenso, the hearing officer is required to conduct the hearings in a fair and impartial manner, which includes reviewing all of the evidence. Instead, the hearing officer disregarded indisputable evidence presented by Mr. Christianson at the hearing. The procedure used by the Department is flawed and weighs in favor of suspension/revocation/disqualification of an individual's driving privileges at all costs, even if that means not following the law. This blatant disregard results in a high risk of erroneous deprivation of an individual's driving privileges.

[¶72] Finally, in regards to the third prong, the government, through the Department, would not face any additional administrative or fiscal burdens. The procedural violations, as outlined above, can be very easily cured with no cost or burden. The hearing officer simply must have a certified copy of the foreign suspension, comply

with the North Dakota Rules of Evidence, and provide a fair and impartial hearing; before suspending, revoking, or disqualifying an individual's driving privileges.

[¶73] Mr. Christianson was denied due process during his administrative hearings. The North Dakota Supreme Court has said “[P]rocedural due process requires fundamental fairness...” Schlittenhart v. North Dakota Dep't of Transp., 2015 ND 179, ¶ 27, 865 N.W.2d 825. Mr. Christianson was denied due process 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. Instead, the hearing officer gave his employer, the Department, an unfair advantage favoring suspension/disqualification regardless of the costs to Mr. Christianson. Therefore, the Court should reverse the hearing officer's decision because Mr. Christianson's due process rights were violated.

[¶74] **V. Even if the court determines there is not a due process violation, the hearing officer violated the Administrative Agencies Practice Act by failing to provide a fair and impartial hearing.**

[¶75] The hearing officer failed to provide Mr. Christianson with a fair and impartial hearing. “All hearing officers shall assure that all hearings and related proceedings are conducted in a **fair and impartial** manner.” N.D.C.C. 28-32-31. In the present case, Mr. Jackson was the head of the driver's license division for the Department. The Department employs the hearing officer. In the present case, 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.

[¶76] The record clearly reflects that Mr. Jackson was on administrative leave from February 12, 2019 to May 3, 2019. Exhibit 3-5, Appendix, 9-33. This is further evident by the Department's own report, which was offered into evidence, that was sent directly to the Director of the Department, Thomas Sorel, on April 8, 2019. Exhibit 3, Appendix, 9-28. Regardless of the evidence, the hearing officer admitted an inaccurate and improperly certified exhibit solely to sustain a suspension/disqualification of Mr. Christianson's driving privileges. The hearing officer violated the Administrative Agencies Practice Act and did not provide a fair and impartial hearing to Mr. Christianson. Therefore, the Court should reverse the hearing officer's decision.

[¶77] VI. There was no evidence presented that indicated Mr. Christianson's alcohol concentration was above a .08 as required by N.D.C.C. § 39-06-32.

[¶78] The North Dakota Approved Method for breath testing states: "AC (alcohol concentration) is expressed as grams of alcohol per two hundred ten liters of end expiratory breath..." Office of Attorney General, Approved Method to Conduct Breath Tests, p. 7, (April 19, 2012); *See also* Exhibit 6. In Canada, an individual's alcohol concentration is measured in milligrams of alcohol per one hundred (100) milliliters of blood. Exhibit 7, Appendix, 46. The Department has authority to suspend or revoke an individual's driving privileges if an administrative decision on an Indian reservation or in another state, indicates that an individual's alcohol concentration is at least eight one-hundredths of one percent by weight. N.D.C.C. 39-06-32(4). The period of suspension must be for the same duration as the suspension in section 39-20-04.1. Id. An individual's driving privileges are suspended "for ninety-one days if the person's driving

record shows that, within the seven years preceding the date of the arrest, the person has not previously violated section 39-08-01 **or equivalent ordinance...**” 39-20-04.1(1)(a).

[¶79] In the present case, the Canadian law in regards to alcohol concentration is not an equivalent ordinance to North Dakota law. Under North Dakota law, alcohol concentration is expressed as grams of alcohol per two hundred and ten liters for breath tests. Exhibit 6, Appendix, 41. Further, for blood tests, North Dakota law states that alcohol concentration is based upon grams of alcohol per one hundred milliliters. N.D.C.C. 39-20-07(4). However, in Canada, they measure alcohol concentration in milligrams of alcohol per one hundred milliliters.

[¶80] The notice of suspension from Canada fails to indicate whether a blood or breath test was used. However, in either circumstance, the two laws are not equivalent. If it was a breath test, the denominators of the North Dakota laws and the Canadian laws are different and not equivalent. If it was a blood test, the numerators of the North Dakota law and the Canadian law are not equivalent. The North Dakota law requires grams per milliliter while the Canadian law requires milligrams per milliliter. These two laws would not be equivalent. As a result, the Department failed to establish that Mr. Christianson’s alcohol concentration was above eight one-hundredths of one percent by weight as required by N.D.C.C. 39-06-32(4) and N.D.C.C. § 39-20-04.1. Therefore, the Court should reverse the decision of the hearing officer.

[¶81] **VII. The Department cannot disqualify Mr. Christianson’s commercial driving privileges because they failed to establish that Mr. Christianson was convicted of driving under the influence as required by statute.**

[¶82] “For a first conviction of driving while under the influence of alcohol...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). Under N.D.C.C. 39-06.2, conviction is defined as:

[A]n unvacated adjudication of guilt, or a determination that an individual has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the individual's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

N.D.C.C. § 39-06.2-02(8).

[¶83] In the present case, the Department failed to provide any evidence of an unvacated adjudication of guilt. Instead, the only document they produced was a notice of suspension filed by a peace officer. A notice of suspension is not a conviction of driving while under the influence of alcohol. Further, there is no evidence in the record that establishes that an authorized administrative tribunal suspended Mr. Christianson's driving privileges. The only evidence that was presented was that Ofc. Dham, a peace officer, decided to suspend Mr. Christianson's license. Again, this would not be a conviction under North Dakota law.

[¶84] Additionally, there is nothing in the record that concludes that the notice of suspension was an unvacated adjudication of guilty. There was no evidence presented that Mr. Christianson's time to appeal the notice of suspension from Canada had expired. Thus, the hearing officer could not reasonably conclude that this was an unvacated adjudication of guilt from a court or administrative tribunal. Because there is no

evidence in the record that indicates there was a “conviction,” as required by statute, this Court should reverse the decision of the hearing officer.

[¶85] VIII. Mr. Christianson was denied due process in Canada when a peace officer suspended his driving privileges without a hearing.

[¶86] “[A] fair trial in a fair tribunal is a basic requirement of due process.” Municipal Servs. Corp. v. State By & Through N. Dakota Dep't of Health & Consol. Labs., 483 N.W.2d 560, 562 (N.D. 1992). “This applies to administrative agencies which adjudicate as well as to courts.” Id. “It is well settled that a driver's license is a protectable property interest that may not be suspended or revoked without due process.” Morrell v. North Dakota Dep't of Transp., 1999 ND 140, ¶ 8, 598 N.W.2d 111.

[¶87] Mr. Christianson was denied due process when his license was suspended in Canada without a hearing. Mr. Christianson’s license was suspended based on the sole decision of a peace officer, Ofc. Dham. While in Canada, Mr. Christianson was not allowed to cross examine witnesses or present any evidence at a hearing to determine whether a license suspension was warranted. As a result, Mr. Christianson’s fundamental right to due process was violated when his driving privileges were suspended unjustly without a hearing. Thus, because of the due process violation, the Department should not have the authority to suspend Mr. Christianson’s noncommercial and commercial driving privileges. Therefore, this Court should reverse the decision of the hearing officer.

[¶88] IX. The hearing officer failed to take judicial notice that Mr. Jackson was on administrative leave.

[¶89] Rule 201 of the North Dakota Rules of Evidence pertains to judicial notice of adjudicative facts. The court or hearing officer may judicially notice a fact that is not

subject to reasonable dispute because it: 1) is generally known within the court's jurisdiction; or 2) can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned. N.D.R.Ev. 201(b). N.D.C.C. § 28-32-24(7), state: "Official notice may be taken of any facts that could be judicially noticed in the courts of this state." Schock v. North Dakota Dep't of Transp., 2012 ND 77, ¶ 17, 815 N.W.2d 255. The North Dakota Supreme Court reviews a court's decision to take judicial notice of evidence presented under an abuse of discretion standard. Opp v. Matzke, 1997 ND 32, ¶ 9, 559 N.W.2d 837.

[¶90] In the present case, Mr. Jackson's administrative leave was generally known within the Department, or reasonably could have been found out by the hearing officer. Mr. Jackson was employed by the Department and was the head of the driver's license division. The hearing officer is also employed by the Department. The hearing officer's position is designed to determine whether an individual's driver's license will be suspended or revoked by the Department. Exhibit 1 was used in both of the administrative proceedings and was sent from the driver's license division to the hearing officer. The hearing officer should have known, or reasonably could have found out that Mr. Jackson was on administrative leave. The hearing officer erred by not taking judicial notice that Mr. Jackson was on administrative leave on April 17, 2019.

[¶91] A hearing officer can draw reasonable inferences from the evidence. Schock, 2012 at ¶ 19. "Common sense and experience permit a hearing officer to aid in drawing inferences from the evidence presented." Id. The hearing officer was presented with a plethora of information in the form of Department investigation and several

newspaper articles. Exhibit 3-5, Appendix 9-33. The hearing officer could draw a reasonable inference that Mr. Jackson was on administrative leave on April 17, 2019. The hearing officers inability to draw reasonable inferences from the evidence presented was an abuse of discretion.

[¶92] Finally, the court or hearing officer must take judicial notice if a party requests it and the court is supplied with the necessary information. N.D.R.Ev. 201(c)(2). Mr. Christianson supplied accurate information from sources whose accuracy cannot reasonably be questioned. First, Mr. Christianson submitted Exhibit 3 which is the investigation conducted by the Department. The investigation indicates that Mr. Jackson was on administrative leave. Further, Mr. Christianson supplied the hearing officer with Exhibit 4 and 5. Both of which are published articles from reputable news sources. Newspaper articles are accurate sources of information and their accuracy cannot be reasonably questioned. *See* N.D.R.Ev. 902(6) (Newspapers and periodicals are self-authenticating documents and require no extrinsic evidence to be admitted). As a result, the hearing officer was required to take judicial notice under N.D.R.Ev. 201(c)(2).

[¶93] In any event, the hearing officer abused his discretion by failing to take judicial notice that Mr. Jackson was on administrative leave. Consequently, the hearing officer improperly admitted Exhibit 1 into the record. Therefore, Exhibit 1 should not have been admitted into evidence and this Court should reverse the decision of the hearing officer.

[¶94] **X. Mr. Christianson is entitled to reasonable attorney fees and costs.**

[¶95] “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. In regards to the term substantial justification, the North Dakota Supreme Court has said:

[S]ubstantially 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.

Kroschel, 2015 at ¶ 35 (citing Lamplighter Lounge, Inc. v. State ex rel. Heitkamp, 523 N.W.2d 73, 75 (N.D.1994)(internal quotations omitted).

[¶96] In this case, the hearing officer acted without substantial justification. Specifically, the Department was without authority or jurisdiction to suspend/disqualify Mr. Christianson’s driving privileges because Exhibit 1 was not a certified copy as required by N.D.C.C. § 39-06-32(4). Further, the hearing officer completely disregarded the North Dakota Rules of Evidence and a North Dakota statute by admitting Exhibit 1 into the record. Additionally, the hearing officer completely ignored Mr. Christianson’s due process rights. The hearing officer also erred because the record establishes that the DUI statutes were not equivalent under North Dakota law. The hearing officer blatantly ignored all of Mr. Christianson’s arguments to obtain a suspension/disqualification. The Department acted without substantial justification when deciding to suspend/disqualify Mr. Christianson’s non-commercial and commercial driving privileges and he is therefore entitled to an award of attorney fees and costs in this matter.

[¶97] **CONCLUSION**

[¶98] “[T]he primary purpose of NDCC ch. 39–20 is to get the drinking driver off the highways...” but, “the legislature was also concerned that the law not be “slanted too much toward the [agency's] convenience.” Samdahl v. North Dakota Dep't of Transp. Dir., 518 N.W.2d 714, 718 (N.D. 1994) (Justice Levine dissenting).

[¶99] North Dakota laws ease the requirements of the Department in several ways. However, what the law does not allow is a forged or fraudulent certification page purporting to be signed by the Director of the Driver’s License Division. The law also does not allow the Department to suspend or disqualify a driver’s driving privileges unless there is an administrative decision or conviction. Further, the law does not allow the Department to suspend an individual's license if there is not an equivalent ordinance from a foreign state. Finally, the law does not allow hearing officers or a foreign state to ignore an individual’s right to due process. Although the law may ease some of the requirements for the Department, it does not allow the Department to completely ignore the law, administrative procedure, or an individual’s rights. Therefore, this Court should reverse the decision.

[¶100] Dated this 22nd day of December, 2019.

/s/ Adam Justinger

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[¶101] **CERTIFICATE OF COMPLIANCE**

[¶102] The undersigned, as attorney representing Appellant Kyle Al Christianson, and authors of the Brief of Appellant, hereby certify that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that the number of pages from cover page to certificate of compliance totals 38 pages and does not exceed 38 pages. This count is automatically calculated by electronic document. The undersigned further certifies the Appellant's appendix complies with Rule 30 of the North Dakota Rules of Appellate Procedure.

[¶103] Dated this 22nd day of December, 2019.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Kyle Al Christianson,)	
)	
Appellant,)	Supreme Court No.
)	20190348
vs.)	
)	
Ronald Henke, Interim Director,)	Burleigh County Case No.
Department of Transportation,)	09-2018-CV-00019
)	
Appellee.)	

ON APPEAL FROM A JUDGMENT ENTERED SEPTEMBER 16, 2019 AFFIRMING THE DECISION OF THE DEPARTMENT OF TRANSPORTATION SUSPENDING THE APPELLANT’S NON-COMMERCIAL AND COMMERCIAL DRIVING PRIVILEGES FROM THE DISTRICT COURT FOR THE SOUTH CENTRAL JUDICIAL DISTRICT BURLEIGH COUNTY, NORTH DAKOTA, THE HONORABLE JOHN GRINSTEINER, PRESIDING.

CERTIFICATE OF SERVICE

[¶1] I, Adam Justinger, an attorney licensed in the State of North Dakota, hereby certify that on **December 22, 2019**, the following documents were filed with the North Dakota Supreme Clerk of Court:

- 1. Brief of Appellant;**
- 2. Appendix to Brief of Appellant; and**
- 3. Certificate of Service.**

[¶2] Copies of these documents were served electronically on all separately represented parties at the e-mail addresses listed below:

**Director of Department of Transportation
c/o aglass@nd.gov**

**Douglas Anderson
dbanders@nd.gov**

¶3 Dated: December 22, 2019.

/s/ Adam Justinger

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