CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
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April 12, 2021

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IN CASE OF: A-20-000172, State v. Abram K. Sollman
TRIAL COURT/ID: Sarpy County District Court CR19-244

The following filing: Petition Appellant for Further Review
Filed on 01/28/21
Filed by appellant Abram K Sollman

Has been reviewed by the court and the following order entered:

Petition of appellant for further review denied.

Respectfully,

Clerk of the Supreme Court
and Court of Appeals

APPENDIX
A

APPENDIX B

OPINION OF THE NEBRASKA COURT OF APPEALS

(Designated for Permanent Publication)

Case Title

STATE OF NEBRASKA, APPELLEE,
V.
ABRAM K. SOLLMAN, APPELLANT.

Case Caption

STATE V. SOLLMAN

Filed January 12, 2021. No. A-20-172.

Appeal from the District Court for Sarpy County: GEORGE A. THOMPSON, Judge. Affirmed.

Thomas P. Strigenz, Sarpy County Public Defender, and Mitchell S. Sell, Senior Certified Law Student, for appellant.

Douglas J. Peterson, Attorney General, and Matthew Lewis for appellee.

1. **Motions to Dismiss: Directed Verdict.** A motion to dismiss at the close of all the evidence has the same legal effect as a motion for directed verdict.
2. **Criminal Law: Motions to Dismiss: Evidence.** In determining whether a criminal defendant's motion to dismiss for insufficient evidence should be sustained, the State is entitled to have all of its relevant evidence accepted as true, the benefit of every inference that can reasonably be drawn from the evidence, and every controverted fact resolved in its favor.
3. **Criminal Law: Directed Verdict.** In a criminal case, a court can direct a verdict only when there is a complete failure of evidence to establish an essential element of the crime charged or the evidence is so doubtful in character, lacking probative value, that a finding of guilt based on such evidence cannot be sustained.
4. **Rules of Evidence: Hearsay: Appeal and Error.** Excluding rulings under the residual hearsay exception, an appellate court reviews the factual findings underpinning a trial court's hearsay ruling for clear error and reviews de novo the court's ultimate determination whether the court admitted evidence over a hearsay objection or excluded evidence on hearsay grounds.
5. **Constitutional Law: Motions to Suppress: Confessions: Miranda Rights: Appeal and Error.** In reviewing a motion to suppress a statement based on its claimed involuntariness, including claims that law enforcement procured it by violating the safeguards established by the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), an appellate court applies a two-part standard of review. Regarding historical facts, an appellate court reviews the trial court's findings for clear error. Whether those facts meet constitutional standards, however, is a question of law, which an appellate court reviews independently of the trial court's determination.
6. **Judgments: Trial: Evidence: Motions for New Trial: Sentences: Appeal and Error.** Evidentiary questions committed to the discretion of the trial judge, orders denying a motion for new trial, and claims of excessive sentencing are all reviewed for abuse of discretion.
7. **Judgments: Words and Phrases.** An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.
8. **Sentences: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent the trial court's abuse of discretion.
9. **Criminal Law: Torts: Proximate Cause.** The concept of proximate causation is applicable in both criminal and tort law, and the analysis is parallel in many instances.
10. **Proximate Cause.** As a general matter, to say one event proximately caused another is a way of making two separate but related assertions: First, it means the former event caused the latter; second, it means that it was not just any cause, but one with a sufficient connection to the result.
11. **Negligence: Proximate Cause.** The idea of proximate cause, as distinct from actual cause or cause in fact, is a flexible concept that generally refers to the basic requirement that there must be some direct relation between the injury asserted and the injurious conduct alleged.
12. ____: ____. A requirement of proximate cause serves to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity.
13. **Negligence: Proximate Cause: Words and Phrases.** A "proximate cause" is a moving or effective cause or fault which, in the natural and continuous sequence, unbroken by an efficient

intervening cause, produces a death or injury and without which the death or injury would not have occurred.

14. **Proximate Cause: Proof.** Three basic requirements must be met in establishing proximate cause: (1) that without the misconduct, the injury would not have occurred, commonly known as the "but for" rule; (2) that the injury was a natural and probable result of the misconduct; and (3) that there was no efficient intervening cause.

15. **Criminal Law: Negligence: Proximate Cause: Words and Phrases.** Criminal conduct is a proximate cause of the event if the event in question would not have occurred but for that conduct; conversely, conduct is not a proximate cause of an event if that event would have occurred without such conduct.

16. **Negligence: Proximate Cause.** An intervening cause supersedes and cuts off the causal link only when the intervening cause is not foreseeable.

17. **Negligence: Proximate Cause: Words and Phrases.** An efficient intervening cause is new and independent conduct of a third person, which itself is a proximate cause of the injury in question and breaks the causal connection between the original conduct and the injury. The causal connection is severed when (1) the negligent actions of a third party intervene, (2) the third party had full control of the situation, (3) the third party's negligence could not have been anticipated by the defendant, and (4) the third party's negligence directly resulted in injury to the plaintiff.

18. **Negligence: Proximate Cause: Tort-feasors: Liability.** The doctrine that an intervening act cuts off a tort-feasor's liability comes into play only when the intervening cause is not foreseeable. But if a third party's negligence is reasonably foreseeable, then the third party's negligence is not an efficient intervening cause as a matter of law.

19. **Negligence.** Foreseeable risk is an element in the determination of negligence, not legal duty. In order to determine whether appropriate care was exercised, the fact finder must assess the foreseeable risk at the time of the defendant's alleged negligence.

20. **Trial: Negligence.** The extent of foreseeable risk depends on the specific facts of the case and cannot be usefully assessed for a category of cases; small changes in the facts may make a dramatic change in how much risk is foreseeable. Thus, courts should leave such determinations to the trier of fact unless no reasonable person could differ on the matter. And if the court takes the question of negligence away from the trier of fact because reasonable minds could not differ about whether an actor exercised reasonable care, then the court's decision merely reflects the one-sidedness of the facts bearing on negligence and should not be misrepresented or misunderstood as involving exemption from the ordinary duty of reasonable care.

21. **Evidence: Hearsay: Words and Phrases.** Hearsay statements are out-of-court statements made by a human declarant that are offered in evidence to prove the truth of the matter asserted.

22. **Drunk Driving: Blood, Breath, and Urine Tests: Proof.** The State is not required to prove a temporal nexus between the test and the defendant's alcohol level at the moment he or she was operating the vehicle.

23. ____: ____: ____. Matters of delay between driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence.

24. **Drunk Driving: Blood, Breath, and Urine Tests: Time.** A valid breath test given within a reasonable time after the accused was stopped is probative of a violation.

25. **Constitutional Law: Criminal Law: Appeal and Error.** Harmless error jurisprudence recognizes that not all trial errors, even those of constitutional magnitude, entitle a criminal defendant to the reversal of an adverse trial result.
26. **Convictions: Appeal and Error.** It is only prejudicial error, that is, error which cannot be said to be harmless beyond a reasonable doubt, which requires that a conviction be set aside.
27. **Appeal and Error.** When determining whether an alleged error is so prejudicial as to justify reversal, courts generally consider whether the error, in light of the totality of the record, influenced the outcome of the case.
28. **Verdicts: Juries: Appeal and Error.** Harmless error review looks to the basis on which the jury actually rested its verdict. The inquiry is not whether in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the actual guilty verdict rendered was surely unattributable to the error.
29. **Trial: Evidence: Verdicts: Appeal and Error.** In conducting harmless error analysis, an appellate court looks to the entire record and views the erroneously admitted evidence relative to the rest of the untainted, relevant evidence of guilt. Overwhelming evidence of guilt can be considered in determining whether the verdict rendered was surely unattributable to the error, but overwhelming evidence of guilt is not alone sufficient to find the erroneous admission of evidence harmless. An additional consideration is whether the improperly admitted evidence was cumulative and tended to prove the same point as other properly admitted evidence.
30. **Convictions: Evidence: Appeal and Error.** In reviewing a criminal conviction for a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.
31. **Criminal Law: Convictions: Evidence: Appeal and Error.** When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
32. **Constitutional Law: Miranda Rights: Self-Incrimination.** *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), prohibits the use of statements derived during custodial interrogation unless the prosecution demonstrates the use of procedural safeguards that are effective to secure the privilege against self-incrimination.
33. **Miranda Rights: Self-Incrimination: Evidence.** *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), requires law enforcement to give a particular set of warnings to a person in custody before interrogation, including that he or she has the right to remain silent, that any statement he or she makes may be used as evidence against him or her, and that he or she has the right to an attorney. These warnings are considered prerequisites to the admissibility of any statement made by a defendant during custodial interrogation.
34. **Miranda Rights.** *Miranda* warnings are required only when a suspect interrogated by the police is in custody.

35. ____. The ultimate inquiry for determining whether a person is in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), is whether there is a formal arrest or restraint on freedom of movement of degree associated with a formal arrest.

36. ____. Custody under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), is to be determined based on how a reasonable person in the suspect's situation would perceive his or her circumstances.

37. **Constitutional Law: Search and Seizure.** A seizure under the Fourth Amendment occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.

38. **Miranda Rights.** In considering whether a suspect is in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), relevant considerations include, but are not limited to, the location of the interaction, who initiated the interaction, the duration of the interaction, the type and approach of questioning, the freedom of movement of the suspect, the duration of the interaction, and whether the suspect was placed under arrest at the termination of the interaction.

39. **Sentences: Appeal and Error.** Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors as well as any applicable legal principles in determining the sentence to be imposed.

40. **Sentences.** In determining a sentence to be imposed, relevant factors customarily considered and applied are the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. The sentencing court is not limited to any mathematically applied set of factors.

41. ____. The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.

MOORE, BISHOP, and WELCH, Judges.

WELCH, Judge.

I. INTRODUCTION

Abram K. Sollman appeals his conviction of motor vehicle homicide, driving under the influence of alcohol (DUI), and reckless driving. He contends the district court erred in (1) overruling his motion to dismiss at the close of evidence and finding him guilty of count 1, because an efficient intervening cause destroys proximate cause; (2) overruling his hearsay objection to exhibit 5; (3) finding evidence beyond a reasonable doubt that he was guilty of count 2; (4) overruling his motion to dismiss at the close of evidence and finding him guilty of count 3; (5) overruling his motion to suppress the statements he made to law enforcement; and (6) imposing excessive sentences. For the reasons set forth herein, we affirm Sollman's convictions and sentences.

II. STATEMENT OF FACTS

At about 6 p.m. on February 1, 2019, Sean Nowling was traveling westbound on Interstate 80 when "[a]ll of a sudden [he heard] honking of a horn like blaring" and a silver Volkswagen Jetta came "fl[ying] by [him] in the left lane . . . swerving back and forth through traffic," outpacing all other cars on the road and not using turn signals. Nowling later saw the same Volkswagen, which he described as a "station wagon car" with "real fancy rims on it" and a Wisconsin license plate, with a door open at the "[Highway] 370 exit" where its driver had pulled over onto the side of the road and it appeared to Nowling as if the driver "was urinating on the side of the road."

After Nowling passed the silver Volkswagen, Nowling exited at the Gretna, Nebraska, off ramp before the Volkswagen came "flying by [him] on the shoulder up through three or four cars . . . in front of [him] . . . on the shoulder all the way through" and ran "the red light at the off ramp turn and Highway 31" toward Gretna. Nowling watched as the Volkswagen ran a second red light near a shopping mall, causing the vehicles in the area to quickly brake to avoid a collision. Nowling also observed the Volkswagen "swerv[e]," "whi[p] around," make a "U-turn," and "hea[d] back towards the [I]nterstate on Highway 31." Shortly thereafter, Nowling saw an "ambulance [and] sheriffs [and saw] Highway 31 was closed off."

Shortly thereafter, a Sarpy County sheriff's deputy, John Sanderson, arrived at the scene of the accident involving the silver Volkswagen and another vehicle, which accident had resulted in injuries to both drivers. Sollman was identified as the driver of the Volkswagen, and a Sarpy County sheriff's sergeant, Kyle Percifield, discovered a "small bottle of Fireball whisky . . . on the passenger side of [Sollman's] vehicle." Deputy Sanderson smelled alcohol emanating from Sollman as Sollman was being transported on a stretcher to a "life flight" helicopter and taken to the University of Nebraska Medical Center (UNMC). The driver of the second vehicle, Cassandra Clausen, later died of blunt force trauma to her torso as a result of the accident.

After Deputy Sanderson smelled alcohol emanating from Sollman, he obtained a search warrant to obtain a DUI blood draw from Sollman. When Deputy Sanderson arrived at UNMC to execute the search warrant, he informed Sollman that he had a search warrant for a blood draw, went over the post-chemical-test advisements, and, during the same conversation, asked Sollman

if he had had anything to drink. Sollman responded that he "hadn't had anything to drink in 15 hours prior was his last drink." The results from the blood draw taken pursuant to the search warrant, which draw occurred approximately 3 hours after the accident, showed that Sollman's blood alcohol content was .125 plus or minus .01 grams of ethanol per 100 milliliters of blood.

The following day, Sergeant Percifield visited Sollman at UNMC and inquired about Sollman's recollection of the accident. Sollman stated that he had been traveling from Michigan to Lincoln and that "he didn't feel intoxicated" prior to the accident. Sergeant Percifield interviewed Sollman for a second time while Sollman was in jail and began by informing Sollman of the charges against him and the preliminary conclusions of the investigation into the accident. During this jail interview, Sollman responded that he thought the speed limit was 65 m.p.h. Sergeant Percifield acknowledged that he did not advise Sollman of his *Miranda* rights while interviewing Sollman at either the hospital or the jail.

In March 2019, Sollman was charged with motor vehicle homicide while under the influence of alcohol or drugs, a Class IIA felony under Neb. Rev. Stat. § 28-306(3)(b) (Reissue 2016) (count 1); DUI, a Class W misdemeanor under Neb. Rev. Stat. § 60-6,196 (Reissue 2010) (count 2); and reckless driving, a Class III misdemeanor under Neb. Rev. Stat. § 60-6,213 (Reissue 2010) (count 3). The information alleged that Sollman unintentionally caused Clausen's death while engaged in the unlawful operation of a motor vehicle, i.e., under the influence of alcohol beyond the legal limit.

1. Motion to Suppress

Prior to trial, Sollman moved to suppress statements he made to law enforcement at the scene of the February 1, 2019, accident and the following day while he was in the hospital, alleging the statements were obtained in violation of the 4th through 6th and 14th Amendments to the U.S. Constitution, as well as article I, §§ 7 and 12, of the Nebraska Constitution. More specifically, Sollman asserted that the statements were obtained when he was hospitalized and in extreme pain and suffering; that he was not free to leave; that his statements were given neither freely nor voluntarily and were not made knowingly, understandingly, or intelligently; that he was not informed of his *Miranda* rights; and that his statements were a result of questions that law enforcement should have known were likely to elicit an incriminatory response.

At the suppression hearing, certain of the aforementioned facts that were relevant to Sollman's motion were admitted into evidence. Additional testimony was adduced from Deputy Sanderson and Sergeant Percifield.

(a) Deputy Sanderson

When Deputy Sanderson executed the search warrant for a blood draw, he observed Sollman to be "conscious, alert, and talking"; believed Sollman knew who Deputy Sanderson was and what was going on; and noted Sollman was appropriately responsive to the questions posed to him. Deputy Sanderson acknowledged that he did not speak with hospital staff about Sollman's condition or about any medications given to Sollman prior to speaking with him; however, Deputy Sanderson reiterated that Sollman was "with it . . . able to hold a conversation," which Deputy Sanderson testified provided him with no indication that Sollman would be unable to coherently answer Deputy Sanderson's questions. Deputy Sanderson agreed that Sollman's

condition likely prevented him from moving around the room or leaving at the time Deputy Sanderson spoke with him, but acknowledged that he did not know for sure. Deputy Sanderson noted that Sollman did not refuse to speak with him and did not ask for an attorney, but acknowledged that he did not advise Sollman of his rights.

Deputy Sanderson recalled that during his interaction with Sollman, he was standing "probably about five feet" from the foot of the bed; did not threaten Sollman, yell at him, or draw his weapon or display it at any point; and did not place Sollman under arrest or handcuff him.

(b) Sergeant Percifield

Sergeant Percifield's first of two meetings with Sollman occurred at UNMC the day after the accident. Prior to questioning Sollman, Sergeant Percifield asked hospital staff about Sollman's condition and learned from Sollman that Sollman was on pain medication. Sergeant Percifield sought Sollman's consent to obtain Sollman's blood alcohol content result, and Sollman responded that Sergeant Percifield "could, and that [Sergeant Percifield] would get it anyway." Sergeant Percifield estimated that he conversed with Sollman "[a]bout 15 minutes" and noted that he was the only law enforcement officer present; did not display his weapon; and did not yell at or threaten Sollman. Despite Sollman's condition, Sergeant Percifield believed Sollman was "alert," was able to focus on the questions asked, and responded appropriately to questions. Sergeant Percifield also noted that Sollman never expressed a desire not to speak with him and never requested an attorney. However, Sergeant Percifield did not believe Sollman was able to freely move around or leave under his own strength.

(c) Court's Order Regarding Motion to Suppress

Following the hearing, the district court denied Sollman's motion to suppress. The court specifically found that Sollman's statements were made voluntarily, explaining that Sollman was "attentive to the conversation"; that "his responses were clear, appropriate, and articulate"; that he was not in custody for purposes of invoking his *Miranda* rights; that his statement "'I thought it [the speed limit] was 65'" was admissible; and that Sergeant Percifield's discussion about how he calculated Sollman's speed was not intended to elicit any response.

2. TRIAL

A bench trial was held in December 2019. Stipulations were entered at trial, including that Clausen died of blunt force trauma to her torso received during the accident and that an exhibit containing a call to the 911 emergency dispatch service was admissible. Additional evidence presented to the district court included testimony from Nowling, a witness to Sollman's erratic driving immediately prior to the accident as previously set forth; Deputy Sanderson; Shayna Hill, the phlebotomist who performed Sollman's DUI blood draw; forensic chemist Shanon Tysor; Sergeant Percifield; and a Nebraska State Patrol trooper, Andrew Phillips. Surveillance system video from a nearby business appeared to show Clausen's vehicle stop at the intersection and two cars pass before her vehicle entered the intersection, at which time it was struck by Sollman's vehicle.

(a) Phlebotomist Hill

Hill testified that when Sollman was brought to the hospital, he was treated as a trauma patient, which included Hill's drawing a blood sample so Sollman's blood alcohol content could be analyzed. She explained that the materials used to collect a blood alcohol sample do not utilize alcohol and that once a sample has been obtained, she submits the sample to the laboratory for testing and later reviews the test results. Sollman's laboratory results obtained the night of the accident showed he had a blood alcohol content of .197 of a gram of alcohol per 100 milliliters of blood, which results were offered into evidence as exhibit 5. Hill identified exhibit 5, but Sollman objected on hearsay grounds, arguing exhibit 5 should not be received by the court, because Hill did not complete the testing on Sollman's blood sample. In response, the State argued that deficiencies in technique go to the weight and credibility but not the admissibility of the exhibit. Ultimately, the district court received exhibit 5 for the purpose of the blood alcohol content reading.

(b) Deputy Sanderson

Deputy Sanderson provided some of the same testimony he gave at the suppression hearing, and counsel for Sollman renewed his objection based on his motion to suppress. In addition to the content of that previous testimony, Deputy Sanderson noted that due to the "chaotic-ness" of the scene, he did not perform any field sobriety tests or give Sollman a preliminary breath test at the scene. Instead, Deputy Sanderson obtained a search warrant for a DUI blood draw. At 9:21 p.m., which was approximately 3 hours after the accident, Deputy Sanderson observed Hill remove two vials' worth of blood from Sollman.

(c) Forensic Chemist Tysor

Tysor, a forensic chemist employed by the Douglas County sheriff's office, testified that she holds a Class A permit from the Nebraska Department of Health and Human Services and explained the permit is a license indicating she can process blood samples to determine alcohol concentration. Tysor stated that she tests blood samples for alcohol content monthly and performs approximately 50 to 60 tests annually. Tysor testified that she received a request from Deputy Sanderson to test Sollman's blood for alcohol and proceeded to test the blood sample in accordance with the specifications of title 177 of the Nebraska Administrative Code. Tysor further stated that all the scientific equipment was in proper working order. However, Tysor testified that the date or time the sample was collected was not included in her report. When Tysor was asked what the blood alcohol content of Sollman's sample was, Sollman objected based on foundation as to the chain of custody, but the court overruled the objection. Tysor reviewed the notes she took when testing Sollman's blood sample and testified the vial indicated that the sample had been collected on February 1, 2019, at 9:21 p.m. Tysor testified Sollman's blood alcohol content was .125 plus or minus .01 grams of ethanol per 100 milliliters of blood.

(d) Sergeant Percifield

Sergeant Percifield testified that he has experience and training in investigating vehicle accidents and that as part of his investigation of the current accident, he recorded his interview

with Sollman at the hospital. The district court received the recording in evidence over Sollman's renewal of his motion to suppress.

Sergeant Percifield also investigated and took photographs of the vehicles involved in the accident. The photographs show the silver Volkswagen's Michigan license plate, number "EAC 7112," and Sergeant Percifield testified that they show the Volkswagen's tire imprint indicated the tires were larger than the manufacturer's recommended size. Sergeant Percifield explained that because the Volkswagen was equipped with larger tires, the speedometer underreported the vehicle's actual speed. Sergeant Percifield further testified that the Volkswagen's speedometer had stopped at approximately 76 m.p.h., which happens with older vehicles that are involved in an accident, but also acknowledged that a frozen speedometer is not definitive proof of the speed Sollman was going at the time of the accident.

Sergeant Percifield also used data from the airbag control module in Clausen's vehicle to corroborate speed calculations. Sergeant Percifield determined that at the time of the accident, Clausen was traveling at 14.93 m.p.h. and Sollman was traveling at approximately 72.49 m.p.h. Sergeant Percifield's investigation established that Clausen was at a stop sign when she failed to yield and turned left in front of Sollman onto Highway 31. Sergeant Percifield estimated that had Sollman been traveling at 55 m.p.h. rather than over 70 m.p.h., Clausen's vehicle would have cleared Sollman's lane of travel when he was 31 feet from the impact area. When asked hypothetically whether this accident would have occurred if both drivers had been sober, Sergeant Percifield stated that the accident might not have occurred, because reaction time is a factor considered during accident reconstruction. More specifically, Sergeant Percifield explained that a sober person might realize an obstruction is in the roadway and react to it more quickly than someone who was intoxicated. Sergeant Percifield opined that based on his calculations, the accident occurred because Sollman was traveling at around 72 m.p.h. in a 55-m.p.h. zone, and that intoxication was a factor in the accident due to the slower reaction and perception of an impaired person. Sergeant Percifield explained that lack of tire marks attributable to Sollman's vehicle was evidence that his reaction to the impending crash was slowed.

Sergeant Percifield spoke to Sollman about the oversized tires on his vehicle and the speed calculations, and Sollman replied that he thought the speed limit was 65 m.p.h. Sollman renewed his motion to suppress by objecting to those statements.

Sergeant Percifield testified that text message data from Clausen's cell phone showed she received a text message near the time of the accident but did not indicate whether that message was viewed by Clausen, and Sergeant Percifield could not conclude whether that contributed to the accident. Sergeant Percifield also noted the incoming text message had the same time stamp as a crash assistance number that was automatically dialed from Clausen's cell phone.

(e) Trooper Phillips

Trooper Phillips testified that he responded to a call for service in February 2019 because Sollman was seeking Salvation Army vouchers for a hotel room. After Phillips spoke with Sollman, he learned that Sollman had two Sarpy County warrants for his arrest for misdemeanor DUI and felony motor vehicle homicide. As Trooper Phillips transported Sollman to the Sarpy

County jail, Sollman made statements related to the accident, including that the accident "cured him from drinking and driving."

3. VERDICT AND SENTENCING

Following the conclusion of the State's case, Sollman moved to dismiss counts 1 and 3 on the basis that the State had failed to present a prima facie case, which motion was overruled by the district court. Sollman then rested without presenting any evidence and renewed his motion to dismiss, which the district court again overruled.

Ultimately, the district court found Sollman guilty of all three of the charged offenses. Prior to sentencing, Sollman filed motions for new trial alleging that there was insufficient evidence to convict him and that the court failed to consider lesser-included offenses. The district court overruled those motions, finding that there was sufficient evidence to convict Sollman on all three charged offenses, and because the State met its burden beyond a reasonable doubt on count 1, the court did not need to consider lesser-included offenses.

At the sentencing hearing, the district court stated that it had considered the contents of the presentence investigation report (PSR), documentation that Sollman was 46 years old at the time of the PSR, was married, and had nine dependent children; Sollman's criminal history and "Level of Service/Case Management Inventory" (LS/CMI) scores; the comments made at sentencing; the circumstances surrounding the accident, including Sollman's intoxication level and speed; and the seriousness of the crimes committed by Sollman. The district court also noted that Sollman blamed the victim for the accident and that the court found Nowling's account of the events leading up to the accident credible. Further, the court reviewed law enforcement's accident reconstruction and calculations, which determined the accident was caused by speeding, but the court noted, "The accident was [caused by] an intoxication level more than two times the legal limit, excessive speeding and erratic driving all the way up to the point in time this occurred."

As a result of those considerations, the district court found that imprisonment was necessary to protect the public due to the substantial risk Sollman would engage in additional criminal conduct if placed on probation and that "a lesser sentence would depreciate the seriousness of the offense or promote disrespect of the law." For count 1, motor vehicle homicide, the district court sentenced Sollman to 14 to 20 years' imprisonment and a 15-year license suspension. For count 2, DUI, the district court sentenced Sollman to 60 days' imprisonment and revoked Sollman's license for 6 months but provided that Sollman could install an ignition interlock device after 45 days. For count 3, reckless driving, the district court sentenced Sollman to 90 days' imprisonment. The sentences were ordered to be served consecutively, but the 15-year and 6-month license revocations were ordered to run concurrently. Additionally, Sollman was given credit for 378 days previously served. The district court also ordered Sollman to pay a fine of $500. Sollman has timely appealed to this court.

III. ASSIGNMENTS OF ERROR

Sollman argues the district court erred in (1) overruling his motion to dismiss at the close of evidence and finding him guilty of motor vehicle homicide (count 1), because an efficient intervening cause destroys proximate cause; (2) overruling his hearsay objection to exhibit 5; (3)

finding him guilty of DUI (count 2); (4) overruling his motion to dismiss at the close of evidence and finding him guilty of reckless driving (count 3); (5) overruling his motion to suppress the statements he made to law enforcement; and (6) imposing excessive sentences.

IV. STANDARD OF REVIEW

[1-3] A motion to dismiss at the close of all the evidence has the same legal effect as a motion for directed verdict. *State v. Combs*, 297 Neb. 422, 900 N.W.2d 473 (2017). See, also, *State v. Malone*, 26 Neb. App. 121, 917 N.W.2d 164 (2018). In determining whether a criminal defendant's motion to dismiss for insufficient evidence should be sustained, the State is entitled to have all of its relevant evidence accepted as true, the benefit of every inference that can reasonably be drawn from the evidence, and every controverted fact resolved in its favor. *State v. Canady*, 263 Neb. 552, 641 N.W.2d 43 (2002). In a criminal case, a court can direct a verdict only when there is a complete failure of evidence to establish an essential element of the crime charged or the evidence is so doubtful in character, lacking probative value, that a finding of guilt based on such evidence cannot be sustained. *Id.*

[4] Excluding rulings under the residual hearsay exception, an appellate court reviews the factual findings underpinning a trial court's hearsay ruling for clear error and reviews de novo the court's ultimate determination whether the court admitted evidence over a hearsay objection or excluded evidence on hearsay grounds. See *State v. Dady*, 304 Neb. 649, 936 N.W.2d 486 (2019).

[5] In reviewing a motion to suppress a statement based on its claimed involuntariness, including claims that law enforcement procured it by violating the safeguards established by the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), an appellate court applies a two-part standard of review. *State v. Montoya*, 304 Neb. 96, 933 N.W.2d 558 (2019). Regarding historical facts, an appellate court reviews the trial court's findings for clear error. *Id.* Whether those facts meet constitutional standards, however, is a question of law, which an appellate court reviews independently of the trial court's determination. *Id.*

[6-8] Evidentiary questions committed to the discretion of the trial judge, orders denying a motion for new trial, and claims of excessive sentencing are all reviewed for abuse of discretion. *State v. Dady, supra.* An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Id.* An appellate court will not disturb a sentence imposed within the statutory limits absent the trial court's abuse of discretion. *State v. Lierman*, 305 Neb. 289, 940 N.W.2d 529 (2020).

V. ANALYSIS

1. MOTION TO DISMISS AND FINDING OF GUILT ON COUNT 1

Sollman first argues that the district court erred in overruling his motion to dismiss at the close of evidence and finding him guilty of count 1, because of the doctrine of efficient intervening cause.

A motion to dismiss at the close of all the evidence has the same legal effect as a motion for directed verdict. *State v. Combs, supra.* In determining whether a criminal defendant's

motion to dismiss for insufficient evidence should be sustained, the State is entitled to have all of its relevant evidence accepted as true, the benefit of every inference that can reasonably be drawn from the evidence, and every controverted fact resolved in its favor. *State v. Canady, supra.* In a criminal case, a court can direct a verdict only when there is a complete failure of evidence to establish an essential element of the crime charged or the evidence is so doubtful in character, lacking probative value, that a finding of guilt based on such evidence cannot be sustained. *Id.*

[9-15] Sollman was charged with motor vehicle homicide, which is defined in § 28-306. Section 28-306(1) provides that "[a] person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide." Section 28-306(3)(b) further provides:

> If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class IIA felony. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least one year and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

Sollman argues that the State failed to prove that Sollman's actions here were the proximate cause of the victim's death. In support of that argument, he cites to *State v. Irish*, 292 Neb. 513, 520-21, 873 N.W.2d 161, 167-68 (2016), wherein the Nebraska Supreme Court set forth the requirements for establishing proximate cause in the criminal context, holding:

> The concept of proximate causation is applicable in both criminal and tort law, and the analysis is parallel in many instances. As a general matter, to say one event proximately caused another is a way of making two separate but related assertions: First, it means the former event caused the latter; second, it means that it was not just any cause, but one with a sufficient connection to the result. The idea of proximate cause, as distinct from actual cause or cause in fact, is a flexible concept that generally refers to the basic requirement that there must be some direct relation between the injury asserted and the injurious conduct alleged. A requirement of proximate cause serves to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity.
>
> Proximate causation and "but for" causation are interrelated. A "proximate cause" is a moving or effective cause or fault which, in the natural and continuous sequence, unbroken by an efficient intervening cause, produces a death or injury and without which the death or injury would not have occurred. Three basic requirements must be met in establishing proximate cause: (1) that without the misconduct, the injury would not have occurred, commonly known as the "but for" rule; (2) that the injury was a natural and probable result of the misconduct; and (3) that there was no efficient intervening cause. Criminal conduct is a proximate cause of the event if the event in question would not have occurred but for that conduct; conversely, conduct is not a proximate cause of an

event if that event would have occurred without such conduct. Thus, "but for" causation is encompassed within proximate causation.

Sollman attempts to argue here that the victim's negligence in pulling out in front of Sollman's vehicle and failing to yield to him was an efficient intervening cause of the accident and the victim's death. More specifically, Sollman argues that "[b]ecause the State does not dispute the accident would not have happened if [the victim] had not pulled out in front of . . . Sollman, the State failed to prove the absence of an efficient intervening cause, and as a result, failed to prove proximate cause." Brief for appellant at 11.

But Sollman's simplified argument misconstrues the concept of intervening cause as it relates to this record. Whereas it is true that there was evidence that the victim failed to yield the right of way to Sollman, there was also evidence that but for Sollman's excessive speed and delayed reaction to the victim's pulling out, the accident would have been avoided. Thus, there was evidence in this record that both parties' conduct, in fact, contributed to the accident here.

[16] The Nebraska Supreme Court addressed the impact of contributing factors to an accident, as it relates to proximate cause, in *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016). In so doing, the court held:

> A reasonable trier of fact could find "but for" causation in this case. If [the defendant] had not been driving the pickup while under the influence, his passenger would not have been seriously injured when [he] failed to negotiate a curve and rolled the pickup, leading to the ejection of the passenger. There is a causal nexus between [his] act of driving while under the influence and the passenger's serious bodily injury; such injury did not merely occur while [he] was driving.
>
> The presence of other factors combining with [the defendant's] act of driving while under the influence does not defeat "but for" causation. [He] argues that "but for" causation cannot be established due to other considerations such as vehicle speed, road construction, failure of the passenger to wear a seatbelt, and snow and ice on the road. We find helpful the following explanation of the U.S. Supreme Court: "Thus, 'where A shoots B, who is hit and dies, we can say that A [actually] caused B's death, since but for A's conduct B would not have died.' . . . The same conclusion follows if the predicate act combines with other factors to produce the result, so long as the other factors alone would not have done so--if, so to speak, it was the straw that broke the camel's back. Thus, if poison is administered to a man debilitated by multiple diseases, it is a but-for cause of his death even if those diseases played a part in his demise, so long as, without the incremental effect of the poison, he would have lived." The other factors to which [the defendant] points may have combined with [his] act of driving to produce the result, but a reasonable trier of fact could conclude that the other factors alone would not have done so. And [his] act of driving while under the influence was an independently sufficient cause of the passenger's serious bodily injury. Thus, "but for" causation exists.
>
> A reasonable trier of fact could also conclude that the passenger's serious bodily injury was a direct and natural result of [the defendant's] act of driving the pickup while under the influence of alcohol and that no intervening cause superseded and severed the causal link. An intervening cause supersedes and cuts off the causal link only when the

> intervening cause is not foreseeable. The other factors that [he] claims contributed to the accident were not efficient intervening causes, because they were foreseeable. And, as noted, there was sufficient causal connection between [his] act of driving while under the influence of alcohol and the resulting serious bodily injury to [his] passenger.

State v. Irish, 292 Neb. at 521-22, 873 N.W.2d at 168.

The same can be said here. A reasonable trier of fact could find "but for" causation in this case. If Sollman had not been driving nearly 20 m.p.h. over the speed limit while intoxicated, this accident could have been avoided notwithstanding the victim's failure to yield. There is a causal nexus between Sollman's act of driving while impaired at an excessive rate of speed and with delayed reaction time and this collision, which resulted in the victim's death.

A reasonable trier of fact could also conclude the victim's death was a direct and natural result of Sollman's act of driving his vehicle at an excessive rate of speed while under the influence of alcohol with limited reaction time and that no intervening cause superseded and severed the causal link.

In making that determination, we are mindful of Sollman's argument that the victim's negligence here was an efficient intervening cause which itself was the proximate cause of the accident. Sollman argues that the victim's conduct in failing to yield to Sollman severed his negligence in operating his vehicle while under the influence at an excessive rate of speed and should have resulted in the court's directing a verdict here.

[17,18] But a similar argument was made by the defendant in *Wilke v. Woodhouse Ford*, 278 Neb. 800, 774 N.W.2d 370 (2009). In addressing the doctrine of efficient intervening cause, the Nebraska Supreme Court held:

> An efficient intervening cause is new and independent conduct of a third person, which itself is a proximate cause of the injury in question and breaks the causal connection between the original conduct and the injury. The causal connection is severed when (1) the negligent actions of a third party intervene, (2) the third party had full control of the situation, (3) the third party's negligence could not have been anticipated by the defendant, and (4) the third party's negligence directly resulted in injury to the plaintiff. The doctrine that an intervening act cuts off a tort-feasor's liability comes into play only when the intervening cause is not foreseeable. But if a third party's negligence is reasonably foreseeable, then the third party's negligence is not an efficient intervening cause as a matter of law.

Id. at 816-17, 774 N.W.2d at 383. Applying that doctrine, like in *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016), the court found there was evidence in the record a jury could find that the alleged intervening act was reasonably foreseeable, thereby precluding judgment as a matter of law on the issue.

[19,20] And more recently, in addressing the issue of foreseeability in cases such as these, the Nebraska Supreme Court held:

> "[U]nder the Restatement (Third), foreseeable risk is an element in the determination of negligence, not legal duty. In order to determine whether appropriate care was exercised, the fact finder must assess the foreseeable risk at the time of the defendant's alleged negligence. The extent of foreseeable risk depends on the specific facts of the case and

> cannot be usefully assessed for a category of cases; small changes in the facts may make a dramatic change in how much risk is foreseeable. Thus, courts should leave such determinations to the trier of fact unless no reasonable person could differ on the matter. And if the court takes the question of negligence away from the trier of fact because reasonable minds could not differ about whether an actor exercised reasonable care (for example, because the injury was not reasonably foreseeable), then the court's decision merely reflects the one-sidedness of the facts bearing on negligence and should not be misrepresented or misunderstood as involving exemption from the ordinary duty of reasonable care."

Latzel v. Bartek, 288 Neb. 1, 17, 846 N.W.2d 153, 165 (2014), quoting *A.W. v. Lancaster Cty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010).

Taking these cases together, unless reasonable minds cannot differ, the issue of whether the victim's negligent act was foreseeable here was a question of fact for the trier of fact. This is not a case where reasonable minds could not differ. Applying a similar rationale in *Vilas v. Steavenson*, 242 Neb. 801, 496 N.W.2d 543 (1993), *overruled on other grounds, DeWester v. Watkins*, 275 Neb. 173, 745 N.W.2d 330 (2008), the Nebraska Supreme Court held that where there was no evidence in the case that the third party's negligence was not reasonably foreseeable, the district court did not err in finding that the third party's negligence was not an efficient intervening cause. We reach the same conclusion here. The record in the instant case is devoid of evidence that Sollman could not have anticipated that the victim would misjudge his speed and enter the intersection. And the record contains evidence that Clausen came to a stop before entering the intersection, waited for two cars to pass, then proceeded into the intersection, and had Sollman been traveling at the posted speed, the accident could have been avoided. This became an issue of fact for the trier of fact in this case. In short, the record indicates evidence of a sufficient causal connection between Sollman's act of driving under the influence of alcohol and the victim's death here. See, also, *State v. Brown*, 258 Neb. 330, 603 N.W.2d 419 (1999) (victim's negligence cannot act to absolve defendant in motor vehicle homicide case unless victim's actions were sole proximate cause of accident); *State v. William*, 231 Neb. 84, 435 N.W.2d 174 (1989) (contributory negligence not defense to charge of motor vehicle homicide). Under the standards of review governing a motion to dismiss or in reviewing the sufficiency of the evidence established above, we determine the court did not err in overruling Sollman's motion to dismiss or in finding for the State on the issue of proximate cause. This first assignment of error fails.

2. Hearsay Objection to Exhibit 5

Sollman next argues that the district court erred in admitting exhibit 5 over his hearsay objection. Exhibit 5 was a medical record issued by the UNMC which contained an entry from a UNMC clinical laboratory which indicated that Sollman's blood alcohol content was .197 of a gram of alcohol per 100 milliliters of blood on February 1, 2019, following the accident. Hill testified that test and the resulting record were a component part of Sollman's medical treatment, Sollman's having been admitted as a trauma patient, which treatment includes drawing a blood sample.

[21] Sollman's counsel objected to the admission of exhibit 5 on hearsay grounds. Sollman argues that the report itself "contains assertions from some unnamed out-of-court declarant." Brief for appellant at 16. He then argues that in regard to Hill's testimony which laid foundation for the record:

> The problem with . . . Hill's testimony is she did not complete the testing on the samples taken from . . . Sollman; she was merely the phlebotomist who drew blood and then sent the sample through a zip tube. . . .
>
> . . . [T]here was no evidence in the record regarding [the] testing procedure that produced Exhibit 5. Drawing blood and sending the sample through a zip tube does not overcome the elements of hearsay to admit the lab results in evidence, and the District Court should have sustained . . . Sollman's objection to Exhibit 5.

Id. at 16-17. The State responds by claiming that although the record contains hearsay statements, which are out-of-court statements made by a human declarant that are offered in evidence to prove the truth of the matter asserted, see *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008), and which are not admissible without exception, statements made for purposes of medical diagnoses or treatment are excepted from the hearsay rule by Neb. Rev. Stat. § 27-803(3) (Reissue 2016). But the State further argues that even if the report is deemed hearsay,

> the State produced additional evidence of Sollman's [blood alcohol content] the night of the accident in the form of [a Douglas County sheriff's office forensic laboratory report], which is more than capable of establishing his [blood alcohol content] after the accident in a fashion more customary in DUI investigations and prosecutions.

Brief for appellee at 29.

We find the State's second argument dispositive here, so we do not reach the first. The State presented clear testimony at trial that it procured a warrant and legally determined Sollman's blood alcohol content, which evidence it offered through the testimony of Tysor, a forensic chemist. Even Sollman's brief acknowledges that because Tysor explained that "she had a Class A permit, was familiar with [t]itle 177 [of the Nebraska Administrative Code], and testified to the various instruments and testing procedures she used[,] Sollman did not object to her testimony." Brief for appellant at 17. As such, the evidence offered by Tysor came in without objection and established that Sollmon was still over the legal limit nearly 3 hours after the accident. The State asserts this evidence adequately supports the verdict regardless of evidence from the separate test provided in exhibit 5.

In response to the evidence offered by Tysor, and the State's argument here, Sollman argues that the results of this test were taken at 9:21 p.m., nearly 3 hours after the accident, and that there were no calculations performed to estimate the metabolism of the sample back to the time of the accident. Accordingly, he argues that the evidence relating to this second test was not sufficient to support the verdict and further demonstrates how the first result created prejudicial error.

[22-24] But a similar temporal-based argument was made by the defendant in *State v. Dinslage*, 280 Neb. 659, 664, 789 N.W.2d 29, 34 (2010), in which the Nebraska Supreme Court held:

> In *State v. Kubik*, [235 Neb. 612, 456 N.W.2d 487 (1990),] we explained that the State is not required to prove a temporal nexus between the test and the defendant's alcohol level at the moment he or she was operating the vehicle. It would be an impossible burden on the State to conduct such an extrapolation when its accuracy depends on the defendant's willingness to testify and his or her honesty in reporting all relevant factors, including the time and quantity of consumption. Thus, matters of delay between driving and testing are properly viewed as going to the weight of the breath test results, rather than to the admissibility of the evidence. And a valid breath test given within a reasonable time after the accused was stopped is probative of a violation. We speculated in *Kubik* that there might in some cases be a "delay . . . so substantial as to render the test results nonprobative of the accused's impairment or breath alcohol level while driving." But we held that a breath test given "less than 1 hour" after the defendant was stopped did not entail an unreasonable delay.

We similarly find that under the circumstances of this case, this valid blood test was obtained within a reasonable time after the motor vehicle accident which resulted in severe injuries to Sollman and the death of the victim. In so finding, we are cognizant of the facts that this accident took place at the outskirts of the Omaha, Nebraska, metropolitan area; that Sollman had to be extricated from his vehicle, "life flighted" to UNMC, and treated for injuries; and that Deputy Sanderson arrived at the scene, drafted a blood draw warrant, had it authorized by a judge, then drove to UNMC in order to locate personnel to collect the blood sample from Sollman. Under these circumstances, we cannot find the nearly 3 hours it took to obtain the blood sample pursuant to the warrant unreasonable. Further, there is no evidence in this record that Sollman, who was experiencing a serious medical condition, had consumed additional alcohol after the accident but before the blood test. The test sample, as attested by Tysor, was validly drawn and tested, and the results indicated Sollman was significantly over the legal limit nearly 3 hours after the accident. This evidence of Sollman's alcohol-based impairment was consistent with testimony which described the erratic nature in which Sollman operated his vehicle just prior to, and at the time of, the accident.

[25-29] As the Nebraska Supreme Court held in *State v. Kidder*, 299 Neb. 232, 243-45, 908 N.W.2d 1, 9-10 (2018):

> Pursuant to Neb. Evid. R. 103, Neb. Rev. Stat. § 27-103(1) (Reissue 2016), "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected[.]" When it comes to evidentiary error, this statutory authority forms the foundation for this court's harmless error jurisprudence. Generally speaking, in criminal cases, the purpose of harmless error review is to ensure convictions are not set aside "'for small errors or defects that have little, if any, likelihood of having changed the result of the trial.'"
>
> Harmless error jurisprudence recognizes that not all trial errors, even those of constitutional magnitude, entitle a criminal defendant to the reversal of an adverse trial result. It is only prejudicial error, that is, error which cannot be said to be harmless beyond a reasonable doubt, which requires that a conviction be set aside.

When determining whether an alleged error is so prejudicial as to justify reversal, courts generally consider whether the error, in light of the totality of the record, influenced the outcome of the case. In other words, harmless error review looks to the basis on which the jury actually rested its verdict. The inquiry is not whether in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the actual guilty verdict rendered was surely unattributable to the error.

In conducting this analysis, an appellate court looks to the entire record and views the erroneously admitted evidence relative to the rest of the untainted, relevant evidence of guilt. Overwhelming evidence of guilt can be considered in determining whether the verdict rendered was surely unattributable to the error, but overwhelming evidence of guilt is not alone sufficient to find the erroneous admission of evidence harmless. An additional consideration is whether the improperly admitted evidence was cumulative and tended to prove the same point as other properly admitted evidence.

Assuming without deciding that the court erred in allowing the admission of exhibit 5, which included additional evidence that Sollman's blood alcohol level exceeded the legal limit, the admission of that evidence was simply cumulative to the properly admitted evidence that Sollman's blood alcohol level exceeded the legal limit as attested by Tysor. The record in this case affirmatively demonstrates that any error in allowing the admission of exhibit 5 was harmless. Accordingly, this assignment of error fails.

3. Sufficiency of Evidence on Count 2--DUI

Sollman next argues that there was insufficient evidence to convict him of DUI, in violation of § 60-6,196(1)(b). Section 60-6,196(1) provides, in pertinent part: "It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle . . . [w]hen such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood."

[30,31] In reviewing a criminal conviction for a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. *State v. Smith*, 302 Neb. 154, 922 N.W.2d 444 (2019). When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Williams*, 306 Neb. 261, 945 N.W.2d 124 (2020).

Applying this standard, the evidence reflects that following this serious accident, investigators determined Sollman to have been the operator of a vehicle traveling at an excessive rate of speed just prior to the accident and to have been driving erratically immediately prior thereto; that while being extricated from his vehicle, Sollman smelled of alcohol; that investigators found an empty bottle of alcohol in his vehicle; and that through the use of a warrant, investigators obtained a blood sample when Sollman became reasonably available to provide it which revealed Sollman's blood alcohol level significantly exceeded the legal limit nearly 3 hours after his being involved in the accident, which resulted in the victim's death.

Although Sollman argues the temporal connection involving the blood test in relation to the accident should result in a finding that the evidence here was insufficient to convict him, we have already found that such evidence was probative of Sollman's condition under these circumstances, and taking it together with all the evidence viewed in the light most favorable to the State, we hold that a rational trier of fact could have found the essential element of this crime beyond a reasonable doubt. This assignment of error fails.

4. Motion to Dismiss and Finding of Guilt--Wanton Disregard

Sollman next argues that there was insufficient evidence to convict him of operating a motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property, in violation § 60-6,213.

Without repeating the full scope of review governing sufficiency of the evidence determination cited above, we review the record to determine whether the evidence in this record is sufficient to find that a rational trier of fact could find that Sollman operated his vehicle in a manner which would indicate an indifferent or wanton disregard for the safety of persons or property, in violation of § 60-6,213. We find that it is.

Although Sollman acknowledges the evidence of his excessive speed, he argues that the speed of a defendant's vehicle alone is not, in and of itself, determinative of a violation of § 60-6,213, citing *State v. Howard*, 253 Neb. 523, 571 N.W.2d 308 (1997). But the evidence in this record was not limited to Sollman's excessive speed. It included the testimony of Nowling, who discussed the erratic nature of Sollman's conduct leading up to the accident. In relation to that testimony, Sollman argues that "Nowling never identified . . . Sollman as the driver [of the vehicle that he observed] at any point during trial" and "Nowling testified that he was unable to see the driver's face despite the fact he observed the driver stand on the side of the road next to his car." Brief for appellant at 19-20.

Regardless of whether Nowling could not specifically identify Sollman's face, his testimony was sufficient to identify that it was Sollman's vehicle he observed driving in an erratic fashion just prior to the accident, and we will not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. The testimony of the investigators here taken together with the testimony of Nowling was sufficient for a rational trier of fact to find the essential element of this offense beyond a reasonable doubt. This assignment of error fails.

5. Motion to Suppress

Sollman's fifth assigned error is that the district court erred in overruling his motion to suppress the statements he made to law enforcement while in the hospital recovering from his injuries. Sollman argues that at no time prior to his conversations with Deputy Sanderson or Sergeant Percifield was he advised of his *Miranda* rights and that any incriminating statement made during those conversations should have been suppressed.

[32-38] The Nebraska Supreme Court has recognized that *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), prohibits the use of statements derived during custodial interrogation unless the prosecution demonstrates the use of procedural safeguards that are effective to secure the privilege against self-incrimination. *State v. Benson*, 305 Neb. 949, 943 N.W.2d 426 (2020). More specifically, the court held:

Miranda requires law enforcement to give a particular set of warnings to a person in custody before interrogation, including that he or she has the right to remain silent, that any statement he or she makes may be used as evidence against him or her, and that he or she has the right to an attorney. These warnings are considered prerequisites to the admissibility of any statement made by a defendant during custodial interrogation.

Miranda warnings are required only when a suspect interrogated by the police is in custody. The ultimate inquiry for determining whether a person is in custody is whether there is a formal arrest or restraint on freedom of movement of degree associated with a formal arrest. Custody is to be determined based on how a reasonable person in the suspect's situation would perceive his or her circumstances. Stated another way, a seizure under the Fourth Amendment occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.

In considering whether a suspect is in custody for *Miranda* purposes, relevant considerations include, but are not limited to the location of the interaction, who initiated the interaction, the duration of the interaction, the type and approach of questioning, the freedom of movement of the suspect, the duration of the interaction, and whether the suspect was placed under arrest at the termination of the interaction.

State v. Benson, 305 Neb. at 963-64, 943 N.W.2d at 439-40.

Applying this doctrine, Sollman argues that the investigating officers' questions here amounted to a custodial interrogation. In furtherance of that position, Sollman argues:

> Because the District Court made a factual finding that officers were conducting a DUI investigation when they interviewed . . . Sollman at the hospital, and he had three broken limbs, it is clear that . . . Sollman was unable to leave during questioning even if he wanted to. These facts amount to . . . Sollman['s] being under custodial interrogation, just like in *Mincey v. Arizona*, 437 U.S. 385[, 98 S. Ct. 2408, 57 L. Ed. 2d 290] (1978), where the defendant was in great pain while in the hospital, and the United States Supreme Court determined he was under custodial interrogation.

Brief for appellant at 21.

Although the U.S. Supreme Court did find that an investigation of a defendant could ripen into a custodial interrogation in a hospital setting, it made that finding on facts dissimilar to the case at bar. In *Mincey v. Arizona*, 437 U.S. 385, 398-99, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978), the hospitalized defendant was not only in "'unbearable'" pain, but was described as being depressed almost to the point of coma; encumbered by tubes, needles, and breathing apparatus; and in a condition so severe the Court concluded that his "statements . . . were not '"the product of a rational intellect and a free will"'" and remarked that even "[i]n this debilitated and helpless condition, [he] clearly expressed his wish not to be interrogated" by requesting a lawyer and repeatedly asking the officer to stop.

The same cannot be said here. Although the record indicates Sollman was injured and unable to leave the room without assistance, Deputy Sanderson described Sollman as "with it" and capable of carrying on a conversation. Deputy Sanderson described Sollman as being properly responsive to him and able to hold a conversation and indicated that at no time did Sollman make an effort to end the interview or express any desire to be uncooperative.

The Nebraska Supreme Court reviewed a similar factual scenario in *State v. Melton*, 239 Neb. 506, 476 N.W.2d 842 (1991). In *Melton*, a police officer engaged in multiple conversations with the defendant in a hospital following an automobile accident which resulted in the death of his passenger. At that time, police were unable to determine the driver of the vehicle, so they questioned the defendant while in the hospital as part of their ongoing investigation governing the incident. Although in a recorded interview, the defendant told investigators that his passenger had been driving, the police eventually determined that the defendant had been driving. He later moved to suppress statements made during his interview, arguing the statements were made during a custodial interrogation and provided without *Miranda* warnings. On those facts, the court in *Melton* concluded:

> We find that [the defendant] was not in custody. He was admitted to the hospital for treatment, was not under formal arrest, and was questioned by officers during the routine course of an accident investigation. Although it is not dispositive, [the defendant] did not incriminate himself in his statement to the police at the hospital, in which statement he denied being the driver of the vehicle involved in the accident, the same position he maintained at trial.

239 Neb. at 510, 476 N.W.2d at 845.

After reviewing the record in the instant case, we likewise find that the officers' questioning him was part of their routine investigation governing this motor vehicle accident and that Sollman was not in custody. Although the record indicates Sollman could not remove himself from the room without assistance, nothing about this record suggests that Sollman's statements were not the "'"product of a rational intellect and a free will"'" or that the officers' questioning or conduct here rose to the level of a custodial interrogation. See *Mincey v. Arizona*, 437 U.S. at 398. We also note that although not dispositive, Sollman's statements were likewise not incriminating, insofar as he denied drinking alcohol immediately prior to the accident. We hold that the district court did not err in overruling Sollman's motion to suppress his statements made from the hospital or admitting those same statements during the course of the trial.

6. Excessive Sentences

Sollman's final assignment of error is that the sentences imposed are excessive.

Sollman was convicted of count 1, motor vehicle homicide--DUI, a Class IIA felony; count 2, DUI, a Class W misdemeanor; and count 3, reckless driving, a Class III misdemeanor. See, § 28-306(3)(b) (motor vehicle homicide); § 60-6,196 (DUI); § 60-6,213 (reckless driving). Sollman was sentenced to 14 to 20 years' imprisonment and a 15-year license revocation on count 1, which sentence is within the statutory sentencing range for Class IIA felonies of 0 to 20 years' imprisonment. See Neb. Rev. Stat. § 28-105 (Cum. Supp. 2018). Additionally, the court properly revoked Sollman's driver's license for a period of 15 years as is required pursuant to § 28-306(3)(b).

On count 2, the court sentenced Sollman to 60 days' imprisonment and fined him $500, which sentence is within the statutory sentencing range for Class W misdemeanors, which are punishable by a mandatory minimum of 7 days' imprisonment and a $500 fine and a maximum of 60 days' imprisonment and a $500 fine. See Neb. Rev. Stat. § 28-106 (Reissue 2016). The

court also revoked Sollman's license for 6 months as required by Neb. Rev. Stat. § 60-6,197.03 (Cum. Supp. 2018).

For count 3, reckless driving, the district court sentenced Sollman to 90 days' imprisonment. See § 60-6,213. This sentence is within the statutory sentencing range for Class III misdemeanors, which are punishable by 0 to 3 months' imprisonment and/or a $500 fine. See § 28-106.

[39-41] Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors as well as any applicable legal principles in determining the sentence to be imposed. *State v. Montoya*, 305 Neb. 581, 941 N.W.2d 474 (2020). In determining a sentence to be imposed, relevant factors customarily considered and applied are the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. *Id.* However, the sentencing court is not limited to any mathematically applied set of factors. *State v. Manjikian*, 303 Neb. 100, 927 N.W.2d 48 (2019). The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *State v. Montoya, supra.*

Here, at the sentencing hearing, the district court stated that it had considered the contents of the PSR, including documentation that Sollman was 46 years old at the time of the PSR, was married, and had nine dependent children; Sollman's criminal history and LS/CMI scores; the comments made at sentencing; the circumstances surrounding the accident, including Sollman's intoxication level and speed; and the seriousness of the crimes committed by Sollman. The district court also noted that Sollman blamed the victim for the accident and that the court found Nowling's account of the events leading up to the accident credible. Further, the court reviewed law enforcement's accident reconstruction and calculations, which determined the accident was caused by speeding, but the court noted, "The accident was [caused by] an intoxication level more than two times the legal limit, excessive speeding and erratic driving all the way up to the point in time this occurred." The district court further found that imprisonment was necessary to protect the public due to the substantial risk that Sollman would engage in additional criminal conduct if placed on probation and "a lesser sentence would depreciate the seriousness of the offense or promote disrespect of the law."

The PSR indicated that Sollman's criminal history includes a conviction for theft in Indiana and charges of robbery, criminal mischief, and kidnapping in Oregon for which Sollman was fined, sentenced to 90 days' imprisonment, and given 5 years' probation. Further, Sollman's LS/CMI scores were assessed to be in the "Medium/Low risk range to reoffend" (emphasis omitted). However, the probation officer completing the PSR noted that Sollman "does not feel [Clausen] is a victim. He regrets his action of drinking the night of [the accident], but does not feel he has done anything else wrong." Sollman's victim-blaming is evident in his defendant's statement, which set forth in pertinent part:

> I was involved in a car accident where I had been drinking. Unfortunately[, the victim] pulled out from a stop sign to turn left right in front of me when I was southbound

on HWY 6 and had right away [sic]. I was seriously injured and [a]ir lifted from the scene and she sadly died.

Based upon the district court's thorough consideration of the relevant factors and the information contained in the PSR; the fact that the sentences imposed were within the relevant statutory sentencing ranges; Sollman's criminal history; his risk to reoffend; the circumstances surrounding the accident, including Sollman's intoxication level and speed; Sollman's refusal to accept responsibility for his role in the offenses and continual victim-blaming; and the seriousness of the crimes committed by Sollman which resulted in the death of the victim, we determine the sentences imposed were not an abuse of discretion.

VI. CONCLUSION

Having considered and rejected Sollman's assigned errors, we affirm his convictions and sentences.

AFFIRMED.

No. A-20-172

IN THE

COURT OF APPEALS

FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,

Appellee,

v.

ABRAM K. SOLLMAN,

Appellant.

APPEAL FROM THE DISTRICT COURT OF
SARPY COUNTY, NEBRASKA

Honorable GEORGE THOMPSON, District Judge
District Court Case CR19-244

APPELLANT'S REPLY BRIEF

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APPENDIX C

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STATEMENT OF JURISDICTION

The Appellant, Abram Sollman, incorporates his Statement of Jurisdiction from his Brief of Appellant. He now brings this Reply Brief to correct misstatements of law in the Brief of Appellee, specifically regarding Assignments of Error I and II.

STATEMENT OF THE CASE

Mr. Sollman incorporates his Statement of the Case from his Brief of Appellant.

PROPOSITIONS OF LAW

1. One of the factors the State must prove beyond a reasonable doubt in order to establish proximate cause is the absence of an efficient intervening cause. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

2. One of the most important considerations to find an efficient intervening cause is whether the defendant "should have foreseen the possibility that [the other driver] would fail to look and would execute a dangerous driving maneuver. *Malolepszy v. State*, 273 Neb. 313, 729 N.W.2d 669 (2007).

3. "As a general rule, a motorist's failure to look, when looking would have been effective in avoiding a collision, is negligence as a matter of law." *Malolepszy v. State*, 273 Neb. 313, 729 N.W.2d 669 (2007).

4. The defendant "was not bound to anticipate—and could not have contemplated—that [the other driver] would disregard the obvious danger inherent in disobeying a stop sign and entering an obstructed intersection at high speed." *Malolepszy v. State*, 273 Neb. 313, 729 N.W.2d 669 (2007).

5. "A traveler on a favored highway approaching an intersection protected by a stop sign of which he had knowledge was legally privileged to assume that oncoming traffic would obey the stop sign and perform all other obligations imposed by law." *Nichols v. McArdle*, 170 Neb. 382, 392, 102 N.W.2d 848, 855 (1960).

6. The concept and analysis of proximate causation is parallel in both criminal and tort law. *State v. Irish*, 292 Neb. 513, 520, 873 N.W.2d 161, 167 (2016).

7. Proximate cause is "not just any cause, but one with a sufficient connection to the result;" it is distinct from but encompasses but-for causation. *State v. Irish*, 292 Neb. 513, 520, 873 N.W.2d 161, 167 (2016).

8. But-for causation is necessary, but not sufficient, to establish proximate cause. *State v. Irish*, 292 Neb. 513, 520, 873 N.W.2d 161, 167 (2016).

9. "Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to be confronted with the analysts at trial." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

10. "Medical reports produced out of court are hearsay." *Vacanti v. Master Elecs.* Corp., 245 Neb. 586, 592, 514 N.W.2d 319, 324 (1994).

11. One of the "foundational elements" of the hearsay exception in Neb. Rev. Stat. § 27-803(3) "is a statement to a health care provider." *Vacanti v. Master Elecs.* Corp., 245 Neb. 586, 592, 514 N.W.2d 319, 324 (1994).

12. Although Nebraska courts have held there is no specific time required for a blood-alcohol test, the time in which it is completed must still be reasonable. *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010).

STATEMENT OF FACTS

Mr. Sollman incorporates his Statement of Facts from his Brief of Appellant.

ARGUMENT

I: The District Court erred in overruling Mr. Sollman's Motion to Dismiss Count I at the close of evidence because the victim's act of disregarding her stop sign was unforeseeable as a matter of law.

In Appellee's Brief, the State contends that "a motorist pulling out into traffic was completely foreseeable." (Br. Appellee at 26). This is an incorrect statement of law. While it may or may not be foreseeable for a motorist to switch lanes unexpectedly, under Nebraska Supreme Court precedent, it is not foreseeable that another driver completely ignores her controlling stop sign and pulls out into oncoming traffic without yielding the right of way. Accordingly, such conduct is an efficient intervening cause as a matter of law, and proximate cause is severed from Mr. Sollman's conduct.

One of the factors the State must prove beyond a reasonable doubt in order to establish proximate cause is the absence of an efficient intervening cause. *See State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016). In describing the requirements for an efficient intervening cause, the Nebraska Supreme Court held one of the most important considerations is whether the defendant "should have foreseen the possibility that [the other driver] would fail to look and would execute a dangerous driving maneuver." *Malolepszy v. State*, 273 Neb. 313, 729 N.W.2d 669 (2007).

Despite being a civil case, the facts of *Malolepszy* are remarkably similar to the instant case and it illustrates how, as a matter of law, a third party's failure to obey traffic control signals is unforeseeable. In *Malolepszy*, the plaintiff brought suit against the state for failure to maintain an intersection after another driver pulled out in front of him. On motion for summary judgment, the evidence showed the plaintiff had the right of way, and the other driver should have waited for the plaintiff to pass before he proceeded into the roadway. *Id* at 273 Neb. 315, 729 N.W.2d at 672. The State argued the other driver's actions were an efficient intervening cause that severed proximate cause from the state's negligence in maintaining the intersection, and the Nebraska Supreme Court agreed. *Id* at 273 Neb. 319, 729 N.W.2d at 675.

The Court first held that "as a general rule, a motorist's failure to look, when looking would have been effective in avoiding a collision, is negligence as a matter of law." *Id* at 273 Neb. 321, 729 N.W.2d at 676. Further, the court held the third party "had complete control over the situation because he could have avoided the collision by exercising reasonable care while driving the pickup toward and into the intersection." *Id* at 273 Neb. 322, 729 N.W.2d at 677. This is significant because it means the actions of the plaintiff, who had the right of way, did not have any influence on the actions of the third party.

Most importantly, the court found the negligence of the other driver was not reasonably foreseeable by the plaintiff: he "was not bound to anticipate—and could not have contemplated—that [the other driver] would disregard the obvious danger inherent in disobeying a stop sign and entering an obstructed intersection at high speed." *Id* at 273 Neb. 320, 729 N.W.2d at 675 (internal quotations omitted). Because the plaintiff was not bound to anticipate the other driver's failure to yield, the failure to yield constituted an efficient intervening cause. This makes sense, because if a driver was required to anticipate the negligence of other drivers, he would have to stop in the middle of the road, even when there is no traffic control device, to ensure cross traffic would obey a 2-way stop sign. Such a situation would be unreasonable, and likely create an even greater risk of collision. Thus, only "the negligent driver could have prevented the collision by exercising reasonable care in obeying the stop sign." *Id.* at 273 Neb. 320, 729 N.W.2d at 675 (internal citations omitted)

These facts and holding are directly applicable to the instant case because the collision in the instant case similarly resulted from the victim's failure to obey her stop sign. Despite the fact *Malolepszy* is a civil case, Mr. Sollman and the Appellee both agree that the Nebraska Supreme Court has instructed the concept and analysis of proximate causation is parallel in both criminal and tort law. (*See* Br. Appellee at 24; *State v. Irish*, 292 Neb. 513, 520, 873 N.W.2d 161, 167 (2016)). Because precedent has applied the same elements of proximate cause in both civil and criminal cases, the victim's failure to yield was unforeseeable as a matter of law, and therefore was an efficient intervening cause. It follows that Mr. Sollman cannot be said to have proximately cause the victim's death because of the presence of an efficient intervening cause, and therefore the District Court erred in overruling Mr. Sollman's motion to dismiss Count I.

However, the State's logical flaw does not stop here, as it asserts that Mr. Sollman should still be found guilty because "accident reconstruction established conclusively that the accident would not have occurred if Sollman had simply driven the speed limit." (Br. Appellee at 25). This is an incorrect statement of law because but-for causation necessary but not sufficient to prove proximate cause.

Even assuming for the sake of argument that Mr. Sollman's driving conduct was a but-for cause of the victim's death, but-for causation alone is not enough to warrant a finding of guilt. The legislature specifically wrote Neb. Rev. Stat. § 28-306(3)(b) with the language of "proximate cause," compared with the mere language of "causes" found in Neb. Rev. Stat. § 28-306(1) for the lesser-included offense. When the legislature mandates an event be proximately caused, it requires "not just any cause, but one with a sufficient connection to the result." *State v. Irish*, 292 Neb. 513, 520, 873 N.W.2d 161, 167 (2016). The idea of but-for causation "is encompassed within proximate causation," but proximate cause requires more and is thus "distinct from" simple but-for causation. *Id.*

Even in its brief, Appellee acknowledges that mere but-for causation and proximate causation are "separate but related." (Br. Appellee at 24). Thus, Appellee is estopped from relying on its argument that the "evidence clearly showed that Sollman was driving while under the influence of alcohol by a significant margin and exceeding the speed limit by a considerable amount" (Br. Appellee at 24) to prove proximate causation of the victim's death beyond a reasonable doubt. This is because but-for causation is necessary but not sufficient to establish proximate cause. *See Irish* at 292 Neb. 520, 873 N.W.2d 167. Rather, in addition to but-for causation, proximate cause also requires the State prove lack of an efficient intervening cause. The State failed to prove this at trial.

Thus, the single most dispositive issue on this appeal remains the fact that victim's failure to obey her stop sign by pulling out into traffic was unforeseeable. Nebraska case law could not be clearer that such an act is unforeseeable. *See, e.g.,, Malolepszy v. State*, *supra*; *Nichols v. McArdle*, 170 Neb. 382, 392, 102 N.W.2d 848, 855 (1960) ("a traveler on a favored highway approaching an intersection protected by a stop sign of which he had knowledge was legally privileged to assume that oncoming traffic would obey the stop sign and perform all other obligations imposed by law.") As the State is incorrect in its assertion the victim's negligence was foreseeable, this Court must reverse the decision of the lower court and grant Mr. Sollman's motion to dismiss Count I because evidence of an efficient intervening cause precludes the State from proving proximate cause beyond a reasonable doubt.

II: The District Court erred in admitting Exhibit 5 because it is not a statement for purpose of medical diagnosis, and therefore not within any recognized hearsay exception

In Appellee's Brief, the State contends that Exhibit 5 qualifies as a hearsay exception under Neb. Rev. Stat. § 27-803(3) for statements made for purposes of medical diagnosis or treatment. (Br. Appellee at 29). Appellee misconstrues this exception, citing to *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 312 (2009) for the proposition that "medical reports created for treatment purposes . . . would not be testimonial under our decision today." However, the State's reliance on *Melendez-Diaz* is incorrect for two reasons.

First, *Melendez-Diaz* is a case that addresses an objection under the Confrontation Clause, not a hearsay exception. Although the two are related, they are distinct: hearsay is an evidentiary rule to ensure statements in evidence are reliable, whereas the Confrontation Clause gives a criminal defendant the right to cross-examine evidence admitted against him.

Second, the holding of *Melendez-Diaz* actually supports Mr. Sollman's position that Exhibit 5 should have been excluded. Appellee's reliance on the case is limited to a footnote, in which the Court was addressing the various state-level cases relied on by the dissent. However, the Court's actual holding is nearly identical to the instant case, and in fact resolves the issue in favor of the defendant: The Court held that upon admission of affidavits reporting the results of forensic analysis, the "analysts [who performed the analysis] were witnesses for purposes of the Sixth Amendment. Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to be confronted with the analysts at trial." *Melendez-Diaz v. Massachusetts*, 557 U.S. at 311. (Internal quotations omitted).

Thus, *Melendez-Diaz* would support the opposite conclusion as Appellee contends. Exhibit 5 is a forensic report, and the analyst who prepared it was not present at trial to testify against Mr. Sollman. This deprived Mr. Sollman of the opportunity to cross-examine the analyst who prepared the report, violating his rights under the Confrontation Clause. Admittedly, Mr. Sollman objected at trial to Exhibit 5 on the grounds of hearsay and not confrontation, but the reasoning of the *Melendez-Diaz* court is contrary to the State's assertions and nevertheless supports his assignment of error that the District Court erred in admitting Exhibit 5.

Regardless of whether the State's erroneous reliance on *Melendez-Diaz* and its analysis of the Confrontation Clause would render Exhibit 5 inadmissible, it is nevertheless inadmissible hearsay because it does not fall within any exception. Without support, the State purports that Exhibit 5 is an exception because it is a statement made for purposes of medical diagnosis or treatment. This is incorrect because to fall within the exception, the statement must be made *to* a healthcare provider, not *by* a healthcare provider.

In *Vacanti v. Master Elecs.* Corp., 245 Neb. 586, 592, 514 N.W.2d 319, 324 (1994), the Nebraska Supreme Court noted that "medical reports produced out of court are hearsay." Further, the court observed the rationale for the exception enumerated in Neb. Rev. Stat. § 27-803(3) is that "the reliability of statements for purposes of medical diagnosis or treatment is assured by the likelihood that the patient believes that the effectiveness of the treatment will depend on the accuracy of the information provided." *Id.* (Internal citations omitted). Because reliability of the hearsay statement is guaranteed by the patient's interest in seeking effective medical treatment, "one of the foundational elements of the exception is a statement *to a health care provider.*" *Id.* (Emphasis in original; citing to Richard Collin Mangrum, *The Law of Hearsay in Nebraska*, 25 Creighton Law Review 499 (1992).)

Here, Exhibit 5 was created by an unknown lab technician who was not present at trial; it was not a statement made by a patient to a healthcare provider, and thus does not fall under the hearsay exception enumerated in Neb. Rev. Stat. § 27-803(3) for statements made for medical diagnosis or treatment.

Because Exhibit 5 does not fall within any hearsay exceptions, the District Court erred in admitting it into evidence. Mr. Sollman maintains that in absence of Exhibit 5, the State failed to show a sufficient temporal connection between his allegedly intoxicated state and his act of driving a motor vehicle in order to establish guilt beyond a reasonable doubt. The State offers no authority to suggest that a delay of more than three hours is a "reasonable" time, as required under *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010). Other jurisdictions require a test within two hours of the defendant's operation of a motor vehicle (*see* Minn. Stat. Ann. § 169A.20(5)), and Mr. Sollman urges this Court to adopt the two-hour limit as a benchmark to determine the duration of a "reasonable" time for a blood alcohol test.

Because the State is unable to prove Mr. Sollman's intoxication within a reasonable time after driving a motor vehicle in absence of Exhibit 5, this Court must reverse Mr. Sollman's conviction on Count II.

CONCLUSION

Mr. Sollman prays this Court not adopt Appellee's reasoning regarding Counts I and II because, as a matter of law, the victim's failure to obey her stop sign was unforeseeable, and Exhibit 5 does not fall within any hearsay exception, respectively. Further, Mr. Sollman re-asserts the remainder of his arguments as set forth in his Brief of Appellant and asks this Court to reverse the decisions of the lower court accordingly.

RESPECTFULLY SUBMITTED,

ABRAM K. SOLLMAN, Defendant,

Dated: 15 July 2020

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IN THE SUPREME COURT OF THE STATE OF NEBRASKA

STATE OF NEBRASKA	)	
	)	NO: A-20-172
Appellee,	)	
	)	**PETITION FOR FURTHER REVIEW**
vs.	)	**AND**
	)	**MEMORANDUM BRIEF IN SUPPORT**
ABRAM K. SOLLMAN,	)	
	)	
Appellant.	)	

NOW COMES the Appellant and pursuant to Rule 2(F) of the Rules of Practice and Procedure in the Supreme Court and Court of Appeals, requests this Court to grant Plaintiff's Petition for Further Review of the Opinion of the Nebraska Court of Appeals, filed on or about January 12, 2021. The Court has erroneously affirmed Appellant's conviction.

Specifically, Plaintiff requests that this Court grant its Petition so that the following errors made by the Court of Appeals may be corrected:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE STATE PROVED THAT THE DEFENDANT'S ACTIONS WERE THE PROXIMATE CAUSE OF THE VICTIM'S DEATH AND THAT THE VICTIM'S CONDUCT WAS NOT AN AN EFFICIENT INTERVENING CAUSE TO THE ACCIDENT;

2. THE COURT OF APPEALS ERRED IN NOT DECIDING WHETHER EXHIBIT 5 SHOULD HAVE BEEN EXCLUDED ON HEARSAY GROUNDS WHEN IT FOUND THAT A BLOOD TEST TAKEN 3 HOURS AFTER THE ACCIDENT WAS PROBATIVE OF DRIVING UNDER THE INFLUENCE.

MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR FURTHER FURTHER REVIEW BY THE SUPREME COURT

A. Nature Of The Case

This is a criminal case arising out of a motor vehicle collision in which the decedent failed to yield the right of way to Mr. Sollman and pulled out onto the highway in front of him. As a result, Mr. Sollman was charged by information with Counts I – Motor Vehicle Homicide; Count II – Driving Under the Influence of Alcohol or Drugs; and Count III – Reckless Driving.

B. Statement Of The Facts

On the evening of February 1, 2019, around 6:00 PM, a witness, Sean Nowling, observed a silver Volkswagen with a Wisconsin license plate weaving in and out of traffic. However, the defendant, Mr. Sollman, drove a vehicle displaying a license plate from Michigan. Mr. Nowling testified he observed the driver of the Volkswagen urinating on the side of the road, but did not see his face. Mr. Nowling gave detailed testimony about pattern of driving he observed from the Volkswagen, but never made an in-court identification of Mr. Sollman as the driver of that car. Also on February 1, 2019, shortly after 6:00 PM, the decedent, Cassandra Clausen, was finishing her shift at Community Pharmacy, and as she was departing from Northstar Drive onto Highway 6/31, was involved in a car wreck. There is a stop sign on Northstar Drive at the intersection onto highway 6/31, but there is no traffic control on Highway 6/31 at the same intersection. The intersection has a clear line of sight in both directions and is flat for miles. Crash reconstruction revealed that Ms. Clausen failed to yield and pulled out from Northstar Drive in front of oncoming traffic on Highway 6/31 was also determined the oncoming vehicle's headlights were on. If Ms. Clausen had not failed to yield, the crash never would have occurred. Deputies identified Mr. Sollman as the driver of the other vehicle involved in the collision with Ms. Clausen. Mr. Sollman was extracted from his vehicle and airlifted to the University of Nebraska Medical Center. Upon arrival, Shayna Hill, a phlebotomist, drew blood from Mr. Sollman for labs at the hospital. She then sent the samples through a "zip tube" for processing. The results were returned in Exhibit 5 by an unknown employee who performed the tests, but did not testify at trial. Later, deputies

arrived at the hospital to collect another blood draw pursuant to a search warrant; this sample was taken at 9:21 PM. At that time, and on the next day, deputies questioned Mr. Sollman while he was in the hospital, unable to leave, without reading him his Miranda rights. Sergeant Kyle Percifield assumed the role of lead crash investigator and created a diagram of the crash based on data he and his team collected. Sgt. Percifield testified that he used principles of math and physics to reach a conclusion that Mr. Sollman's vehicle was traveling at 72.49 miles per hour at the time of the collision. Sgt. Percifield opined that if Mr. Sollman had been traveling the speed limit of 55 miles per hour, his vehicle would not have collided with the decedent's vehicle. Thus, he concluded Mr. Sollman's act of exceeding the speed limit was the proximate cause of the accident. However, he further testified that speed alone does not indicate impairment by alcohol. Evidence also revealed there was nobody else in the Ms. Clausen's car, and she had full control of it as she pulled into the intersection. (317:14-318:1). Sgt. Percifield admitted that even if Mr. Sollman was intoxicated and exceeding the speed limit, the accident would not have occurred if Ms. Clausen had not failed to yield and pulled into the intersection.

The case was tried to the District Court without a jury, and Mr. Sollman was found guilty on all counts after his motions to dismiss were overruled. Mr. Sollman was sentenced to 14-20 years' imprisonment on Count I, 60 days' imprisonment on Count II, and 90 days' imprisonment on Count III, all run consecutively.

ARGUMENT

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE STATE PROVED THAT THE DEFENDANT'S ACTIONS WERE THE PROXIMATE CAUSE OF THE VICTIM'S DEATH AND THAT THE VICTIM'S CONDUCT WAS NOT AN AN EFFICIENT INTERVENING CAUSE TO THE ACCIDENT;

In order to convict the Appellant of motor vehicle homicide, The State had to prove that "the proximate cause of the death of another is [the Appellant's] operation of a motor vehicle in violation of section 60-6,196..." Neb. Rev. Stat. § 28-306(b)(2).

Proximate cause has three elements: "(1) that without the misconduct, the injury would not have occurred, commonly known as the "but for" rule; (2) that the injury was a natural and probable result of the misconduct; and (3) that there was no efficient intervening cause." *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

There are four elements of an efficient intervening cause: "(1) the negligent actions of a third party intervene, (2) the third party had full control of the situation, (3) the third party's negligence could not have been anticipated by the defendant, and (4) the third party's negligence directly resulted in injury..." *Wilke v. Woodhouse Ford*, 278 Neb. 800, 774 N.W.2d 370 (2009)

All seven (7) of these elements had to be proven beyond a reasonable doubt by the State in order to find the Appellant guilty. This burden never shifts to the Defendant because it is one of the most basic principles of criminal procedure that under the Due Process Clause of the 14th Amendment to the U.S. Constitution and under the Nebraska Constitution, "the State must prove every element of an offense beyond a reasonable doubt and may not shift the burden proof to the defendant by presuming that element upon proof of the other elements of the offense." *State v. Mann*, 302 Neb. 804, 814, 925 N.W.2d 324, 332 (2019).

Contributory negligence is not a defense to the charge of motor vehicle homicide. *State v. William*, 231 Neb. 84, 435 N.W.2d 174 (1989). The Appellant did not use the decedent's failure to yield as a defense to the charge but rather, to illustrates the State's failure to prove all the required elements of proximate cause in its case-in-chief.

The leading authority is *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016). In *Irish*, the

Nebraska Supreme Court refined its interpretation of proximate cause in the criminal context, explaining that proximate cause has three elements: "(1) that without the misconduct, the injury would not have occurred, commonly known as the "but for" rule; (2) that the injury was a natural and probable result of the misconduct; and (3) that there was no efficient intervening cause." *Id.* As explained above, the burden of proof in a criminal case is always on the State and that burden never shifts to the Defendant and *Irish* makes it clear the State must prove each element of proximate cause beyond a reasonable doubt.

The State failed to meet its burden of proof for each element of proximate cause, specifically by failing to prove absence of an efficient intervening cause.

The State offered **no evidence** to prove Ms. Clausen's failure to yield was not an efficient intervening cause despite the *Irish* court mandating that as an essential element of proximate cause.

Since *Irish* has been decided, neither the Nebraska Supreme Court or Court of Appeals has defined "efficient intervening cause" in context of a criminal matter. However, the *Irish* court did note that "the concept of proximate causation is applicable in both criminal and tort law, and the analysis is parallel in many instances." *Id.* at 292 Neb. 520, 873 N.W.2d 167.

The *Irish* decision cites to *Wilke v. Woodhouse Ford*, 278 Neb. 800, 774 N.W.2d 370 (2009), which lays out four elements of an efficient intervening cause: "(1) the negligent actions of a third party intervene, (2) the third party had full control of the situation, (3) the third party's negligence could not have been anticipated by the defendant, and (4) the third party's negligence directly resulted in injury..." *Id.* 278 Neb. 800, 816, 774 N.W.2d 370, 383 (2009).

Again emphasizing the importance of the burden of proof in the instant case, *Irish* makes it clear that it is the State's burden of proving proximate cause beyond a reasonable doubt **includes proving the absence of an efficient intervening cause beyond a reasonable doubt.** Thus, the State has an

affirmative burden to disprove the elements of an efficient intervening cause, because the only way the State can meet its burden to prove the absence of an efficient intervening cause is to prove the elements of an efficient intervening cause were not present.

The State is unable to disprove the elements of an efficient intervening cause because the evidence in the record is uncontroverted that this tragedy would not have happened if Ms. Clausen had not failed to yield the right of way to Mr. Sollman. In fact, even the District Court commented "it would be common sense" this accident would not have occurred if Ms. Clausen did not pull out into the intersection. Even if she believed Mr. Sollman was traveling the speed limit of 55 miles per hour, Sgt. Percifield's calculation indicated Ms. Clausen's vehicle would have cleared the point of impact when Mr. Sollman's vehicle was only 31 feet away. At 55 miles per hour, 31 feet takes less than half a second to travel. Although she theoretically could have cleared the intersection, no reasonable driver pulls out knowing she will only clear oncoming traffic by less than half a second. With this simple revelation, the State is unable to disprove that (1) the negligent actions of a third party intervened and (4) the third party's negligence directly resulted in injury.

The evidence in the record is uncontroverted that Ms. Clausen had full control of her vehicle. Sgt. Percifield, the lead investigator, concluded she was the one in control of her vehicle, accelerated into the intersection on her own, and was not pushed or forced by anyone else. This evidence was not disputed anywhere else in the record, and it means the state failed to disprove the second (2) element of an efficient intervening cause that the third party had full control of the situation.

Nor was the State able to prove that Ms. Clausen's actions could have been anticipated by Mr. Sollman. It was never disputed that there is no traffic control on highway 6/31 at intersection of Northstar Drive, meaning a driver on highway 6/31 has the right of way over drivers on Northstar who face a stop sign. This is important because the Nebraska Supreme Court has long held drivers are

permitted to assume others will obey traffic laws. See *Nichols v. McArdle*, 170 Neb. 382, 392, 102 N.W.2d 848, 855 (1960) ("a traveler on a favored highway approaching an intersection protected by a stop sign of which he had knowledge was legally privileged to assume that oncoming traffic would obey the stop sign and perform all other obligations imposed by law.") The law recognizes that the Appellant was permitted to assume Ms. Clausen would obey her stop sign and yield the right of way to him. Thus, the State failed to disprove the third (3) element of an efficient intervening cause, that the third party's negligence could not have been anticipated by the defendant.

Because the State failed to disprove any of the elements of an efficient intervening cause, the State failed to prove there was not an efficient intervening cause of this accident. Because the State failed to prove there was no efficient intervening cause, the State failed to prove Mr. Sollman's actions proximately caused the death of another.

The instant case is the unique scenario where the victim's negligence is an efficient intervening cause. In fact, this exact situation was contemplated by this Court in *State v. Brown*, 258 Neb. 330, 341, 603 N.W.2d 419, 427 (1999), when it held "a victim's negligence cannot act to absolve the defendant in a motor vehicle homicide case unless the actions of the victim were the sole proximate cause of the accident." Id. (emphasis added).

While tragic, the facts of the instant case are uncontroverted that the actions of the decedent were the sole proximate cause of the accident. All parties agreed at trial that without her failure to yield, this accident would not have happened. Thus, the State failed to prove proximate cause because the evidence was uncontroverted that the decedent's actions were an efficient intervening cause.

Because there was no evidence of proximate cause, the Court of Appeal erred in finding the District Court was correct in overruling Mr. Sollman's motion to dismiss and finding him guilty of all elements in Count I beyond a reasonable doubt.

II.

THE COURT OF APPEALS ERRED IN NOT DECIDING WHETHER EXHIBIT 5 SHOULD HAVE BEEN EXCLUDED ON HEARSAY GROUNDS AFTER IT FOUND THAT A BLOOD TEST TAKEN 3 HOURS AFTER THE ACCIDENT WAS NOT UNREASONABLE AND PROBATIVE OF DRIVING UNDER THE INFLUENCE.

Exhibit 5 contains the lab results of tests performed on Mr. Sollman upon his admission to the hospital following the accident. Exhibit 5 was first offered for purposes of Mr. Sollman's motion in limine found at page 69 of the record. At trial, the State sought to introduce Exhibit 5 at page 245 of the record. Defense counsel objected, among other grounds, to hearsay.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Neb. Rev. Stat. § 27-801.

A statement may be an oral or written assertion. *Id.* Unless an exception applies, hearsay is not admissible. Neb. Rev. Stat. § 27-802. Because the declarant must be a person, a mechanical readout such as a machine displaying results of a test would not be hearsay. However, Exhibit 5 is not simply a printout from a computer that displays results; Exhibit 5 was compiled by another hospital employee who did not testify at trial. Ms. Hill testified that "med techs would do the processing" after she sent a sample through the zip tube. She explained the results are then put into the patient's chart. When asked to identify Exhibit 5, Ms. Hill identified the document as the patient's charts from the lab, not simply the printout of lab results.

This is important because it means another human processed the results into the chart shown in Exhibit 5. Thus, the document is a statement that falls within the hearsay rule. There are no exceptions under Rule 803 that would allow Exhibit 5 to come into evidence. Further, the State did not offer any evidence the doctor that performed the test was unavailable, and thus Rule 804 is not applicable, either.

Thus, Exhibit 5 should have been excluded from evidence because there was no testimony from the individual that performed the tests and compiled the information shown in Exhibit 5.

The Nebraska Court of Appeals did not rule on this error however because it found that another test that was taken pursuant to search warrant, three hours after the accident, was obtained within a reasonable time after the accident and thus was probative of the Appellant's intoxication at the time of the accident. In so holding, the Court of Appeals relied on *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010). However, *Dinslage* was a case where a blood test was taken "less than 1 hour" after the Defendant was stopped. In the case at bar, the blood test was taken 3 hours later.

Therefore, Exhibit 5 was essential to Mr. Sollman's convictions on Counts I and II, and thus it was reversible error to admit it at trial.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff-Appellant, respectfully requests that this Court grant its Petition for Further Review and, after further briefing (and oral argument if this Court so desires), reverse the Opinion of the Nebraska Court of Appeals.

Respectfully Submitted:

ABRAM K SOLLMAN, Plaintiff - Appellant

BY: *Thomas P. Strigenz*

Thomas P. Strigenz, #20209
Sarpy County Public Defender
1208 Golden Gate Drive
Papillion, NE 68046
(402) 593-5933

IT IS FURTHER ORDERED that on Count 1, the Defendant's operator's license in the State of Nebraska is revoked for 15 years and on Count 2, the Defendant's operator's license in the State of Nebraska is revoked for 6 months, from this date and if the Defendant has a non-Nebraska operator's license, said operator's license is impounded for 15 years, less credit for any suspension pursuant to the Nebraska Administrative License Revocation laws and this term can be reviewed annually.

IT IS FURTHER ORDERED that effective after 45 days from this Order, pursuant to NEB.REV.STAT. §60-6,211.05 and §60-498.02 the Defendant to install an ignition interlock device of a type approved by the Nebraska Department of Motor Vehicles on each motor vehicle operated by the Defendant and, after sufficient evidence of installation, the Defendant may apply to the Nebraska Department of Motor Vehicles for a restricted ignition interlock permit pursuant to Nebraska law.

IT IS FURTHER ORDERED that the Defendant is remanded to the custody of the Sheriff of Sarpy County, for placement in the Sarpy County Jail pending transportation to the Nebraska Department of Corrections in accordance with the sentence imposed by this Court.

IT IS FURTHER ORDERED a commitment shall be issued accordingly. Clerk to deliver certified copy of this Order to Sarpy County Jailer.

IT IS FURTHER ORDERED that the Defendant's bond, if any, is released after all appearances are completed for payment of fine and costs.

Signed and entered this 24th day of February, 2020.

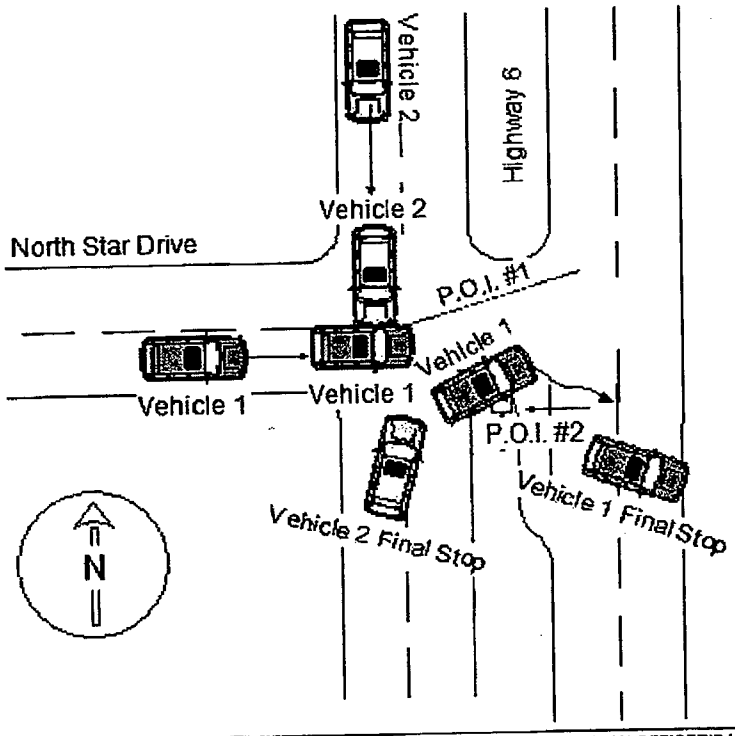
BY THE COURT:

District Judge

THE FOLLOWING INFORMATION IS REQUIRED FOR ALL ACCIDENTS

INDICATE BY DIAGRAM WHAT HAPPENED

Agency Case No. 3656-19



APPENDIX E

Not To Scale

DESCRIPTION OF ACCIDENT BASED ON OFFICER'S INVESTIGATION

VEHICLE 1 WAS TURNING LEFT FROM NORTH STAR DRIVE ONTO NORTHBOUND HIGHWAY 6. VEHICLE 2 WAS DRIVING SOUTHBOUND ON HIGHWAY 6. VEHICLE 2'S FRONT STRUCK VEHICLE 1 ON THE DRIVER SIDE OF THE VEHICLE. THE CRASH CAUSED VEHICLE 1 TO SPIN OUT AND STRIKE A MEDIAN SIGN THAT WAS IN THE MEDIAN SOUTH OF THE NORTH STAR DRIVE INTERSECTION. THE MEDIAN SIGN WAS REMOVED FROM THE GROUND ON IMPACT. VEHICLE 1 CONTINUED TO SPIN UNTIL IT CAME TO A FINAL RESTING SPOT IN THE NORTHBOUND LANE OF HIGHWAY 6. VEHICLE 1 WAS FACING SOUTH EAST. VEHICLE 2 SPUN OUT AFTER THE CRASH AND CAME TO ITS FINAL RESTING SPOT IN THE SOUTHBOUND LANES OF HIGHWAY 6. VEHICLE 2 WAS FACING NORTH ON HIGHWAY 6. SARPY COUNTY CRASH TEAM IS FURTHER INVESTIGATING THE CRASH.

PROPERTY	OBJECT DAMAGED	OWNER NAME ADDRESS	PHONE	Approx. Cost of Damage
	MEDIAN SIGN	NDOT 4425 S. 108TH STREET, OMAHA, NE 68137	(402) 595-2534	$300.00
	OBJECT DAMAGED	OWNER NAME ADDRESS	PHONE	Approx. Cost of Damage

WITNESS	NAME	ADDRESS	PHONE
	NAME	ADDRESS	PHONE

VEHICLE MOVEMENT BEFORE COLLISION

VEH NO.	N	S	E	W	ROAD OR HIGHWAY NAME
1			✓		NORTH STAR DRIVE
2		✓			HIGHWAY 6

1	06
2	01

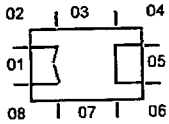
01 Essentially straight ahead; 02 Backing; 03 Changing lanes; 04 Overtaking / Passing; 05 Turning right; 06 Turning left; 07 Making U-turn; 08 Entering traffic lane; 09 Leaving traffic lane; 10 Parked; 11 Slowing or stopped in traffic; 12 Other; 13 Unknown

POINT OF IMPACT AND MOST DAMAGED AREA

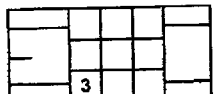
(Enter numbers for each vehicle)

	VEHICLE 1	VEHICLE 2
POINT OF IMPACT	07	01
MOST DAMAGED AREA	07	01

00 None; 09 Top and windows; 10 Undercarriage; 11 Total (all areas); 12 Other

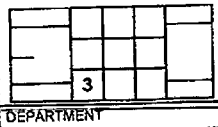


AIRBAG DEPLOYED Vehicle 1

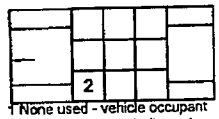


1 Deployed - front; 2 Deployed - side; 3 Deployed - both front/side; 4 Not deployed; 5 Not applicable/ no airbag available; 6 Unknown

Vehicle 2

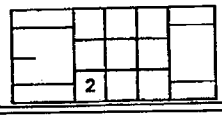


RESTRAINT USE Vehicle 1



1 None used - vehicle occupant; 2 Lap and shoulder belt used; 3 Shoulder belt only used; 4 Lap belt only used; 5 Child safety seat used; 6 Child booster seat used; 7 DOT approved helmet used; 8 Costume helmet used; 9 Restraint use unknown

Vehicle 2



TOTAL OCCUPANTS	VEH 1	1	VEH 2	1	
ALCOHOL TESTING	Driver No. 1		Driver No. 2		Pedestrian
ALCOHOL LEVEL TESTED	Y ☐ N ☑		Y ☑ N ☐		Y ☐ N ☐
BAC LEVEL					
ALCOHOL/ DRUGS SUSPECTED	5		2		

1 Neither alcohol nor drugs suspected; 2 Yes - alcohol suspected; 3 Yes - drugs suspected; 4 Yes - alcohol and drugs suspected; 5 Unknown

OFFICER NO.	TROOP/ TEAM/ BEAT	DEPARTMENT	Photographs taken?
[redacted]83		SARPY COUNTY SHERIFF'S OFFICE	(●) Yes ( ) No

INVESTIGATOR NAME (Print or type)	INVESTIGATOR SIGNATURE	DATE OF REPORT
John Sanderson	Approved By Kyle Percifield	02/03/2019

Incident Report

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Incident Summary

Incident Type: CRIMINAL
Inc Occurred Address: NORTH STAR DR & HWY 6, GRETNA,
Inc Occurred Start: 02/01/2019 18:14 **Inc Occurred End:**
Domestic: N **Bias Motivation:** NONE
Contact Nature: IN PERSON
Reporting Officer: SANDERSON, JOHN
Case Status: INACTIVE **Disposition:** INACTIVE

Report Type: INCIDENT
Sector/Beat: /S656
Report Taken: 02/01/2019 18:14
Gang Related: N **Substance:** N
Reported Date/Time: 02/01/2019 18:22
Primary Assigned Officer: RAUGHTON, JONATHAN
Disposition Date: 02/04/2019 09:33

Offenses

Statute Code: 606196001 **Enhancers:** CON
Statute Desc: DWI/DUI 1ST OFFENSE
Counts: 1 **Statute Severity:** CLASS W MISDEMEANOR

Statute Code: 999036 **Enhancers:** CON
Statute Desc: PI COLLISION
Counts: 1 **Statute Severity:** OTHER

Statute Code: 28030604_3B **Enhancers:**
Statute Desc: MOTOR VEHICLE HOMICIDE (IF 606196 OR 606197.06) (EFFECTIVE 8/30/15)
Counts: 1 **Statute Severity:** CLASS 2A FELONY

Officers

Event Association	Emp#	Badge#	Name	Squad#
PRIMARY REPORTING OFFICER	S1083	S1083	SANDERSON, JOHN	
APPROVING SUPERVISOR	S1000	S1000	HILLABRAND, ROBERT	
ASSISTING OFFICER	S1037	S1037	CREE, MICHAEL	
APPROVING SUPERVISOR	S888	S888	PERRIN, MIKE	
PRIMARY ASSIGNED OFFICER	S1052	S1052	HURT, ANDREA	
CRASH TEAM INVESTIGATOR	S1060	S1060	PERCIFIELD, KYLE	
PRIMARY ASSIGNED OFFICER	S1075	S1075	RAUGHTON, JONATHAN	

Persons Involved

Person#: 0001 **MNI:** 817060 **Can ID Suspect:** No
Event Association: DECEASED **Contact Date/Time:** 02/01/2019 18:14
Name: CLAUSEN, CASSANDRA A
SSN: **DOB:** 09/19/1947 **Age:** 71 - 71 **Sex:** FEMALE **Race:** WHITE/CAUCASIAN
Height: 5' 5" - 5' 5" **Weight:** 202 - 202 lbs **Eye Color:** HAZEL **Hair Color:** GRAY
Address: 21808 HILLTOP AVE, GRETNA, NEBRASKA 68028 **Sector/Beat:**
Phone Type 1: HOME PHONE **Phone# 1:** (402) 332-0180 **Ext 1:**
Phone Type 2: **Phone# 2:** **Ext 2:**
DL State: NEBRASKA **DL#:** G59042138 **DL Exp. Date:**
Occupation: **Employer/School:**

Person Offenses

Statute Code: 999036 **Enhancers:** CON
Statute Desc: PI COLLISION
Counts: 1

APPENDIX F

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Persons Involved

Person#: 0002 **MNI:** 817068 **Can ID Suspect:** No
Event Association: SUSPECT **Contact Date/Time:** 02/01/2019 18:14
Name: SOLLMAN, ABRAM K
SSN: **DOB:** 12/16/1973 **Age:** 45 - 45 **Sex:** MALE **Race:** WHITE/CAUCASIAN
Height: 6' 0" - 6' 0" **Weight:** 200 - 200 lbs **Eye Color:** **Hair Color:** BALD
Address: 28773 MAPLE TERRACE, DOWAGIAC, MICHIGAN 49047 **Sector/Beat:**
Phone Type 1: HOME PHONE **Phone# 1:** (269) 338-7230 **Ext 1:**
Phone Type 2: **Phone# 2:** **Ext 2:**
DL State: OREGON **DL#:** 4997655 **DL Exp. Date:**
Occupation: **Employer/School:**

Person Offenses

Statute Code: 606196001 **Enhancers:** CON
Statute Desc: DWI/DUI 1ST OFFENSE
Counts: 1
Statute Code: 999036 **Enhancers:** CON
Statute Desc: PI COLLISION
Counts: 1

Person#: 0003 **MNI:** 668685 **Can ID Suspect:** No
Event Association: WITNESS **Contact Date/Time:**
Name: NOWLING, SHAWN T
SSN: **DOB:** 05/04/1972 **Age:** 46 - 46 **Sex:** MALE **Race:** WHITE/CAUCASIAN
Height: 6' 1" - 6' 1" **Weight:** 205 - 210 lbs **Eye Color:** BLUE **Hair Color:** BLACK
Address: 13325 S 219TH ST, GRETNA, NEBRASKA 68028 **Sector/Beat:**
Phone Type 1: HOME PHONE **Phone# 1:** (402) 686-0835 **Ext 1:**
Phone Type 2: **Phone# 2:** **Ext 2:**
DL State: NEBRASKA **DL#:** H12612535 **DL Exp. Date:**
Occupation: **Employer/School:**

Vehicles Involved

Vehicle#: 0001
Event Assoc: DAMAGED **Vehicle Status:** DESTROYED/DAMAGED/VANDALIZED
Vehicle Type: A **Year:** 2017 **Make:** HONDA **Model:** CRV
VIN: 2HKRW2H86HH618921 **License#:** CASSY **State:** NE **Expires On:**
Style: SPORTS UTILITY VEHICLE **Prim Color:** SILVER **Sec Color:** **Ter Color:**
Status Dt/Tm: 02/01/2019 18:22 **Status Value:** $1,001.00 **Recovered Date:** **Recovered Value:**
NCIC Date: **NCIC Reported By:**
NCIC#: **NCIC Cancelled:**

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Vehicles Involved

Vehicle#: 0002
Event Assoc: DAMAGED
Vehicle Type: A
Year: 2002
VIN: WVWSK61J82W120433
License#: EAC7112
Style: SPORTS UTILITY VEHICLE
Prim Color: SILVER
Status Dt/Tm: 02/01/2019 18:22
Status Value: $1,001.00
NCIC Date:
NCIC#:
Vehicle Status: DESTROYED/DAMAGED/VANDALIZED
Make: VOLKSWAGON
State: MI
Model: JETTA
Expires On:
Sec Color:
Ter Color:
Recovered Date:
Recovered Value:
NCIC Reported By:
NCIC Cancelled:

Property Involved

Property # 0001
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: BLOOD DRAW KIT #05787 FROM ABRAM SOLLMAN
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 21:21:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19A01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0002
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: PORTABLE ELECTRONIC COMMUNIC
Description: BLACK ZTE PHONE - OWNER SOLLMAN
Make/Brand:
Color: BLACK
Serial/Lot#:
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19B01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Property Involved

Property # 0003
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: PURSES/HANDBAGS/WALLETS
Description: BLACK PURSE
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B02A
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0004
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: 7 GIFT CARDS
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B02B
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0005
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: CREDIT/DEBIT CARDS
Description: 6 DEBIT/CREDIT CARDS
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B02C
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Property Involved

Property # 0006
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: IDENTITY DOCUMENTS
Description: 3 ID CARDS
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B02D
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0007
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: 2 KEYS
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B02E
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0008
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: MONEY
Description: MONEY ENVELOPE CONTAINING $37.59
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:

Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:

Evidence#: 3656-19B03
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

SARPY COUNTY SHERIFF'S OFFICE
8335 PLATTEVIEW ROAD
PAPILLION, NEBRASKA 68046
(402) 593-2288

Incident Number: LSO190201003656

Property Involved

Property # 0009
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: PORTABLE ELECTRONIC COMMUNI(
Description: WHITE IPHONE W/ PURPLE CASE - OWNER CASSANDRA CLAUSEN
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 20:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19B04
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0010
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: COLLECTIONS/COLLECTIBLES
Description: BAG CONTAINING ANTIQUE STAMP, POSTCARD & CALENDAR COLLECTION
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/3/2019 16:30:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19C01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0011
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: DIGITAL PHOTOS FROM BERGEN ER
Make/Brand:
Color:
Serial/Lot#: S1052
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 21:11:00
Current Status Date:
Model:
Quantity: 13
Owner Applied#: DIGITAL P HOTO FILE
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19D01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

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Property Involved

Property # 0012
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: DIGITAL PHOTOS FROM AUTOSPSY
Make/Brand:
Color:
Serial/Lot#: S1052
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 21:11:00
Current Status Date:
Model:
Quantity: 14
Owner Applied#: DIGITAL PHOTO FILE
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19D02
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0013
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: VEHICLE PARTS/ACCESSORIES
Description: AIRBAG CONTROL MODULE FROM HONDA CR-V
Make/Brand:
Color:
Serial/Lot#:
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/3/2019 16:00:00
Current Status Date:
Model:
Quantity: 1
Owner Applied#:
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-19E01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

Property # 0014
Event Assoc/Orig status: EVIDENCE
Current Status: EVIDENCE
Property Type: OTHER
Description: DIGITAL PHOTOS AND AUDIO OF CRASH, AUTOPSY AND FOLLOWUP
Make/Brand:
Color:
Serial/Lot#: S1060
NCIC Date:
NCIC#:
Evidence: Yes
Original Status Date: 2/1/2019 18:14:00
Current Status Date:
Model:
Quantity: 271
Owner Applied#: DIGITAL PHOTO FILE
NCIC Reported By:
NCIC Cancelled:
Evidence#: 3656-F01
Original Value:
Current Value:

Property/Person Associations

Per#:	Person Name:	Association:
0001	CLAUSEN, CASSANDRA A	ASSOCIATION PERSON <-> PROPERTY
0002	SOLLMAN, ABRAM K	ASSOCIATION PERSON <-> PROPERTY

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Narratives

ENTERED DATE/TIME: 2/4/2019 09:22:21
NARRATIVE TYPE: PI COLLISION,DUI
SUBJECT: PI COLLISION,DUI
AUTHOR: SANDERSON, JOHN

RN 3656-19

99-9036 P.I. Collision
60-6,196 DUI

On 02-01-19, I, Dep. J. Sanderson/1083 was working for the Sarpy County Sheriff's Road Patrol Division in full uniform and driving a marked cruiser (S25). At approximately 1814, Dep. Cree/1037 and I were dispatched to Highway 6 and North Star Drive in reference to a personal injury crash. Sarpy County Dispatch stated there was a two vehicle crash and there was one pinned party. Dep. Cree and I advised we were in route to the scene urgent (emergency lights and sirens activated). Sgt. Perrin/881 requested dispatch to ask Nebraska State Patrol (NSP) if they could assist. Dispatch explained NSP was sending one unit.

While in route, Dispatch stated Gretna Fire was on scene and requested Lifenet place the helicopter on stand by at approximately 1818. Dispatch explained there was an unconscious female. Dispatch further advised Lifenet was requested to lift off at approximately 1823. Dispatch stated extraction was required at approximately 1826. Sgt. Perrin contacted the South Metro Crash Response Team and they advised they were in route.

Dep. Cree and I arrived at approximately 1826. NSP had multiple units on scene directing traffic and Gretna Fire was also on scene. There was a silver 2017 Honda CR-V (Nebraska License Plate: CASSY) with extensive damage to the driver side of the vehicle. The Honda CR-V was in the northbound lanes of Highway 6 facing the south east. There was a silver 2002 Volkswagen Bora Jetta (Michigan License Plate: EAC7112, VIN 2HKRW2H86HH618921) with extensive damage to the front end. The Volkswagen Bora Jetta was in the southbound lanes of Highway 6 facing to the north. At approximately 1832 a second Lifenet helicopter was requested.

Gretna Fire Personnel was conducting extraction of the female driver in the Honda CR-V and the male driver in the Volkswagen Bora Jetta. While trying to extricate the female from the Honda CR-V, Gretna Fire Personnel was conducting CPR on her. I assisted Gretna Fire Personnel with removing the female from the Honda CR-V, who was later identified as CLAUSEN, Cassandra (DOB 09-19-1947). Once Clausen was extracted from the Honda CR-V, she was placed in the back of an ambulance where Grenta Fire Personnel was conducting life saving measures. Gretna Fire Personnel was able to extricate the male from the Volkswagen Bora Jetta. The male, who was later identified as SOLLMAN, Abram (DOB 12-16-1973) was placed in the back of an ambulance until Lifenet arrived. NSP Trooper Del Toral/6 assisted Gretna Fire Personnel with extracting Sollman from the Volkswagen Bore Jetta. Del Toral advised he could smell alcohol emitting from Sollman's person.

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While waiting for Lifenet to arrive, I began to look in the vehicles for identifying information, registration and proof of insurance. I was able to find Clausen's driver's license, vehicle registration and proof of insurance in her Honda CR-V. While searching the Volkswagen Bora Jetta, I could not find registration or proof of insurance. In the glove box, I did find a Utah Uniform Citation from 1-20-19 for open container that was written to Sollman. Grenta Fire Department stated the male identified himself as Abe. Dispatch advised the plate on Sollman's car was coming back to a GMC Yukon. The Yukon was registered to Sollman.

I also spoke to witnesses from the crash who were standing by. No witness saw the actual crash occur. NSP Del Toral stated Clausen was leaving her work near 217th and North Star Drive. Clausen was attempting to turn left onto northbound Highway 6 from North Star Drive. Sollman was driving southbound on Highway 6 approaching the North Star Drive intersection. When Clausen pulled into the intersection, Sollman's vehicle crashed into Clausen's vehicle's driver side. The impact caused both vehicles to spin out. Clausen's vehicle then struck a median sign that was in the median to the south of the intersection. Clausen's vehicle continued to skid until it came to its final resting spot facing south east in the northbound lanes. Sollman's vehicle came to its final resting spot facing north in the southbound lanes

At approximately 1846, Lifenet landed on scene. I walked with Gretna Fire Personnel as they brought Sollman to the helicopter. While Sollman was being placed in the helicopter, I could smell alcohol emitting from his person. At approximately 1857, Gretna Fire Department canceled the second Lifenet helicopter. Gretna Fire Department advised they were transporting Clausen to Bergan Mercy Hospital by ambulance while conducting CPR. The Lifenet helicopter that transported Sollman to University of Nebraska Medicine Hospital (UNMC) took off at approximately 1859. Dep. Cree went to Bergan Mercy Hospital to follow-up with Clausen. Please see Dep. Cree's report for further information on his involvement at the crash scene and his follow-up at Bergan Mercy Hospital.

The South Metro Crash Response Team arrived took control of the scene and crash investigation.

Due to smelling alcohol emitting from Sollman's person, I completed an affidavit for a search warrant for a DUI blood draw. Sarpy County Judge Freeman signed the search warrant for DUI blood draw at 2000. When I arrived at UNMC, I provided Phlebotomist Shayna Robinson with the signed search warrant. I asked Sollman if he had anything to drink tonight and Sollman stated he drank about 15 hours prior. I then read Sollman the post arrest chemical advisement. Sollman stated he gave consent to test his blood for alcohol. Sollman signed the post arrest chemical advisement at 2114. Phlebotomist Shayna Robinson removed two vials of blood from Sollman at 2121. I then took control of the two vials of blood and packaged them in blood draw kit #05787 per the instructions provided. I placed the two vials of blood and blood draw kit #05787 into Sarpy County Evidence using from number 20907.

At approximately 2024, On 2-2-19, I conducted follow-up with Sollman at UNMC. I provided Sollman with a copy of the signed search warrant for his blood. I also provided Sollman a copy of the search warrant inventory.

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I completed a state crash report and provided Sollman a driver's exchange form. With this report, I am submitting the post arrest chemical advisement, affidavit, DUI blood draw search warrant and search warrant return inventory.

This case is considered open in the files of this office. Further reports are forthcoming.

ENTERED DATE/TIME: 2/4/2019 09:49:51
NARRATIVE TYPE: SUPPLEMENTAL
SUBJECT: CREE NARRATIVE
AUTHOR: CREE, MICHAEL

RN: 3656-19

I, Dep. M. Cree/1037 was working for the Sarpy County Sheriff's Road Patrol Division in full uniform and driving a marked cruiser (S06) on 2-1-19. At approximately 1814 hours, I was dispatched to Highway 6 and North Star Drive, Gretna, Sarpy County reference a personal injury accident. I was dispatched to assist Dep. J. /1083.

Upon my arrival the Gretna Fire Department was on location as well as Nebraska State Patrol. Gretna Fire was tending to patients and State Patrol was conducting traffic control. Dep. Sanderson arrived at approximately the same time as I arrived. Dep. Sanderson started gathering information for the drivers and vehicles. I assisted State Patrol with traffic control. Once traffic was diverted from the accident scene and the patients had been transferred to the hospital, I started gathering information on the vehicles to complete tow sheets.

I was instructed by Sgt. M. Perrin/888 to respond to Bergen Mercy Hospital in Omaha to possibly get a statement from one of the drivers. The driver/patient I was checking on was CLAUSEN, Cassandra A (9-19-47). Upon my arrival I was met by hospital security. I informed security who I was looking for and escorted me to room 33 of the Emergency Department. I was informed by Dr. CORNELL that the patient was deceased. CLAUSEN was pronounce deceased at 1923 hours by Dr. CORNELL.

Sgt. Perrin was informed that CLAUSEN was deceased and he had my contact Inv. A. Hurt/1052.

QUELETTE, Jacqueline L (5-10-73), daughter of CLASUEN was at the hospital prior to my arrival and was notified by hospital staff that her mother was deceased. QUELETTE had also contated other family members.

QUELETTE and family members were allowed to visit with CLASUEN after Inv. HURT authorized it. I remained in the room while the family visiting.

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This is a supplemental report. Refer to Dep. Sanderson's report for additional information.

This case is considered closed in the files of this office. This is the final report.

ENTERED DATE/TIME: 2/4/2019 15:45:50
NARRATIVE TYPE: PI COLLISON, DUI
SUBJECT: HURT NARRATIVE
AUTHOR: HURT, ANDREA

RN: 3656-19

On 2/1/19, I, Inv. A. Hurt/1052 was working as the on call investigator for the Sarpy County Sheriff's Office Investigations Division. At 1847 hours, I, Inv. Hurt was contacted by Sgt. Perrin/888 who advised that there was a serious personal injury accident involving two vehicles at Highway 6 and Northstar Drive, Sarpy County, NE. Gretna Fire Department EMS responded to the accident. Sgt. Perrin stated that the female driver identified as CLAUSEN, Cassandra (DOB: 9-19-47) was transported to Bergan Mercy Hospital with CPR in progress. Sgt. Perrin advised that the Sarpy County Crash Response Unit responded to the scene for the crash investigation. At approximately 2001 hours, Dep. Cree/1037 contacted me and advised that he was at Bergan Mercy Hospital ER Room 33 and CLAUSEN had been pronounced deceased by an ER doctor.

I contacted Sgt. Percifield/1060 who was at the scene of the accident as the lead Crash Investigator. Sgt. Percifield advised that CLAUSEN appeared to have been traveling east on Northstar Drive and turning North on to Hwy 6, when she was struck by a southbound vehicle. He advised that CLAUSEN's Honda CRV was impacted on the driver's side. The other driver was identified as SOLLMAN, Abram (DOB: 12-16-73) and he was life-flighted to UNMC. Both drivers required extrication. Sarpy County Sheriff's Office and Nebraska State Patrol established scene security and interviewed witnesses at the accident scene. Sgt. Percifield advised that alcohol was suspected from the other driver SOLLMAN.

I responded and arrived at Bergan Mercy Hospital at 2110 hours. Upon arrival, I made contact with Dep. Cree. The deceased was identified as Cassandra CLAUSEN (DOB: 9-19-47). Bergan Mercy ER Dr. Cornell pronounced CLAUSEN deceased at 1923 hours.
I observed the deceased Cassandra CLAUSEN laying on her back on the hospital bed in ER Room 33. I pronounced her deceased at 2110 hours. ER RN Heather Reese provided me the decedent's chart notes. It was noted that Gretna Volunteer Fire reported a head on collision occurred at approximately 1815 hours with prolonged extrication. The decedent had been unresponsive, with no vitals for approximately 50 minutes. It was noted that the decedent was asystole for Gretna Fire and was asystole when checked in the trauma bay at UNMC.

The decedent's family were already at the hospital and had been previously notified. I interviewed the

decedent's daughter identified as QUELETTE, Jacqueline (DOB: 5-10-73) at the hospital. QUELETTE advised that the decedent had no major medical issues. She reported that in 1984, the decedent was in a bad car accident in which she had a brain injury to her frontal lobe, broken arms, and a broken clavicle. The decedent also had breast cancer in approximately 2012 and had a lumpectomy. The decedent was diagnosed with diabetes and was prescribed medication in pill form. QUELETTE also believed the decedent took prescription medication for high blood pressure and took multiple dietary supplements. QUELETTE stated that the decedent works at Gretna Community Pharmacy, which is located at 21689 Northstar Drive, Gretna, NE. QUELETTE stated that the decedent got off work at 1800 hours and was most likely on her way home to 21808 Hilltop Avenue, Gretna, NE when the accident occurred.

I further inspected the decedent's body on the hospital bed. The decedent had IV ports in both legs. The decedent also had an ET tube with tube tamer in her mouth and was wearing a C-collar. The decedent had a blood pressure cuff on her left arm and a pulse oximeter on a left finger. AED pads were on the decedent's chest. The decedent had bruising across her abdomen that appeared to be from a seatbelt. The decedent also had bruising on her lower legs. There was no blood coming from her mouth, nose, or ears. The temperature of the decedent was cool to the touch, and there were no signs of lividity or rigor mortis. The decedent was dressed in a blue hospital gown, in which hospital nurses advised they had dressed her in. RN Reese released four rings, one earring, a watch, and the decedent's clothing to QUELETTE. Numerous photos were taken of the decedent.

I contacted Sarpy County attorney Kate Kucera reference the death at 2151 hours. Shawn Haggerty from the Douglas County Coroner's office was contacted at 2128 hours and an autopsy was scheduled for 2-2-19 at 1100 hours. Lt. Boldt of the Sarpy County Sheriff's Office was the ADC and was contacted at 2155 hours. I contacted the transport service at 2100 hours. They arrived at 2110 hours at which time the decedent was place in a white body bag with an evidence tag prepared by this investigator. Three vials of the decedent's first admission blood was placed in the body bag. The bag was secured with the evidence tag and with red tag lock # 0095624. The decedent was transported from the hospital at 2140 hours.

On 2/2/19, I arrived at the Douglas County Hospital to attend the autopsy of Cassandra CLAUSEN. The autopsy, ME# 19-77, was performed by Dr. Linde and assistant Nicole Pfeifler-Ruiz. Also in attendance was Sgt. Percifield/1060 and Dep. Chase/1085. The autopsy began at 1139 hours, in which the body bag was unsealed by cutting the red tag lock # 0095624.

I observed that the decedent was in the same general condition. There were no X-rays taken prior to the autopsy. Sgt. Percifield and I took pictures of the deceased during the autopsy. There was no need for an anatomy chart or fingerprints to be collected pre or post examination.

During the course of the autopsy, Dr. Linde did not find anything suspicious during the examination of the deceased's body. Dr. Linde noted that there were traumatic internal injuries, including a broken chest plate, damage/lacerated heart that was pushed out of the pericardial sac, pelvic injuries including a lacerated liver; all

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of which are consistent with a traffic accident. Based off that information, Dr. Linde advised that the cause of death would be blunt force trauma to the torso. Dr. Linde stated that toxicology would also be done on the decedent. The autopsy completed at 1305 hours.

I completed a coroner duty checklist reference this case. The autopsy report completed by Dr. Linde will be scanned in with this report once received.

This case is considered closed in the files of this office. This is the final report.

ENTERED DATE/TIME: 2/13/2019 08:19:34
NARRATIVE TYPE: PHONE PROCESSING
SUBJECT: MORRISSEY SUPPLEMENTAL
AUTHOR: MORRISSEY, DARIN

RN #3656-19 Phone Processing

On 2/8/19 I, Inv. Morrissey/866 had viewed an email from Sgt. Percifield requesting to process an I-Phone 7 belonging to the victim of a car fatality. The victim was CLAUSEN, Cassandra.

In the email it stated that the owner and operator of the phone is deceased and a pin code was obtained from family members to open up the phone. I, Inv. Morrissey retrieved the phone out of evidence on 2/8/19. The phone was charged to 100% utilizing power cord. The phone was identified as Model #A1660 on the back of the phone. The phone appeared to be undamaged with the screen fully intact. Once phone was fully charged it was plugged into my Dell Laptop computer to run forensic software.

The forensic software utilized was Cellebrite version 7.14. The first extraction was a Logical Method One which was started at 1358 hours and completed at 1403 hours. Once that extraction was completed it was uploaded into Cellebrite UFED Physical Analyzer version 7.14. After loading the Logical One extraction into Physical Analyzer I then completed a second extraction under Logical Method Two. That extraction was started at 1403 hours and completed at 1412 hours. That extraction was then uploaded into Physical Analyzer. Once both extractions were loaded into Physical Analyzer I clicked on the time line. The request from Sgt. Percifield was to document what operations were occurring on the phone during the time of this suspected accident. In the email it stated that the accident was reported at 1814 hours.

Once the timeline was presented by the Cellebrite Software I documented all activity for 2/1/19. In going through the time frame I saw that the victim's phone had an incoming text message at 1813 hours. That text message was from phone #1-402-709-5254 with the contact name Jennifer CLAUSEN. The message was "ok take interstate to L Street exit going east, turn r on 108th, go straight through the light at Q, last building on the right before neighborhood (3rd building I think)". Also at that same time of 18:13 an outgoing call is made to

1-855-896-1222. That conversation lasted 12 minutes and 37 seconds.

At 1818 hours an incoming MMS message, which was a screen shot and a text message of here is the address. That message was again from her daughter Jennifer CLAUSEN. According to Sgt. Percifield the accident was called in at 1814 hours. I documented the time line in the PDF report and turned it over to Sgt. Percifield. Sgt. Percifield researched the 12 minute 35 second phone call to 1-855-896-1222. He stated that that was the OnStar phone call made due to the impact. At that time I then went over the time frame with Sgt. Percifield and all events that occurred on 2/1/19 between 1800 hours and 1823 hours. Sgt. Percified was satisfied with those results and asked this investigator to dictate a report. The time line generated by this investigator will be printed out and scanned into LRMS with this report.

This is the extent of follow-up requested of this investigator on case #3656-19, a fatality death investigation.

End of report.
Inv. Morrissey/866

ENTERED DATE/TIME: 2/13/2019 09:18:04
NARRATIVE TYPE: CRASH TEAM CALL OUT
SUBJECT: PERCIFIELD NARRATIVE
AUTHOR: PERCIFIELD, KYLE

On 02/01/2019 at 18:22 hours, I, Sergeant K. Percifield/1060, was contacted by Sergeant M. Perrin/888 as the Crash Response Unit Team Leader for the Sarpy County Sheriff's Office regarding a personal injury crash at the intersection of Highway 6 and North Star Drive, Gretna, Sarpy County. Deputies with the Sarpy County Sheriff's Office, along with Troopers from the Nebraska State Patrol and Gretna Fire and Rescue Department responded to a report of a personal injury crash at the intersection of Highway 6 and North Star Drive, Gretna, Sarpy County. While in route, Deputies were informed that a medical helicopter was being requested for the patients, due to the severity of injuries.
Upon arrival, Deputies observed a two-vehicle crash between a 2017 Honda CR-V, bearing Nebraska license plates "CASSY" and 2002 Volkswagen Bora Jetta, bearing Michigan license plates EAC7112. The driver of the Volkswagen was identified as Abram K. SOLLMAN (DOB:12/16/1973) and the driver of the Honda was identified as Cassandra A. CLAUSEN (DOB:09/19/1947). SOLLMAN had to be extricated from the vehicle and sustained severe injuries to his limbs. SOLLMAN was semi-conscious and it was determined he needed to be transported by the medical helicopter to Nebraska Medicine Trauma Center. During the extrication efforts and transportation to the helicopter, Trooper M. Del Toral/7, Deputy J. Sanderson/1083, and other Gretna Fire personnel all stated they detected the odor of alcoholic beverage emitting from SOLLMAN'S person.

CLAUSEN was found to be unresponsive in her vehicle and not breathing. CLAUSEN was extricated by the Gretna Fire Department and CPR was performed on her from extrication until she was transported by ambulance to Bergan Mercy Trauma Center. Upon arrival at Bergan Mercy, CLAUSEN was pronounced

deceased. Based upon the severity of the crash, the South Metro Crash Response Team (SMCRT), a joint-agency traffic crash investigation team, was paged and responded to the scene to investigate. I, Sergeant Kyle Percifield, am a Crash Reconstructionist and the Team Leader for both the SMCRT and the Sheriff's Office Crash Response Unit (CRU). I assumed the role of lead investigator for the crash upon my arrival on the scene.

I conducted a visual inspection of the scene and vehicles upon my arrival. Initial responding Deputies and Troopers stated there were no known witnesses to the crash. Based upon the evidence and damage to the vehicles, I was able to determine the Volkswagen was traveling southbound on Highway 6, approaching North Star Drive. The Honda was traveling eastbound on North Star Drive, approaching Highway 6, where a stop sign was located for traffic on North Star Drive to stop. The initial cause of the crash appeared to be due to CLAUSEN failing to yield to the right of way to SOLLMAN, with CLAUSEN attempting to negotiate a left turn and pulling in front of SOLLMAN as he crossed through the intersection. This caused the front of SOLLMAN'S vehicle to strike the driver's door of CLAUSEN'S vehicle.

The scene was photographed and documented forensically by investigators with the SMCRT. While I conducted an inspection of the vehicles on scene, I located an open and empty bottle of Fireball whiskey within the passenger compartment of SOLLMAN'S vehicle. This information was passed along to Dep. Sanderson, who was completing a search warrant for samples of SOLLMAN'S blood. Dep. Sanderson got the search warrant signed and had a phlebotomist conduct a withdrawal of SOLLMAN'S blood at Bergan Mercy.
On 2/2/2019, at approximately 1300 hours, I responded to Bergan Mercy hospital to speak to SOLLMAN. Upon arrival, I observed SOLLMAN to be in a hospital bed with three broken limbs. I asked SOLLMAN if he was willing to tell me what he remembered occurring. SOLLMAN stated he did not fully remember the crash, but that he remembered a vehicle turning in front of his path and making eye contact with the driver prior to the collision. He stated the next thing he remembered was being extricated from the vehicle. I asked SOLLMAN if he consumed alcohol prior to the crash, and he estimated he consumed alcohol 15 hours prior to the crash. SOLLMAN was traveling from Michigan to Lincoln, Nebraska to meet his significant other. I asked SOLLMAN if he would consent to have his nurse provide his hospital-recorded blood alcohol level that was obtained at the time of his admission to the hospital. SOLLMAN consented, citing that the Sheriff's Office was "going to find out anyway". SOLLMAN'S nurse retrieved SOLLMAN'S medical records and stated that, upon SOLLMAN'S arrival at the hospital immediately after the crash, he had a blood alcohol level of 0.197.

On 2/2/2019, I also attended the autopsy of CLAUSEN at the Douglas County Hospital and performed by pathologist Dr. Erin Linde. After completing the autopsy, Dr. Linde concluded the cause of death for CLAUSEN was blunt force injuries to the torso, as a result of the crash. On 02/05/2019, the Douglas County Sheriff's Office Forensic Services Bureau completed an analysis of the sample of SOLLMAN'S blood obtained via the search warrant on the night of the crash. The analysis revealed the blood contained 0.125 +/- 0.001 grams of ethanol per 100 milliliters of blood.

In addition to the driving under the influence of alcohol investigation, I conducted an analysis of the data obtained on the night of the crash, to include but not limited to measurements of roadway marks, gouges, tire

marks, and damage to the vehicles. I also obtained vehicle specifications for each vehicle to know its overall dimensions, weight, and weight distributions. As a Crash Reconstructionist of approximately five years, I am trained in applying mathematic calculations with the evidence at hand to make speed estimations, based upon the application of known laws of physics and mathematics.

With this crash, I was able to determine the approach and departure angles of both vehicles as they move into the crash and leave the crash after interacting. I was also able to determine which tire marks were left by which respective tire and vehicle. Using this data, along with drag factor data obtained the day of the crash, I was able to determine post-impact speeds for each vehicle or the speed at which the vehicles departed the area of impact. In determining these speeds, combined with the weights of the vehicles and using trigonometry functions, I was able to determine the speeds when the vehicles first came in contact. For the VW, driven by SOLLMAN, he was traveling approximately 72 MPH in a 55 MPH zone. For the Honda, driven by CLAUSEN, she was traveling at approximately 14 MPH in a 15MPH zone, negotiating a left-turn onto a 55MPH roadway. I was also able to obtain data from the Honda's airbag control module, which has an event data recorder that stores vehicle diagnostic data in the event of a vehicle having airbags deploy or come close to deployment. In this case, the Honda's airbags did deploy, and two events associated with this crash were stored. In comparing the mathematic calculations with the data stored by the event data recorder in the Honda, the data corroborates the calculations.

Using SOLLMAN'S calculated speed of 72 MPH and comparing it to the speed limit of 55 MPH, I looked to determine whether this crash would have occurred if SOLLMAN would have been traveling 55 MPH. It took CLAUSEN approximately 2.5 seconds to travel from the stop sign on North Star Drive to the area of impact. I calculated that if CLAUSEN still observed SOLLMAN in the same position north of the intersection and believed she could safely make the left turn and began to travel into the intersection, if SOLLMAN was traveling 55 MPH, he would have been approximately 62 feet prior to the area of impact as CLAUSEN was at the spot of the impact area. Using the length of CLAUSEN'S vehicle, it would take her approximately .18 seconds to have the entire length of her vehicle completely clear of the area of impact. At 55 MPH, it would take SOLLMAN .77 seconds to close the distance of 62 feet. Therefore, CLAUSEN would have been completely clear of the intersection and SOLLMAN would have been 31 feet short of the area of impact, still, if traveling the speed limit of 55 MPH.

In comparing all these calculations, it can be concluded that this crash would not have occurred if SOLLMAN was traveling the speed limit of 55 MPH. Consequently, if the crash did not occur, CLAUSEN would not have been killed as a result of injuries sustained from the crash.

In addition to the information gathered at the scene, a witness to SOLLMAN'S driving prior to the crash contacted the Sheriff's Office to make a statement. I contacted the witness, identified as Shawn NOWLING (DOB:05/04 /1972). NOWLING stated that on the night of the crash, he was dropping his daughter off at an event near 108th Street and Harrison Street in La Vista and that he got in Interstate 80 westbound from Giles Road to go home, near Highway 6 and Capehart Road in Gretna. At approximately 1807 hours, while on I-80 near 144th Street, NOWLING stated a gray Volkswagen station wagon came up behind him at "a high rate of speed and was

laying on the horn". NOWLING stated the vehicle "flew by" him and continued westbound. NOWLING explained that as he got close to the Highway 370 exit on I-80, he noticed the same Volkswagen station wagon on the side of the road and the driver was outside the vehicle and urinating into the interstate. After NOWLING passed the vehicle, NOWLING stated he watched in his rearview mirror for the vehicle again. As NOWLING approached the Highway 31 exit, the same Volkswagen station wagon "flew by" NOWLING on the shoulder of I-80 and onto the off-ramp "at a high rate of speed". NOWLING explained he saw the station wagon violate the red traffic control signal at I-80 and Highway 31 and go northbound on Highway 6. NOWLING said he saw the vehicle continue northbound on Highway 6 and that he was watching it attentively, due to its driving behavior. NOWLING stated as he got close to Capehart Road, he observed the vehicle make a "U-turn" and travel south on Highway 6, back towards North Star Drive and the Interstate. NOWLING continued home to a residence off 219th Street and Capehart Road and that, approximately 5 minutes later, he heard the emergency vehicle sirens when he got out of his vehicle in his driveway. NOWLING went back to Highway 6, but the roadway was closed at Capehart Road, due to the collision between SOLLMAN and CLAUSEN.

On 02/10/2019, I spoke to SOLLMAN'S wife in Michigan, Rachel SOLLMAN. Rachel stated she received a call from Nebraska Medicine on 02/09/2019 after Abram SOLLMAN left against medical advice. Rachel SOLLMAN stated among several things the nurse explained about Abram SOLLMAN'S medical treatment, the nurse told Rachel SOLLMAN that Abram SOLLMAN'S drug screening upon intake the night of the crash indicated the presence of cocaine in his body. Rachel SOLLMAN stated Abram SOLLMAN had a history of drug use over several years prior.

On 02/10/2019, I met with Judge Freeman and the Sarpy County Attorney's Office on 02/10/2019 and informed all of the newest details of the case. An arrest warrant was issued for Abram SOLLMAN for felony motor vehicle homicide was signed and issued.

On 02/11/2019, I received a call from Nebraska State Trooper A. Phillips/423, who stated he had contact with Abram SOLLMAN at a hotel in Omaha after Abram SOLLMAN had walked out of Nebraska Medicine, against medical advice, for the second time. Abram SOLLMAN had left against medical advice on 02/09/2019 without contacting the Sheriff's Office as well. Abram SOLLMAN was aware he had an active arrest warrant for DUI at that time. I instructed Trp. Phillips to arrest Abram SOLLMAN and transport him to the Sarpy County Jail. I met Abram SOLLMAN at the jail and informed him of his new charges. I did not ask Abram SOLLMAN any questions and just informed him my math calculations determined he was speeding. Without asking SOLLMAN any questions, he stated "I thought it was 65", referring to the speed limit on Highway 6.

On 02/12/2019, I received a signed search warrant from Judge Freeman for medical records of Abram SOLLMAN from Nebraska Medicine to determine any drug and alcohol content at the time of his admission to the hospital.

This is still an ongoing investigation and this report is limited to information known now. A full reconstruction report will be completed on this case.