

STATE OF NORTH DAKOTA
COUNTY OF [REDACTED]

IN DISTRICT COURT
[REDACTED] JUDICIAL DISTRICT

State of North Dakota,

Court File No. [REDACTED]

Plaintiff,

**SENTENCING
MEMORANDUM**

[REDACTED],

Defendant.

INTRODUCTION

[¶1] In the criminal law, the line between accident and criminality is thin. This case puts that thinness on full display. [REDACTED] crashed a car he was driving into another car driven by a man named [REDACTED]. [REDACTED] and his passenger suffered severe injuries and, tragically, [REDACTED] died. Nobody claims [REDACTED] did this on purpose. Nor does anyone claim [REDACTED] intended to kill [REDACTED]. For if either were true, then [REDACTED] conduct would clearly be criminal. What the state is claiming, however, is that [REDACTED] was traveling too fast at the time of the crash, and this excessive speed is what pushed [REDACTED] behavior barely over the line of accident into criminality. But there is much more to the story of what happened that night than the simple narrative that [REDACTED] crashed a car while speeding and killed a man. This sentencing memorandum tells that story.

BACKGROUND¹

[¶2] On August 27, 2022, [REDACTED] and his friend, [REDACTED] [REDACTED] attended a concert at Arthur's Barn, which is located one mile north of Arthur, North Dakota. The two traveled from [REDACTED] South Dakota, which is about two-and-a-half hours from Arthur. They took [REDACTED] car, and [REDACTED] drove. The plan was to drive up, go to the concert, and then stay overnight in Arthur. Given this plan to stay, upon arrival, [REDACTED] drank exactly one beer while watching the show.

[¶3] At some point, [REDACTED] told [REDACTED] that the plan to stay overnight in Arthur had fallen through. Upon learning this, [REDACTED] immediately stopped drinking. At the end of the concert, [REDACTED] had drunk too much to drive, so he asked [REDACTED] to drive his car back to [REDACTED]. Completely sober, [REDACTED] agreed. But his plan wasn't to drive all the way to [REDACTED] instead, it was to drive to Fargo, rent a hotel room, and stay overnight. The reason was simple: the concert had ended late, [REDACTED] was tired, and he didn't want to drive [REDACTED] car longer than necessary. So staying in Fargo seemed like the safest and most responsible decision.

[¶4] [REDACTED] left Arthur around 12:30 a.m. and arrived in Fargo around 1:30 a.m. Once in Fargo, [REDACTED] went to three hotels and tried to rent a room for the night. Because [REDACTED] was just 19 years old, however, none would rent him a room. This put [REDACTED] in a

¹ This section all comes from the North Dakota Highway Patrol's Incident Report, attached as Exhibit 1 (NDHP Incident Report).

bind. He was sober, so he technically could drive to [REDACTED] But it was late, he was tired, and the car wasn't his. So he really didn't want to. He didn't know what to do. Ultimately, and reluctantly, he drove [REDACTED] car back to [REDACTED]

[¶5] During the drive, [REDACTED] fell asleep behind the wheel and crashed head-on into a car drive by [REDACTED] [REDACTED] [REDACTED] and [REDACTED] suffered severe injuries, which required surgery at the Sanford hospital in Fargo. [REDACTED] [REDACTED] died from his injuries. Law enforcement arrived at the crash site and questioned [REDACTED] [REDACTED] admitted to falling asleep and then waking up right before the crash. He also stated he was sober, which no officer questioned or disputed.

[¶6] Paramedics then took [REDACTED] to Sanford in Fargo to care for his broken leg. Upon arrival, nurses immediately tested his blood for alcohol, and it came back negative, meaning he had none in his system. Before [REDACTED] went into surgery on his leg, law enforcement questioned him a second time. [REDACTED] stated he was traveling at “about 65-75 mph” at the time of the crash. Officers also noted that the speedometer of [REDACTED] car “slapped” at around 80-85 mph.² Based on [REDACTED] hospital admission, and the speedometer slap, the state charged [REDACTED] with aggravated reckless driving for traveling faster than the posted speed limit of 65 mph at the time of the crash.

² The speedometer “slap,” though not definitive, is one way crash investigators determine a car's speed at the time of impact.

[¶7] After retaining counsel, and considering the circumstances of the crash, [REDACTED] and the state negotiated a plea agreement to resolve the matter. The plea agreement's terms include:

- [REDACTED] pleads guilty to misdemeanor aggravated reckless driving.
- [REDACTED] serves no jail time.
- [REDACTED] serves 360 days of unsupervised probation.
- [REDACTED] pays \$5,000 in restitution.
- [REDACTED] pays \$325 in fees.
- [REDACTED] participates in two online driving-related courses.
- The parties leave open for sentencing (1) whether [REDACTED] should complete community service and, if so, how much; and (2) whether the Court should defer [REDACTED] conviction upon completion of its terms.

[REDACTED] pleaded guilty on November 22, 2023 and the Court set his sentencing hearing for December 19, 2023. [REDACTED] submits this memorandum before the hearing.

DISCUSSION

[¶8] In sentencing [REDACTED] the Court will likely have in the back of its mind the fact that a man died because of the crash.³ Anytime someone dies on a North Dakota roadway, it is a tragedy that merits sympathy and solemnity. But context also matters,

³ See N.D. Cent. Code § 12.1-32-04(1).

as it informs the Court as to [REDACTED] level of culpability. So while on one side of the ledger is [REDACTED] death, it can't be the only consideration.

[¶9] Instead, the Court must also consider the mitigating circumstances present the night of the crash. For while [REDACTED] did act criminally when he crashed the car, his level of intent and culpability are as low as possible without transforming this incident from criminality to accident. To be clear, it wasn't an accident, which is why [REDACTED] has accepted responsibility and pleaded guilty. But it's close. And the Court should keep that in mind when it sentences [REDACTED]

1) [REDACTED] **tried several times to do the right thing before the crash.**

[¶10] Before the crash, [REDACTED] made several decisions and good-faith attempts to avoid driving back to [REDACTED] after the concert. While they ultimately proved unsuccessful, they still merit consideration by the Court.⁴

a) [REDACTED] **immediately stopped drinking when plans changed.**

[¶11] [REDACTED] recognizes this cuts both ways. On the one hand, he's 19 years old, so drinking alcohol is illegal.⁵ But on the other hand, it's a common activity for people that age, he had only one beer (hardly enough to get a person drunk), and he immediately stopped the moment [REDACTED] told him the plan to stay in Arthur fell

⁴ *Id.* at (2), (4), and (8).

⁵ *Id.* at § 5-01-08.

through. Putting aside the Court's thoughts on an underage person drinking a single beer, ██████ decision to stop drinking is impressive. Few people that age would have the maturity or foresight to do what ██████ did in that moment. Most would have instead kept drinking and "figured something out" later.

[¶12] Not ██████ He knew drinking and driving was unacceptable and not something he would do, or even be a part of, if ██████ tried to drive. So he took it upon himself to stop drinking and be ready to be the sober driver. This Court has no doubt seen cases with similar facts as ██████ where the defendant does not make that decision, and instead drunkenly gets behind the wheel. That ██████ didn't do this proves his good moral character and should go onto the side of the ledger supporting leniency.

b) ██████ tried to rent a hotel room in Fargo.

[¶13] After stopping drinking, ██████ also tried to avoid driving back to ██████ by staying overnight in Fargo. He went to three hotels, looking to rent a room. But because of his age, the hotels would not accept a debit card from ██████ And while he had money to pay, the hotels refused to rent to him because he was not 21 years old. Because of this policy, ██████ could not rent a room and stay the night in Fargo. But just because his attempt didn't succeed doesn't mean the Court shouldn't consider it.

[¶14] This decision once again shows ██████ good moral character. He knew it was late at night. And he knew it was smarter to stay the night in Fargo rather than drive back to ██████ So he went to multiple hotels and tried to do the right thing. Such

behavior makes ██████ intent clear—he tried multiple times to avoid driving late at night. He was being mature. He was being thoughtful. He was being the type of person that he’s been his whole life.

[¶15] Unfortunately, sometimes even the best-laid plans fail, and they did for ██████ So he faced a dilemma. He could either park ██████ car somewhere and the two could spend the night in the vehicle, or he could drive back to ██████ Had the vehicle been his, or had ██████ been sober enough to weigh in, ██████ might have chosen differently. But those weren’t the facts on the ground. And so ██████ made what he thought was the best choice—he begrudgingly drove back to ██████

[¶16] Now it’s easy to play Monday morning quarterback with this decision. But before doing so, the Court should remember that ██████ did the right thing when he tried to rent a hotel room in Fargo. It didn’t work, but his intent is what matters. And his intent was to err on the side of caution and not get on the road. This, too, should go onto the side of the ledger supporting leniency.

c) ██████ drove because he was sober and ██████ wasn’t.

[¶17] Lastly, ██████ could have avoided this conviction entirely had he let ██████ drive back to ██████ It was his car, after all, so really it was his responsibility to figure out what to do. But as noted above, that’s not who ██████ is. Instead, ██████ acted swiftly and responsibly the moment he knew there was a possibility

that he'd have to drive home. That extended all the way to trying to get a hotel room, and when that failed, to deciding to drive instead of [REDACTED]

[¶18] [REDACTED] knew [REDACTED] could not drive the vehicle home safely. He also knew it would be much riskier if [REDACTED] drove. So for the third time that night, [REDACTED] did the mature and responsible thing: he drove instead of [REDACTED]. Again, he didn't have to. But he was doing what he thought best given the circumstances. He was trying to avoid something bad from happening.

[¶19] Tragically, the very thing he was trying to avoid occurred. But it wasn't for a lack of effort by [REDACTED]. At every turn leading up to the crash, he made right decision after right decision. His efforts proved insufficient. But he tried. And this Court should credit this effort in the form of placing it onto the side of the ledger supporting leniency.

2) [REDACTED] exact speed at the time of the crash is unclear.

[¶20] While it's clear [REDACTED] was speeding at the time of the crash, it's less clear exactly how fast he was going. And had the case proceeded to trial, this would have been the central focus of [REDACTED] defense. But since the case resolved, it technically doesn't matter under the elements of the offense. It does matter, however, in terms of perception. Simply put, it looks much worse if [REDACTED] was traveling 20 mph over the speed limit rather than 5 mph over.

[¶21] Given this, [REDACTED] hired Gregory Gravesen, an accident reconstruction specialist, to review the crash and answer one question: how fast was [REDACTED] car

going at the time of the crash? The answer is far less cut and dry than the 85 mph the state wants the Court to believe. Instead, it's just as plausible that [REDACTED] speed at the time of impact was closer to 70 mph. Here's why:

- Trooper [REDACTED] [REDACTED] the officer who conducted the accident analysis for the state, "concluded the impact speed of the Nissan [REDACTED] vehicle] was between 64 and 80 mph."⁶
- The methodology [REDACTED] used to produce this range has an accuracy of "+/- 10 percent," which he failed to disclose or address.⁷
- While there were no errors with [REDACTED] calculations, he overlooked the "uncertainty in all of the variables used in a momentum analysis."⁸
- Given [REDACTED] failure to account for these two things, Gravesen concluded it was "just as possible the Nissan was traveling 64 mph [at the time of the crash], which is below the 65-mph speed limit."⁹

[¶22] To be clear, this doesn't matter for the resolution of the case. [REDACTED] admitted to speeding at the time of the crash in violation of the statute. But it does matter for fashioning an appropriate punishment. Driving 20 mph over the speed limit seems to make [REDACTED] more culpable than driving 5 mph over the speed limit. But based on Gravesen's analysis, *which rests on the state's own accident reconstruction*, it's

⁶ Exhibit 2 (Gravesen Letter) at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

uncertain that █████ was driving 20 mph over the speed limit at the time of the crash. In truth, it's just as possible he was driving 5 mph over or less, which is yet another fact that should go onto the side of the ledger supporting leniency.¹⁰

3) █████ has never been charged with a crime before in his life.

[¶23] This section is easy because it writes itself. This is the first time █████ has ever gotten in *actual criminal trouble* in his life, which shows how unique, unforeseen, and out-of-character this whole incident is. █████ is not a criminal; he doesn't commit crimes; and he's not going to commit any more.¹¹ The crash was a once-in-a-lifetime situation for █████ and his family, and it is unlikely to ever happen again.¹² Given his guilty plea, he deserves a punishment. But his complete and total lack of criminality before this incident should weigh heavily on the side of the ledger supporting leniency.¹³

4) █████ proposed sentence is a fair resolution.

[¶24] By its willingness to resolve this case, and to recommend various favorable terms under the plea agreement, the state is all but assenting to everything █████ has outlined in this memorandum: that he is a good kid who tried to do the right thing and

¹⁰ See N.D. Cent. Code § 12.1-32-04(2), (4), and (8).

¹¹ *Id.* at (7).

¹² *Id.* at (8).

¹³ *Id.* at (9).

made a tragic miscalculation along the way. The terms of the plea agreement also prove that the state believes █████ is “particularly likely to respond affirmatively to probationary treatment.”¹⁴

[¶25] And while █████ understands the plea agreement is nonbinding, he asks the Court to give it thoughtful consideration as it makes its decision. The agreement resulted from an arm’s-length negotiation between the parties, who took into consideration all the facts and circumstances of the case, including faithfully applying § 12.1-32-04. As always, the Court must do what it believes is right. But the parties agree this plea agreement provides a good roadmap for achieving that goal.

CONCLUSION

[¶26] This case is difficult for everyone involved. █████ █████ family is suffering, understandably, because they lost an unambiguously good man—a husband, a father, a community leader. But █████ and his family are also suffering. Their young son, with his whole life ahead of him, made an unfortunate decision that will have lifelong consequences. Now if █████ had driven drunk, this would be an easy case. It would be easy to have no sympathy for what happened. But those aren’t the facts. █████ committed a crime, but he did so in the least criminal way possible. Taking this into consideration, █████ requests that the Court impose the following sentence:

¹⁴ *Id.* at (10).

- 1) Accept in full the agreed-upon plea agreement terms.
- 2) Order [REDACTED] complete 50 hours of community service.
- 3) Order [REDACTED] conviction deferred upon successful completion of the plea agreement's terms.

[¶27] [REDACTED] [REDACTED] [REDACTED] made a single bad choice to drive over the speed limit when tired. He shouldn't have done it. But he's not a bad person, nor is he ever going to do it again. His sentence should fairly reflect that dichotomy.

Dated: December 12, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dane", with a large, stylized initial "D" and a long horizontal stroke extending to the right.

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