

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

McKayla Hanson,

Appellee,

v.

Director, North Dakota Department
of Transportation,

Appellant.

Supreme Ct. No. 20220071

District Ct. No. 08-2021-CV-01326

APPEAL FROM THE MARCH 8, 2022,
JUDGMENT OF THE DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE DAVID REICH

BRIEF OF APPELLANT

State of North Dakota
Drew H. Wrigley
Attorney General

By: Michael Pitcher
Assistant Attorney General
State Bar ID No. 06369
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
Email mtpitcher@nd.gov

Attorneys for Appellant.

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	3
	<u>Paragraph</u>
Statement of Issue.....	1
Statement of Case	2
Statement of Facts.	5
Proceedings on Appeal to District Court.....	10
Standard of Review	15
Law and Argument	17
I. The hearing officer did not abuse her discretion in admitting Hanson’s chemical Intoxilyzer tests results into evidence.....	17
A. This Court reviews the administrative hearing officer’s evidentiary ruling for abuse of discretion.....	17
B. Hanson’s Intoxilyzer test was properly admitted into evidence.	18
C. Hanson did not rebut the prima facie evidence of proper installation of the Intoxilyzer 8000 device used to analyze the alcohol concentration of her breath.....	22
Conclusion.....	28

TABLE OF AUTHORITIES

	<u>Paragraph(s)</u>
<u>Cases</u>	
<u>Berger v. State Highway Comm’r.,</u> 394 N.W.2d 678 (N.D. 1986)	22
<u>Bieber v. N.D. Dep’t of Transp. Dir.,</u> 509 N.W.2d 64 (N.D. 1993)	25
<u>Buchholtz v. Dir., N.D. Dep’t of Transp.,</u> 2008 ND 53, 746 N.W.2d 181	18
<u>Buchholz v. N.D. Dep’t of Transp.,</u> 2002 ND 23, 639 N.W.2d 490.....	18
<u>Ell v. Dir., N.D. Dep’t of Transp.,</u> 2016 ND 164, 883 N.W.2d 464.....	20, 21, 23
<u>Gillmore v. Levi,</u> 2016 ND 77, 877 N.W.2d 801	22
<u>Harter v. N.D. Dep’t of Transp.,</u> 2005 ND 70, 694 N.W.2d 677.....	16
<u>Haynes v. Dir., Dep’t of Transp.,</u> 2014 ND 161, 851 N.W.2d 172.....	15, 16
<u>Jangula v. N.D. Dep’t of Transp.,</u> 2016 ND 116, 881 N.W.2d 639.....	17
<u>Johnson v. N.D. Dep’t of Transp.,</u> 2004 ND 59, 676 N.W.2d 807.....	18
<u>Kastet v. Henke,</u> 2020 ND 91, 942 N.W.2d 453.....	17
<u>McClintock v. Dep’t of Transp.,</u> 2021 ND 26, 955 N.W.2d 62.....	20, 21
<u>Phipps v. N.D. Dep’t of Transp.,</u> 2002 ND 112, 646 N.W.2d 704.....	16

<u>Schwind v. Dir., N.D. Dep't of Transp.,</u> 462 N.W.2d 147 (N.D. 1990)	18
<u>State v. Blaskowski,</u> 2019 ND 192, 931 N.W.2d 226.....	20, 21
<u>State v. Fasteen,</u> 2007 ND 162, 740 N.W.2d 60.....	16
<u>State v. VandeHoven,</u> 288 N.W.2d 857 (N.D. 1986)	25
<u>Thorsrud v. Dir., Dep't of Transp.,</u> 2012 ND 136, 819 N.W.2d 483.....	22
<u>Wagner v. Backes,</u> 470 N.W.2d 598 (N.D. 1991)	18
 <u>Statutes and Rules</u>	
N.D.C.C. ch. 28-32.....	15
N.D.C.C. § 28-32-46	15
N.D.C.C. § 28-32-46(5)	12
N.D.C.C. § 28-32-46(6)	12
N.D.C.C. § 31-11-03(15)	25
N.D.C.C. § 39-08-01	3
N.D.C.C. § 39-20-01	3, 12
N.D.C.C. § 39-20-02	3
N.D.C.C. § 39-20-05(4)	21
N.D.C.C. § 39-20-05(4)(c)	25
N.D.C.C. § 39-20-07(5)	9, 18
N.D.C.C. § 39-20-07(6)	9, 25

N.D.C.C. § 39-20-07(7) 9

Other Authorities

Black’s Law Dictionary 1071 (5th ed. 1979) 22

STATEMENT OF ISSUE

[¶1] Whether the District Court erred in granting Hanson’s appeal and reversing the hearing officer’s decision when it determined the evidence did not show that the Intoxilyzer instrument used to conduct Hanson’s chemical breath test was installed by a field inspector prior to use as required by the approved method.

STATEMENT OF CASE

[¶2] Burleigh County Sheriff’s Department Deputy Kyle Haman (Deputy Haman), arrested McKayla Jo Hanson (Hanson) on June 12, 2021, for driving under the influence of alcohol. (R4:8:18-21). A Report and Notice, including a temporary operator’s permit, was issued to Hanson. (R5:2). The Report and Notice notified Hanson that the Department intended to suspend her driving privileges. Id.

[¶3] In response to the Report and Notice, Hanson requested an administrative hearing. (R5:4). The administrative hearing was held on July 6, 2021. (R4:1:5) The hearing officer considered the following issues:

- (1) Whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle while under the influence of intoxicating liquor in violation of N.D.C.C. section 39-08-01 or equivalent ordinance;
- (2) Whether the person was placed under arrest;
- (3) Whether the person was tested in accordance with N.D.C.C. section 39-20-01 and, if applicable, section 39-20-02; and

- (4) Whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent but less than eighteen one-hundredths of one percent by weight.

(R4:1:10-21); (R6).

[¶4] Following the hearing, the hearing officer issued her findings of fact, conclusions of law and decision, suspending Hanson's driving privileges for a period of 91 days. (R16). Hanson requested judicial review of the hearing officer's decision. (R1).

STATEMENT OF FACTS

[¶5] At approximately 1:21 a.m. on June 12, 2021, Deputy Haman was driving eastbound on Burleigh Avenue, when he observed a vehicle approach the intersection of Burleigh Avenue and South 12th Street and stop for an unusual length of time. (R4:4:5-10); (R5:2) The vehicle continued eastbound, making a complete stop at the intersection of East Burleigh Avenue and University Drive, before engaging its signal lights. (R4:4:11-13). Deputy Haman activated his overhead lights to initiate a traffic stop and observed the vehicle turn right into the passing lane of University Drive, as opposed to the proper inside lane before it pulled over. (R4:4:14-16).

[¶6] Deputy Haman made a driver's side approach and identified the driver as Hanson by her North Dakota driver's license. (R4:4:21-25). Deputy Haman noted Hanson had glossy red eyes and detected the odor of alcoholic beverage coming from her breath. (R4:5:10-13). When asked where she was traveling from, Hanson stated she was coming from a bar. (R4:5:16-18). Hanson

admitted to consuming alcoholic beverages. (R4:5:18-19). Deputy Haman requested Hanson submit to standard field sobriety tests, to which Hanson consented. (R4:5:21-24).

[¶7] After administering field sobriety tests and an onsite screening test which confirmed his suspicion that Hanson was impaired, Deputy Haman placed Hanson under arrest for driving under the influence of intoxicating liquor. (R4:5:24 – R4:8:21). Deputy Haman read Hanson the implied consent advisory and requested a chemical breath test. (R4:9:2-6).

[¶8] Hanson was transported to the Burleigh Morton Detention Center where Deputy Haman conducted a chemical breath test on an Intoxilyzer 8000 device which showed Hanson had an alcohol concentration of 0.104 by weight. (R4:9:7-14); (R5:3).

[¶9] At the administrative hearing, the Department offered Hanson's Intoxilyzer Test Record and Checklist into evidence. (R4:22:11). The exhibit showed the Intoxilyzer 8000 device used to test Hanson's breath was serial # 80-004945. (R5:3). The Department also offered Exhibit 7 into evidence, which is the "Intoxilyzer 8000 Installation and Repair Checkout" form for Intoxilyzer 8000 device serial # 80-004945. (R11). Exhibit 7 was signed by field inspector Deputy Kyle Haman on March 1, 2021, approved by state toxicologist Charles E. Eder on March 9, 2021, and posted with the state crime laboratory division of the attorney general at the attorney general's Website at <http://www.attorneygeneral.nd.gov/alcoholtoxicology-testing>, in accordance

with N.D.C.C. § 39-20-07(5), (6) & (7). (R7), (R11). Hanson's objection to Exhibit 1 was overruled and Hanson's chemical test record was admitted. (R4:22:12-23).

PROCEEDINGS ON APPEAL TO DISTRICT COURT

[¶10] After Deputy Haman finished testifying at the hearing, the hearing officer offered Exhibit 1 into the record. (R4:22:10-11). Hanson objected to the admission of Exhibit 1 "based upon the previously offered and admitted Exhibit 7." (R4:22:12-14). More particularly, Hanson asserted that Exhibit 7 does not indicate that the Intoxilyzer 8000 machine was installed by a field inspector, but only showed the performance of monthly tests. (R4:22:14-16). The hearing officer overruled the objection and admitted Exhibit 1 into the record. (R4:22:22-23). Hanson renewed her objection during closing argument. (R4:23:2-4).

[¶11] Based on the evidence presented at the hearing, the hearing officer determined:

Deputy Haman is trained and certified to administer the Intoxilyzer 8000. Deputy Haman is also the field inspector that installed the Intoxilyzer 8000 used in this matter. Deputy Haman administered the Intoxilyzer 8000 fairly and in accordance with the approved method, within two hours of the time of driving. The test results obtained show Ms. Hanson had an alcohol concentration of 0.104.

(R16). The hearing officer issued her decision suspending Hanson's driving privileges for a period of 91 days. Id.

[¶12] Hanson sought judicial review of the hearing officer’s decision, alleging in pertinent part as follows:

[2] The findings of fact made by the agency are not supported by a preponderance of the evidence. N.D.C.C. § 28-32-46(5). Specifically, the hearing officer found that “Deputy Haman is also the field inspector that installed the Intoxilyzer 8000 used in this matter.” The record does not support this finding of fact that the device was installed by a field inspector.

[3] The conclusions of law are not supported by the findings of fact. N.D.C.C. § 28-32-46(6). Specifically, the hearing officer concluded that Ms. Hanson was “tested in accordance with N.D.C.C. § 39-20-01.” Under section 39-20-01 the chemical test must be administered in accordance with the approved method of the director of the state crime laboratory or their designee. The approved method requires proof that the device was installed by a field inspector. The factual record does not establish installation by a field inspector and therefore does not support the conclusion of law that the test was conducted in accordance with section 39-20-01.

(R1).

[¶13] The District Court issued its Memorandum and Order Reversing Hearing Officer’s Decision on December 23, 2021. (R30). The District Court noted:

[¶17] From Exhibit #7, the Court can conclude a few facts. First that the Intoxilyzer used was tested and performed satisfactory on March 1, 2021. That Deputy Haman performed the monthly tests required. And lastly, that Charles Eder certified that “this installation has been reviewed and the instrument is approved to be used for the analysis of breath to determine alcohol concentration form (sic) the date the Field Inspector performed the installation.” Docket Number 11 (Exhibit 7 Intoxilyzer 8000 Installation & Repair Checkout). The Court cannot conclude from Exhibit 7, when and if the Intoxilyzer was properly installed.

...

[¶19] Here, the Court does not have a date of installation, nor a date that the Court could accurately infer from.

[¶20] Because the Court cannot, from the record, determine when and if the Intoxilyzer was properly installed, the Court holds the hearing officer's finding that Deputy Haman was the individual who installed the machine, erroneous.

Id. The District Court concluded "the hearing officer misapplied the law and abused her discretion in admitting the breath test result." (R30:¶21).

[¶14] Judgment was entered on March 8, 2022. (R40). The Department appealed the Judgment to the North Dakota Supreme Court. (R34). The Department requests this Court reverse the Judgment of the Burleigh County District Court and reinstate the Hearing Officer's Decision suspending Hanson's driving privileges for a period of 91 days.

STANDARD OF REVIEW

[¶15] "The Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, governs the review of a decision to revoke 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.

[¶16] “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. “When an ‘appeal involves the interpretation of a statute, a legal question, this Court will affirm the agency’s order unless it finds the agency’s order is not in accordance with the law.’” Harter v. N.D. Dep’t of Transp., 2005 ND 70, ¶ 7, 694 N.W.2d 677 (quoting Phipps v. N.D. Dep’t of Transp., 2002 ND 112, ¶ 7, 646 N.W.2d 704). The “interpretation of a statute is a question of law fully reviewable on appeal.” State v. Fasteen, 2007 ND 162, ¶ 8, 740 N.W.2d 60.

LAW AND ARGUMENT

I. **The hearing officer did not abuse her discretion in admitting Hanson’s chemical Intoxilyzer tests results into evidence.**

A. This Court reviews the administrative hearing officer’s evidentiary ruling for abuse of discretion.

[¶17] At the administrative hearing Hanson raised the issue of whether her Intoxilyzer test results were inadmissible. This Court reviews the administrative hearing officer’s ruling for an abuse of discretion. See Kastet v. Henke, 2020 ND 91, 942 N.W.2d 453. An abuse of discretion occurs when a hearing officer acts in an arbitrary, unreasonable, or capricious manner or misinterprets or misapplies the law. Jangula v. N.D. Dep’t of Transp., 2016 ND 116, 881 N.W.2d 639. Thus, the broad question, properly framed, is whether the hearing officer abused her discretion in admitting Hanson’s Intoxilyzer test results into evidence.

B. Hanson’s Intoxilyzer test was properly admitted into evidence.

[¶18] This Court has observed that “[t]he admissibility of an Intoxilyzer test result is governed by N.D.C.C. § 39-20-07(5).” Buchholtz v. Dir., N.D. Dep’t of Transp., 2008 ND 53, ¶ 10, 746 N.W.2d 181 (quoting Johnson v. N.D. Dep’t of Transp., 2004 ND 59, ¶ 11, 676 N.W.2d 807). This Court also has observed that “[f]air administration of an Intoxilyzer test may be established by proof that the method approved by the State Toxicologist for conducting the test has been scrupulously followed.” Buchholtz, 2008 ND 53, ¶ 10, 746 N.W.2d 181 (quoting Buchholz v. N.D. Dep’t of Transp., 2002 ND 23, ¶ 7, 639 N.W.2d 490).

However, “scrupulous’ compliance does not mean ‘hypertechnical’ compliance.” Buchholtz, 2008 ND 53, ¶ 10, 746 N.W.2d 181 (external citations omitted.) Even when there is a deviation from the state toxicologist’s directions, the test results may be admitted if the deviation could not have substantially affected the test results. Schwind v. Dir., N.D. Dep’t of Transp., 462 N.W.2d 147, 152 (N.D. 1990); see also Wagner v. Backes, 470 N.W.2d 598, 600 (N.D. 1991) (“When . . . we have been able to say that the deviation involved some clerical or ministerial aspect of an approved method and, therefore, could not have affected the test results, we have upheld a license suspension.”).

[¶19] The hearing officer admitted Hanson’s Intoxilyzer Test Record and Checklist into evidence. (R4:22:10-11); (R5:3). As noted on the Intoxilyzer Test Record and Checklist, Deputy Haman tested Hanson’s breath alcohol content on June 12, 2021. (R5:3). Deputy Haman also noted on the Intoxilyzer Test Record and Checklist that “I followed the approved method and the instructions displayed by the Intoxilyzer in conducting this test.” Id.

[¶20] In Ell v. Director, Department of Transportation, this Court found that the approved method to conduct breath tests with the Intoxilyzer 8000 required the device to be installed by a field inspector prior to use. 2016 ND 164, ¶ 20, 883 N.W.2d 464; accord McClintock v. Dep’t of Transp., 2021 ND 26, ¶ 10, 955 N.W.2d 62; State v. Blaskowski, 2019 ND 192, ¶ 6, 931 N.W.2d 226. This was so because the approved method for the test states the first step in instrument preparation for a test is that “[t]he Intoxilyzer 8000 must be

installed by a Field Inspector prior to use.” Ell, 2016 ND 164 at ¶ 20. This Court in Ell held that because, “[t]here was no documentary or testimonial evidence that the device was installed by a field inspector. . . . The documentary evidence and testimony did not show scrupulous compliance with the approved method to conduct the breath test.” Id. at ¶ 21.

[¶21] In contrast to Ell and Blaskowski, but like McClintock, here there was documentary evidence submitted showing the Intoxilyzer device, used to conduct Hanson’s chemical breath test, was installed by a field inspector prior to use. To that end the Department offered Exhibit 7, which is the “Intoxilyzer 8000 Installation and Repair Checkout” form and its 3 associated “run” tests for the Intoxilyzer device, serial number 80-004945. (R11). The serial number matches the serial number on the Intoxilyzer used to perform Hanson’s test. See (R5:3). Under N.D.C.C. § 39-20-05(4), the regularly kept records of the state crime laboratory may be introduced at a hearing and those records are prima facie evidence of their contents without further foundation.

C. Hanson did not rebut the prima facie evidence of proper installation of the Intoxilyzer 8000 device used to analyze the alcohol concentration of her breath.

[¶22] Once Exhibit 7 and Hanson’s Intoxilyzer Test Record and Checklist were admitted into evidence the Department met its prima facie case of fair administration of his chemical test. The term “prima facie evidence” is defined as meaning “[e]vidence good and sufficient on its face . . . and which if not rebutted or contradicted, will remain sufficient.” Black’s Law Dictionary 1071

(5th ed. 1979). This Court has stated, “[i]f a driver want[s] to discredit the prima facie fairness and accuracy of a test, it [is] the driver’s responsibility to produce evidence that the test was not fairly or adequately administered. . . . A driver must do more than raise the mere possibility of error.” Berger v. State Highway Comm’r, 394 N.W.2d 678, 688 (N.D. 1986). See Gillmore v. Levi, 2016 ND 77, ¶ 12, 877 N.W.2d 801 (stating, “... Gillmore had the burden to rebut the prima facie evidence contained in the report and notice); Thorsrud v. Dir., N.D. Dep’t of Transp., 2012 ND 136, ¶ 10, 819 N.W.2d 483 (stating, “once the record and checklist was received into evidence, Thorsrud had the burden to present sufficient evidence to rebut the prima facie evidence of fair administration by proving Officer Nielsen had not followed the approved method”).

[¶23] Yet, Hanson and the district court believe that because the “Other” box is checked with “Monthly Tests” being designated as the “Reason for Install/Repair”, proper foundation for the chemical test results was not established. (R24:¶19); (R30:¶17). Hanson further asserted that monthly tests do not establish installation by a field inspector any more than the record in Ell, and under Ell requires expert testimony absent other evidence the device was installed by a field inspector. (R24:¶19). The problem for Hanson and the district court is that they ignore the plain language of the Installation and Repair Checkout form. The “Other” box is within a larger box stating, “Reason for Install/Repair”. (R11) (emphasis added). Thus, the crime laboratory form

plainly recognizes there are several reasons for an installation. Nothing in the record suggests that “Monthly Tests” is not a proper installation as the district court improperly implies. In fact, the ten checks the field inspector puts the device through and which the field inspector must verify performing as part of the installation are the same ten actions that occur whether the box, “Install After Receiving From Crime Laboratory,” “Install After Location Change,” or “Other (Specify)” is designated as the reason for the install.

[¶24] Further, and most importantly, Hanson’s and the district court’s arguments ignore the attestation and certification on the face of the form from state toxicologist, Charles E. Eder. In his certification signed on March 9, 2021, Charles Eder, the state toxicologist notes:

This installation has been reviewed and the instrument is approved to be used for the analysis of breath to determine alcohol concentration from the date the Field Inspector performed the installation. This record on file at the Office of Attorney General, Crime Laboratory Division, in the County of Burleigh, North Dakota, is certified to be a true and correct copy of the documents received.

(R11:1) (emphasis added).

[¶25] Under 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.”). The Legislature also intended that this authority could be delegated. VandeHoven, 388 N.W.2d at 860. The authority is now delegated by the director of the crime laboratory to the director’s designees, which include Eder. See N.D.C.C. § 39-20-05(4)(c) (certificates of the director designating the director’s designees); N.D.C.C. § 39-20-07(6) (the state crime laboratory director or the director’s designees may “appoint, train, certify, and supervise field inspectors” and “the inspectors shall report the findings of any inspection” to the director or the director’s designee for appropriate action).

[¶26] The installation record, Exhibit 7, is prima facie evidence of Intoxilyzer 8000 serial # 80-004945 being installed by field inspector, Deputy Haman, prior to Hanson’s chemical test being performed on that device. Therefore, it was Hanson’s burden to rebut the prima facie evidence. Prima facie evidence is not rebutted by merely pointing out that the “Other” box and “Monthly Tests” was the reason for the installation. Rather, Hanson was required to present actual evidence contradicting the prima facie evidence that the March 1, 2021, installation by Deputy Haman and reviewed and certified by Eder on March 9, 2021, does not constitute a valid installation.

[¶27] If Hanson was concerned about whether Exhibit 7 constituted a valid installation, he could have questioned Deputy Haman about the installation, since Deputy Haman was the field inspector who performed the installation.

Further, Hanson could have had a subpoena issued to State Toxicologist Eder, to challenge the efficacy of the installation. Hanson did not do either of these things, and as it stands Hanson has not overcome the disputable presumption of regularity as to the acts of the state crime laboratory in the installation of Intoxilyzer 8000 device, serial number 80-005951. Hanson has presented no evidence rebutting Deputy Haman's installation and Eder's approval of the installation of the Intoxilyzer instrument. In other words, there simply is no deviation on the face of the Installation and Repair Checkout form, which calls into question whether the installation was completed prior to Hanson's chemical test, which is all that the approved method requires.

CONCLUSION

[¶28] The Department requests this Court reverse the Judgment of the Burleigh County District Court and affirm the Hearing Officer's Decision suspending Hanson's driving privileges for a period of 91 days.

Dated this 6th day of April, 2022.

State of North Dakota
Drew H. Wrigley
Attorney General

By: /s/ Michael Pitcher
Michael Pitcher
Assistant Attorney General
State Bar ID No. 06369
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
Email mtpitcher@nd.gov

Attorneys for Appellant.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

McKayla Hanson,

Appellee,

v.

Director, North Dakota Department
of Transportation,

Appellant.

CERTIFICATE OF COMPLIANCE

Supreme Ct. No. 20220071

District Ct. No. 08-2021-CV-01326

[¶1] The undersigned certifies pursuant to N.D.R.App.P. 32(a)(8)(A), that the Brief of Appellant contains 19 pages.

[¶2] This brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 word processing software in Century 12 point font.

Dated this 6th day of April, 2022.

State of North Dakota
Drew H. Wrigley
Attorney General

By: /s/ Michael Pitcher
Michael Pitcher
Assistant Attorney General
State Bar ID No. 06369
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
Email mtpitcher@nd.gov

Attorneys for Appellant.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

McKayla Hanson,

Appellee,

v.

Director, North Dakota Department
of Transportation,

Appellant.

**CERTIFICATE OF SERVICE
BY ELECTRONIC MAIL**

Supreme Ct. No. 20220071

District Ct. No. 08-2021-CV-01326

[¶1] I hereby certify that on April 6, 2022, the following documents: **BRIEF OF APPELLANT and CERTIFICATE OF COMPLIANCE** were filed electronically with the Clerk of Supreme Court. Service is being accomplished upon McKayla Hanson, by electronic mail through her attorney, Lloyd C. Suhr at lawfirm@suhtrandlofgren.com.

State of North Dakota
Drew H. Wrigley
Attorney General

By: /s/ Michael Pitcher
Michael Pitcher
Assistant Attorney General
State Bar ID No. 06369
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
Email mtpitcher@nd.gov

Attorneys for Appellant.