

APPELLANT'S BRIEF

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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NO. 30904

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STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 30904

v.

SETH CHARLES KEIM,

Defendant and Appellant.

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APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
COUNTY OF PENNINGTON

---

HONORABLE JOSHUA K. HENDRICKSON

CIRCUIT JUDGE

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---

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**PRELIMINARY STATEMENT**

All references in this brief to the Settled Record of this action are referred to as SR, followed by the page number. References to the Appellant's Appendix is referred to as App. followed by the page number. There is a table of contents listing the exhibits for the Appendix. Change of Plea Hearing Transcript is referred to as PL Tr. The Pre-Sentence Investigate Report will be referred to as the PSR. The Sentencing Hearing Transcript is referred to as Sen. Tr. The page number of the transcript cite will follow the hearing designation.

**JURISDICTIONAL STATEMENT**

This is an appeal of the Appellant's Amended Judgment of his sentence after plea of guilty, entered on November 7, 2024, regarding Seventh Judicial Circuit Pennington

County file CRI23-3780, wherein the Appellant was sentenced to the penitentiary for forty (40) years of which 15 years were suspended. SR330 The original sentence upon conviction was entered on October 21, 2024. SR 328. The Appellant filed a timely notice on November 11, 2024. .SR333. This Court possesses jurisdiction of this matter pursuant to SDCL 23A-32-2.

### **STATEMENT OF THE CASE**

On October 20, 2023, Pennington County's Deputy State's attorney, Olivia Siglin, filed a six-count Information against the Appellant-Defendant, Seth Charles Keim. SR37-41, App. 83, Exh. K. Count 1 charged Vehicle Homicide, in violation of SDCL 22-16-41. Count 2 charged Driving or Control of Vehicle while under the Influence of Alcohol in violation of SDCL 32-23-1(2). Count 3 charged, in the alternative, Driving or Control of Vehicle while having .08 Percent or More by Weight of Alcohol in his Blood, in violation of SDCL 32-23-1(1). Count 4 charged Vehicle Battery while under the influence of alcohol, and without the design to cause bodily injury, caused the serious bodily injury to RCPD Kyle Kumjian, in violation of SDCL 22-18-36. Count 5 charged Driving while under Revocation, in violation of SDCL 32-12-65(1). SR37-38. Part 2 of the Information charged that Counts 2 and 3 were premised on four prior offenses. SR40. Count 6 charged Reckless Driving in violation of SDCL 32-24-1. SR38. Part 3 of the Information charged the Appellant as a habitual offender, as defined under SDCL 22-7-8.1, which enhanced Count 1 to a Class 1 felony, and Count 4 to a Class 2 felony. SR41.

On August 26, 2024, the Pennington County Deputy State's Attorney offered a plea deal for the Appellant to plead guilty to Count 1, and to admit Part 3 of the Information, charging him as a Habitual Offender. SR221. The Appellant accepted the

plea deal and pled guilty in accordance with the plea agreement on that day, August 26, 2024, before the Honorable Joshua Hendrickson, Circuit Court Judge. SR366; PL. Tr.4:12-5:24. On September 27, 2024, the Pennington County Court Services Department completed an Adult Presentence Report ("PSR"), and submitted it to Judge Hendrickson. SR226, 327. Judge Hendrickson held a Sentencing Hearing on October 18, 2024. SR379. At the hearing, Judge Hendrickson sentenced the Appellant to forty (40) years in the South Dakota State Penitentiary with fifteen (15) years suspended and three hundred seventy-three (373) days credit plus each day served in the Pennington County Jail awaiting transport. SR379; App. 62-63, Exh. H. Sen. Tr. 45:22-46: 1. The Judgment of conviction and sentence was entered on October 21, 2024. SR328, App.9-10, Exh. C. This Judgment was amended to delete the fact that the Defendant had to pay the statutory fee of \$50 for DUI, was entered on November 7, 2024. SR330, App.7, Exh. B. It is from that Judgment and Amended Judgment and Sentence that Keim appeals.

### **STATEMENT OF THE FACTS**

As presented in the PSR, (SR226, 327) and Law Enforcement Reports, (SR6), on the day of the offense on September 2, 2023, the Appellant Defendant Seth Keim spent the day with his girlfriend, Lexi Hagen. SR227. At the plea hearing, Keim told the court it could use the law enforcement officer's report for the "facts" in this case, SR227. Keim and Hagen enjoyed the day together doing house chores, watching movies and drinking alcohol. SR227. Midday they drove to Pactola to watch the sunset and drink some more. Later, they drove back home for dinner. After dinner, Lexi asked to go out again, to a bar and Keim agreed as long as they did not stay out late. SR227-8. At about midnight, Keim told Lexi that they should drive home. SR228. On the way home, Keim

started driving recklessly and faster to get home quickly. At about 12:27am, Keim sped off an exit of the interstate and southbound down onto Haines Avenue, and saw Rapid City Police Officer Kyle Zaven Kumjian suddenly drive out in his marked Rapid City Police vehicle in front of Keim. Keim could not stop to miss hitting the officer's vehicle. SR228. At the time of the accident, Officer Kumjian was attempting to make a left turn into a parking lot while traveling northbound on Haines Avenue. SR8,11 Kumjian was responding to a separate police call. SR11.

Rapid City Police Officers responded to the scene and requested medical personnel since the officer, Keim and Lexi were injured in the accident. SR11. Their police officers identified that Keim's licensed to drive had been revoked. Keim's girlfriend, Lexi had a valid license. SR8. The primary officer at the scene was South Dakota Highway Patrol Trooper, Louis Plunkett. SR8, 11. Trooper Plunkett found Keim "was lying on the ground and yelling in pain." SR 8. Keim sustained non-life threatening but serious injuries.SR8. Keim was taken to the hospital. Lexi was found unconscious, sitting in the passenger side of the vehicle. Lexi later passed away at the hospital. SR8,11. Officer Kumjian "sustained serious injuries to his face and arms as well as a severe concussion." SR11.

When he was approached by Trooper Plunkett about the accident, Keim stated that a car darted out in front of him. SR8,11. Trooper Plunkett administered a preliminary breath test at the scene. The test results indicated a blood alcohol content of .161%, at about 12:37am. SR8. Trooper Kyle Maciejewski went to the Monument Health hospital to obtain blood draws Trooper Plunkett emailed a signed search warrant to the officer. SR12. The hospital blood technician took two blood draws from Keim at



approximately 2:53-2:54. Two more vials were drawn at 3:08-3:09. SR12. Trooper Maciejewski indicated that he kept control and custody of the blood vials until he securely mailed them to the state lab. SR. 12. The lab report indicated that one set of Keim's test vials showed a blood alcohol level of 0.173%, and the other showed 0.153%. South Dakota Highway Patrol Trooper Plunkett continued his investigation, with the support of Rapid City police officers and other troopers. Troopers interviewed several witnesses and provided affidavits. SR6-20.

As found in the PSR, Keim is a single 28-year-old male who lost the love of his life on the night of the accident. SR227-9, Sen. Tr. 42:9-13. Keim fully cooperated with law enforcement officers and the Court Services Officer who conducted interviews for the PSR. SR233. In fact, Keim readily admitted to this offense and took responsibility for drinking, driving, and killing Lexi. SR226, 227, App. 60, Exh. H, Sen. Tr. 42:9-13. Keim feels "regretful and depressed. At times, wish it was me instead of Her." SR 228. Keim and his girlfriend, the victim, Lexi, had been in a relationship for about a year before her death. He knows that he should not have been drinking and driving that night. SR229; App. 60, Exh. H, Sen. Tr. 42:5-18. Even before this accident, at age 26, he was diagnosed with anxiety and depression and put on mental health medications. Not surprisingly, Keim's mental health has gotten worse since his girlfriend's death. SR 232. Keim also suffers from his physical injuries from the accident since he had a rod placed in his right leg from a broken femur. SR232. Regardless, Keim acknowledged that Lexi's family must feel "Horrible, Depressed, Sad" and apologizes to them for causing her death. SR 232-3. Keim stated that not a day goes by that he does not think of her and the accident. SR233. In recognizing that his drinking and driving caused the loss of someone

he loved, Keim stated that he knows that he has to change his life: "Drinking and Driving was not worth it." SR233.

For several years preceding this offense, Keim had been gainfully employed at various jobs. SR231. Keim has also maintained stable and supportive relationships with his mother and father, and with his two brothers. SR230. Unfortunately, this offense follows four prior DUI's, where afterwards he participated in some type of treatment program. SR233. Keim stated that only the last treatment was successful as he was sober for six months. Then, he relapsed and started drinking with Lexi between a 6 and 12 pack daily, which he said did not make him drunk. SR232. Keim also hung "out with people who were in trouble, drinking, or using when he committed the offense." SR231. However, now he plans to give up alcohol for good "and Never touch it again and Stay away from People who drink so I don't relapse." SR232. After serving his prison time, Keim hopes to "work, save money and pay off debts." SR232. He hopes that he can eventually start his own business in exteriors. SR232. Keim's mother, Kimberly Bailey, provided a character letter for him to Ms. Mitchell. SR226. Keim provided additional support letters to the judge at sentencing hearing.

In considering sentencing, the Court Services Officer, Joanna Mitchell raised a concern in her report that Keim had four prior DUI's, and that particularly he received treatment, Keim was driving drunk this time with a BAC of .173, and he hit a police officer's car and killed his girlfriend. SR234. Ms. Mitchell also noted that she thought Keim did not realize he really had an alcohol problem because he would drink "out of boredom" and would just not drink anymore. SR234. Judge Hendrickson at sentencing, and Ms. Mitchell in her report, noted that the due to the habitual offense enhancement,

the maximum prison sentence would be fifty (50) years, and/or a \$50,000 fine. SR230; App. 65, Exh. H, 44:19-20. Ms. Mitchell remarked that “Official parole eligibility will be calculated by the Board of Pardons and Paroles”. SR230. In discussing sentencing, Judge Hendrickson, expressed concern that this was Keim’s fifth DUI and was a second one involving hitting an officer’s vehicle. App. 62, Exh. H, Sen. Tr., 44: 17-25. Additionally, Judge Hendrickson indicated that Keim’s situation was one of the more aggravating DUI’s that he has seen, that he needed to protect the public because it did not appear that Keim recognized he had a drinking problem, and he drove “like an idiot” at about 60 miles an hour while drunk. App. 63; Exh. H, 45:1-21.

Based on the foregoing, Judge Hendrickson sentenced Keim to forty (40) years incarceration but suspended fifteen (15) years of that sentence. Judge Hendrickson stated, “That means essentially that is a 25-year sentence”. App. 63; Exh. H, 45:22-25. He also ordered ten (10) years revocation of his license to start once he is released from prison, \$10,000 in restitution for the deductible on the police car and \$5,564.54 for Rapid City, RAS, insurance. App. 64, Exh. H, Sen. Tr. 46: 8-11. Neither Ms. Mitchell, nor Judge Hendrickson, mentioned the impact of the recently enacted S.D. Codified Laws § 24-15-4.2, which bars parole for any inmate who is convicted of, and sentenced for, vehicular homicide, for a crime committed on or after July 1, 2023. (App. 11-12). The crime here occurred on September 2, 2023.

## **STATEMENT OF THE ISSUES**

- I. Whether the trial court abused its discretion in imposing an extremely harsh, unusual sentence for vehicular homicide against Keim while failing to also consider the impact of the recently enacted S.D. Codified Laws § 24-15-4.2 which barred parole for Keim’s offense, and failing to adequately consider

appropriate rehabilitative factors, and the Appellant's personal history and character.

- II. Whether Keim's sentence must be vacated because the 40-year sentence, even with a 15-year suspension, without a chance of parole, was cruel and unusual punishment in violation of the U.S. Const. amend. VIII

### STANDARD OF REVIEW

The Appellate Court reviews a trial court's sentence which falls within the crime's statutory maximum, for abuse of discretion. *State v. McCahren* 2016 SD 34, P34-P38, 877 N.W.2d 586, 601-2 (2016)(citing *State v. Rice*, 2016 S.D. 18, P 13, 29, 877 N.W.2d 75, 85 (as differentiated from Eighth Amendment constitutional claims, "arguments that bear on the question whether the sentencing court acted within its discretion will be reviewed under the abuse-of-discretion standard."); *State v. Anderson*, 1996 SD 46, 546 N.W.2d 395, 401-03 (S.D. 1996); *State v. Kaiser*, 526 N.W.2d 722, 726, #18562, 1995 S.D. LEXIS 18 (January 26, 1995). "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." *State v. Lanpher*, 2024 SD 26, P21-P35; 7 N.W.3d 308, 316-317 (citing *State v. Coffee*, 2023 S.D. 51, ¶ 26, 996 N.W.2d 351 (S.D. 2023), 359-60.).

On the other hand, the Appellate Court reviews *de novo* constitutional challenges which assert that the sentence imposed by the trial court constitutes cruel and unusual punishment in violation of the U.S. Const. amend. VIII. *State v. Robe*, 2024 SD 77 at 20; 15 N.W.3d 460, 467; *State v. Rice*, 2016 SD 18, P13, 877 N.W.2d 75, 80; *Coffee*, 2023 S.D. 51, ¶ 16, 996 N.W.2d at 357-58; (citing *State v. Manning*, 2023 SD 7, 985 N.W.2d 743 (S.D. 2023) at 757). This *de novo* review determines whether the defendant's sentence is grossly disproportionate to the gravity of the offense. *State v. Jensen*, 2017

SD 18, P9, 894 N.W.2d 397, 400; *State v. Diaz*, 2016 SD 78, ¶ 51; 887 N.W.2d 751, 766 (S.D. 2016); *State v. Chipps*, 2016 SD 8, 874 N.W.2d 475 (S.D. 2016).

## ARGUMENT

### **I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT MADE A FUNDAMENTAL ERROR OF JUDGMENT BY IMPOSING A 40-YEAR SENTENCE, EVEN WITH THE 15-YEAR SUSPENSION, WHICH SIGNIFICANTLY EXCEEDED THE MAXIMUM SENTENCE OF 15 YEARS FOR VEHICULAR HOMICIDE, WITHOUT CONSIDERING THAT S.D. CODIFIED LAWS § 24-15-4.2 BARRED PAROLE FOR THE OFFENSE.**

Although Circuit Courts have broad discretion in sentencing, the Circuit Courts must exercise that discretion within constitutional and statutory limits. *State v. Lanpher*, 2024 SD 26, P25-P26; 7 N.W.3d 308, 317-318 (citing *Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83). In fact, the sentencing court abuses its discretion when it makes a "fundamental error of judgment, a choice outside the range of permissible choices . . . ." *State v. Henry*, 2024 SD 30, P23-P24, 7 N.W.3d 907, 912-913 (citing *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting *MacKaben v. MacKaben*, 2015 S.D. 86, 871 N.W.2d 617 (S.D. 2015))).

Such fundamental errors of judgment must include imposing an extremely severe sentence which does not fit the crime or offender. Even the Eighth Amendment prohibits "extreme sentences that are 'grossly disproportionate to the crime.'" *State v. Cloud*, 2023 SD 53, P72; 996 N.W.2d 670, 687 (citing *State v. Quevedo*, 2020 S.D. 42, 947 N.W.2d 402) (quoting *State v. Diaz*, 2016 SD 78, ¶ 51; 887 N.W.2d 751, 766 (S.D. 2016))). Accordingly, even though the Appellate Court does not "substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence", (citing *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 358), it will assess whether the Circuit Court

accurately assessed the 'true nature of the offense' before sentencing. *Id.* at P25-P26; 7 N.W.3d 308, 317-318 (citing *State v. Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d 326, 333 (S.D. 2021)(quoting *State v. Klinetobe*, 2021 S.D. 24, 958 N.W.2d 734 (S.D. 2021))).

**A. The Court fundamentally errs if it does not appropriately consider the severity of the sentence and principles of punishment, including determining the availability of parole, in line with those principles.**

Initially, the Appellate Court must determine whether the Circuit Court appropriately considered "the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation" for this particular case." *Lanpher*, 2024 SD 26, P25-P26; 7 N.W.3d 308, 317-318 (citing *Coffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360). The Circuit Court "may determine 'which theory is accorded priority' in a particular case". *Id.* As part of this analysis, "courts must consider sentencing evidence tending to mitigate or aggravate the severity of a defendant's conduct and its impact on others." *Id.* at 317-318 (citing *State v. Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d 326, 333 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 36, 958 N.W.2d 734, (S.D. 2021) 742).

However, whether parole was available for the offense has been a critical factor in the sentencing decision since it provides the opportunity for rehabilitation. *State v. Quevedo*, 947 N.W.2d 402, 410-11 (S.D. 2020) ("When considering the harshness of the penalty, we also consider whether the defendant is eligible for parole. See *Diaz*, 2016 S.D. 78, ¶ 55, 887 N.W.2d at 768"); *Rice*, 2016 SD 18, P28, 877 N.W.2d 75, 85 ("However, the court imposed a sentence of substantially less time. By imposing a term of years, the court preserved the possibility of future parole for Rice, see SDCL 24-15-4, and struck a balance between retribution, rehabilitation, and deterrence."); *Chipps*, 2016



SD 8, ¶ 37, 874 N.W.2d at 488 (“in judging the harshness of the penalty, we also consider the possibility of parole.”); *State v. Mollman*, 2003 SD 150, P30-P32; 674 N.W.2d 22, 31 (“the court came to the conclusion that Defendant should be sentenced to 15 years. We also note that Defendant will be eligible for parole in 3.8 years.”) Just as critically, the courts must consider the proximity of the sentence to the maximum set under the offense as a factor in determining whether the court abused its discretion in imposing its sentence. *State v. McCahren*, 2016 SD 34, 878 N.W.2d 586 (S.D. 2016); *Rice*, 2016 S.D. pp. 19, 23, 877 N.W.2d. at 82-83.

Here, the court must question whether the Circuit Court truly properly assessed the true nature of the offense before imposing an extreme sentence of 40 years, even if considering the 15-year suspension. Vehicular homicide is a Class 3 felony which sets fifteen (15) years as the maximum sentence for the defendant’s incarceration. S.D. Codified Laws § 22-16-41; S.D. Codified Laws § 22-6-1. The habitual offender information filed by the State enhanced the potential sentence for the Class 3 vehicular homicide conviction to a Class 1 felony. (App. 83, Exh. K) The maximum sentence for a Class 1 felony is fifty (50) years imprisonment. S.D. Codified Laws § 22-6-1(4). Judge Hendrickson sentenced Keim to forty (40) years incarceration—just 10 years shy of the maximum sentence for a habitual offender but significantly more than double the maximum sentence for vehicular homicide. Judge Hendrickson suspended fifteen (15) years of the sentence, however, a defendant given a suspended execution of sentence shall remain under the jurisdiction of the court. S.D. Codified Laws § 23A-27-18. Notably, S.D. Codified Laws § 24-15-4.2 lists Vehicular Homicide as one of the offenses which is no longer eligible for parole. (App. 11-12)

This sentence was excessively harsh and unreasonable as seen in a typical comparison of other defendants convicted of vehicular homicide, inside and outside the state.

1. *State v. Schwebach*, 2000 SD 50, P5; 609 N.W.2d 130, 131. Schwebach changed his pleas to guilty on both counts of vehicular homicide. The circuit court sentenced him to serve twelve and a half years in the state penitentiary on each count, to be served consecutively.
2. *State v. Mollman*, 2003 SD 150, P29; 674 N.W.2d 22, 30. Mollman sentenced to 15-year incarceration for vehicular homicide.
3. *State v. Angle*, 2021 SD 21, ¶12, 958 N.W.2d 501, 505 (S.D. 2021). For the vehicular homicide conviction, the circuit court sentenced Angle to fifteen years in the penitentiary with credit for 350 days served and two years suspended upon certain conditions. The court also sentenced Angle to 350 days in county jail for Angle's DUI-first offense conviction with credit for 350 days served.
4. *Engesser v. Dooley*, 457 F.3d 731 (8th Cir. 2006). The South Dakota state court sentenced Engesser to fifteen years' imprisonment on the homicide charge.
5. *State v. Tho Ngoc Nguyen*, 1997 SD 47, 6; 563 N.W.2d 120, 122. Defendant sentenced to fifteen years for vehicular homicide.
6. *Brittany Sneesby*, 27, sentenced to ten (10) years in Lawrence County court for the December 2023 death of 38-year-old Brandon Pressley in Deadwood, South Dakota. Judge suspended five (5) years of sentence. Bryan Savic, *Woman sentenced for 2023 Deadwood vehicular homicide*, KOTA Territory, Rapid City, SD, Dec. 12, 2024 <https://www.kotatv.com/2024/12/13/woman-sentenced-deadwood-vehicle-homicide-2023>.
7. *Grady v. Zanders*, No. 10-768 PJS/JJK, 2011 U.S. Dist. LEXIS 74467 (D. Minn. Apr. 7, 2011). Defendant sentenced to a 96-month sentence in Minnesota State Prison.
8. *State v. Yuran*, 2024-Ohio-5655, P1 (Ohio Ct. App. 2024). Yuran sentenced to 7 to 10.5 years of imprisonment for aggravated vehicular homicide.
9. *Tarbell v. Janssen*, No. 19-CV-1040 (NEB/DTS), 2019 U.S. Dist. LEXIS 208172, at \*1 (D. Minn. Sept. 30, 2019). Tarbell pled guilty. Court sentenced him to 81 months but stayed the sentence for ten (10) years. "As conditions of the stayed sentence, Tarbell was ordered to serve 365 days in the county jail, placed on probation for ten years, and ordered to pay a fine and restitution."



10. *State v. Justen*, 2018-Ohio-101, P14, (Ohio Ct. App. 2018). "Defense counsel submitted detailed information concerning the sentences for other vehicular homicide cases in which sentences from three to seven years were imposed. He acknowledged, however, that some were third-degree felonies, and others did not involve alcohol or drug use. He also informed the court of a case involving two fatalities where the defendant received a 15-year sentence."
11. *State v. Sanford*, 2021-Ohio-1619, ¶9 (Ohio Ct. App. 2021). "The trial court sentenced Mr. Sanford to an aggregate term of eight [\*\*5] years in prison. As some of the offenses were determined to be allied, Mr. Sanford was only sentenced on two of the counts."
12. *Atwood v. Mapes*, 325 F. Supp. 2d 950 (N.D. Iowa 2004). "On June 12, 1998, petitioner Jeremy Michael Atwood ("Atwood") was convicted of two counts of vehicular homicide in the District Court in and for Linn County, Iowa, by a jury of his peers. Atwood was sentenced to two consecutive indeterminate terms not to exceed ten years in prison."
13. *Omar v. Ins.*, 298 F.3d 710 (7th Cir. 2002) (8th Cir./MN/immigration case). Omar pled guilty in state district court to two counts of criminal vehicular homicide under Minn. Stat. § 609.21, subd. 1(4). He was sentenced to 48 months for each offense, to run consecutively. The sentence was stayed on condition he serve two years in a county workhouse and pay restitution.
14. *Wickner v. Symmes*, No. 09-940 (DWF/JJK), 2010 U.S. Dist. LEXIS 86686, at \*2 (D. Minn. July 22, 2010). Defendant sentenced to 116 months for vehicular homicide and 13 months for escape.
15. *Block v. Toyota Motor Corp.*, 5 F. Supp. 3d 1047, 1054 (D. Minn. 2014)(wrongful death claim) "Following the accident, Lee was charged with seven counts of vehicular homicide and injury, and one count of careless driving. Block Compl. ¶ 34. Although Lee testified at trial that the Camry's brakes had stopped working, a jury convicted Lee on all counts. In October 2007, the state court sentenced Lee to eight years in prison."
16. *Tucker v. State*, 2023 WY 106; 537 P.3d 767, 769. Court sentenced the defendant to 12 to 20 years in prison on each count, to run consecutively for two counts of aggravated vehicular homicide.

In fact, even before the South Dakota Legislature enacted the Truth in Sentencing act, Code § 24-15-4.2 to ban parole for certain offenses, the legislature noted in their 2022 House Bill, "HB", 1074 that the average length of penitentiary sentences was 3,501 days, or 9.59 years. HB 1074-Prison/Jail Population Cost Estimate Statement, An Act to

classify vehicular homicide as a crime of violence. At the time of HB1074, an inmate was “eligible for parole after serving 30% of the sentence, or around 2.88 years.” *Id.* Under HB1074, “inmates would serve at least 4.92 years of their sentence prior to release on parole”. *Id.* “Pursuant to the bill, inmates would serve on average at least 700 more days of their sentence before they would become eligible for parole.” *Id.* If the court had imposed the 25-year sentence under the former statutes, the Circuit Court would have expected Keim to serve roughly 50-75% of that Sentence before he was parole eligible. However, in 2023, in following many other states, the legislature sought more certainty in prison time for violent offenses, by enacting § 24-15-4.2, barring any parole for Vehicle Homicide offenders. Paula M. Ditton, Doris James Wilson, BJS Statisticians, *Truth in Sentencing in State Prisons*, Bureau of Justice Statistics’ Special Report, January 1999, NCJ 10032. If the court ignores the parole ineligibility, and fails to apprise the defendant of the lack of parole eligibility, there can be no “truth in sentencing” for the defendant, nor the state. When viewed in this way, the court’s sentence becomes extreme.

The Circuit Court attempts to soften its extreme sentence by stating that the 15-year suspension means that Keim is really only being sentenced to twenty-five (25) years’ incarceration. However, the court committed a significant and fundamental error when it (and the Court Services Officer in the Pre-Sentence Investigative Report), failed to even address the lack of parole eligibility for vehicular homicide pursuant to the recently enacted S.D. Codified Laws § 24-15-4.2, while articulating its rationale for that sentencing decision. Circuit Court Judge Hendrickson stated:

It will be the judgment of the Court you be sentenced to the State Penitentiary for a period of 40 years. I’m going to suspend 15 of those years. That means essentially it’s a 25-year sentence. Then you are going to be put on a long period of parole after that.

App. 63; Exh. H, Sentencing Transcript, "Sen. Trans.", 45:22-46:1.

The Court Services Officer stated only the following in the Presentence

Investigative Report:

The sentencing offense is the Defendant's fourth felony offense as an adult. The maximum allowable sentence on this offense is 50 years' incarceration and/or a \$50,000 fine with the admission to the Part III habitual offender information. Official parole eligibility will be calculated by the Board of Pardons and Paroles.

In sum, by ignoring the parole ineligibility, the court's sentence was "a choice outside the range of permissible choices" or otherwise, an abuse of discretion in sentencing. See *MacKaben*, 2015 S.D. 86, ¶ 9, 871 N.W.2d at 622 (quoting *Gartner v. Temple*, 2014 SD 74, 855 N.W.2d 846, 850 (S.D. 2014)). Such a lapse directly contravenes the premise of § 24-15-4.2 to be the "Truth in Sentencing Act".

**B. The Court fundamentally errs in its sentencing analysis and decision, when it does not appropriately engage in a review of the total circumstances, absent availability of parole, including an examination of the offender's character, personal history and cooperation with the court and law enforcement.**

Lastly, "sentencing involves considering the totality of the circumstances as to the individual defendant before the court." *State v. Kurtz*, 2024 SD 13, P15; 4 N.W.3d 1, 5 (citing *State v. Seidel*, 2020 SD 73, 953 N.W.2d 301 (S.D. 2020)). Thus, in determining the fitting sentence for this defendant, the trial court must "acquire a thorough acquaintance with the character and history of the man before it" which includes examination of the defendant's "general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record." *State v. Anderson*, 1996 SD 46, 32; 546

N.W.2d 395, 403. “The punishment should fit the offender and not merely the crime.” *Id.* (citing *Williams v. New York*, 337 U.S. 241, 247, 69 S. Ct. 1079, 1083, 93 L. Ed. 1337, 1342 (1949)); See also *State v. Larsen-Smith*, 2011 SD 93, P5-P18; 807 N.W.2d 817, 819-821. “This includes the circumstances of the offense ‘together with the character and propensities of the offender.’” *Id.* (citing *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) (citations omitted)); See also *State v. Jensen*, 2017 SD 18, P21; 894 N.W.2d 397, 403; *State v. Charles*, 2017 SD 10, P18; 892 N.W.2d 915, 921 (S.D. 2017).

The Circuit Court’s 40-year sentence for an offense ineligible for parole can be treated as equivalent to a life imprisonment without parole for Keim. See *State v. Charles*, 2017 SD 10, P18; 892 N.W.2d 915, 921 (S.D. 2017); *Boneshirt v. United States*, Nos. CIV 13-3008-RAL, 10-CR-30008-RAL, 5 F. Supp. 3d 1047 (D.S.D. Nov. 19, 2014); *Long v. United States*, No. CIV 13-1012, 2014 U.S. Dist. LEXIS 51147 (D.S.D. Apr. 11, 2014) “A (a), life sentence could be imposed only where rehabilitation was so unlikely that the interests of society demanded that the defendant be kept off the streets for the rest of his life.” *State v. Hinger*, 1999 SD 91; 600 N.W.2d 542, (S.D. 1999) 543. In this case, it appears especially egregious considering the fact that even with the suspension, the defendant would be subject to further control by the Department of Corrections until he reaches the forty (40) year sentence.<sup>1</sup> Thus, the verdict here is clear- - this is too harsh a sentence for this young man.

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<sup>1</sup>The United States Sentencing Commission equates a life sentence to a 470-month sentence for the average offender (39.2 years). *Boneshirt v. United States*, Nos. CIV 13-3008-RAL, 10-CR-30008-RAL, 5 F. Supp. 3d 1047 (D.S.D. Nov. 19, 2014) (citing 2013 Sourcebook of Federal Sentencing Statistics app. A at 7, U.S. Sent. Comm’n, (18th ed. 2012) [hereinafter 2013 Sourcebook] available at <http://www.ussc.gov/research-and-publications/annual->

Even if not considered a life sentence, even a 25-year sentence must be considered extraordinarily severe for this offender. Understandably, retribution is necessary when a death has been caused by a criminal's reckless conduct. However, the family did not seek 25 or 40 years of prison time. They only sought "justice and mercy". App. 24, Exh. H, Sen Tr. 6:9; App. 27, Sen. Tr. 9:17; App. 35, Sen. Tr., 17:6. App. 36, Sen. Tr. 18: 8-13. In fact, Lexi's father even asked that the court exercise some compassion for Keim, since he recognized that Keim is suffering as well, as he loved his daughter. App. 37, Exh. H, Sen. Tr. 19:15-21. He further stated, "It's hard for me to say, but I'm certain that she (Lexi) would forgive Seth. And I hope you are able to show him some compassion, too. Obviously, he needs some time to make some changes. When he gets out, I hope he's able to have his life and think about her as he obtains milestones that she can not. I just hate to see another victim of the tragedy." App. 37, Exh. H, Sen. Tr. 19:15-21. The Court failed to exercise that same compassion.

Critically, Keim not only did not run away, he cooperated with the police from the minute that law enforcement approached him at the site of the accident. Keim also accepted responsibility for his actions, and understood the pain he caused to her family and friends due to her death. Keim further pled guilty to also avoid putting the family and friends through further trauma. For the rest of his life, Keim will agonize over the

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reports-sourcebooks/2013/sourcebook-2013); *Long*, 2014 U.S. Dist. LEXIS 51147, at \*4-5 ("The U.S. Sentencing Commission has stated that for federal sentencing purposes 470 months is "functionally equivalent" to life."). Under the report, the average age of an offender was thirty-six, which is only ten years older than Keim. *Id.* (citing 2013 Sourcebook tbl.6 (displaying the age of offenders by offense category)). The 40-year sentence would equal 480 months.

loss of woman he loved, while also knowing that he caused that loss due to his extremely reckless behavior. This serves to deter him in the future.

The circumstances also establish that Keim did not intend to harm Lexi. Yes, he willfully drove drunk. No doubt he is responsible for this accident, and not Lexi. However, it is important to consider for sentencing purposes, that Lexi chose to stay with him throughout that day and before, drank with him regularly, and let him drive even though she had a valid license, but he did not. Lexi not only lived with him, but knew him for almost a year. They obviously formed a bond, which she did not want to sever. Even on that day, she was not screaming for help. It is said they were even singing in the car right before the accident.

Although Keim stated during the investigation that he did not think he had an alcohol problem, [he had not drank for over a year between the date of incident and sentencing] he also acknowledged that he needed to stop drinking and to stay away from those bad influencers who could cause him to relapse. He admitted to needing a more intense in-patient intervention. App. 60, Exh. H, Sen. Tr. 42:19-20. Those are statements of someone who recognizes he has a drinking problem that must be controlled.

Moreover, the PSR showed that Keim has a substantial support network with his family, who can assist in fostering rehabilitation. Upon discharge he would be released to live with his father. *Id.* Although he has had several prior DUI's, Keim has always complied with treatment programs and probation requirements. Keim kept steady employment in the process. These facts evidence a man with some strong character traits to help him to succeed. All of these factors must mitigate at least some of the aggravating ones. Based on the foregoing, the court did not adequately examine Keim's true potential



for rehabilitation. Imposing such a severe sentence without any chance of parole under these circumstances, mandates a vacation for abuse of discretion.

## **II. THE CIRCUIT COURT’S SEVERE SENTENCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

### **A. The Circuit Court’s sentence, without parole, is grossly disproportionate to Keim’s commission of Vehicular Homicide.**

The U.S. Const. amend. VIII prohibits ‘cruel and unusual punishment’, U.S. Const. amend. VIII. *State v. Robe*, 2024 SD 77, P20-P21, 15 N.W.3d 460, 467; *State v. Diaz*, 2016 SD 78, ¶ 51; 887 N.W.2d 751, 766 (S.D. 2016). In short, extreme sentences that are “grossly disproportionate to the crime”, constitute unconstitutional “cruel and unusual” punishment. *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (Kennedy, J., concurring in part and concurring in the judgment); *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983); *See also State v. Cloud*, 2023 SD 53, P64-P79; 996 N.W.2d 670, 686-688; 2023 S.D. LEXIS 106, \*32-37; 2023 WL 6472302 (citing *Quevedo*, 2020 S.D. 42, ¶ 37, 947 N.W.2d at 410 (quoting *State v. Diaz*, 2016 SD 78, ¶ 51; 887 N.W.2d 751, 766 (S.D. 2016))); *State v. Springer*, 2014 SD 80, ¶11, 856 N.W.2d 460, 464 (S.D. 2014); *State v. Diaz*, 2016 SD 78, ¶ 51; 887 N.W.2d 751, 766 (S.D. 2016); *Chipp*s, 2016 SD 8, ¶¶ 34, 38, 874 N.W.2d at 487, 489; *State v. Springer*, 2014 SD 80, ¶11, 856 N.W.2d 460, 464 (S.D. 2014); *State v. Williams*, 2006 SD 11, P 12, 710 NW2d 427, 431 (S.D. 2006).

The Appellate court will conduct a de novo review to determine whether a defendant’s sentence is grossly disproportionate to the gravity of the offense. *State v. Chipp*s, 2016 SD 8, ¶ 31, 874 N.W.2d 475, (S.D. 2016) 486. To determine gross

disproportionality, the court “first compare(s) the gravity of the offense—i.e., ‘the offense’s relative position on the spectrum of all criminality’—to the harshness of the penalty—i.e., ‘the penalty’s relative position on the spectrum of all permitted punishments.’” *State v. Robe*, 2024 SD 77, P20-P21, 15 N.W.3d 460, 467(citing *Caffee*, 2023 S.D. 51 ¶ 17 (citation omitted); See also *Diaz*, , 2016 SD 78, P52, 887 N.W.2d 751, 767. ( “Comparisons can be made in light of the harm caused or threatened to the victim or society, and the culpability of the offender.”) (citing *Helm*, 463 U.S. at 292, 103 S. Ct. at 3011). Other factors can also be considered like intentional versus negligent behavior and violent behavior versus non-violent behavior. (quoting *Helm*, 463 U.S. at 292-94, 103 S. Ct. at 3011). “I(i)f the sentence is enhanced because of the offender’s recidivism, then the gravity of his past offenses also contributes to the gravity of the present offense.” *Chipps*, 2016 SD 8, P36; 874 N.W.2d 475, 488; (citing *Ewing v. California*, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003) (plurality opinion))

Next, the court evaluates the harshness of the sentence imposed. “The harshness component looks, not to the maximum penalty available, but “to the penalty’s relative position on the spectrum of permitted punishments.” *Diaz*, 2016 SD 78, P54, 887 N.W.2d 751, 767 (citing *Chipps*, 2016 SD 8, ¶ 37, 874 N.W.2d at 488); See also *State v. Quevedo*, 947 N.W.2d 402, 410-411. “In *Chipps*, we recognized that “[f]or sentences of imprisonment, the question is one of degree—e.g., ‘[i]t is clear that a 25-year sentence generally is more severe than a 15-year sentence[.]’” 2016 SD 8, ¶ 37, 874 N.W.2d at 488 (alterations in original) (quoting *Helm*, 463 U.S. at 294, 103 S. Ct. at 3012). The comparison is really “one of line-drawing.” *Helm*, 463 U.S. at 294, 103 S. Ct. at 3012. However, in judging the harshness of the penalty, we also consider the possibility of



parole. *Chippis*, 2016 SD 8, ¶ 37, 874 N.W.2d at 488.” *Diaz*, 2016 SD 78, P55; 887 N.W.2d 751, 768; 2016 S.D. LEXIS 134, \*39

For example, in the *Diaz* case, Diaz was convicted of first-degree murder, a Class A felony, the highest in degree of felonies. 2016 SD 78, P30, 887 N.W.2d 751, 760. “The court sentenced Diaz to 80 years with no time suspended for her conviction of first-degree murder.” *Id.* at P56. A Class A felony can be punished by death. S.D. Codified Laws § 22-6-1. The court also considered that “Diaz would be eligible for parole at 55 years old, after 40 years served.” *Id.* (citing *Chippis*, 2016 SD 8, ¶ 37, 874 N.W.2d at 489). Therefore, the 80-year sentence was not unconstitutionally harsh. Ultimately, the court found the 80-year sentence not grossly disproportionate in light of the significant gravity of the crime of first-degree murder necessitating imprisonment for a significant number of years was tempered by the fact that Diaz had the possibility of early release. *Id.*

The Court’s sentencing decision in Keim’s case was not so tempered. No doubt any homicide is considered a very grave offense which has a very high position “relative position on the spectrum of all criminality”. *Quevedo*, 947 N.W.2d at 411. As a class 3 felony, Vehicular Homicide rates five positions lower than Classes A through C, and 1 and 2, which prescribes much higher penalties. S.D. Codified Laws § 22-6-1. However, the court recognized Keim’s plea to the Information Habitual Offender Enhancement raised the Class 3 felony to a Class 1 felony.

First-degree murder is the only Class A felony. Class B felonies include second-degree murder and first-degree aggravated kidnapping. First-degree rape, first-degree manslaughter, and terrorism are examples of Class C felonies. Class 1 felonies include

crimes like second-degree rape, selling meth to a minor, and human trafficking involving torture. Class 2 felonies include arson, robbery, and burglary in the first degree. Class 3 felonies include shooting at an occupied structure or vehicle, vehicular homicide, and aggravated assault. Class 4 felonies include selling child pornography, stealing drugs, and rioting with force or violence. Class 5 felony examples include threats to public officials, repeat stalking offenses, and promotion of prostitution. Class 6 felonies include falsification of evidence, possession of a firearm with an altered serial number, and malicious harassment (hate crime).<sup>2</sup> Gazing at these offenses shows very obvious differences among the classes in level of violent conduct and the offender's intentions directing the conduct. Thus, the gravity of a vehicular homicide here, based on reckless driving while under the influence of alcohol, should not be perceived to be akin in gravity to human trafficking involving torture, etc.

More importantly, the harshness component favors a finding of a constitutionally gross disproportionality in the court's 40-year, or even the 25-year, imposed sentence when there was no discussion of parole ineligibility. The most serious felonies—Classes A, B, and C—carry possible life sentences, and Class A felonies can also be punished by death. Class 1 is the most serious and Class 6 is the least serious. Class 1 maximum penalties include imprisonment up to 50 years' imprisonment and \$50,000 in fines. A Class 3 felony only prescribes a maximum imprisonment up to 15 years' imprisonment and \$30,000 in fines.

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<sup>2</sup>List obtained at <https://www.criminaldefenselawyer.com/resources/criminal-defense/state-felony-laws/south-dakota-felony-class.htm>

The court's sentence here must be considered very severe under the circumstances. Keim did not intend to harm Lexi or the police officer. Keim suffered from his own actions causing the loss of someone he loved. Even Lexi's father favored less severe sentence. The harshness of the sentence becomes especially evident when compared to others convicted of vehicular homicide, as presented in Section IA, *supra*, which usually fell well below the maximum sentence and chances for parole or rehabilitation were presented, or at least considered. This was not the case here.

**B. Comparison with other offenders also establishes a constitutional violation.**

Once the court finds, or even questions, that gross disproportionality appears after the initial comparison of the gravity of the offense against the harshness of the penalty, the court compares the defendant's sentence to those imposed on other criminals for the same crime within or, if necessary, outside the jurisdiction. *Diaz*, 2016 SD 78, P50-P51; 887 N.W.2d 751, 766 (citing *Chippis*, 2016 SD 8, ¶¶ 34, 38, 874 N.W.2d at 487, 489); See also *Robe*, 2024 SD 77, P20-P21, 15 N.W.3d at 467; *State v. Iannarelli*, 2008 SD 121, ¶¶12-13; 759 N.W.2d 122 (S.D. 2008), 125-126. "The proper role for comparative analysis of sentences is to validate an initial judgment that a sentence is grossly disproportionate to a crime." *Henderson v. Norris*, 258 F.3d 706, 708-711 (8th Cir. 2001).

As thoroughly presented in Section IA, vehicle homicide offenders have generally been sentenced to far less prison time than what was imposed on Keim in this case. Most importantly, those defendants would have at least had a chance for parole. This is not the case here. In sum, the sentence imposed on Keim in this case was rare, very harsh and

unjustified. A ruling otherwise amounts to cruel and unusual punishment in violation of the Eighth Amendment.

To remedy this constitutional infringement, the Appellant requests that the court vacate the lower's court sentence and remand as needed to facilitate the court's order. This court certainly has even the authority to reduce an illegal sentence. S.D. Codified Laws § 23A-31-1 provides the authority for courts to correct an illegal sentence at any time or to reduce a sentence within two years after imposing the sentence. See *State v. Jensen*, 2017 SD 18, P8; 894 N.W.2d 397, 399-400 (citing *State v. Springer*, 2014 SD 80, ¶9, 856 N.W.2d 460, 463 (S.D. 2014)), ( "[A]n unconstitutional sentence is an illegal sentence.").

### CONCLUSION

Based on the foregoing, the Circuit Court abused its discretion under the circumstances, when it imposed a 40-year sentence in this case, even with the 15-year suspension, without recognizing Kiem's ineligibility for parole. Moreover, the circumstances also establish that the sentence was grossly disproportionate and thereby constituting cruel and unusual punishment in violation of the Eighth Amendment of the Constitution. This court should vacate the sentence and remand with appropriate instructions to facilitate the court's order below.

Respectfully submitted this 6th day of June, 2025.

/s/ Matthew L. Skinner  
MR. MATTHEW L. SKINNER, SR.  
Attorney at Law  
508 Columbus Street  
Rapid City, South Dakota  
Attorney for the Appellant

### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Times Roman typeface in 12-point type. The Appellant's Brief contains 8,522 words (contain no more than the greater of 10,000 words or 50,000 characters).
2. I certify that the word processing software used to prepare this brief is Microsoft Word for Microsoft 365.

Dated this 6th Day of June, 2025

/s/ Matthew L. Skinner  
Matthew L. Skinner  
Attorney for Appellant-Defendant

### CERTIFICATE OF SERVICE

I, Matthew L. Skinner, do hereby certify that on the 6th day of June, 2025, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served upon:

Lara Roetzel  
Pennington County State's Attorney

☐ U.S. Mail (First Class)  
☒ Electronic Case Filing

Marty Jackley  
Attorney General's Office

☐ U.S. Mail (First Class)  
☒ Electronic Case Filing

/s/ Matthew L. Skinner  
Matthew L. Skinner  
Attorney for Appellant-Defendant

APPELLANT'S APPENDIX

---

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

NO. 30904

---

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

No. 30904

v.

SETH CHARLES KEIM,

Defendant and Appellant.

---

APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
COUNTY OF PENNINGTON

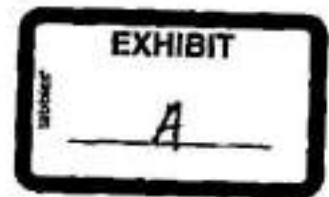
---

HONORABLE JOSHUA K. HENDRICKSON  
CIRCUIT JUDGE



|            |                                                                                                                                                               |    |
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Seventh Judicial Circuit Court  
PO Box 230  
Rapid City SD 57709-0230  
(605) 394-2575 / (605) 394-2570 / 605-394-2688



**CIRCUIT JUDGES**

Robert Gusinsky, Presiding Judge  
Matthew M. Brown  
Jeffrey R. Connolly  
Joshua K. Hendrickson  
Eric Kelderman  
Heidi L. Ljunggren  
Scott A. Rootzel  
Stacy L. Wickre

**MAGISTRATE JUDGES**

Scott M. Bogue  
Todd J. Hyronimus  
Sarah Morrison  
Janki V. Sharma

**PENNINGTON COUNTY**

**CLERK OF COURTS**  
Amber Watkins

December 11, 2024

Mr. Marty Jackley  
Attorney General  
1302 E. Hwy 14, Suite 1  
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Ms. Lara Rootzel  
Pennington County State's Attorney  
130 Kansas City Street  
Rapid City, SD 57701

Mr. Matthew Skinner  
Attorney for Defendant  
508 Columbus St  
Rapid City, SD 57701

Re: State of South Dakota v. Seth Keim  
Appeal of Criminal File No. 23-3780

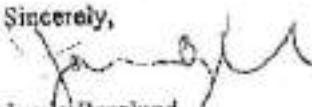
Dear Counsel:

The Notice of Appeal filed by Attorney Matthew Skinner on November 19, 2024, in the above-referenced matter, has been forwarded to the Clerk of the Supreme Court.

Enclosed are copies of the Chronological Index and Alphabetical Index that have been prepared in this matter. There were no physical exhibits.

Please call me if you have any questions.

Sincerely,

  
Jamie Berglund  
Deputy Clerk of Courts

12-12-24

App 1

STATE OF SOUTH DAKOTA - PLAINTIFF

ATTORNEY: SIGLIN, OLIVIA JUNE

KEIM, SETH CHARLES - DEFENDANT

ATTORNEY: SKINNER, MATTHEW L

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STATE OF SOUTH DAKOTA, )  
 )SS  
COUNTY OF PENNINGTON, )

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )

File No. CR123-3780

vs. )

AMENDED JUDGMENT

SETH CHARLES KEIM, )  
DOB: 9/24/96 )  
Defendant. )

Appeninnce at sentencing:  
Prosecutor: Olivia Siglin

Defense attorney: Matthew Skinner, Sr.

Date of Sentence: October 18, 2024

Date of offense: September 3, 2023

Charge: Count 1: Vehicular Homicide, and admitted the Part III Information enhancing the charge to a Class 1 Felony, pursuant to SDCL 22-16-41 and SDCL 22-7-8.1

Plea of Guilty entered on August 26, 2024

Habitual offender admitted on: August 26, 2024

☐ SDCL 22-7-7 ☐ SDCL 22-7-8 ☒ SDCL 22-7-8.1

☒ The Defendant having pled guilty and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:

Forty (40) years in the South Dakota State Penitentiary with Fifteen (15) years suspended and Three Hundred Seventy-Three (373) days credit plus each day served in the Pennington County jail.

☐ Fully Suspended Pen

Check if applicable:

☐ The sentence shall run concurrent with \_\_\_\_.

☐ The sentence shall run consecutive to \_\_\_\_.

☒ That Defendant pay court costs of \$116.50.

☐ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11.

☒ That Defendant pay prosecution costs: UA \$ \_\_, Drug Test \$120.00, Blood \$250.00, SART Bill \$ \_\_; Transcript \$ \_\_.

☐ That Defendant pay prosecution costs from dismissed file \_\_: UA \$ \_\_, Drug Test \$ \_\_, SART Bill \$ \_\_; Blood \$ \_\_, Transcript \$ \_\_.

☐ That Defendant pay the statutory fee of \$ \_\_ DUI, \$ \_\_ DV.

☐ That Defendant pay fines imposed in the amount of \$ \_\_.

☒ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of Ten Thousand Dollars (\$10,000.00) to the City of Rapid City; and, Five Thousand Five Hundred Sixty-Four Dollars and Sixty-Five Cents (\$5,564.65) to Risk Administration Services.



☒ That the Defendant's driver's license is unconditionally revoked for Ten (10) years.

Other Conditions:

☐ \_\_\_\_\_  
☐ \_\_\_\_\_

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

BY THE COURT:

\_\_\_\_\_  
**HON. JOSHUA K. HENDRICKSON** CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

STATE OF SOUTH DAKOTA, )  
 )SS  
COUNTY OF PENNINGTON. )

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )

File No. CRI23-3780

vs. )

JUDGMENT

SETH CHARLES KEIM, )  
DOB: 9/24/96 )  
Defendant. )

Appearance at sentencing:  
Prosecutor: Olivia Siglin

Defense attorney: Matthew Skinner, Sr.

Date of Sentence: October 18, 2024

Date of offense: September 3, 2023

Charge: Count 1: Vehicular Homicide, and admitted the Part III Information enhancing the charge to a Class 1 Felony, pursuant to SDCL 22-16-41 and SDCL 22-7-8.1

Plea of Guilty entered on August 26, 2024

Habitual offender admitted on: August 26, 2024

☐ SDCL 22-7-7 ☐ SDCL 22-7-8 ☒ SDCL 22-7-8.1

☒ The Defendant having pled guilty and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:

Forty (40) years in the South Dakota State Penitentiary with Fifteen (15) years suspended and Three Hundred Seventy-Three (373) days credit plus each day served in the Pennington County jail.

☐ Fully Suspended Pen

Check if applicable:

- ☐ The sentence shall run concurrent with \_\_\_\_.  
☐ The sentence shall run consecutive to \_\_\_\_.

☒ That Defendant pay court costs of \$116.50.

☐ That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11.

☒ That Defendant pay prosecution costs: UA \$\_\_\_\_, Drug Test \$120.00, Blood \$250.00, SART Bill \$\_\_\_\_; Transcript \$\_\_\_\_.

☐ That Defendant pay prosecution costs from dismissed file \_\_\_\_; UA \$\_\_\_\_, Drug Test \$\_\_\_\_, SART Bill \$\_\_\_\_; Blood \$\_\_\_\_, Transcript \$\_\_\_\_.

☒ That Defendant pay the statutory fee of \$50.00 DUI, \$\_\_\_\_ DV.

☐ That Defendant pay fines imposed in the amount of \$\_\_\_\_.

☒ That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of Ten Thousand Dollars (\$10,000.00) to the City of Rapid City, and, Five Thousand Five Hundred Sixty-Four Dollars and Sixty-Five Cents (\$5,564.65) to Risk Administration Services.

☒ That the Defendant's driver's license is unconditionally revoked for Ten (10) years.

Other Conditions:

☐ \_\_\_\_\_  
☐ \_\_\_\_\_

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.

10/21/2024 1:55:21 PM

Attest:  
Ricke, Jolanda  
Clerk/Deputy



BY THE COURT:

  
\_\_\_\_\_  
HON. JOSHUA K. HENDRICKSON CIRCUIT JUDGE

You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

**S.D. Codified Laws § 24-15-4.2**

\*\*\* Current through the 2025 Regular Session of the 100th South Dakota Legislative Assembly, with acts received March 21, 2025.\*\*\*

*LexisNexis® South Dakota Codified Laws Annotated > Title 24 Penal Institutions, Probation and Parole (Chs. 24-1 — 24-16A) > Chapter 24-15 Parole of Penitentiary Inmates (§§ 24-15-1 — 24-15-30)*

**Notice**

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► This section has more than one version with varying effective dates.

**24-15-4.2. Definition. [Effective until July 1, 2025]**

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For the purposes of this section, the term, offense, means any of the following:

- (1) Vehicular homicide, as defined in § 22-16-41;
- (2) Aggravated assault, as defined in § 22-18-1.1;
- (3) Aggravated criminal battery of an unborn child, as defined in § 22-18-1.3;
- (4) Kidnapping in the second degree, as defined in § 22-19-1.1;
- (5) Second degree burglary, as defined in § 22-32-3;
- (6) Riot, as defined in § 22-10-1;
- (7) Manslaughter in the second degree, as defined in § 22-16-20;
- (8) Second degree human trafficking, as defined in § 22-49-3;
- (9) Felony child abuse, as defined in § 26-10-1; and
- (10) Attempt to commit, or a conspiracy to commit, or a solicitation to commit any offense enumerated in section 1 of this Act.

An inmate convicted of and sentenced for an offense as specified in this section, for a crime committed on or after July 1, 2023, is not eligible for parole by the Board of Pardons and Paroles except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate shall serve the full term of imprisonment imposed by the court for the offense. The court shall retain the discretion to suspend a portion of the prison sentence required. If the court suspends a portion of the prison sentence, the Board of Pardons and Paroles shall supervise the suspended time and has the authority to revoke the suspended portion of the sentence for failing to follow the conditions of release.

An inmate may earn any credit for which the inmate is eligible. However, such credits may only be used for increased privileges and may not be used to reduce the sentence imposed by the court, except as otherwise provided in this section.

Discharge credits earned pursuant to §§ 24-15A-50 and 24-15A-50.1 may be used to reduce an inmate's sentence by up to fifteen percent of the sentence imposed by the court that the inmate must serve before becoming eligible for release on parole. Discharge credits may not be used to alter the inmate's sentence expiration date.

## History

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2023 sb146, § 2, effective July 1, 2023.

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End of Document

**CREDIT TIME SERVED**

| Inmate     | Inmate #  | Charge                           | Charge                                                                                   | Court Case # | Arrest Date | Resolved Date | Resolved Reason | Sanction/pre-sentenced days | Days served after sentencing |
|------------|-----------|----------------------------------|------------------------------------------------------------------------------------------|--------------|-------------|---------------|-----------------|-----------------------------|------------------------------|
| KEIM, SETH | 23-008400 | 32-23-1 -<br>DUI 5th             | 32-23-1 - DUI 5th Offense or More<br>(F4) - Remand                                       | 23-3780      | 10/11/23    |               | IN CUSTODY      | <del>324</del>              | 0                            |
| KEIM, SETH | 23-008400 | 22-18-36 -<br>Vehicular          | 22-18-36 - Vehicular Battery (F4) -<br>Remand                                            | 23-3780      | 10/11/23    |               | IN CUSTODY      |                             |                              |
| KEIM, SETH | 23-008400 | 32-12-65 -<br>Driving            | 32-12-65 - Driving Under Revocation<br>(M1) - Remand                                     | 23-3780      | 10/11/23    |               | IN CUSTODY      |                             |                              |
| KEIM, SETH | 23-008400 | 22-16-41 -<br>Vehicular          | 22-16-41 - Vehicular Homicide (F3) -<br>Remand                                           | 23-3780      | 10/11/23    | 10/14/24      | IN CUSTODY      | Sentence = 373 days total   |                              |
| KEIM, SETH | 23-008400 | 32-24-1 -<br>Reckless<br>Driving | 32-24-1 - Reckless Driving (M1) -<br>Remand, 32-24-1 - Reckless Driving<br>(M1) - Remand | 23-3780      | 10/11/23    |               | IN CUSTODY      |                             |                              |
|            |           |                                  |                                                                                          |              |             |               |                 |                             |                              |
|            |           |                                  |                                                                                          |              |             |               |                 |                             |                              |
|            |           |                                  |                                                                                          |              |             |               | CURRENT CREDIT  | <del>324</del>              | 0                            |

App 22





STATE OF SOUTH DAKOTA )  
 )SS:  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SETH KEIM, )  
 )  
Defendant. )

FILE NO.: 51CRI23-3780

ORDER FOR FURLOUGH

Defendant having moved the Court for an Order authorizing a furlough for Defendant in the above-captioned criminal proceedings and good cause appearing, now therefore it is hereby

**ORDERED**, that Defendant, Seth Keim, shall be released from the Pennington County Jail, located at 307 St. Joseph Street, Rapid City, SD, on a furlough for purposes of attending a medical procedure at Monument Health, Rapid City, SD, related to a prior injury and surgery and based on medical professionals' recommendation, effective **Monday, July 22nd, 2024, at 07:00 a.m. until** adequate recommended recovery time has been completed based off medical professional recommendations; and it is further

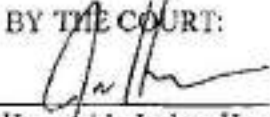
**ORDERED**, that Defendant shall abide by all laws and conditions as set forth by the Court during Defendant's furlough.

7/19/2024 3:02:06 PM

Attest  
Tavros, Lynnsey  
Clerk/Deputy



BY THE COURT:

  
Honorable Joshua Hendrickson  
Circuit Court Judge  
SEVENTH Judicial Circuit

STATE OF SOUTH DAKOTA )  
 )SS:  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

FILE NO.: 51CRI23-3780

Plaintiff,

vs.

ORDER FOR FURLOUGH

SETH KEIM,

Defendant.

Defendant having moved the Court for an Order authorizing a furlough for Defendant in the above-captioned criminal proceedings and good cause appearing, now therefore it is hereby

**ORDERED**, that Defendant, Seth Keim, shall be released from the Pennington County Jail, located at 307 St. Joseph Street, Rapid City, SD, on a furlough for purposes of attending a medical procedure at Monument Health, Rapid City, SD, related to a prior surgery and based on medical professional's recommendation, effective **Tuesday, July 23, 2024, at 4:30 a.m. until adequate recommended recovery time has been completed based off medical professional recommendations**; and it is further

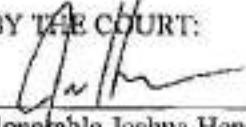
**ORDERED**, that the Pennington County Sheriff's Office, transport, Seth Keim, from Pennington County Jail to Monument Health, for the purpose of obtaining surgery.

7/23/2024 9:36:23 AM

Attest:  
Tavares, Lynsey  
Clerk/Deputy



BY THE COURT:

  
Honorable Joshua Hendrickson  
Circuit Court Judge  
SEVENTH Judicial Circuit

STATE OF SOUTH DAKOTA )  
 )SS:  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

FILE NO.: 51CRI23-3780

Plaintiff,

vs.

AMENDED  
ORDER FOR FURLOUGH

SETH KEIM,

Defendant.

Defendant having moved the Court for an Order authorizing a furlough for Defendant in the above-captioned criminal proceedings and good cause appearing, now therefore it is hereby

**ORDERED**, that Defendant, Seth Keim, shall be released from the Pennington County Jail, located at 307 St. Joseph Street, Rapid City, SD, on a furlough for purposes of attending a medical procedure at Monument Health, Rapid City, SD, related to a prior surgery and based on medical professional's recommendation, effective **upon commencement of medical procedure, until adequate recommended recovery time has been completed based off medical professional recommendations**; and it is further

**ORDERED**, that the Pennington County Sheriff's Office, transport, Seth Keim, from Pennington County Jail to Monument Health, for the purpose of obtaining surgery.

7/23/2024 1:39:28 PM

Attest:  
Tavares, Lynnsey  
Clerk/Deputy



BY THE COURT:

Honorable Joshua Hendrickson  
Circuit Court Judge  
SEVENTH Judicial Circuit

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )

File No. 23-3780

Plaintiff, )

ORDER FOR 24/7 PROGRAM

vs. )

Seth Kerim )

Defendant. )

- ☒ Bond State's Attorney  
☐ Bond Attorney General  
☐ Sentence / Probation  
☐ Work Permit Only  
☐ Child Placement

Offense: Vehicle Homicide

**THIS COURT HEREBY ORDERS THAT:**

☒ You shall participate in the 24/7 Sobriety Program REPORTING IMMEDIATELY AFTER COURT/UPON RELEASE to 111 New York St., Suite 300 Rapid City, South Dakota, (Phone: 716-7366; Fax: 716-9613). You shall sign the participation agreement and follow all of the conditions contained therein. 24/7 Sobriety Program. (PBT testing hours are 6:00 – 8:00 A.M. and 6:00 – 8:00 P.M. UA testing hours are 6:00 – 7:30 A.M. and 6:00 – 7:30 P.M.)

☒ You shall not use alcohol, illicit drugs, or marijuana in any form or be present where such substances are being used.

☒ You shall remain on your good behavior and obey all laws of the City, State and Nation.

☒ You shall remain in contact with your attorney as directed by said attorney.

☒ You shall submit to a search of your vehicle, residence and/or person for alcohol, controlled drugs or substances or marijuana whenever requested by a law enforcement officer.

**YOU SHALL SUBMIT TO TESTING IN THE FORM OF:**

☐ Once daily PBT tests and pay for the same at the rate of \$1 per test AND a State Fee of \$1 per day for the first 30 days.

☐ AM ONLY

☐ PM ONLY

☒ Twice daily PBT tests and pay for the same at the rate of \$1 per test AND a State Fee of \$1 per day for the first 30 days.

Urinalysis testing and pay for the same at the rate of \$10/test and actual costs incurred for the analysis of any positive test.

☐ Random 3 UAs PER WEEK

UA WAIVER(S): ☐ NONE ☐ Original waivers apply \_\_\_\_\_ Controlled Substance \_\_\_\_\_ THC

(SCRAM) Electronic Alcohol Monitor testing and pay for the same at the rate of \$6/day. You shall contact the 24/7 Program to schedule installation appointment. Upon installation of the bracelet you shall pay \$122 to the 24/7 Program. (\$42 for the first week of wearing the bracelet/\$40 for the activation fee/\$40 deactivation fee up front)

Remote Breath testing and pay for the same at the rate of \$5.00 per day. You shall contact the 24/7 Program to schedule installation appointment. Upon activation you shall pay \$115 to the 24/7 Program. (\$35 for the first week of wearing the bracelet/\$40 for the activation fee/\$40 deactivation fee up front)

☐ Drug Patch testing and pay for the same at the rate of \$50/patch. You shall contact the 24/7 Program to schedule installation.

☐ Other Info \_\_\_\_\_

This Order shall remain in effect until otherwise ordered. Should you, at anytime, fail to report for your court ordered testing requirements or violate any condition herein, you shall be transported to the Pennington County Jail and held without bond until the matter is brought before the Court; OR, if unable to locate, a Warrant shall be issued for your arrest.

DATED: October 11, 2023

BY THE COURT:

ATTEST:

Amber Watkins, Clerk of Courts

By: Adonna Baker  
(Deputy)

(SEAL)

white copy: clerk of courts



The Honorable

pink copy: defendant

FILED  
Pennington County, SD  
IN CIRCUIT COURT

OCT 11 2023

Revised 06/14/2023

Amber Watkins, Clerk of Courts

By: KB Deputy

STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 ) SS  
 COUNTY OF PENNINGTON ) SEVENTH JUDICIAL CIRCUIT

\*\*\*\*\*  
 STATE OF SOUTH DAKOTA, ) FILE NO. 51CRI23-3780  
 )  
 Plaintiff, )  
 ) SENTENCING  
 vs. )  
 )  
 SETH CHARLES KEIM, )  
 )  
 Defendant. )  
 \*\*\*\*\*

DATE: October 18, 2024  
 PLACE: Pennington County Courthouse  
 Rapid City, South Dakota  
 BEFORE: THE HONORABLE JOSHUA HENDRICKSON  
 Circuit Court Judge  
 Rapid City, South Dakota

#### A P P E A R A N C E S

FOR THE PLAINTIFF: MS. OLIVIA SIGLIN  
 Pennington County  
 Deputy State's Attorney  
 Rapid City, South Dakota

FOR THE DEFENDANT: MR. MATTHEW L. SKINNER, SR.  
 Attorney at Law  
 508 Columbus Street  
 Rapid City, South Dakota

Appearing via Zoom: Mallory Bednarz and Danica Bemis

1       **THE COURT:** All right. We will go on the record now in  
2       State vs. Seth Keim. Court File 23-3780. This is the  
3       time set for a sentencing.

4               Mr. Keim, you had previously entered a plea to a  
5       vehicular homicide, Class 3 felony, and admitted a Part  
6       III Information, enhancing the penalty to a Class 1  
7       felony back on August 26th of this year. Today is the  
8       date set for sentencing. Is it your intention to let  
9       your plea and admission stand and proceed to sentencing  
10      today?

11      **THE DEFENDANT:** Yes, Your Honor.

12      **THE COURT:** Thank you.

13              Have both sides had the opportunity to review the  
14      Presentence Investigation?

15      **MS. SIGLIN:** The State has, with no additions or  
16      corrections.

17      **THE COURT:** And I will note, Defense, that I had received  
18      via e-mail your letters in support of the Defendant and I  
19      have reviewed each of those. Additionally, there was a  
20      victim impact packet sent by the State that I have also  
21      reviewed. I will include both of those as part of the  
22      Court presentence.

23              Defense, any additions or corrections other than  
24      that?

25      **MR. SKINNER:** No, Your Honor.

1 THE COURT: All right. I will hear from the State first.

2 MS. SIGLIN: Prior to the State making its argument,  
3 there are a couple people here who would like to provide  
4 victim impact statements and we'd ask that they be  
5 allowed to go first.

6 THE COURT: That's fine.

7 MS. SIGLIN: First we'd call Kristi Bemis.

8 THE COURT: I'll just have you sit at the table and make  
9 sure you speak into the mic, if you would. And if you  
10 are reading off something, just make sure you do it  
11 slowly enough so our court reporter can take it down, all  
12 right? And could you state your name for the record  
13 again?

14 KRISTI BEMIS: My name is Kristi Bemis.

15 THE COURT: Okay.

16 KRISTI BEMIS: The first letter is from my daughter  
17 Danica.

18 Dear Judge: My name is Danica. I am Lexi's  
19 stepsister. From the first day Lexi came into my life to  
20 the day she left it, she was my best friend. We  
21 connected immediately and have bonded closely ever since.

22 Lexi and I did everything together. We were  
23 inseparable. We had almost all the same friends,  
24 hobbies, interests. We shared a bedroom. We got into  
25 trouble together. Even were grounded from each other at

1 one point. We were the typical sister duo. She brought  
2 new light to my eyes that I had never seen before and  
3 very quickly became my favorite person.

4 Lexi was such a colorful, fun, and bubbly person.  
5 She was bold and defiant but had a heart of gold. She  
6 saw the good in everyone and always gave someone the  
7 benefit of the doubt. A beautiful chaos. She knew how  
8 to make anyone laugh. She knew how to raise your spirits  
9 and she knew when you just needed a hug. She was that  
10 one person that you could never have a bad time around.  
11 Her goofiness and free-spirited ways would make you feel  
12 loved at all times.

13 Lexi was definitely a memorable person. Lexi's  
14 passing was not only the most traumatic thing that I've  
15 ever experienced but also the most painful. The state of  
16 severe depression lasted for months and only just  
17 recently gotten tolerable since starting therapy. I was  
18 diagnosed with PTSD for the nightmares, constant,  
19 horrible, and graphic thoughts of how she died, the phone  
20 call confirming my worst nightmare and other common signs  
21 of trauma.

22 Lexi passed away six days before my wedding. A  
23 wedding that she was supposed to be a part of. Trying to  
24 experience what is supposed to be the most amazing day of  
25 one's life was very, very hard to enjoy without her



1       there.

2               I have a three-year-old son Owen who she will never  
3       get to meet. When he was born, Lexi was so happy and  
4       excited to be an auntie. Always checking in on us and  
5       wanting pictures of him. That part breaks me the most.  
6       Owen now knows his auntie as -- Owen now knows his auntie  
7       like he has an angel in the sky. They would have had the  
8       best relationship and it is so painful to think that they  
9       will never have that.

10              I was the one who had to tell our family that Lexi  
11       had passed. Finding out from Facebook and making call  
12       after call, just trying to figure out if my sister was  
13       alive or dead. Our family is and never will be the same  
14       without Lexi. She was the light and love that brought  
15       everyone together.

16              Without her loud laugh, the house just feels off  
17       now. Without her presence, we are not the same. A void  
18       that will never be filled will always be lingering and  
19       following us.

20              Lexi shouldn't have been the one to die and she  
21       didn't deserve this. Lexi was an amazing woman with a  
22       good head on her shoulders and had a bright future ahead  
23       of her. Lexi will never get to experience getting  
24       married, never get to have children of her own, will  
25       never get her own house or have a career. All of her

1 biggest life accomplishments were stripped from her by  
2 the selfish acts of one human being. It is not fair that  
3 she was the one that had to go.

4 I am asking for your compassion, Judge. I am asking  
5 that you look at a picture of Lexi and think about all  
6 the things this woman could have had. I am asking that  
7 you consider all the prior crimes Mr. Keim has committed  
8 and think about who he will hurt or possibly kill next.  
9 I am asking you to give us justice and mercy for this  
10 unforgivable act. Although nothing will bring Lexi back  
11 to us, having closure might bring a little comfort back  
12 into our lives. Thank you. Danica Oster.

13 This one was from another friend of hers; Chanci.

14 Your Honor, today I write to you with a heart  
15 shattered into a million pieces trying to find the words  
16 to convey the immense pain and loss that has consumed my  
17 life. My best friend Lexi Caye Hagen was ripped away  
18 from us in a senseless drinking and driving accident.  
19 She was only 27 years old with so much life left to live.  
20 So many dreams yet to fulfill.

21 Lexi was a light in all of our lives. Someone who  
22 had the rare gift of making everyone feel completely at  
23 ease and free to be themselves. Her infectious laughter  
24 and genuine kindness always brought out the best in  
25 people. Lexi wasn't just a friend. She was a beacon of

1 joy, authenticity, reminding us to live fully and love  
2 deeply.

3 She made the smallest moments together feel so alive  
4 and free. She questioned all the secrets in life such as  
5 aliens, life after death, the ocean, just to list a few.  
6 She loved astrology and having conversations about why we  
7 are here, where we came from, our purpose. Never a dull  
8 conversation with her. Conversations we will never get  
9 to have with her physically again.

10 Lexi turned everyday life into an adventure. She  
11 always knew how to make you laugh. Knew the most random  
12 facts, like how many taste buds a person has or how many  
13 times a person blinks in a day. Yes, these were the real  
14 things she told me about. Just so goofy and always  
15 brought out the kid in you.

16 Music was her everything. Any time you were with  
17 her, music was playing. It was her escape in life. Her  
18 absence leaves a void that can never be filled. But her  
19 spirit will continue to inspire us to cherish every  
20 moment and truly live and to be true to ourselves, just  
21 as she always encouraged us to be.

22 Lexi is more than just a friend. She is my rock, my  
23 confidant, and my family who understood me better than  
24 anyone else.

25 The night of the accident my entire world was

1 shattered. The reckless and selfish decision to drink  
2 and drive didn't just end a life. It destroyed the lives  
3 of everyone who loved Lexi. The laughter, the late night  
4 talks, all about the unknowns in life, the excitement of  
5 looking forward to all of our firsts together, all stolen  
6 in an instant by a reckless, thoughtless, and selfish  
7 decision.

8 For 12 years we spoke every single day, sharing our  
9 deepest secrets, our dreams, and our everyday moments.  
10 She was supposed to be my maid of honor at my wedding  
11 next year. Now the thought of walking down the aisle  
12 without her by my side is a nightmare I can't wake up  
13 from. Lexi was supposed to be there for all my big  
14 milestones in life and I was there for hers. Our  
15 weddings, each other's first baby, traveling the world.  
16 Every day I'm reminded of what was taken from us. The  
17 future we had envisioned. The memories where -- we were  
18 supposed to create, all stolen in an instant.

19 The impact of her loss extends far beyond me. Her  
20 family is drowning in grief. Her friends are lost  
21 without her. And I am left trying to navigate a world  
22 that feels infinitely darker and emptier. The pain is  
23 unbearable and the hole in our hearts will never fully  
24 heal. The ripple effect of her loss is profound,  
25 touching every aspect of our lives. I beg you to

1 understand the depth of our sorrow, the magnitude of our  
2 loss.

3 The Defendant hasn't just had one DUI but at least  
4 four. That's four times that we know of that he could  
5 have made the right choice to call a friend or an Uber or  
6 simply walk. It is a series of missed chances to do the  
7 responsible thing and prevent harm of any sort. That's  
8 also four different times he could have taken the life of  
9 an innocent person or multiple lives and put people and  
10 families through exactly what we're going through today.  
11 This is a person who thinks they are above the law and  
12 needs to be shown the consequences of his actions. It is  
13 a sobering reflection on the importance of making safe  
14 decisions and the impact those choices can have on  
15 countless lives.

16 This wasn't just a life taken too soon. It was a  
17 future destroyed. A light extinguished. We need justice  
18 for Lexi, not just for the sake of closure but to honor  
19 the beautiful soul she was. To prevent this tragedy from  
20 happening to anyone else and to show the consequences of  
21 choosing to drink and drive.

22 And I believe that -- that letter was from Kyla,  
23 right? There's not names on here so I'm not sure which  
24 friend wrote which one.

25 This is a poem written by Chanci's husband who is

1       also a dear friend of Lexi's.

2               Your Honor, a spoken word about my dear friend Lexi.  
3       You know we loved that smile. A free spirit. We'll see  
4       you in a blink. Everyone just move like Lexi. Take a  
5       step and just breathe. Peace, love, and happiness for  
6       family. You had that positive -- you had that good  
7       energy. Positive vibrations. History in the making.  
8       Laugh and presence was contagious. Sorry I never told  
9       you you're amazing.

10              Now that you're gone, I reflect on myself to make me  
11       a better me. I needed your help. Thank you. Look down  
12       on us all. We fell but you picked us back up. You did  
13       you. Lulu, you cool dude, I'm happy to say I knew you.

14              As I play back our moments, I can only smile to days  
15       and days of laughter. Poking fun at each other.  
16       Cooking, games, playing with my son, being the life in  
17       the room, and most importantly never settling less than  
18       who you are as a person. Gotta admit your style was  
19       unmatched. Vibrant colors like your smile. Retro feel.  
20       You had soul. My adopted sister that I'm ecstatic to  
21       know to infinity and beyond. Can't wait until we meet  
22       again.

23              This is another letter written by Chanci, another  
24       one of her really good friends.

25              Your Honor, my name is Chanci. I'm 28 years old and

1 I'm a very close friend of Lexi Hagen. We enjoyed 12  
2 years of friendship. Lexi was not just a typical friend  
3 to me. She was family. We didn't share the same mom or  
4 dad, but she was and forever will be my -- will be a  
5 sister to me.

6 We practically grew up together as we met our  
7 freshman year of high school and stayed in close contact  
8 ever since. Lexi was a beautiful, young, free-spirited  
9 woman. There was never a dull moment. Being in her  
10 presence, she brought love, laughter, and happiness to  
11 this world. She never failed to lift my spirits, even on  
12 the worst of my days. Lexi could walk into a room and  
13 immediately change the aura with her high vibrant energy.  
14 She made friends everywhere she went.

15 I have a two-year-old son who was very close to  
16 Lexi. He called her Lulu. They spent many days together  
17 as she would babysit for me quite often. Lexi was one of  
18 my son's favorite people. The joy in his eyes and how  
19 much they would brighten every time she walked in the  
20 room explained just how much he adored her. It breaks my  
21 heart knowing he will never get the chance to build their  
22 bond even further.

23 Although he is too young to understand that she's  
24 never coming back, he asks quite often. Every time he  
25 sees pictures or videos of her, his eyes brighten. The



1 same way they did when she was here with us. He often  
2 asks for her to come over and it's heartbreaking when I  
3 have to tell him she won't be -- she won't be able to  
4 come over today. These moments are often followed by  
5 silent tears, knowing she will never be able to come  
6 over, while trying to shield my son from the pain.

7 There are no words to describe the pain I have felt  
8 from Lexi being taken from this world. She was and  
9 forever will be a part of my heart that was taken from  
10 me. We had many plans of growing old together. Plans to  
11 be part of each other's weddings, travel the world. When  
12 I looked at my future, it always included her in it.  
13 It's devastating knowing none of that will ever happen.

14 She will never get to see my son go off to his first  
15 day of school. She will never get to see me get married  
16 and I will never get to experience that with her. She  
17 may not have been blood to me, but she is my soul sister,  
18 and trying to process life without her in it has been  
19 crippling.

20 Every day she crosses my mind as I remember the  
21 moments we shared doing the simplest of things such as  
22 cooking together, just sitting on my couch watching our  
23 shows. I often take drives and think about all the  
24 cruises we've taken together. I picture her in my  
25 passenger seat while we ride down the road with the



1 windows down, jamming our favorite songs. The tears  
2 follow because I know I will never get to experience that  
3 again.

4 I often find myself in exciting moments thinking I  
5 *need to call Lexi and tell her this*, and then it hits me  
6 all over again there will never be another phone call.  
7 Every big event of my life, I am reminded my best friend  
8 will never get to experience this with me. I will never  
9 get to hug her again. I will never get to hear her  
10 contagious laugh. I will never be in her presence again.  
11 And there are no words to describe this feeling.

12 Lexi being taken from me, from the world, has cost  
13 me emotionally and mentally. It has affected my home  
14 life, my emotional well-being, and my mental state. I  
15 have hard days where it's difficult to do the simplest of  
16 tasks because my heart is so broken.

17 For the first few months after the accident I was  
18 scared to drive because all I could think about is what  
19 happened to my best friend. I've had many nightmares  
20 re-playing the moment I found out she was taken from us.  
21 When I wake up, the pain feels as though it happened  
22 yesterday.

23 Anger has built up a lot inside me. I often think  
24 about the night of the accident. Lexi was a free spirit.  
25 However, she also had a soft side that came with a lot of

1 fears. She talked all the time how much Seth's driving  
2 scared her. She hated getting in the car with him. I  
3 imagine her being in the passenger seat scared with no  
4 way out. The speed he was going would have anyone in  
5 that passenger seat scared.

6 My best friend deserved better. It was not her  
7 choice to drive at that rate of speed and I have no doubt  
8 in my mind she was telling him to slow down.

9 I get angry Seth has not shown remorse. Three to  
10 four weeks after the accident he was released from the  
11 hospital and out on the streets living his best life. He  
12 went to car shows, hung out with friends, got to meet his  
13 nephew, got a new tattoo. I can't imagine losing my  
14 significant other and moving on with life as if nothing  
15 happened.

16 Lexi will forever be in my heart and on my mind. I  
17 was blessed to have known this beautiful woman for 12  
18 years. She was a bright ray of sunshine and the world  
19 will forever remain a darker place without her in it.  
20 Chanci.

21 Dear Honorable Judge Hendrickson: Lexi was a  
22 young -- was young and free beyond what you can imagine.  
23 She lived day by day with the sole purpose of smiling and  
24 laughter. This was her greatest gift to everyone around  
25 her. A bubbly girl with the purest green eyes you will

1       ever see. They had a special clarity and sparkle when  
2       she smiled. Her laugh that follows is just as pure.  
3       Lexi has a golden aura. Truly one of those people that  
4       light up a room when they walk in.

5             Her kindness is unmatched. Every person she met was  
6       drawn to her because she gave people the feeling of  
7       safety and understanding. But most of all she is defined  
8       by love. She lives by love. This is how she has lived  
9       since the first day I met her 15 years ago. It's always  
10      been love.

11            Lexi's passing has taken a toll on many. She was a  
12      sister, an aunt, a daughter, a best friend and much more.  
13      And there is nothing more that Lexi wanted than to be  
14      around the people she loved the most. She loved to be  
15      together no matter who it was. Her life revolved around  
16      others. She is genuinely that selfless. Because of  
17      this, Lexi created so many strong bonds that will last  
18      infinitely.

19            In the end I believe that is all she ever wanted.  
20      She never expected anything from others. She would  
21      always give. Give her heart and soul to bring other's  
22      happiness, especially kids. Lexi had a way with  
23      children. She always took time to stop and play and I  
24      think that is why all the kids loved her.

25            Lexi had a special bond with my daughter Aaliyah.

1     Aaliyah.

2             I don't know how to say that.

3             I remember when my daughter was a toddler, Lexi got  
4     her the loudest and most obnoxious toy. I couldn't help  
5     but laugh because as Lexi had a way of doing, it brought  
6     everyone so much joy. Not only was my daughter running  
7     around laughing, but I'll never forget how Lexi was, too.  
8     My daughter is eight now and she still has it. That's  
9     how much it's meant to my daughter.

10            Lexi had a maternal energy that comes so naturally.  
11     It's heart-shattering knowing Lexi would have been an  
12     amazing mother and that she will never get to experience  
13     motherhood for herself.

14            Lexi's passing was both heartwarming and  
15     devastating. She made an impact in so many lives and  
16     whole families around our entire city. The hurt in this  
17     town was heavy, but the love was immense. Seeing how  
18     many people she made happy gave everyone a sense of  
19     serenity. Lexi did that. She did exactly what she set  
20     out to do. To help others be happy and be okay with a  
21     hug, a laugh, a smile, a goofy dance.

22            During the funeral there wasn't a dry eye in  
23     attendance, but the beautiful part was that laughter  
24     echoed throughout. There's no mentioning Lexi without  
25     it.

1           I have tried my best to put into words the powerful  
2           existence of who Lexi was and how she has impacted this  
3           world. If you never got to meet her in person, I'm not  
4           sure you can truly understand.

5           I am asking for that understanding and the  
6           compassion for our dear Lexi to get justice. She didn't  
7           deserve this. She had so much life to live and love yet  
8           to give. I'm asking for empathy for the life that was  
9           lost and the loved ones left with a hole that was once  
10          filled with Lexi's spirit. Thank you.

11          And that was by Martika.

12          This is a letter from my daughter Mallory who is  
13          Lexi's sister.

14          Honorable Judge Hendrickson: I write you today  
15          overwhelmed with grief, attempting to express the impact  
16          of losing my sister Lexi. A series of reckless decisions  
17          made on September 3rd last year have led us here today.  
18          Her sudden death has devastated our family, leaving each  
19          of us with a deep void that can never be filled.

20          Every day without her is a painful reminder of all  
21          the things that we will never share again. Her voice.  
22          Her laughter. Her spirit. Birthdays, holidays, and the  
23          simple moments of joy will never be the same for our  
24          family.

25          The accident didn't just take her life, it took a

1 part of all of us. Our family is forever changed. Left  
2 to navigate a world without her vibrant presence. Lexi  
3 deserved so much more than to have her life cut short in  
4 such a devastating way. She brought love, light, and  
5 laughter to everyone who knew her. Her memory will live  
6 on in our hearts, but the pain of her absence is  
7 something we will carry forever.

8 I have struggled with the idea of justice throughout  
9 this process. While I do not know exactly what justice  
10 looks like in this scenario, I know that you have my full  
11 support to impose the sentence that you feel is right. I  
12 can only hope that once sentencing is complete, my family  
13 can begin to heal.

14 Thank you for allowing me the chance to share how  
15 deeply this tragedy has impacted my life and my family.  
16 We live with this loss every single day and I can only  
17 hope this experience serves as a reminder of the  
18 responsibility that comes with every decision made behind  
19 the wheel. Sincerely, Mallory.

20 My letter's actually to Lexi. It says Lexi: The  
21 day you died you took a big piece of my heart. I miss  
22 how funny and goofy you were. Your excitement over just  
23 the smallest things. Your adventurous side. Your love  
24 for the outdoors. Your love for learning about random  
25 facts of life. Your big heart. Caring so much for

1 others before yourself. Your laugh. And I miss our  
2 talks. I know you are watching over us and our family is  
3 not the same without you. I love you and I miss you so  
4 much and there is not a day that goes by without me  
5 thinking of you. Love, Mom.

6 MS. SIGLIN: The State calls Brent Bednarz.

7 THE COURT: If you could just state your name for the  
8 record first, sir, before you give your statement.

9 BRENT BEDNARZ: I'm Brent Bednarz, Lexi's dad.

10 I think obviously we're all in pain. Decisions were  
11 made that were bad and it's a tragic event I'm sure for  
12 both families. You can tell by the letters that Lexi had  
13 a big heart. She's irreplaceable and we will miss her  
14 always.

15 It's hard for me to say, but I'm certain that she  
16 would forgive Seth. And I hope that you are able to show  
17 him some compassion, too. Obviously he needs some time  
18 to make some changes. When he gets out, I hope he's able  
19 to have his life and think about her as he obtains  
20 milestones that she cannot. I just hate to see another  
21 victim of the tragedy.

22 That's all I really have to say.

23 THE COURT: Thank you, sir.

24 MS. SIGLIN: I think that's all of our victim impact  
25 statements today.



1           The State in this matter is requesting costs of  
2           \$116.50 in court costs. \$120 for State Health Lab  
3           blood-alcohol testing. \$250 for State Health Lab drug  
4           testing costs. A \$50 DUI county fee. \$10,000 in  
5           restitution to the City of Rapid City for the deductible  
6           paid to replace the Rapid City Police Department's 2021  
7           Dodge Durango. And \$5,564.65 in restitution to Risk  
8           Administration Services to reimburse for Officer  
9           Kumjian's medical expenses. The State is also asking for  
10          the mandatory 10-year driver's license revocation as a  
11          condition of this sentence.

12          Otherwise, the State's recommendation today is that  
13          the Court consider imposing a 40-year sentence. And  
14          that's never something that we come from the State asking  
15          for lightly in a courtroom, but in this case where  
16          Mr. Keim took the life of Lexi Hagen and caused serious  
17          bodily injury to Kyle Kumjian, and when he took those  
18          actions after years and years of reckless and drunk  
19          driving behavior and three prior opportunities on felony  
20          probation, a lengthy sentence is absolutely appropriate  
21          to both punish the Defendant as well as to protect the  
22          public from further tragedies like this one.

23          On September 3rd of 2023, the date that this  
24          incident occurred, Seth Keim's driver's license was  
25          revoked. It was revoked at that time due to prior

1 convictions for DUI fourth offense and driving under  
2 revocation.

3 For pretty much the entire period from 2013 to 2023,  
4 Seth Keim never had a valid driver's license due to four  
5 prior DUI convictions, multiple driving under revocation  
6 convictions, and other offenses.

7 Having a revoked driver's license and a pending  
8 driving under revocation charge did not stop him from  
9 driving that day. As of September 3rd, 2023 Mr. Keim had  
10 four prior DUI convictions. As he acknowledged in his  
11 PSI, he has been to at least four lifetime treatment  
12 programs, with the most recent program being completed  
13 just months prior to this tragedy. And despite all this  
14 prior treatment, it didn't stop him from drinking and  
15 using THC.

16 And on September 3rd, 2023 Seth Keim made the choice  
17 to get behind the wheel. He was in Rapid City where  
18 Lyfts are readily available. He chose not to utilize  
19 that. With toxicology results showing that his  
20 blood-alcohol content at the time of the crash was about  
21 twice the legal limit, Mr. Keim didn't seem to think  
22 twice about drunk driving.

23 His girlfriend Lexi Hagen was the passenger in the  
24 black Volkswagen Jetta that he was driving. Rapid City  
25 Police Officer Kyle Kumjian was also driving somewhere

1       that night. He was on duty in his official capacity as a  
2       police officer traveling in his department-issued 2021  
3       Dodge Durango. He was responding to a routine call  
4       around Haines Avenue. When he went to take a turn in his  
5       vehicle to help with a call near Harbor Freight, he never  
6       ended up making it to that call. Mr. Keim hit the gas,  
7       and he later told medical staff at Monument Health that  
8       he was racing. While we don't have black box data from  
9       the Volkswagen to know the exact speed he was traveling,  
10      most witness and law enforcement estimates place his  
11      speed at around somewhere close to 60 miles an hour or  
12      more in a 35-mile-an-hour zone here in town.

13             If Mr. Keim had been going the speed limit, Officer  
14      Kumjian would have had no problem completing his turn and  
15      making it to his call. Maybe this would have never  
16      happened. But the Defendant never even saw Officer  
17      Kumjian before striking him.

18             In talking with Rapid City fire and medical about  
19      their response to this crash while we were preparing for  
20      trial, they said they knew that this car was going well  
21      in excess of the speed limit because they typically don't  
22      see crashes this bad in town. This is the type of damage  
23      and injury and loss of life that comes from speeds on  
24      highways and interstates, not on Haines Avenue.

25             The crash knocked Officer Kumjian's patrol vehicle

1 across the southbound lanes of traffic, off the road, and  
2 onto the sidewalk near Harbor Freight. The Jetta came to  
3 a stop in the roadway with significant front end damage.  
4 First responders raced to assist both Lexi and Mr. Keim  
5 with lifesaving measures, but Lexi's injuries were fatal.  
6 Officer Kumjian whose air bags were deployed and whose  
7 vehicle was towed was dazed but was able to step out on  
8 his own before being transported to Monument Health where  
9 he received treatment for a concussion.

10 You heard a lot about Lexi Hagen today who was only  
11 27 years old and how much light and laughter she brought  
12 to those around her. And we recognize there is no  
13 sentence this Court can give today that can bring Lexi  
14 back or take away the pain that her family has felt every  
15 day since this has occurred.

16 Kyle Kumjian was just a young police officer doing  
17 his job serving the community and trying to respond to a  
18 routine call and his life was forever changed that night,  
19 too. So were the lives of many others, including family  
20 members, first responders to the crash.

21 The State submitted to the Court body camera footage  
22 from Officer Cody McCracken, who was close by at the time  
23 of the crash and the first law enforcement responder,  
24 showing just how far Officer Kumjian's car was hit off of  
25 the road and the fear that Officer McCracken felt racing

1 up to the car that Kumjian was in, not knowing whether he  
2 was okay or whether he would walk away from this, and  
3 those type of things really stick with a person and it  
4 didn't have to happen.

5 In his PSI, Mr. Keim says that he deserves some  
6 punishment but that to get a lengthy sentence would be  
7 excessive; that anything over five years would be too  
8 much because it was an accident. Now, while he might not  
9 have intended the result, he certainly intended every  
10 single step that led up to it. The drinking. The  
11 driving. The excessive speeds in town. That and the  
12 fact that he's made these decisions over and over and  
13 over again show just what an extreme danger he is to the  
14 public.

15 This was not a one-time mistake. This was far from  
16 the first time that Mr. Keim had driven drunk, that he  
17 had driven recklessly, and it wasn't even the first time  
18 that he had drunkenly crashed into a Rapid City Police  
19 Department patrol vehicle. This was an absolute worst  
20 case scenario, but given his prior conduct, it's hard to  
21 call this a mistake or an accident.

22 In 2016, Sergeant Craig Cassen of the Rapid City  
23 Police Department was on duty running scene security  
24 following a shooting. He heard a car revving its engine  
25 and swerving down Meadowood Road towards him. The driver

1 of that vehicle Seth Keim then accelerated straight at  
2 Officer Cassen's patrol vehicle and crashed into its rear  
3 end, and on that occasion Seth Keim was convicted of DUI  
4 and possession of a controlled substance.

5 In October of 2016 the Defendant was stopped for  
6 driving 68 miles an hour in a 40-mile-an-hour zone with a  
7 blood-alcohol content of 0.237.

8 In May of 2017 Mr. Keim was found passed out in a  
9 running vehicle behind the Flying J Truck Stop in  
10 Hermosa. He had been called in by a truck driver who had  
11 seen him reportedly driving in several circles, nearly  
12 striking a couple trucks, and ultimately parking behind  
13 the building. He had a blood-alcohol content of 0.231 on  
14 that occasion.

15 In May of 2021 a man named Seth Dean in Rapid City  
16 called 911 to report a driver in a white Buick speeding  
17 at an estimated 100 miles per hour and crossing over the  
18 line near east Catron Boulevard and Cambell Street here  
19 in town. When law enforcement found Mr. Keim, he was  
20 located in the vehicle facing southbound in the  
21 northbound lane. He admitted to consuming eight beers  
22 before driving. He had no valid driver's license and  
23 this was his DUI fourth offense.

24 In June of 2023, just a few months before the events  
25 in this case, a Pennington County sheriff's deputy was on

1 patrol and stopped Mr. Keim for going 47 in a  
2 25-mile-an-hour zone. He was driving under revocation  
3 for multiple prior DUIs.

4 While some of his support letters ask that he get  
5 help or that the Court prioritize rehabilitation, we have  
6 to wonder how much they truly know of his history because  
7 he's had that chance many times over the course of the  
8 past three years and he's got three prior felony  
9 convictions which is why he's facing a maximum sentence  
10 of 50 years. On each of those three prior felonies he's  
11 gotten probation.

12 In 2021 when he was convicted of DUI fourth offense,  
13 he got probation even though that was a third felony. On  
14 two prior drug offenses he got chances on probation.  
15 According to his own statements in the PSI, he'd been to  
16 four different treatment programs and successfully  
17 completed them. And in the PSI he claimed that he  
18 doesn't believe he has a problem with alcohol and that he  
19 was just drinking because there wasn't anything else to  
20 do after work.

21 We know that this is at least the fifth DUI that  
22 he's been charged with. Really it's probably just the  
23 fifth time that he's been caught.

24 One of the last things we want to address from  
25 Mr. Keim's character letters is the theme that both he



1 and Lexi made bad decisions that night or that mistakes  
2 were made by both. To say that because she willingly got  
3 into the passenger seat that she deserved anything to  
4 happen to her, that does not sit well with us.

5 Lexi may have drank that night, but to say that  
6 because she got into the passenger seat of a car that she  
7 played a role in her own death is simply wrong. And I  
8 don't think that Mr. Keim asked his family to make  
9 excuses for them, but this was more than a mistake. This  
10 wasn't Lexi's fault. The only mistake that Lexi made  
11 that night was having a boyfriend who did not prioritize  
12 her safety and well-being.

13 Lexi Hagen had a whole life ahead of her. Kyle  
14 Kumjian should have never received a traumatic head  
15 injury. His co-workers and first responders should have  
16 never had to witness these traumatic events from  
17 September 3rd of 2023. And one person is responsible for  
18 all the reckless choices that were made that night and  
19 that's Seth Keim.

20 While Mr. Keim has accepted responsibility by  
21 pleading guilty, sparing Lexi's family and Officer  
22 Kumjian from a trial, it's because of the seriousness of  
23 his actions, the impact that he's had on others, and the  
24 fact that he's been an habitual offender, committing  
25 these types of offenses time and time again, having three

1 prior chances on probation, four different times at  
2 treatment that we're asking for a sentence of 40 years,  
3 both to punish and deter this type of conduct but also to  
4 keep him off the road and to keep this from happening to  
5 anyone else.

6 THE COURT: Thank you.

7 Defense.

8 MR. SKINNER: Thank you, Judge. I guess I'll start off  
9 with I am appreciative of everyone that is here, both in  
10 support of Seth and in support of Lexi. This obviously  
11 is a tragedy as has been pointed out. At the end of the  
12 day, what Seth wants I guess more than anything is that  
13 there can be healing and closure for the family.

14 I, too, have reviewed the letters on behalf of Seth,  
15 and it should be noted that those were letters from  
16 family primarily, a couple friends. And certainly Seth  
17 can't control exactly what is put in the letters. I  
18 don't recall a letter saying that Lexi played a role in  
19 her own death. I don't think that was ever said. It did  
20 mention that she was intoxicated, but I don't believe the  
21 letters are suggesting that anyone thought that she  
22 played a role in her own death. Certainly Seth does not  
23 believe that she played any role in her own death.

24 Seth is 28 years old. We are asking for 373 days of  
25 credit for the time that he's served.

1           In reviewing the PSI, Judge, I note that he was  
2 cooperative. We're not gonna make this about Seth  
3 obviously, but there are a few things that I think I need  
4 to say on his behalf as his attorney and his advocate.

5           He did have a tough upbringing. That doesn't excuse  
6 his behavior of what occurred, doesn't excuse his past  
7 criminal behavior, but I think it's at least a factor a  
8 Court could consider in mitigation.

9           He does have a good family support system in place.  
10 As the Court noted, I think the Court had received nine  
11 to 11 character letters, in that neighborhood. He does  
12 have a good work history. He's cut all ties obviously  
13 with any former friends that have used substances.

14           When I read through the PSI, my -- I wouldn't say my  
15 biggest concern, but an alarming concern was certainly  
16 the fact about not having a problem with alcohol. And  
17 I'm sure that rang true for every professional that read  
18 that and was in the room.

19           And so when Seth and I had our discussion last  
20 night, you know, that was something we had talked about.  
21 And one of the questions I had asked him, too, was, *Well,*  
22 *why did treatment never work for you in the past if*  
23 *you've been to treatment, you know, three times or four*  
24 *times?* And really his general response was -- and I'm  
25 kinda paraphrasing -- but peer pressure, not so much life

1 stressors but more peer pressure, hanging out with  
2 friends that were experiencing these good times and going  
3 back to that.

4 And to be quite honest, I don't think that Seth ever  
5 really took it seriously. As the Court sees a lot when  
6 people are involved in addiction, a lot of times they are  
7 simply going to treatment to check that box so that they  
8 can get off probation. And I imagine that that was at  
9 least partly what was going on.

10 For whatever it's worth, I obviously think he needs  
11 inpatient treatment, lengthy inpatient treatment. After  
12 our discussion, after I told him, *Look, you know, the*  
13 *State's going to point this out obviously that you've had*  
14 *all these prior DUIs. You've had this drug addiction.*  
15 *And then for you to say you don't have a problem,*  
16 *something's not clicking. And then, of course, the Court*  
17 *has to be not only mindful of what happened with -- with*  
18 *Lexi and her death and the tragedy and punishment for*  
19 *that, but then the Court also has to be mindful of, you*  
20 *know, are you a danger to the public down the road.*

21 And so we had that discussion. And -- and I hope  
22 that Seth gets it, that he understands that he does have  
23 a problem. I mean, sure, he can now tell us all, *Yes, I*  
24 *admit I have a problem, okay?* Those are words. But  
25 given the magnitude of what occurred here, given the

1 magnitude of the fact that he's, you know, been  
2 incarcerated for over a year, given the magnitude that  
3 he's facing a potential of 50 years of incarceration, I  
4 take him at his word that I hope he's having a deeper  
5 understanding.

6 I have known Seth since he was probably 11. I have  
7 known this family. I have been involved with this family  
8 and I know their history as a family. And that's why I  
9 say, yeah, it was a tough upbringing, okay? Doesn't  
10 excuse his behavior. But as a whole, I feel everyone's  
11 really turning the corner and then this tragic event  
12 happened. When I think back on Seth -- well, I won't go  
13 into that yet.

14 So he was on probation at least two or three times  
15 in the past for his felonies. Everything that I could  
16 determine was he had always successfully completed  
17 probation, so that's a good sign. I don't know that he  
18 ever had a probation violation that I recall. But again,  
19 I wanted to make it assured that Seth is not in any way  
20 suggesting and nor do I think any of the family that I  
21 have spoken with are suggesting that Lexi played a role  
22 in her own death.

23 You know, Officer Kumjian, I'll address that just  
24 briefly. You know, I know he had a -- a head trauma.  
25 Maybe I missed it. I understood that he had gotten a

1       concussion. I don't know if there's anything more so  
2       than the -- the concussion. But that was my recollection  
3       of -- of his injuries. I'm not taking that lightly. It  
4       could have been very much worse obviously, but that was  
5       my recollection.

6       There's been a lot of attention and media attention  
7       about Seth. And we certainly acknowledge that he was  
8       intoxicated. We certainly acknowledge that he was  
9       driving recklessly and foolishly. But there was also a  
10      lot of media attention about that his headlights were  
11      off. And we want to make it clear that the headlights  
12      were on and that was verified through different videos,  
13      so I want that point to be clear that the headlights were  
14      not off.

15      I know Officer Kumjian in all of the videos that  
16      I've seen, there were many, many videos, and in one of  
17      the videos Officer Kumjian talks about, Well, I never saw  
18      the Defendant. Like -- like he was responding to a call  
19      and he had turned and he never saw the Defendant. He  
20      might have been blindsided from another car because Seth  
21      was kinda weaving. Never saw -- and Seth says the same  
22      thing. Never saw the officer.

23      It was just -- sounds like it was quick. And I  
24      think that's all confirmed because there aren't even  
25      really, like, skid marks or anything. There's some yaw

1 marks after the impact, but no, like, skid marks. I  
2 think this -- it sounded like it was a quick, quick hit.

3 Because of that and some of the body camera footage  
4 is, you know, muted obviously, but -- but also in that  
5 footage even Officer Kumjian makes a statement to the  
6 effect of *If it was my fault, it was my fault.*

7 Now, of course that was early on. There wasn't any  
8 investigation. But he didn't see Seth. Seth didn't see  
9 him. It was -- it was that quick of a deal.

10 Now, with all that said -- and these are  
11 conversations obviously I've had with family and Seth.  
12 With all of that said, it does not excuse Seth for  
13 drinking, being intoxicated, and driving like an idiot,  
14 okay? Reckless driving. Seth's blood-alcohol was 0.153  
15 on -- I think that might have been the first draw or the  
16 second draw. I couldn't tell. There was two draws. One  
17 was a 0.153. One was a 0.173. Obviously both over the  
18 legal limit of 0.08. So I do agree with the State that  
19 he was almost two times the legal limit.

20 As far as responsibility goes, it's very difficult  
21 to express to the family any kind of remorsefulness and  
22 acceptance of responsibility as we navigate through this  
23 system for -- for a year. But I -- the family on both  
24 sides don't get to see the PSI. They don't get to see  
25 that Seth says, *I was driving like an idiot*, quote. That



1       he said, *Speeding and dodging -- that I was speeding and*  
2       *dodging through cars, quote. That I take full*  
3       *responsibility for my actions, quote. That I am*  
4       *regretful and depressed, quote. That he recognizes the*  
5       *victim's family Feels, quote, horrible, depressed and*  
6       *sad. That he says, I'm very sorry, quote. That he knows*  
7       *he needs to change.*

8               We did have a chance to review the character letters  
9       on behalf of Lexi and the family and there was two that I  
10      wanted to somewhat address. And I forgot to print  
11      something off so just bear with me for a second.

12              So this is with respect to Danica. And I know she's  
13      appearing via Zoom, but this is a letter that Seth had  
14      written that she may have seen. And I want to read this  
15      letter because I don't know if she's seen this or not.

16              But it says, Hey Danica. It's Seth Keim. I was  
17      writing you to say sorry about the things I said to you  
18      after Lexi passed away. That was not the right thing to  
19      do and I feel horrible about the whole situation. Your  
20      sister loved you a lot and even talked about you quite  
21      often. I feel horrible about what happened and I take  
22      full responsibility. I wanted to write you and just say  
23      sorry. I don't expect you to forgive me right away, but  
24      I hope some day you and your family can. It was an  
25      accident, but I take responsibility. And I know words

1       won't bring her back, but I think she would think it's  
2       good that I am saying sorry. Not a day goes by that I  
3       don't think about her and wish the circumstances were  
4       different.

5               The other letter I think I want to just touch on is  
6       from Chanci who I know is here as well. And when Seth  
7       was out for a period of time, maybe it was two weeks  
8       before he got incarcerated for the year now, it indicates  
9       that he went to car shows and hung out with friends and  
10      got to meet his nephew and a new tattoo. And in my  
11      discussions with primarily Seth and his father, he wasn't  
12      going to any car shows or hanging out with friends. He  
13      did get a tattoo and he went to get that tattoo with his  
14      dad. And the reason they went to get that tattoo is they  
15      knew that ultimately Seth was going to be going to  
16      prison.

17             And so I don't know if dad has gotten the tattoo  
18      because they were going to get similar tattoos, but  
19      funding is very tight for this family. So Seth, his dad  
20      set it all up, got a tattoo. And that's what that was  
21      about. It was not, *Hey, I'm living my best life. My*  
22      *loved one just died from my actions.* It was essentially,  
23      *No, this is kind of a last thing that I'm going to be*  
24      *able to do with my dad.* So for whatever that's worth.

25             I asked Seth about him and Lexi's relationship and

1       he said, *I've known Lexi since high school.* And then as  
2       things went on or went by, you know, within the last, oh,  
3       probably eight months to 12 months before the accident,  
4       they kinda started hanging out. Days went by of them  
5       hanging out. *And as time went on we fell in love.*

6               She started -- she was staying at a hotel. And I  
7       would just note that, you know, I've had a chance to talk  
8       with Kristi, the step mom. I've had a chance to talk  
9       with Brent, the dad. Very positive, good conversations.  
10      I know that -- that Lexi had some issues with -- with  
11      being at home and so she had to stay in a hotel. Well --  
12      or motel.

13             And eventually that wasn't working out. Seth had a  
14      place. They met up and were hanging out and that's  
15      ultimately why she moved in with Seth. And once they  
16      moved in -- or she moved in, you know, they did what a  
17      lot of young adults do, not all but a lot of young adults  
18      do, especially Seth, I don't know anything about Lexi,  
19      but especially Seth who's obviously got alcohol problems  
20      for sure, and they were drinking and they were drinking a  
21      lot. And they were -- not they, Seth was drinking and  
22      driving probably a lot with Lexi in the vehicle.

23             We take a little bit of an issue with the fact that  
24      maybe Lexi saying that Seth's driving constantly scared  
25      her. I mean, they were courting each other for a few

1 months it sounds like and then they moved in and were  
2 together for like six months together. And so our  
3 position has never been that Lexi was yelling at Seth and  
4 telling him that his driving scared her or anything to  
5 that effect.

6 I mean, that evening when this tragedy occurred,  
7 they were both intoxicated and the blood-alcohols were --  
8 were both very high. I don't know that the Court has  
9 seen that in the -- in the paperwork attached to the PSI,  
10 but it is in the reports.

11 But anyway, she was staying with Seth and she  
12 finally moved in March 10th is when she moved in with  
13 Seth. So from March to September they were living  
14 together. He says, *Lexi and I were deeply in love and*  
15 *after six months I knew I wanted her for the rest of my*  
16 *life.*

17 You know, in my discussions with -- well, let's talk  
18 about the day of the crash. And this is in the PSI as  
19 well and kinda what happened that day. Because I think  
20 it needs to be expressed for -- for everyone's benefit to  
21 understand what went on.

22 And so that day, you know, they did house stuff and  
23 I mean they slept in until like 1:00, I think, and then  
24 they did a bunch of house stuff, they did laundry stuff,  
25 they were going back and forth from the laundromat, and

1       then later on that evening they headed up to Pactola to  
2       watch the sunset. And they had already been drinking,  
3       both had been drinking, and -- which is completely -- and  
4       that's where I gotta be careful because I don't -- I  
5       don't want to sound like -- like this is in any way  
6       Lexi's fault because it's not. But I think it's  
7       important to note that, yeah, they were together. They  
8       were having a good time. They were having a nice evening  
9       together. He was driving. She wasn't driving.

10       They go to Pactola to watch the sunset, having a  
11       wonderful time watching the sunset. White Claws were  
12       being drank. He had some Crown Royal I think in addition  
13       to that. And then on the way home they decided to go to  
14       a bar and have a few drinks, and then they did that and  
15       they were driving home and both were happy. And I asked  
16       Seth, you know, *Why were you driving like such an idiot?*  
17       And basically his answer was, *I just wanted to get home.*  
18       *It was getting late.* And they wanted to share the night  
19       together.

20       Prior to the accident, they were singing. I asked  
21       Seth. They were singing and having a good time in the  
22       car. She wasn't saying, you know, *Slow down or quit*  
23       *driving like an idiot.* Like I said, this isn't the first  
24       time that they've done this together. I mean, Seth was  
25       the driver. You can see from his history that, yeah,

1 he's probably done this multiple times in the past where  
2 he was driving.

3 We're asking the Court to consider a 15-year  
4 sentence but with 10 suspended. And I appreciate, like I  
5 said, visiting with the step mom, who's basically her  
6 mother. I don't mean to disrespect you. But basically  
7 her mom but legally step mom. I appreciate Mr. Bednarz  
8 as well in understanding the big picture. But we  
9 understand, too, that there are consequences and we've  
10 known that the whole time.

11 I think this Court knows that I advocate for my  
12 clients, or at least I try to do the best of my ability.  
13 And in this case, I would give the State props, if you  
14 will, in the sense that we tried to get this to just the  
15 15, okay? Get rid of the Part IIs. And normally you see  
16 that a lot. And at the end of the day it was a no. It's  
17 not going to happen.

18 We knew we can't go to trial, okay? That was never  
19 an intention here. And it became what it is. We're  
20 accepting it. So he's facing 50 years and we're hoping  
21 the Court would consider obviously something less than  
22 that. I'm proposing the 15 with the five -- or 10  
23 suspended. That puts him on probation -- I mean, he's 28  
24 years old. That puts him on probation for potentially  
25 until -- not probation, sorry -- on parole until

1       potentially he's 43 years old.

2               The reports indicate that he was going 45 to 60,  
3       according to the reports in the PSI, so we're not  
4       disputing that, but we don't want to suggest or agree  
5       that it was anything more than that. But I'm not an  
6       expert, but that's kinda what the witnesses's reports  
7       indicate.

8               And then I think lastly I want to say two things.  
9       Number one, on behalf of Seth, on behalf of me as his  
10      attorney, and I think Brent and Kristi, yeah, have gotten  
11      a feel or a sense for me when I say this, that I hope  
12      that we have not offended anybody in any way. That was  
13      not my intention certainly of doing that. We want it to  
14      be clear, like I said, and I know I'm repeating myself  
15      but this is important, that Seth accepts responsibility.  
16      He understands he's going to prison. That's never been a  
17      question even in his family's mind. As hard as that is  
18      to say when you love somebody, as hard as that is to say  
19      when this was just an accident, yeah, but it was an  
20      accident that didn't have to happen, okay? So he gets  
21      that. The family understands that. It's really about I  
22      guess what is going to ensure the public safety and  
23      ensure justice for Lexi and her family. That was the  
24      first thing.

25              Just in closing, I wanted to say -- and I thought



1       this was important. Again, I read all those beautiful  
2       letters. And they were. They were fantastic letters  
3       from family and friends. And these cases suck. They  
4       just stink for everybody. We know that. Everyone is  
5       glad today is here finally and we're done so that we can  
6       have hopefully closure. We can have healing on both  
7       sides. And even though I am his attorney and Seth's  
8       advocate and I've got to represent him zealously, this  
9       one's a little closer because I've known him and the  
10      family.

11       And I just want to say this. I read all those  
12      letters. And Lexi, I didn't know her from nothing  
13      obviously. Sounds like a wonderful, a beautiful person,  
14      okay? I just want you to know that. And I believe that.  
15      Because it came from her family. It came from her  
16      friends. When Brent -- or Mr. Bednarz said, *I think that*  
17      *Lexi would forgive Seth*, I can only think that maybe  
18      that's true. But Lexi, despite Seth, despite his prior  
19      record, she chose Seth. She still chose Seth. She knew  
20      all these things and she chose Seth.

21       And so to me, this is a little bit different than  
22      other cases because she is a good person. She is a  
23      goodhearted person. But she did choose Seth. He  
24      shouldn't have drove. He shouldn't have done that.

25       In any event, that's all. Thank you.

1 THE COURT: Thank you.

2 Mr. Keim, is there anything you would like to say at  
3 this time?

4 THE DEFENDANT: Yes. I would just like to say I am  
5 extremely sorry to everybody that was impacted and I just  
6 wish I could go back in time and change my decision and  
7 not drink and drive. I should have called an Uber or a  
8 Lyft or something, but I thought I was fine to drive.

9 As a result of my decision, I lost the love of my  
10 life. And not a day goes by that I don't think about  
11 Lexi and how different life would have been if I would  
12 have decided just to stay home instead of going out  
13 drinking.

14 I take full responsibility for what happened and I  
15 know that nothing I do or say can bring her back. I love  
16 Lexi with all my heart and still do and always will. I  
17 was selfish for drinking and driving and putting others's  
18 lives in danger by driving in a reckless manner. I  
19 believe a high level of treatment would do me good and  
20 help me take sobriety serious. Drinking has done nothing  
21 for me but ruin my life and also take the life of Lexi's.  
22 I am extremely sorry and hope one day I can be forgiven  
23 for what I've done. Thank you.

24 THE COURT: Thank you.

25 Is there any legal reason why judgment should not be

1 imposed at this time?

2 MS. SIGLIN: No.

3 MR. SKINNER: No, Your Honor.

4 THE COURT: All right. These cases are always difficult  
5 for the Court. From both sides it is a terribly  
6 devastating event that occurred. You've seen the results  
7 of that, how it has affected family. I'm sure you have  
8 some effect on yourself and your family as well. Maybe  
9 in a different fashion, but still nonetheless there's  
10 been devastation wreaked on both sides that probably will  
11 never go away. Hopefully there will be some healing.

12 Mr. Keim, you're probably going to be living with  
13 the results of this event the rest of your life and, you  
14 know, that's one of the things that goes along with these  
15 and you should think about it on a regular basis.

16 Part of what the Court looks at in sentencing in  
17 these types of matters are a number of factors. There's  
18 a punitive nature that the Court considers. There's a  
19 rehabilitative nature the Court considers. I do look at  
20 protecting the public and to look at potential deterrent  
21 effects a sentence like this could have on others.  
22 That's kind of a big factor I look at in these types of  
23 situations as well.

24 There's a mind-set that goes along with these  
25 sometimes and it's kind of been thrown around a little

1 bit here of this not being an intentional act but this  
2 being an accident. The term accident is I think  
3 widely-ranged. I don't consider this an accident. I  
4 don't think it's intentional per se, but certainly all  
5 the acts that led up to it were conscious and the  
6 decision was made to consciously do that. Had you been  
7 abiding by the law, just not driving, this -- you know,  
8 this is a completely avoidable situation. If this was  
9 just a simple DUI fifth offense, which it would be if you  
10 had just gotten pulled over, you were speeding and got  
11 pulled over and there was no wreck that night, there's a  
12 mandatory minimum four-year sentence on those now. So  
13 really what the Court looks at in this is just a number.  
14 You knew it's a penitentiary sentence. Everybody knows a  
15 penitentiary sentence is coming and the Court just has to  
16 decide how long.

17 There's factors I look at in aggravation on that.  
18 Number one, this being a fourth felony offense for you.  
19 You admitted the Part II. You're looking at up to 50  
20 years. I don't think that you're lacking in the obvious  
21 severe nature of that enhancement. One of those priors  
22 is for a DUI -- a fourth offense DUI, meaning this is a  
23 fifth offense DUI. It's absolutely shocking to the Court  
24 that this is the second time you've been in a wreck with  
25 a law enforcement officer under the influence. You hit a

1 police car. It's absolutely mind-blowing. That's a fact  
2 that the Court's considering. I don't even know how  
3 that's possible statistically.

4 You're twice the legal limit, give or take,  
5 depending on the blood draw. You're driving -- your  
6 attorney is correct. You were driving like an idiot.  
7 There's no other way to put it. You're weaving in and  
8 out of traffic 60 miles an hour. Well, I mean there's  
9 nothing to confirm that, but multiple witnesses have it  
10 between 45 and 60 and certainly the result complies with  
11 that.

12 Again, your attorney touched on it, but the fact  
13 that you make a statement that you don't believe you have  
14 a problem with alcohol, it gives the Court serious pause  
15 in the area of public protection. I don't know how you  
16 can not think you have a serious problem with alcohol.

17 Based upon the totality of the circumstances here,  
18 and this is one of the -- to be honest with you, I've had  
19 a few of these vehicular homicide type cases and  
20 sentencings -- well, multiple, this is one of the more  
21 aggravating ones I've seen given your past history.

22 It will be the judgment of the Court you be  
23 sentenced to the State Penitentiary for a period of 40  
24 years. I'm going to suspend 15 of those years. That  
25 means essentially it's a 25-year sentence. Then you're

1 going to be put on a long period of parole after that.  
2 The reason I'm doing that is I still think you're going  
3 to be a danger to the public after you get out and I want  
4 you monitored for alcohol use after that by a parole  
5 officer. There needs to be a deterrent effect on this  
6 and people need to know that when you kill someone in a  
7 drunken driving accident, there are severe consequences.

8 All the costs as outlined by the State will be made  
9 part of the judgment. Restitution, \$10,000 to Rapid City  
10 for the deductible on the police car. \$5,564.54 to  
11 the -- is it the RAS insurance?

12 **MS. SIGLIN:** Yes, Your Honor.

13 **THE COURT:** Thank you. All the costs and fees that were  
14 mentioned by the State will be part of the judgment.  
15 Attorney's fees -- are you retained, Mr. Skinner?

16 **MR. SKINNER:** Yes.

17 **THE COURT:** Thank you. Additionally, there will be a  
18 10-year driver's license revocation as a condition of the  
19 sentence. That doesn't -- that won't begin until you're  
20 released from incarceration.

21 That will be the judgment of the Court. You have 30  
22 days to appeal the judgment once it's been reduced to  
23 writing. You do have credit for 373 days credit for time  
24 served, plus any time awaiting transport. Best of luck  
25 to you, Mr. Keim. With that, we'll be in recess.

1       STATE OF SOUTH DAKOTA       )  
2       COUNTY OF PENNINGTON       )   SS.       CERTIFICATE

3  
4       I, Teresa L. Benson, RMR, CRR, Official Court Reporter  
5       of the Seventh Judicial Circuit and Notary Public  
6       within and for the State of South Dakota, do hereby  
7       certify that I reported in stenotype the proceedings of  
8       the above-entitled action; that I thereafter  
9       transcribed said stenotype notes into typewriting; and  
10      that the foregoing pages 1-47, inclusive, are a true,  
11      full, and correct transcript of my stenotype notes.

12      IN TESTIMONY WHEREOF, I hereto set my hand this  
13      4th day of December, 2024.

14  
15                               /s/ Teresa L. Benson

16  
17                               \_\_\_\_\_  
18                               Teresa L. Benson, RMR, CRR  
19                               Official Court Reporter  
20                               Notary Public  
21                               My Commission Expires: 4/29/2028  
22  
23  
24  
25



|                                  |                                   |                                    |
|----------------------------------|-----------------------------------|------------------------------------|
| BRENT BEDNARZ: [1] 19/9          | 26th [1] 2/7                      | 34/25 36/3 38/20 40/19 40/20 44/2  |
| KRISTI BEMIS: [2] 3/14 3/16      | 27 [2] 6/19 23/11                 | 44/2 44/3 46/7                     |
| MR. SKINNER: [4] 2/25 28/8       | 28 [3] 10/25 28/24 39/23          | accomplishments [1] 6/1            |
| 43/3 46/16                       | 3                                 | according [2] 26/15 40/3           |
| MS. SIGLIN: [7] 2/15 3/2 3/7     | 30 [1] 46/21                      | acknowledge [2] 32/7 32/8          |
| 19/6 19/24 43/2 46/12            | 373 [2] 28/24 46/23               | acknowledged [1] 21/10             |
| THE COURT: [15] 1/24 2/12        | 3780 [2] 1/4 2/2                  | across [1] 23/1                    |
| 2/17 3/1 3/6 3/8 3/15 19/7 19/23 | 3rd [5] 17/17 20/23 21/9 21/16    | act [2] 6/10 44/1                  |
| 28/6 42/1 42/24 43/4 46/13 46/17 | 27/17                             | action [1] 47/8                    |
| THE DEFENDANT: [2] 2/11          | 4                                 | actions [5] 9/12 20/18 27/23 34/3  |
| 42/4                             | 4/29/2028 [1] 47/18               | 35/22                              |
| \$                               | 40 [2] 28/2 45/23                 | acts [2] 6/2 44/5                  |
| \$10,000 [2] 20/4 46/9           | 40-year [1] 20/13                 | actually [1] 18/20                 |
| \$116.50 [1] 20/2                | 43 [1] 40/1                       | addiction [2] 30/6 30/14           |
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| <b>F</b>                                                                                                         | 47/11                                                                                                                                                                             | gotten [6] 4/17 26/11 31/25 35/17 40/10 44/10                                                                                                                                       |
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| firsts [1] 8/5                                                                                                   | gave [3] 4/6 15/6 16/18                                                                                                                                                           | habitual [1] 27/24                                                                                                                                                                  |
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| Flying [1] 25/9                                                                                                  | genuine [1] 6/24                                                                                                                                                                  | Hagen [6] 6/17 11/1 20/16 21/23 23/10 27/13                                                                                                                                         |
| follow [1] 13/2                                                                                                  | genuinely [1] 15/16                                                                                                                                                               | Haines [2] 22/4 22/24                                                                                                                                                               |
| followed [1] 12/4                                                                                                | get [31] 5/3 5/23 5/24 5/25 7/8 11/21 12/14 12/15 12/15 12/16 13/2 13/8 13/9 13/9 14/9 16/12 17/6 21/17 24/6 26/4 30/8 33/24 33/24 35/13 35/13 35/14 35/18 38/17 39/14 39/15 46/3 | hand [1] 47/12                                                                                                                                                                      |
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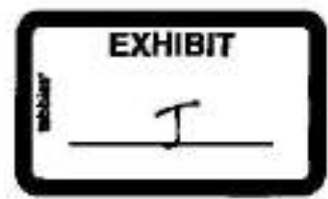
|                                                                                                                                |                                                              |                                                                                                                                                                                                                                                 |
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|                                                                                                                                | singing [2] 38/20 38/21                                      | speeds [2] 22/23 24/11                                                                                                                                                                                                                          |
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| <p><b>S</b></p> <p>spent [1] 11/16</p> <p>spirit [5] 7/19 10/3 13/24 17/10 17/22</p> <p>spirited [2] 4/11 11/8</p> <p>spirits [2] 4/8 11/11</p> <p>spoke [1] 8/8</p> <p>spoken [2] 10/2 31/21</p> <p>SR [1] 1/20</p> <p>SS [2] 1/1 47/1</p> <p>staff [1] 22/7</p> <p>stand [1] 2/9</p> <p>start [1] 28/8</p> <p>started [2] 36/4 36/6</p> <p>starting [1] 4/17</p> <p>state [25] 1/1 1/4 2/2 2/15 2/20 3/1 3/2 3/12 4/15 13/14 19/6 19/7 20/1 20/2 20/3 20/9 20/14 23/21 33/18 39/13 45/23 46/8 46/14 47/1 47/6</p> <p>State's [3] 1/19 20/12 30/13</p> <p>statement [3] 19/8 33/5 45/13</p> <p>statements [3] 3/4 19/25 26/15</p> <p>statistically [1] 45/3</p> <p>stay [2] 36/11 42/12</p> <p>stayed [1] 11/7</p> <p>staying [2] 36/6 37/11</p> <p>stenotype [3] 47/7 47/9 47/11</p> <p>step [6] 10/5 23/7 24/10 36/8 39/5 39/7</p> <p>stepsister [1] 3/19</p> <p>stick [1] 24/3</p> <p>still [5] 16/8 41/19 42/16 43/9 46/2</p> <p>stink [1] 41/4</p> <p>stolen [2] 8/5 8/18</p> <p>stop [5] 15/23 21/8 21/14 23/3 25/9</p> <p>stopped [2] 25/5 26/1</p> <p>straight [1] 25/1</p> <p>Street [2] 1/21 25/18</p> <p>streets [1] 14/11</p> <p>stressors [1] 30/1</p> <p>striking [2] 22/17 25/12</p> <p>stripped [1] 6/1</p> <p>strong [1] 15/17</p> <p>struggled [1] 18/8</p> <p>stuff [3] 37/22 37/24 37/24</p> <p>style [1] 10/18</p> <p>submitted [1] 23/21</p> <p>substance [1] 25/4</p> <p>substances [1] 29/13</p> <p>successfully [2] 26/16 31/16</p> <p>such [5] 4/4 7/4 12/21 18/4 38/16</p> <p>suck [1] 41/3</p> <p>sudden [1] 17/18</p> | <p>suggest [1] 40/4</p> <p>suggesting [3] 28/21 31/20 31/21</p> <p>sunset [3] 38/2 38/10 38/11</p> <p>sunshine [1] 14/18</p> <p>support [6] 2/18 18/11 26/4 28/10 28/10 29/9</p> <p>supposed [5] 4/23 4/24 8/10 8/13 8/18</p> <p>sure [9] 3/9 3/10 9/23 17/4 19/11 29/17 30/23 36/20 43/7</p> <p>suspend [1] 45/24</p> <p>suspended [2] 39/4 39/23</p> <p>swerving [1] 24/25</p> <p>system [2] 29/9 33/23</p> <p><b>T</b></p> <p>table [1] 3/8</p> <p>take [15] 3/11 10/4 12/23 17/25 22/4 23/14 31/4 34/2 34/21 34/25 36/23 42/14 42/20 42/21 45/4</p> <p>taken [9] 8/16 9/8 9/16 12/8 12/9 12/24 13/12 13/20 15/11</p> <p>taking [1] 32/3</p> <p>talk [3] 36/7 36/8 37/17</p> <p>talked [3] 14/1 29/20 34/20</p> <p>talking [1] 22/18</p> <p>talks [3] 8/4 19/2 32/17</p> <p>tasks [1] 13/16</p> <p>taste [1] 7/12</p> <p>tattoo [7] 14/13 35/10 35/13 35/13 35/14 35/17 35/20</p> <p>tattoos [1] 35/18</p> <p>tears [2] 12/5 13/1</p> <p>tell [6] 5/10 12/3 13/5 19/12 30/23 33/16</p> <p>telling [2] 14/8 37/4</p> <p>Teresa [3] 47/4 47/15 47/17</p> <p>term [1] 44/2</p> <p>terribly [1] 43/5</p> <p>TESTIMONY [1] 47/12</p> <p>testing [2] 20/3 20/4</p> <p>than [12] 2/23 7/22 7/23 10/17 15/13 18/3 27/9 28/12 32/2 39/21 40/5 41/21</p> <p>Thank [14] 2/12 6/12 10/11 17/10 18/14 19/23 28/6 28/8 41/25 42/1 42/23 42/24 46/13 46/17</p> <p>that [291]</p> <p>that's [23] 3/6 9/4 9/7 16/8 19/22 19/24 20/14 27/19 31/8 31/17 32/24 35/20 35/24 36/14 38/4 40/6 40/16 41/18 41/25 43/14 43/22 45/1 45/3</p> <p>THC [1] 21/15</p> <p>their [3] 11/21 22/19 31/8</p> <p>them [3] 26/17 27/9 36/4</p> | <p>theme [1] 26/25</p> <p>themselves [1] 6/23</p> <p>then [14] 13/5 25/1 30/15 30/16 30/19 31/11 36/1 37/1 37/23 38/1 38/13 38/14 40/8 45/25</p> <p>therapy [1] 4/17</p> <p>there [30] 2/19 3/3 5/1 8/13 8/14 11/9 12/7 13/6 13/11 15/13 16/22 19/4 23/12 26/19 28/13 29/3 32/9 32/16 32/24 33/7 33/16 34/9 39/9 42/2 42/25 43/11 44/11 46/5 46/7 46/17</p> <p>there's [13] 9/23 16/24 32/1 32/6 32/25 43/9 43/17 43/18 43/24 44/11 44/17 45/7 45/8</p> <p>thereafter [1] 47/8</p> <p>these [16] 7/13 12/4 24/12 27/16 27/25 30/2 30/14 33/10 41/3 41/20 43/4 43/14 43/17 43/22 43/24 45/19</p> <p>they [51]</p> <p>they've [1] 38/24</p> <p>thing [6] 4/14 9/7 32/22 34/18 35/23 40/24</p> <p>things [13] 6/6 7/14 12/21 17/21 18/23 24/3 26/24 29/3 34/17 36/2 40/8 41/20 43/14</p> <p>think [43] 5/8 6/5 6/8 12/23 13/18 13/23 15/24 19/10 19/19 19/24 21/21 27/8 28/19 29/3 29/7 29/10 30/4 30/10 31/12 31/20 32/24 33/2 33/15 35/1 35/1 35/3 35/5 37/19 37/23 38/6 38/12 39/11 40/8 40/10 41/16 41/17 42/10 43/15 44/2 44/4 44/20 45/16 46/2</p> <p>thinking [2] 13/4 19/5</p> <p>thinks [1] 9/11</p> <p>third [1] 26/13</p> <p>this [104]</p> <p>those [15] 2/19 2/21 9/14 15/3 20/17 23/12 24/3 26/10 28/15 30/24 41/1 41/11 44/12 44/21 45/24</p> <p>though [3] 13/21 26/13 41/7</p> <p>thought [4] 8/11 28/21 40/25 42/8</p> <p>thoughtless [1] 8/6</p> <p>thoughts [1] 4/19</p> <p>three [9] 5/2 14/9 20/19 26/8 26/8 26/10 27/25 29/23 31/14</p> <p>three-year-old [1] 5/2</p> <p>through [6] 9/10 9/10 29/14 32/12 33/22 34/2</p> <p>throughout [2] 16/24 18/8</p> <p>thrown [1] 43/25</p> <p>ties [1] 29/12</p> <p>tight [1] 35/19</p> |
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| <p><b>T</b></p> <p>time [31] 2/3 4/10 7/16 11/19<br/>11/24 14/1 15/23 19/17 20/25<br/>21/20 23/22 24/15 24/16 24/17<br/>26/23 27/25 27/25 28/25 35/7 36/5<br/>38/8 38/11 38/21 38/24 39/10 42/3<br/>42/6 43/1 44/24 46/23 46/24</p> <p>times [13] 4/12 7/13 9/4 9/8 26/7<br/>28/1 29/23 29/24 30/2 30/6 31/14<br/>33/19 39/1</p> <p>today [12] 2/7 2/10 6/14 9/10 12/4<br/>17/14 17/17 19/25 20/12 23/10<br/>23/13 41/5</p> <p>toddler [1] 16/3</p> <p>together [18] 3/22 3/25 5/15 7/3<br/>8/5 11/6 11/16 12/10 12/22 12/24<br/>15/15 37/2 37/2 37/14 38/7 38/9<br/>38/19 38/24</p> <p>told [4] 7/14 10/8 22/7 30/12</p> <p>tolerable [1] 4/17</p> <p>toll [1] 15/11</p> <p>too [9] 9/16 11/23 16/7 19/17<br/>23/19 24/7 28/14 29/21 39/9</p> <p>took [6] 15/23 17/25 18/21 20/16<br/>20/17 30/5</p> <p>totality [1] 45/17</p> <p>touch [1] 35/5</p> <p>touched [1] 45/12</p> <p>touching [1] 8/25</p> <p>tough [2] 29/5 31/9</p> <p>towards [1] 24/25</p> <p>towed [1] 23/7</p> <p>town [5] 16/17 22/12 22/22 24/11<br/>25/19</p> <p>toxicology [1] 21/19</p> <p>toy [1] 16/4</p> <p>traffic [2] 23/1 45/8</p> <p>tragedies [1] 20/22</p> <p>tragedy [7] 9/19 18/15 19/21<br/>21/13 28/11 30/18 37/6</p> <p>tragic [2] 19/11 31/11</p> <p>transcribed [1] 47/9</p> <p>transcript [1] 47/11</p> <p>transport [1] 46/24</p> <p>transported [1] 23/8</p> <p>trauma [2] 4/21 31/24</p> <p>traumatic [3] 4/14 27/14 27/16</p> <p>travel [1] 12/11</p> <p>traveling [3] 8/15 22/2 22/9</p> <p>treatment [11] 21/11 21/14 23/9<br/>26/16 28/2 29/22 29/23 30/7 30/11<br/>30/11 42/19</p> <p>trial [3] 22/20 27/22 39/18</p> <p>tried [2] 17/1 39/14</p> <p>trouble [1] 3/25</p> | <p>truck [2] 25/9 25/10</p> <p>trucks [1] 25/12</p> <p>true [4] 7/20 29/17 41/18 47/10</p> <p>truly [4] 7/20 15/3 17/4 26/6</p> <p>try [1] 39/12</p> <p>trying [7] 4/23 5/12 6/15 8/21<br/>12/6 12/18 23/17</p> <p>turn [2] 22/4 22/14</p> <p>turned [2] 7/10 32/19</p> <p>turning [1] 31/11</p> <p>twice [3] 21/21 21/22 45/4</p> <p>two [8] 11/15 26/14 31/14 33/16<br/>33/19 34/9 35/7 40/8</p> <p>two-year-old [1] 11/15</p> <p>type [4] 22/22 24/3 28/3 45/19</p> <p>types [3] 27/25 43/17 43/22</p> <p>typewriting [1] 47/9</p> <p>typical [2] 4/1 11/2</p> <p>typically [1] 22/21</p> <p><b>U</b></p> <p>Uber [2] 9/5 42/7</p> <p>ultimately [3] 25/12 35/15 36/15</p> <p>unbearable [1] 8/23</p> <p>under [5] 21/1 21/5 21/8 26/2<br/>44/25</p> <p>understand [5] 9/1 11/23 17/4<br/>37/21 39/9</p> <p>understanding [4] 15/7 17/5 31/5<br/>39/8</p> <p>understands [3] 30/22 40/16<br/>40/21</p> <p>understood [2] 7/23 31/25</p> <p>unforgivable [1] 6/10</p> <p>unknowns [1] 8/4</p> <p>unmatched [2] 10/19 15/5</p> <p>until [5] 10/21 37/23 39/25 39/25<br/>46/19</p> <p>up [14] 8/12 10/12 11/6 13/21<br/>13/23 15/4 22/6 24/1 24/10 35/20<br/>36/14 38/1 44/5 44/19</p> <p>upbringing [2] 29/5 31/9</p> <p>upon [1] 45/17</p> <p>us [19] 5/4 5/19 6/9 6/11 6/18 7/1<br/>7/19 7/21 8/16 10/12 10/12 12/1<br/>13/20 17/17 17/19 18/1 19/2 27/4<br/>30/23</p> <p>use [1] 46/4</p> <p>used [1] 29/13</p> <p>using [1] 21/15</p> <p>utilize [1] 21/18</p> <p><b>V</b></p> <p>valid [2] 21/4 25/22</p> <p>vehicle [9] 22/5 22/25 23/7 24/19<br/>25/1 25/2 25/9 25/20 36/22</p> | <p>vehicular [2] 2/5 45/19</p> <p>verified [1] 32/12</p> <p>very [11] 4/3 4/25 4/25 11/1 11/15<br/>32/4 33/20 34/6 35/19 36/9 37/8</p> <p>via [3] 1/23 2/18 34/13</p> <p>vibrant [3] 10/19 11/13 18/2</p> <p>vibrations [1] 10/7</p> <p>victim [4] 2/20 3/4 19/21 19/24</p> <p>victim's [1] 34/5</p> <p>videos [5] 11/25 32/12 32/15<br/>32/16 32/17</p> <p>violation [1] 31/18</p> <p>visiting [1] 39/5</p> <p>voice [1] 17/21</p> <p>void [3] 5/17 7/18 17/19</p> <p>Volkswagen [2] 21/24 22/9</p> <p><b>W</b></p> <p>wait [1] 10/21</p> <p>wake [2] 8/12 13/21</p> <p>walk [4] 9/6 11/12 15/4 24/2</p> <p>walked [1] 11/19</p> <p>walking [1] 8/11</p> <p>want [12] 26/24 32/11 32/13<br/>34/14 35/5 38/5 40/4 40/8 40/13<br/>41/11 41/14 46/3</p> <p>wanted [9] 15/13 15/19 31/19<br/>34/10 34/22 37/15 38/17 38/18<br/>40/25</p> <p>wanting [1] 5/5</p> <p>wants [1] 28/12</p> <p>was [181]</p> <p>wasn't [11] 6/25 9/16 16/22 24/17<br/>26/19 27/10 33/7 35/11 36/13 38/9<br/>38/22</p> <p>watch [2] 38/2 38/10</p> <p>watching [3] 12/22 19/2 38/11</p> <p>way [10] 12/1 14/4 15/22 16/5<br/>18/4 31/19 38/5 38/13 40/12 45/7</p> <p>ways [1] 4/11</p> <p>we [57]</p> <p>we'd [2] 3/4 3/7</p> <p>we'll [2] 10/3 46/25</p> <p>we're [9] 9/10 19/10 28/2 29/2<br/>39/3 39/19 39/20 40/3 41/5</p> <p>we've [2] 12/24 39/9</p> <p>weaving [2] 32/21 45/7</p> <p>wedding [3] 4/22 4/23 8/10</p> <p>weddings [2] 8/15 12/11</p> <p>weeks [2] 14/10 35/7</p> <p>well [17] 13/14 20/21 22/20 27/4<br/>27/12 29/21 31/12 32/17 35/6<br/>36/11 37/17 37/19 39/8 43/8 43/23<br/>45/8 45/20</p> <p>well-being [2] 13/14 27/12</p> <p>went [11] 11/14 14/12 22/4 35/9</p> |
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|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| <b>W</b>                                                                                                                                                       |                                                                                                                                                                                 | <b>Z</b>                 |
| went... [7] 35/13 35/14 36/2 36/2 36/4 36/5 37/21                                                                                                              | words [6] 6/15 12/7 13/11 17/1 30/24 34/25                                                                                                                                      | zealously [1] 41/8       |
| were [51]                                                                                                                                                      | work [3] 26/20 29/12 29/22                                                                                                                                                      | zone [3] 22/12 25/6 26/2 |
| what [26] 4/24 8/16 9/10 13/18 14/22 16/19 18/9 24/13 28/12 28/17 29/6 30/9 30/17 30/25 34/21 35/20 36/16 37/19 37/21 39/19 40/6 40/22 42/14 42/23 43/16 44/13 | workers [1] 27/15                                                                                                                                                               | Zoom [2] 1/23 34/13      |
| whatever [2] 30/10 35/24                                                                                                                                       | working [1] 36/13                                                                                                                                                               |                          |
| wheel [2] 18/19 21/17                                                                                                                                          | world [10] 7/25 8/15 8/21 11/11 12/8 12/11 13/12 14/18 17/3 18/2                                                                                                                |                          |
| when [26] 4/9 5/3 12/1 12/2 12/11 13/21 15/1 15/4 16/3 19/18 20/17 22/4 25/19 26/12 29/14 29/19 30/5 31/12 35/6 37/6 37/12 40/11 40/18 40/19 41/16 46/6        | worse [1] 32/4                                                                                                                                                                  |                          |
| where [8] 7/7 8/17 13/15 20/15 21/17 23/8 38/4 39/1                                                                                                            | worst [3] 4/20 11/12 24/19                                                                                                                                                      |                          |
| WHEREOF [1] 47/12                                                                                                                                              | worth [2] 30/10 35/24                                                                                                                                                           |                          |
| whether [2] 24/1 24/2                                                                                                                                          | would [26] 3/3 3/9 4/11 5/7 11/17 11/19 14/4 15/20 16/11 19/16 22/14 22/15 24/2 24/6 24/7 35/1 36/7 39/13 39/21 41/17 42/2 42/4 42/11 42/11 42/19 44/9                          |                          |
| which [5] 9/23 9/24 26/9 38/3 44/9                                                                                                                             | wouldn't [1] 29/14                                                                                                                                                              |                          |
| while [8] 12/6 12/25 18/9 22/8 22/19 24/8 26/4 27/20                                                                                                           | wreaked [1] 43/10                                                                                                                                                               |                          |
| white [2] 25/16 38/11                                                                                                                                          | wreck [2] 44/11 44/24                                                                                                                                                           |                          |
| who [20] 3/3 5/2 5/10 6/8 6/21 7/23 8/3 9/11 9/25 10/18 11/15 15/15 17/2 17/12 18/5 23/10 23/22 25/10 27/11 35/6                                               | write [3] 6/14 17/14 34/22                                                                                                                                                      |                          |
| who's [2] 36/19 39/5                                                                                                                                           | writing [2] 34/17 46/23                                                                                                                                                         |                          |
| whole [5] 16/16 27/13 31/10 34/19 39/10                                                                                                                        | written [3] 9/25 10/23 34/14                                                                                                                                                    |                          |
| whose [2] 23/6 23/6                                                                                                                                            | wrong [1] 27/7                                                                                                                                                                  |                          |
| why [8] 7/6 15/24 26/9 29/22 31/8 36/15 38/16 42/25                                                                                                            | wrote [1] 9/24                                                                                                                                                                  |                          |
| widely [1] 44/3                                                                                                                                                | <b>Y</b>                                                                                                                                                                        |                          |
| widely-ranged [1] 44/3                                                                                                                                         | yaw [1] 32/25                                                                                                                                                                   |                          |
| will [50]                                                                                                                                                      | yeah [5] 31/9 38/7 38/25 40/10 40/19                                                                                                                                            |                          |
| willingly [1] 27/2                                                                                                                                             | year [15] 2/7 5/2 8/11 11/7 11/15 17/17 20/10 20/13 31/2 33/23 35/8 39/3 44/12 45/25 46/18                                                                                      |                          |
| windows [1] 13/1                                                                                                                                               | years [21] 6/19 8/8 10/25 11/2 14/18 15/9 20/18 20/18 23/11 24/7 26/8 26/10 28/2 28/24 31/3 39/20 39/24 40/1 44/20 45/24 45/24                                                  |                          |
| wish [2] 35/3 42/6                                                                                                                                             | yelling [1] 37/3                                                                                                                                                                |                          |
| within [2] 36/2 47/6                                                                                                                                           | Yes [6] 2/11 7/13 30/23 42/4 46/12 46/16                                                                                                                                        |                          |
| without [13] 4/25 5/14 5/16 5/17 8/12 8/21 12/18 14/19 16/24 17/20 18/2 19/3 19/4                                                                              | yesterday [1] 13/22                                                                                                                                                             |                          |
| witness [2] 22/10 27/16                                                                                                                                        | yet [3] 6/20 17/7 31/13                                                                                                                                                         |                          |
| witnesses [1] 45/9                                                                                                                                             | you [124]                                                                                                                                                                       |                          |
| witnesses's [1] 40/6                                                                                                                                           | you're [11] 10/9 10/10 43/12 44/19 44/20 45/4 45/5 45/7 45/25 46/2 46/19                                                                                                        |                          |
| woman [4] 5/21 6/6 11/9 14/17                                                                                                                                  | you've [5] 29/23 30/13 30/14 43/6 44/24                                                                                                                                         |                          |
| won't [5] 12/3 12/3 31/12 35/1 46/19                                                                                                                           | young [7] 11/8 11/23 14/22 14/22 23/16 36/17 36/17                                                                                                                              |                          |
| wonder [1] 26/6                                                                                                                                                | your [31] 2/8 2/9 2/11 2/18 2/25 3/12 4/8 6/4 6/14 10/2 10/11 10/18 10/19 10/25 18/22 18/23 18/23 18/24 18/25 19/1 19/7 19/8 34/19 34/24 43/3 43/8 43/13 45/5 45/12 45/21 46/12 |                          |
| wonderful [2] 38/11 41/13                                                                                                                                      | Your Honor [3] 6/14 10/2 10/25                                                                                                                                                  |                          |
| word [2] 10/2 31/4                                                                                                                                             | yourself [2] 19/1 43/8                                                                                                                                                          |                          |



PLEA AGREEMENT



**OFFICE OF THE PENNINGTON COUNTY STATE'S ATTORNEY**

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August 20, 2024

Matt Skinner  
Attorney for Defendant  
Sent via email

**RE: *State v. Seth Keim*; Ct. File No: CR123-3780**

Dear Mr. Skinner:

I am writing this letter for the purpose of extending a revised plea offer to your client. That plea offer is as follows:

Your client would plead guilty to Count 1: Vehicular Homicide and admit the Part III Habitual Offender Information enhancing Count 1 to a Class 1 felony. He would be responsible for all costs of prosecution and any restitution, as ordered by the Court. In exchange, the State would dismiss the remaining counts of the Information and the Part II Information. At the time of sentencing, both sides and all victims would be free to comment.

**This offer shall remain open until otherwise rejected or revoked. This offer is contingent on the Defendant making all court appearances as required and committing no further law violations OR BOND violations (INCLUDING 24/7 Program) while out of custody on bond. Entry of a guilty but mentally ill plea will NOT suffice, unless the Defendant provides a factual basis for a court finding that satisfies SDCL 23A-7-16. Should your client accept this offer and enter a plea pursuant to the agreement, any further law or bond violation prior to sentencing will nullify the agreement and the State will be relieved of its obligations under this agreement.**

If this offer involves the dismissal of other counts or charges, that dismissal will not occur until after the plea and sentencing on contemplated charges. Should your client decide to accept this offer, please inform me as soon as possible so that we may make the appropriate arrangements to expedite this case. Thank you for communicating this offer to your client.

Sincerely,

*/s/ Olivia Siglin*  
Olivia Siglin  
Deputy State's Attorney

FILED  
Pennington County, SD  
IN CIRCUIT COURT

AUG 26 2024

Amber Watkins, Clerk of Courts  
By                      Deputy



CHARGING DOCUMENTS AND  
LAW ENFORCEMENT REPORTS

|                           |       |                                 |
|---------------------------|-------|---------------------------------|
| STATE OF SOUTH DAKOTA     | }     | IN CIRCUIT COURT                |
|                           | ) SS. |                                 |
| COUNTY OF PENNINGTON      | }     | SEVENTH JUDICIAL CIRCUIT        |
| STATE OF SOUTH DAKOTA,    | }     | FILE NO. CRI23-3780             |
|                           | )     |                                 |
| Plaintiff,                | )     | <b>COUNT 1: C-3-FEL = 15/30</b> |
|                           | )     | <b>COUNTS 2-3: C-1-MISD</b>     |
| vs.                       | )     | <b>COUNT 4: C-4-FEL = 10/20</b> |
|                           | )     | <b>COUNT 5-6: C-1-MISD</b>      |
| <b>SETH CHARLES KEIM,</b> | }     |                                 |
|                           | )     | <b>INFORMATION</b>              |
| Defendant,                | )     |                                 |

Information for **COUNT 1: VEHICULAR HOMICIDE; COUNT 2: DRIVING OR CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL; COUNT 3: DRIVING OR CONTROL OF VEHICLE WHILE HAVING .08 PERCENT OR MORE BY WEIGHT OF ALCOHOL IN HIS BLOOD; COUNT 4: VEHICULAR BATTERY; COUNT 5: DRIVING UNDER REVOCATION; COUNT 6: RECKLESS DRIVING**

Olivia Siglin, as prosecuting attorney, in the name of and by the authority of the State of South Dakota, makes and files this Information against **SETH CHARLES KEIM** and charges:

**COUNT 1:** That on or about the 3rd day of **September, 2023**, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the offense of **VEHICULAR HOMICIDE** in that he did, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, and without a design to effect death, operate or drive a motor vehicle in a negligent manner and did thereby cause the death of **Lexi Hagen**, in violation of SDCL 22-16-41, and

**COUNT 2:** That on or about the 3rd day of **September, 2023**, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the public offense of **DRIVING OR CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL** in that he did drive or be in actual physical control of a vehicle while under the influence of an alcoholic beverage, in violation of SDCL 32-23-1(2), or

IN THE ALTERNATIVE:

**COUNT 3:** That on or about the 3rd day of **September, 2023**, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the public offense of **DRIVING OR CONTROL OF VEHICLE WHILE HAVING .08 PERCENT OR MORE BY WEIGHT OF ALCOHOL IN HIS BLOOD** in that he drove or was in actual physical control of a vehicle while having .08 percent or more by weight of alcohol in his/her blood as shown by chemical analysis of his/her breath, blood, or other bodily substance, in violation of SDCL 32-23-1(1), and

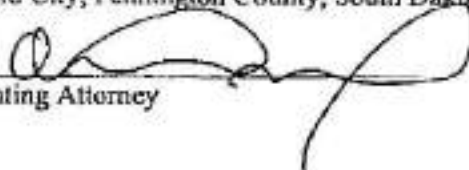
**COUNT 4:** That on or about the 3rd day of **September, 2023**, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the public offense of **VEHICULAR BATTERY** in that he did, while under the influence of alcohol, drugs, or substances, without a design to effect serious bodily injury, operate or drive a motor vehicle in a negligent manner and did thereby cause serious bodily injury to **RCPD Kyle Kumjian**, in violation of SDCL 22-18-36, and

**COUNT 5:** That on or about the 3rd day of September, 2023, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the public offense of **DRIVING UNDER REVOCATION** in that he did then and there drive a motor vehicle on a public highway of this state at a time when his privilege to do so was revoked, in violation of SDCL 32-12-65(1), and

**COUNT 6:** That on or about the 3rd day of September, 2023, in the County of Pennington, State of South Dakota, **SETH CHARLES KEIM** did commit the public offense of **RECKLESS DRIVING** in that he did then and there operate a motor vehicle upon a highway carelessly and heedlessly in disregard of the rights or safety of others or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, in violation of SDCL 32-24-1, and

contrary to the statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 20th day of October, 2023, in Rapid City, Pennington County, South Dakota.

  
Prosecuting Attorney

STATE OF SOUTH DAKOTA     )  
                                                          ) SS.  
COUNTY OF PENNINGTON     )

Olivia Siglin, being first duly sworn, states that she is the prosecuting attorney for the above matter, that she has read the foregoing information and the same is true to her own best knowledge, information and belief.

  
Prosecuting Attorney



Subscribed and sworn to before me this 20th day of October, 2023.

  
Notary Public, South Dakota  
My Commission Expires: 12/29/28

Witnesses known to the Prosecuting Attorney at the time of the filing of this Information:

Trooper Louis Plunkett  
Officer Kyle Kumjian  
Trooper Brandon Allen  
Trooper Kimberly Craig  
Forensic Chemist  
Officer Cody McCracken  
Officer Matthew James  
Harlan Fortin  
Lacrecia Martin  
Ashley Smith  
Wayne Asscherick  
Jon Jensen

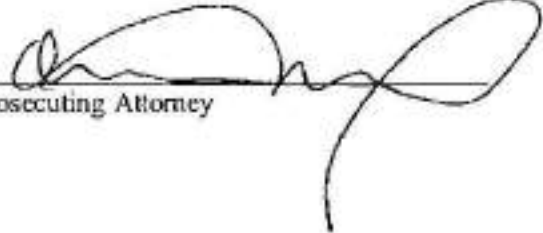
Officer Garrett Mastin  
Trooper Kyle Maciejewski  
Trooper Chris Regan  
Dr. Donald Habbe  
MT Mary Seifert  
Deputy Brian Harlan  
Deputy Ryan McMurray  
Kelly Lee  
Michael Shank  
RCPD Cadet Dayten Johns  
James Chastain



STATE OF SOUTH DAKOTA     )  
                                          ) SS.  
COUNTY OF PENNINGTON     )

NOTICE OF DEMAND FOR  
ALIBI DEFENSE

I, Olivia Siglin, Prosecuting Attorney in the above matter, hereby state that the alleged offense(s) were committed on or about September 3, 2023, at approximately 0027 hours, in Pennington County, South Dakota. I hereby request that the Defendant or his attorney serve upon me a written notice of his intention to offer a defense of alibi within ten (10) days as provided in SDCL 23A-9-1. Failure to provide such notice of alibi defense may result in exclusion of any testimony pertaining to an alibi defense.

  
Prosecuting Attorney

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF PENNINGTON )  
  
STATE OF SOUTH DAKOTA, )  
 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
SETH CHARLES KEIM, )  
Defendant. )

IN CIRCUIT COURT  
  
SEVENTH JUDICIAL CIRCUIT  
  
FILE NO. CRI23-3780  
  
COUNTS 2-3: C-4-FEL = 10/20  
MAND. MIN = 4 YEARS  
  
PART 2 INFORMATION

Information for DRIVING OR CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE (FIFTH OFFENSE) (FELONY).

Olivia Siglin, as prosecuting attorney, in the name of and by the authority of the State of South Dakota, makes and files this Information against **SETH CHARLES KEIM** and charges:

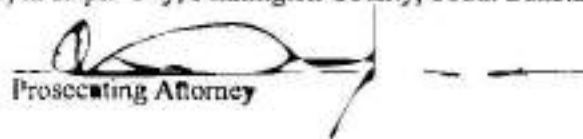
That the offense as set out in the Information filed in this matter is a Fifth Offense in that the above-named Defendant, **SETH CHARLES KEIM**,

on or about April 17, 2017, in Pennington County, South Dakota, Court File No. CRI16-4162, and on or about April 17, 2017, in Pennington County, South Dakota, Court File No. CRI16-5061, and on or about January 2, 2018, in Custer County, South Dakota, Court File No. CRI17-74, and on or about December 13, 2021, in Pennington County, South Dakota, Court File No. CRI21-2345,

was convicted of a state charge of Driving or Control of Vehicle While under the Influence, said prior offenses having occurred within the statutory period set forth in SDCL 32-23-4.1, contrary to 32-23-4.7.

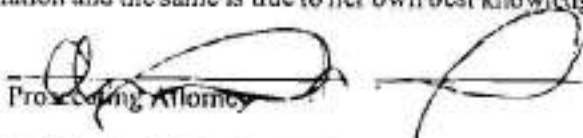
contrary to the statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 20th day of October, 2023, in Rapid City, Pennington County, South Dakota.

  
Prosecuting Attorney

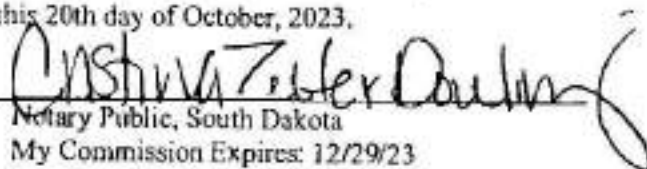
STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF PENNINGTON )

Olivia Siglin, being first duly sworn, states that she is the prosecuting attorney for the above matter, that she has read the foregoing Information and the same is true to her own best knowledge, information and belief.

  
Prosecuting Attorney



Subscribed and sworn to before me this 20th day of October, 2023.

  
Notary Public, South Dakota  
My Commission Expires: 12/29/23

Filed: 10/20/2023 2:22 PM CST Pennington County, South Dakota 51CRI23-3780

|                        |       |                          |
|------------------------|-------|--------------------------|
| STATE OF SOUTH DAKOTA  | )     | IN CIRCUIT COURT         |
|                        | ) SS. |                          |
| COUNTY OF PENNINGTON   | )     | SEVENTH JUDICIAL CIRCUIT |
| STATE OF SOUTH DAKOTA, | )     | FILE NO. CRI23-3780      |
|                        | )     |                          |
| Plaintiff,             | )     | COUNT 1: C-1-FEL = 50/50 |
| vs.                    | )     | COUNT 4: C-2-FEL = 25/50 |
|                        | )     |                          |
| SETH CHARLES KEIM,     | )     | PART 3 INFORMATION       |
|                        | )     |                          |
| Defendant.             | )     |                          |

Information for **HABITUAL OFFENDER**.

Olivia Siglin, as prosecuting attorney, in the name of and by the authority of the State of South Dakota, makes and files this Information against **SETH CHARLES KEIM** and charges:

That the Defendant, **SETH CHARLES KEIM**, is a habitual offender, as that term is defined in SDCL 22-7-8.1, in that the Defendant **SETH CHARLES KEIM**, was convicted of the following felonies:

That on or about the 17th day of April, 2017, the Defendant was convicted of the crime of Possession of a Controlled Drug or Substance in the Circuit Court of the State of South Dakota for the County of Pennington, Court File No CRI16-4162;

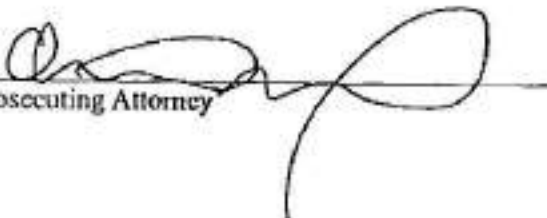
That on or about the 17th day of April, 2018, the Defendant was convicted of the crime of Unauthorized Ingestion of Controlled Drug or Substance in the Circuit Court of the State of South Dakota for the County of Pennington, Court File No CRI17-328;

That on or about the 13th day of December, 2021, the Defendant was convicted of the crime of Driving Under Influence - Fourth Offense in the Circuit Court of the State of South Dakota for the County of Pennington, Court File No CRI21-2345;

in violation of SDCL 22-7-8.1, and

contrary to the statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 20th day of October, 2023, in Rapid City, Pennington County, South Dakota.

  
 Prosecuting Attorney

STATE OF SOUTH DAKOTA     )  
                                                  ) SS.  
COUNTY OF PENNINGTON     )

Olivia Siglin, being first duly sworn, states that she is the prosecuting attorney for the above matter, that she has read the foregoing Information and the same is true to her own best knowledge, information and belief.

  
Prosecuting Attorney

Subscribed and sworn to before me this 20th day of October, 2023.



  
Notary Public, South Dakota  
My Commission Expires: 12/29/28

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 30904

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

SETH CHARLES KEIM,

*Defendant and Appellant.*

---

APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
PENNINGTON COUNTY, SOUTH DAKOTA

---

THE HONORABLE JOSHUA K. HENDRICKSON  
Circuit Court Judge

---

**APPELLEE'S BRIEF**

---

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ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

---

Notice of Appeal filed November 19, 2024

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 30904

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

SETH CHARLES KEIM,

*Defendant and Appellant.*

---

**PRELIMINARY STATEMENT**

Keim appeals arguing the circuit court abused its discretion in sentencing him and his sentence violated the Eighth Amendment.

References to the Settled Record, 51CRI23-3780, are denoted "SR." References to the Appellant's Brief are denoted "AB." The proper page number(s) follows the references.

**JURISDICTIONAL STATEMENT**

This is an appeal of an Amended Judgment and Sentence entered on November 7, 2024. SR:330-31. Keim timely filed a Notice of Appeal on November 19, 2024. SR:333; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

## STATEMENT OF LEGAL ISSUES AND AUTHORITIES

### I.

#### WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN SENTENCING KEIM?

The circuit court did not rule on this issue.

*State v. Lanpher*, 2024 S.D. 26, 7 N.W.3d 308

*State v. Willingham*, 2019 S.D. 55, 933 N.W.2d 619

### II.

#### WHETHER KEIM'S SENTENCE VIOLATED THE EIGHTH AMENDMENT?

The circuit court did not rule on this issue.

*State v. Shelton*, 2021 S.D. 22, 958 N.W.2d 721

## STATEMENT OF THE CASE

Keim pled guilty to vehicular homicide and admitted the Habitual Offender Information, under SDCL 22-7-8.1,<sup>1</sup> enhancing vehicular homicide to a class 1 felony. SR:221, 367. In exchange, the State dismissed the remaining counts of the Information<sup>2</sup> and the Habitual Offender Information under SDCL 32-23-4.7.<sup>3</sup> SR:367. Under the terms

---

<sup>1</sup> The Habitual Offender Information alleged Keim had prior felony convictions for possession of a controlled substance, unauthorized ingestion of a controlled substance, and DUI fourth offense. SR:41.

<sup>2</sup> The other counts of the Information were DUI fifth offense, vehicular battery, driving while his driver's license was revoked, and reckless driving. SR:37-39.

<sup>3</sup> The Habitual Offender Information alleged Keim had four prior DUIs. SR:40.

of the plea agreement, the State had discretion to propose any sentence permitted by statute. SR:221.

The circuit court found several aggravating factors and sentenced Keim to forty years in the South Dakota State Penitentiary with fifteen years suspended and credit for 373 days served. SR:330-31, 421-24.

### **STATEMENT OF THE FACTS**

On September 2, 2023, Keim and his girlfriend, Lexi Hagen, spent the day drinking at their home and watching movies. SR:227. The two decided to go to Pactola to watch the sunset. *Id.* On their way there, they bought a twelve pack of White Claws and a bottle of Crown Royal. *Id.* While watching the sunset, Keim drank most of the bottle of Crown Royal. *Id.* After watching the sunset, they drove home, made supper, and watched television. *Id.* After eating, the couple went to Borrachos and had a drink; then, they went to the Flying J Bar. SR:228.

Around midnight, Keim told Lexi they “should leave now and go home.” *Id.* Keim was driving, and Lexi was seated in the front passenger’s seat. *Id.*; SR:254. Keim was driving<sup>4</sup> southbound on Haines Avenue at a speed of approximately 50 miles per hour.<sup>5</sup> SR:13, 15, 55, 72. Keim “was driving like a[n] idiot, speeding and dodging” through cars “trying to get home as fast as [he] could.” SR:228.

---

<sup>4</sup> Keim’s driver’s license was revoked due to his prior DUI convictions. SR:12, 187, 201, 358.

<sup>5</sup> The speed limit on Haines Avenue is 35 miles per hour. SR:72.

Officer Kyle Kumjian, traveling northbound on Haines Avenue, was responding to a call for service at Harbor Freight. SR:15, 58. As Officer Kumjian was turning left into Harbor Freight's parking lot, traveling approximately five miles per hour, he was struck by Keim's vehicle. SR:12, 15. Officer Kumjian's vehicle spun onto the sidewalk. SR:56.

At the time of the collision, Keim's blood alcohol content was approximately .173; Keim "knew he shouldn't have been driving but didn't feel too drunk to drive." SR:12, 82, 228. As a result of the collision, Lexi died, and Officer Kumjian received a severe concussion and injuries to his face and arms. SR:12, 15.

## **ARGUMENTS**

### **I.**

#### **KEIM RECEIVED AN APPROPRIATE SENTENCE.**

A circuit court's sentencing decision is usually reviewed for an abuse of discretion. *State v. Lanpher*, 2024 S.D. 26, ¶ 25, 7 N.W.3d 308, 317. "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable." *Id.* (quoting *State v. Caffee*, 2023 S.D. 51, ¶ 28, 996 N.W.2d 351, 3360).

When this Court reviews a circuit court's discretion, it does not "substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence." *Id.* ¶ 26, 7 N.W.3d at 317 (quoting *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 358).

Instead, “[c]ircuit courts have broad discretion in sentencing.” *Id.* (quoting *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360); *see also State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (“Within constitutional *and* statutory limits, the trial courts of this state exercise broad discretion when deciding the extent and kind of punishment to be imposed.”). Consequently, “a sentence within the statutory maximum [generally] will not be disturbed on appeal.” *Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83.

Nonetheless, “[c]ourts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation.” *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360 (citation omitted). Courts should weigh these factors “on a case-by-case basis” and may determine “which theory is accorded priority” in a particular case. *Id.*

As part of its consideration, “[t]he sentencing court should have access to ‘the fullest information possible concerning the defendant’s life and characteristics. Information which should be available to the court includes general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.’” *State v. Manning*, 2023 S.D. 7, ¶ 52, 985 N.W.2d 743, 758 (quotation omitted).

Here, the circuit court did not abuse its discretion when it sentenced Keim. Before imposing its sentence, the circuit court heard victim impact statements, arguments of counsel, letters in support of

Keim, and Keim's statements. SR:380-424. The circuit court also reviewed Keim's PSI. SR:380. Neither party had any objections to the PSI. *Id.* The PSI contained, among other things, information about Keim's extensive criminal history, family history, education, employment history, social circumstances, and attitudes/orientation. SR:226-326.

In making its decision, the circuit court explicitly considered the traditional sentencing factors. SR:421. It recited the need to protect the public, the punitive and rehabilitative aspect of the sentence, and the deterrent effect on Keim and others. *Id.* The circuit court stated it does not find Lexi's death to be "an accident[.]" because "the acts that led up to it were conscious." SR:422. The circuit court commented that had Keim been law abiding, this would of been "a completely avoidable situation." *Id.*

The circuit court considered Keim's rehabilitation and acknowledged Keim suffered from this "terribly devastating event" and will "probably [be] living with the results of this event the rest of [his] life[.]" SR:421. The circuit court found Keim to be a danger to society. SR:423-24. The circuit court remarked that Keim's belief that he does not have a problem with alcohol gave the circuit "[c]ourt serious pause in the area of public protection." SR:423. The circuit court determined Keim is "going to be a danger to the public" even after he is released from prison. SR:423-24. Therefore, Keim's sentence included "a 10-year

driver's license revocation[,]” which does not “begin until [he is] released from incarceration.” SR:424.

The circuit court considered the potential deterrence effect on others. It noted “[t]here needs to be a deterrent effect on this and people need to know that when you kill someone in a drunken driving accident, there are severe consequences.” *Id.*

The circuit court reviewed Keim’s criminal history and outlined some of Keim’s convictions for the record, which included:

ingestion of intoxication other than alcohol in November of 2015; possession of a controlled substance and DUI in August of 2016; DUI in October of 2016; ingestion of a controlled substance in January of 2017; DUI 2nd May of 2017; simple assault in March of 2021; and DUI 3rd in May of 2021.

SR:228-29, 422. The circuit court commented to Keim “[i]t’s absolutely shocking to the Court that this is the second time you’ve been in a wreck with a law enforcement officer [while] under the influence. You hit a police car. It’s absolutely mind-blowing. That’s a fact that the court’s considering. [The circuit court] does not] even know how that’s possible statistically.” SR:422-23.

Keim pled guilty to vehicular homicide and admitted the Habitual Offender Information, under SDCL 22-7-8.1, enhancing vehicular homicide to a class 1 felony. SR:221, 367; SDCL 22-7-8.1, 22-16-41. Therefore, Keim’s maximum possible sentence was fifty years imprisonment and a \$50,000 fine. SDCL 22-6-1, 22-7-8.1, 22-16-41. The circuit court sentenced Keim to forty years imprisonment, with



fifteen years suspended. SR:330-31, 423-24. Because Keim's sentence was within the statutory maximum, his sentence should not be disturbed on appeal. *See Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83.

Keim argues the circuit court abused its discretion when sentencing him because the circuit court "fail[ed] to [] consider the impact of the recently enacted S.D. Codified Laws § 24-15-4.2 which barred parole for Keim's offense[] and fail[ed] to adequately consider appropriate rehabilitative factors[.]" AB:7.

SDCL 24-15-4.2 provides that an inmate convicted of and sentenced for vehicular homicide, as defined in § 22-16-41, if committed on or after July 1, 2023, is not eligible for parole. Keim committed his offense on September 2, 2023; therefore, SDCL 24-15-4.2 applied to his sentence. During sentencing, the circuit court stated:

It will be the judgment of the Court you be sentenced to the State Penitentiary for a period of 40 years. I'm going to suspend 15 of those years. That means essentially, it's a 25-year sentence. Then you're going to be put on a long period of parole after that. The reason I'm doing that is I still think you're going to be a danger to the public after you get out and I want you monitored for alcohol use after that by a parole officer.

SR:423-24. Although the circuit court referred to parole, which Keim is ineligible for, the conditions it referred to will apply to Keim's suspended time. Keim will be mandated to follow the circuit court's conditions during his suspended time. Further, there were no objections to the circuit courts mention of parole or to the mention of parole in the PSI.

SR:380, 423-24; *see* SR:229. Moreover, Keim's attorney referred to parole when making his sentencing argument. SR:417-18. Keim failed to show the circuit court abused its discretion in sentencing him.

Additionally, Keim cited fifteen cases where the defendant was convicted of vehicular homicide. AB:11-13. In those cases, the defendants did not face the Habitual Offender enhancement, making their situation different from Keim's situation. In Keim's case, the circuit court stated Keim's crime was especially "aggravating" because of Keim's "past history" of driving while under the influence of alcohol. SR:423. Therefore, the comparison with other defendants is irrelevant.

This Court has held "the mere presence of mitigating evidence does not entitle a defendant to a diminished sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider." *State v. Klinetobe*, 2021 S.D. 24, ¶ 41, 958 N.W.2d 734, 744. Contrary to Keim's argument that the circuit court failed to adequately consider appropriate rehabilitative factors, it's clear from the record that the circuit court properly considered all the sentencing factors when making its decision. As previously discussed, the circuit court considered Keim's mitigating circumstances and determined he committed "one of the more aggravating [vehicular homicide cases] [it] has seen given [Keim's] past history." SR:423.

Keim raised no issues to the circuit court with the way it considered the factors it relied on, making the circuit court's

consideration of the factors proper. *See State v. McKinney*, 2005 S.D. 74, ¶ 18, 699 N.W.2d 460, 466 (holding the circuit court properly considered evidence when the defendant did not object or otherwise contest the evidence at sentencing). Thus, the issue is not preserved for appellate review. *See State v. Willingham*, 2019 S.D. 55, ¶ 25, 933 N.W.2d 619, 625. And, on appeal, Keim failed to adequately present arguments and authority to show that placing more weight on certain factors is an abuse of discretion, constituting waiver on appeal. The circuit court acquired a thorough acquaintance with the character and history of Keim and fashioned an appropriate sentence. The circuit court did not abuse its discretion in sentencing Keim.

## II.

### KEIM'S SENTENCE DOES NOT VIOLATE THE EIGHTH AMENDMENT.

This Court reviews de novo whether a defendant's sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. *Lanpher*, 2024 S.D. 26, ¶ 18, 7 N.W.3d at 315. The Eighth Amendment "forbids only extreme sentences that are 'grossly disproportionate' to the crime." *State v. Shelton*, 2021 S.D. 22, ¶ 34, 958 N.W.2d 721, 732 (quoting *State v. Quevedo*, 2020 S.D. 42, ¶ 37, 947 N.W.2d 402, 410). The Eighth Amendment standard for analyzing sentences is "relatively straightforward." *State v. Chipps*, 2016 S.D. 8, ¶ 38, 874 N.W.2d 475, 488. First, this Court looks "to the gravity of the

offense and the harshness of the penalty. This comparison rarely leads to an inference of gross disproportionality and typically marks the end of [this Court's] review." *Id.* ¶ 38, 874 N.W.2d at 488-89 (citation modified). Only if the penalty imposed appears to be grossly disproportionate to the gravity of the offense will this Court compare the sentence to those "imposed on other criminals in the same jurisdiction," as well as those "imposed for [the] commission of the same crime in other jurisdictions." *Rice*, 2016 S.D. 18, ¶ 13, 877 N.W.2d at 80 (citing *Chipps*, 2016 S.D. 8, ¶ 38, 874 N.W.2d at 489).

Further, this Court held if the "sentence is enhanced because of the offender's recidivism, then the gravity of his past offenses also contributes to the gravity of the present offense." *Lanpher*, 2024 S.D. 26, ¶ 21, 7 N.W.3d at 316 (quoting *Chipps*, 2016 S.D. 8, ¶ 36, 874 N.W.2d at 488). "The reason for this is that

the State's interest is not merely punishing the offense of conviction, or the 'triggering' offense: 'It is in addition the interest in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law.'"

*Chipps*, 2016 S.D. 8, ¶ 36, 874 N.W.2d at 488 (citation omitted).

"The gravity of the offense refers to the offense's relative position on the spectrum of all criminality." *Shelton*, 2021 S.D. 22, ¶ 37, 958 N.W.2d at 732 (quotation omitted). Some factors considered when judging the gravity of an offense include the harm caused to the victim or

society, the culpability of the offender, the violent versus non-violent nature, the level of intent required, and other relevant conduct. *State v. Diaz*, 2016 S.D. 78, ¶ 52, 887 N.W.2d 751, 766 (citations omitted).

The State agrees with Keim that “any homicide is considered a very grave offense[.]” AB:20 (quoting *Quevedo*, 947 N.W.2d at 411). As to the specific conduct relevant to Keim’s offense, Keim spent the day drinking alcohol, went to Pactola and drank most of a bottle of Crown Royal, and then drove to a bar where he continued to consume alcohol. SR:227. Despite drinking all day, having multiple DUI convictions, and failing to have a valid driver’s license, at around midnight, Keim drove home. SR:228. With Lexi seated in the passenger’s seat, Keim drove “like a[n] idiot, speeding and dodging” through cars “trying to get home as fast as [he] could.” *Id.* Keim was driving approximately 50 miles per hour in a residential area. *Id.* Keim crashed into Officer Kumjian, spinning his vehicle onto the sidewalk. SR:56. As a result of the collision, Lexi died, and Officer Kumjian received severe injuries. SR:12, 15. At the time of the collision, Keim’s blood alcohol content was .173; Keim “knew he shouldn’t have been driving but didn’t feel too drunk to drive.” SR:12, 82, 228. The circuit court commented that Keim’s intentional actions of driving while intoxicated placed others in danger and ended the life of a young woman. SR:422.

The circuit court considered Keim’s past conduct, including his prior DUI convictions, when determining Keim’s sentence and found that

Keim committed “one of the more aggravating [vehicular homicide cases] [it] has seen given [Keim’s] past history.” SR:423.

As for the harshness of the penalty, the harshness is reflected by the penalty’s “relative position on the spectrum of all permitted punishments.” *Shelton*, 2021 S.D. 22, ¶ 37, 958 N.W.2d at 732 (quotation omitted). The most severe punishments for three of the classes of felonies include the death penalty, mandatory life in prison, and non-mandatory life sentences. *Id.* (citing SDCL 22-6-1). The next six felony classifications “are less severe, setting forth maximum sentences ranging from [fifty] years for a class one felony down to two years for a class six felony.” *Id.* (citing SDCL 22-6-1). In judging the harshness of the penalty, the possibility of parole is a consideration. *Quevedo*, 2020 S.D. 42, ¶ 39, 947 N.W.2d at 411 (citing *Diaz*, 2016 S.D. 78, ¶ 55, 887 N.W.2d at 768).

Keim pled guilty to vehicular homicide and admitted the Habitual Offender Information,<sup>6</sup> under SDCL 22-7-8.1, enhancing vehicular homicide to a class 1 felony. SR:221, 367; SDCL 22-7-8.1, 22-16-41. Therefore, Keim’s maximum possible sentence was fifty years imprisonment and a \$50,000 fine. SDCL 22-6-1, 22-7-8.1, 22-16-41. The circuit court sentenced Keim to forty years imprisonment, with fifteen years suspended, and without the possibility of parole. SR:330-

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<sup>6</sup> The Habitual Offender Information alleged three prior felony convictions for possession of a controlled substance, unauthorized ingesting of a controlled drug or substance, and DUI fourth offense.

31. This punishment, on the spectrum of possible punishments, is not unduly harsh because as Keim stated “any homicide . . . has a very high position . . . ‘on the spectrum of all criminality.’” AB:20 (quoting *Quevedo*, 947 N.W.2d at 411).

Keim’s sentence fails to suggest gross disproportionality; therefore, it is unnecessary to compare this penalty with those of other criminals. Moreover, as discussed in section I, the defendants cited by Keim were not subject to the same penalty he faced. Because of Keim’s prior conduct, his sentence was enhanced elevating his offense to a class 1 felony. SR:221, 367. Keim’s sentence was not grossly disproportionate to his crime; thus, his sentence should be affirmed.

### **CONCLUSION**

In light of Keim’s criminal history and disregard for human life by continuing to drive while intoxicated, the circuit court did not abuse its discretion in sentencing Keim and Keim’s sentence does not violate the Eighth Amendment. Therefore, the State respectfully requests that Keim’s sentence be affirmed.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 3,006 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 15th day of July 2025.

/s/ Renee Stellagher

Renee Stellagher  
Assistant Attorney General

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 15, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Seth Charles Keim*, was served via Odyssey File and Serve upon Matthew L. Skinner, Sr. at skinnerlaw95@gmail.com.

/s/ Renee Stellagher

Renee Stellagher  
Assistant Attorney General