

ORIGINAL

IN THE COUNTY COURT OF CHEYENNE COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

v.

DAVID MCKNIGHT,

Defendant.

TR16-831

TRANSCRIPT

VOLUME I of I  
(Pages 1 to 17, incl.)

Proceedings had before THE HONORABLE RANDIN R.  
ROLAND, Judge, at Sidney, Nebraska, on April 13, 2017.

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A P P E A R A N C E S

FOR THE STATE:

Jonathon Stellar, #24728  
Chief Deputy County Attorney  
920 Jackson Street  
P.O. Box 217  
Sidney, NE 69162-0217

PRO SE:

David McKnight

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CHEYENNE COUNTY COURT

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C E R T I F I C A T E

GENERAL REPORTING SERVICE, official transcription agency for the Cheyenne County Court of Nebraska, for the Twelfth Judicial District, does hereby certify that this Transcript was prepared from the record of the proceedings made by Cheyenne County Court on April 13, 2017; that the within and following Transcript is full, true, and correct, to the best of my ability to compile the same; and that said Transcript consists of:

Volume I -- Pages 1 to 17, incl.;

and that the cost of said Transcript, including postage, is \$ 59.25.

Dated this 1st day of May, 2017.

By: Rori J. Schnert  
Transcriber

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V E R I F I C A T I O N

I, RANDIN R. ROLAND, County Judge for the  
Cheyenne County Court, in the Twelfth Judicial District of  
the State of Nebraska, do hereby settle and allow the within  
and following as the Transcript of this case; do hereby  
state that the recording from which this Transcript was  
prepared is the official record made at the time of the  
proceedings had in the foregoing cause in said court; and  
that said recording constituting the official record has  
been at all times in the custody and/or under the control of  
the Cheyenne County Court.

Dated this 3<sup>rd</sup> day of May, 2017.

Randin R. Roland  
County Judge



- - -

1 (On April 13, 2017, in the County Court of  
2 Cheyenne County, Nebraska, in Sidney, Nebraska, before THE  
3 HONORABLE RANDIN R. ROLAND, Judge of this Court, with Mr.  
4 Jonathon Stellar appearing on behalf of the State, and with  
5 Mr. David McKnight appearing personally and pro se, the  
6 following proceedings were had:)

7 THE COURT: This is State of Nebraska vs. David  
8 McKnight. This is Case No. TR16-831. Mr. McKnight is  
9 present. He appears without counsel. Mr. Stellar, Chief  
10 Deputy County Attorney, representing the State. Today does  
11 come on for a restitution hearing and sentencing.

12 Mr. McKnight, you previously waived your right to  
13 an attorney. Are you still willing to go forward without an  
14 attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And has anyone made any promises,  
17 threats, or inducements to have you waive that right?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Are you doing that voluntarily on your  
20 own?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Stellar, is there any issue  
23 regarding restitution? Where do we stand on that?

24 MR. STELLAR: Your Honor, we have an agreement in  
25 place. The defendant's agreed to pay Jeffrey Phelps of 1192



1 Alvarado Court, Sidney, Cheyenne County, Nebraska, 69162. I  
2 can provide that information to the Court after court. He's  
3 agreed to pay \$1500 in restitution. And, obviously, the  
4 State is just going to be recommending statutory fines as  
5 that is our -- that's the only thing we can recommend.

6 THE COURT: Okay. And, Mr. McKnight, is that your  
7 understanding of the agreement for restitution in the case?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And has anyone made any promises,  
10 threats, or inducements to have you pay that amount of  
11 restitution?

12 THE DEFENDANT: No.

13 THE COURT: Are you doing that voluntarily on your  
14 own?

15 THE DEFENDANT: Yes.

16 THE COURT: Any reason not to go forward with  
17 sentencing at this time, Mr. McKnight?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Mr. Stellar?

20 MR. STELLAR: Your Honor, prior to going -- I  
21 guess, prior to actually going to sentencing, I would  
22 ask -- Mr. Phelps would like to read a statement to the  
23 Court. So, if the Court is -- would allow that, he does  
24 have a statement.

25 THE COURT: Mr. Phelps is present, sir?

1 MR. STELLAR: Yes, sir.

2 THE COURT: You may address the Court.

3 MR. PHELPS: Thank you, Your Honor. The injuries  
4 as sustained as a result of the collision include mid-shaft  
5 fracture of left humerus, which is the upper arm bone,  
6 muscle atrophy of the left long head bicep; a SLAP tear of  
7 the labrum in my left shoulder; the deep laceration above  
8 the left elbow; a hairline fracture and a sprained right  
9 ankle; severe bruising of my left hip and leg; a deeply  
10 bruised left calf; a DVT, which is a blood clot, in my left  
11 calf; had abrasions on my lower back and cuts on the top of  
12 my head.

13 The medical facilities I visited with Sidney  
14 Regional Medical Center here in Sidney: the ER, radiology,  
15 the clinic, and the rehab departments. Regional West  
16 Medical Center in Scottsbluff: the ER; surgery, radiology,  
17 and orthopedics departments. And Highpoint Spine and Joint  
18 Center here in Sidney for chiropractic care.

19 Procedures I underwent were the ambulance  
20 transport to Sidney Hospital and the transfer to the  
21 Scottsbluff Hospital; multiple x-rays of my left arm and  
22 right ankle; CT scans of my head, and neck, and lower back;  
23 two interventional radiology procedures to insert an IVC  
24 blood clot filter in my (indiscernible) artery, and then to  
25 remove the IVC blood clot filter. I had surgery to repair

1 my broken left humerus using a titanium plate and six  
2 screws. Also prescribed three months on Pradaxa blood  
3 thinning medication for the blood clot. I have ultrasounds  
4 to identify blood clot presence and later to identify that  
5 it dissolved. I made six visits for chiropractic  
6 adjustments on my spine and my right ankle. I went through  
7 10 weeks of physical therapy. I had an MRI of my left  
8 shoulder to confirm the SLAP tear in my labrum and eight  
9 visits to the orthopedic doctor for follow-up appointments.  
10 In total, I spent six days in the hospital, made 38 visits  
11 to medical professionals.

12 The mileage to appointments totals approximately  
13 1900 miles. Estimated medical bills to date \$120,000.  
14 Estimated personal property damage to my bicycle and gear,  
15 \$11,963, \$2,115.26 of which remains unpaid and the reason  
16 for the restitution request today.

17 This had an effect on my career. The hours of  
18 work I missed totaled approximately 480 hours, which is 60  
19 days. I lost productivity and contribution to the business.  
20 It had an effect on my physical abilities. I was restricted  
21 from lifting my left arm for two months prior to starting  
22 physical therapy, which led to a shoulder injury. Eight  
23 months post-surgery now and I still have limitations and  
24 weakness (indiscernible) rotation of my left arm, even after  
25 continued exercises to strengthen the arm and the shoulder.



1 It had an effect on my cycling activities. I lost three  
2 months and an ability to train. I lost fitness. I was not  
3 able to compete in the remaining 2016 race season. And I  
4 faced emotional challenges to overcome regarding riding my  
5 bicycle in traffic.

6 It had a profound effect on my family. My wife  
7 missed 22 days of work. She used up all of her accrued  
8 vacation to be my caretaker. And we were not able to take  
9 our 2016 family vacation. This caused emotional wear and  
10 tear on all my family members.

11 Your Honor, the morning of July 20<sup>th</sup>, I was  
12 lawfully riding on the road (indiscernible) have done on  
13 several mornings out of the past 20-plus years. I was  
14 riding my bicycle and trusting that the motorists sharing  
15 the road with me were driving their vehicles with safety in  
16 mind. However, Mr. David McKnight was negligent in his  
17 driving that morning and failed to give me the three feet  
18 required to safely pass me and struck me with his truck  
19 almost killing me. My life has been changed dramatically  
20 since that morning. The outline I read above does not begin  
21 to explain the pain and suffering I've endured over the past  
22 eight months. This has not only affected my life, but the  
23 lives of all my family members. There's not a day I don't  
24 feel pain in my arm and emotional pain inflicted upon me  
25 from the collision. People have approached me and said, "I

1 read in the newspaper that you just broke your arm." The  
2 method in which my arm was broken, and the complications,  
3 were far more serious than a third grader breaking his arm  
4 falling off a merry-go-round at recess. I don't know if or  
5 when I'll regain full strength and function in my left arm.  
6 I've had to make many concessions in my life when I could've  
7 been using my left arm.

8 I remain passionate about this case because if the  
9 State of Nebraska's going to have a three-foot law, there  
10 needs to be consequences for the drivers who violate the  
11 law. Otherwise, this law has no teeth to it and more  
12 cyclists will be injured or killed. Even in my own dealings  
13 with law enforcement and the County Attorney's Office in  
14 this case, I was shocked to learn that many do not know our  
15 state has this law. Most motorists are not aware of the law  
16 and neither are so many law enforcement officers and those  
17 committed to bringing justice in our courts. This law makes  
18 it mandatory to give a cyclist three feet with passing.  
19 It's not optional. It's something I'd like to see  
20 implemented in our state are signs on all roadways  
21 indicating the three-foot-to-pass law. I have yet to see  
22 one on any roads in western Nebraska.

23 I ask the Court to require Mr. McKnight to serve  
24 60 to 100 hours of community service to match the work I've  
25 missed and time I've spent at doctors' appointments. This

1 is a fair and reasonable request that involves more than  
2 just some meaningless fines. I'm not seeking revenge or  
3 jail time here, but I do ask this Court to impose some  
4 sentence on the motorist here to give him pause next time he  
5 goes to pass a cyclist. If it cannot be in the form of  
6 service, I'd ask this Court to consider other ways that this  
7 driver can spend time thinking about his conduct, perhaps  
8 feeling a mere fraction of the disruption to his life that  
9 I've felt from this incident and perhaps which will  
10 encourage him to drive more safely, and more careful, around  
11 cyclists in the future.

12 Please, Your Honor, do not simply order a fine in  
13 this matter. When David McKnight entered a no-contest plea,  
14 he failed to take total responsibility for his actions like  
15 a guilty plea would have. I do not think this man truly  
16 comprehends the effect his conduct has had on my life.  
17 Thank you, Your Honor.

18 THE COURT: Thank you. I'll address that further  
19 when I get to sentencing. Thank you, sir.

20 Mr. Stellar, anything further?

21 MR. STELLAR: No, Your Honor.

22 THE COURT: Mr. McKnight, anything you would like  
23 to say before I pronounce sentence?

24 THE DEFENDANT: I agree with Jeff. There needs to  
25 be a sign on every road. And I have felt -- I think, every



1 time I see a bicyclist, I slow down to 40 miles an hour and  
2 I give them a six-foot radius from now on. It freaks me  
3 out. I almost killed a man doing my job, driving. I have  
4 no excuse for that. I can't say that -- all I can say is  
5 I'm sorry.

6 And I do understand what you have went through,  
7 Jeff. I do. Every time -- three weeks after I hit you, I  
8 thought, "I killed a man. I killed a man." And I'd wake up  
9 in sweat, in my bed, and not want to go to work, not want to  
10 drive that semi, not want to provide for my family, but I  
11 have to because that's what I have to do. I have to  
12 provide. I understand you missed out, too, and I'm sorry.  
13 I apologize once again.

14 Whatever you decide to do, Judge, is good with me.

15 THE COURT: Thank you, Mr. McKnight.

16 Mr. Phelps, thank you. I certainly -- I can't  
17 begin to imagine understanding your pain, but you certainly  
18 went through a lot and it has to be frustrating to come to  
19 court today knowing, essentially, the Court has two  
20 infractions in front of it. But I think there might be some  
21 things that I should do. The first I would suggest is, I  
22 don't know if you've been in touch with Senator Erdman, our  
23 local senator for Nebraska here.

24 MR. PHELPS: No, I haven't.

25 THE COURT: I would suggest that you contact



1 Senator Erdman and bring the matter to his attention.  
2 Because, if we're going to have changes, the legislature is  
3 where that needs to take place for something like this.  
4 And, certainly, he could address that, probably not this  
5 session because they're getting close to the end now, but I  
6 think he needs to be made aware of that. You are one of his  
7 constituents.

8 Mr. McKnight, did you have something on that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Okay.

11 THE DEFENDANT: If you go on the bicycling rules  
12 website, there's this link right there. It'll take you  
13 right to what he's talking about for cyclists.

14 THE COURT: Senator Erdman and the legislature?  
15 Okay.

16 THE DEFENDANT: And I will stand right next to you  
17 with that.

18 THE COURT: And that may be something next year  
19 where he may ask you to come down for the legislature and  
20 provide testimony in front of that committee as to the  
21 importance of having this amended so it can not happen to  
22 someone else that, unfortunately, may be in the position  
23 that you were.

24 The other thing is, we have something now called  
25 victim offender mediation, which I think may help both of

1 you, I wouldn't say, bring closure to this, but help you  
2 deal with and get through this because, obviously, you're  
3 both going to be suffering the effects of this for quite  
4 some time. So, what I am going to do to assist with that  
5 is, I do have something called bench probation.

6 And, Mr. McKnight, I'm going to place you on bench  
7 probation. The \$1,500, do you know when you will be able to  
8 have that paid off, or do you have any plans -- any idea how  
9 long it would take?

10 THE DEFENDANT: I couldn't tell you a  
11 specific -- I'd probably try to have it paid off within a  
12 year.

13 THE COURT: Okay.

14 THE DEFENDANT: I'm the only one working at the  
15 moment, Your Honor. My wife's been sick, been going to the  
16 doctor and dealing with all that. I can pay as much as I  
17 can every month.

18 THE COURT: One of the things I want to make sure  
19 is that Mr. Phillips (sic) is compensated for that.

20 THE DEFENDANT: Yes, sir. I will make sure of  
21 that.

22 THE COURT: Mr. McKnight, I'm going to place you  
23 on bench probation, or probation to the Court, for a period  
24 of 12 months. That means, as you walk out of here today,  
25 I'm essentially your probation officer. The terms of that

1 are going to be that you pay \$1,500 restitution to Mr.  
2 Phillips -- Mr. Phelps, I apologize. That is to be made in  
3 regular monthly installments. I'm going to schedule a  
4 review hearing in about two months, so we can monitor the  
5 progress and how things are going with that. I'm also going  
6 to order that Mr. McKnight pay for victim offender mediation  
7 through Mediation West. They will come down here to Sidney  
8 to meet with both of you. They try not to have either of  
9 you have to go out of your way to meet with them. They'll  
10 send a certified mediator down. They'll get some background  
11 information on the case. And then, generally, they meet  
12 with both of you in an effort to further explore both sides  
13 on this matter.

14 As far as the community service work, the only  
15 thing with bench probation is, I really have no way to  
16 monitor that, so I'm not going to order community service  
17 work. But the law does provide for driving on the shoulder  
18 of the highway and passing in the same direction, both  
19 infractions. Unfortunately, it's a \$25 fine on the waiver  
20 schedule. That may be something that you could address with  
21 the senator in looking at that further. It may be something  
22 that, when we're talking about a bicyclist, maybe there's a  
23 new law that needs to be made, or for a pedestrian, to  
24 account for the facts of this specific case. And, again,  
25 that's something that Senator Erdman, I'm sure, would listen



1 to you about and may be able to go forward on.

2 Mr. McKnight, you're also ordered to pay the court  
3 costs in the case. You will have two months to pay the fine  
4 and court costs in full. Again, those are minimal. What  
5 has happened and getting restitution paid is the Court's  
6 primary concern. If you haven't already, I'm going to  
7 order -- well, you have the victim offender mediation and  
8 they will address any apology or anything in that as well.

9 Tracy (phonetic), if you can get the calendar,  
10 let's get a date to come back in about two months.

11 Mr. McKnight, I'm also going to order that you  
12 actively participate in, and successfully complete, the  
13 Attitudinal Dynamics of Driving course, and I think Mr.  
14 Stellar can give you information on where you can take that  
15 at. They do offer it here in Sidney at various times. That  
16 needs to be completed within three months.

17 THE DEFENDANT: Okay.

18 THE COURT: Mr. Phelps, does morning or afternoon  
19 work better for you, to take time out of your schedule, to  
20 make a hearing?

21 MR. PHELPS: It doesn't matter.

22 THE COURT: Mr. McKnight, any preference?

23 THE DEFENDANT: Whenever.

24 THE COURT: Why don't we go ahead and let's just  
25 set that close to the lunch hour, then, Thursday, June 8<sup>th</sup>.



1 We'll do that at 11:30, and we'll come back. And the  
2 purpose of that is, Mr. McKnight, I'm going to have some  
3 questions for you on where we stand. I'm going to look at  
4 the court records on how you're doing with your payments.  
5 I'm going to want to know about your completion of the  
6 Attitudinal Dynamics of Driving course. I believe that you  
7 will get a certificate for that. If you do have it at that  
8 time, bring that with you so we can make a copy. And, also,  
9 I'm going to want to know about the victim offender  
10 mediation.

11 Mr. McKnight, any conditions I've mentioned that  
12 you do not believe you'd be able to comply with?

13 THE DEFENDANT: No.

14 THE COURT: Okay. You should understand, if you  
15 violate a condition, the Court can revoke your probation.  
16 Unfortunately, in this case, there's really not a whole lot  
17 more that the Court can do. But, if you do not complete the  
18 terms, the Court can also find you in contempt of court and  
19 that's when a jail sentence could be possible. Do you  
20 understand?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Alright. I'll need you to sign a time  
23 payment agreement out at the counter. Court's adjourned.

24 (Whereupon, the hearing was concluded on April 13, 2017.)

25 - - -