

IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	Supreme Court No.
Petitioner,	)	
	)	Crim. No. 51-2020-CR-564
	)	
vs.	)	
	)	
	)	
The Honorable Stacy J. Louser and	)	
Misten Lee Schwarz,	)	
	)	
Respondents.	)	

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**APPENDIX**

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**Appeal from a Written Order Entered on November 11, 2020  
In District Court, Ward County, State of North Dakota  
The Honorable Stacy J. Louser, Presiding**

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Ladd Erickson (#05220)  
Special Assistant  
Ward County State's Attorney  
PO Box 1108  
Washburn, ND 58577  
701-462-8541  
28sa@nd.gov

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**REGISTER OF ACTIONS****CASE No. 51-2020-CR-00564****State of North Dakota vs. Misten Lee Schwarz**§  
§  
§  
§  
§  
§Case Type: **Felony**  
Date Filed: **03/19/2020**  
Location: **– Ward County**  
Judicial Officer: **Louser, Stacy****RELATED CASE INFORMATION****Related Cases**

51-2018-CR-02100 (Related Case)

**PARTY INFORMATION****Defendant**  **Schwarz, Misten Lee**Devils Lake, ND 58301  
DL: NDSCH807382Female White  
DOB: 1980  
SSN: XXX-XX-9194**Attorneys**  
**Ashley Marie Gulke**  
*Public Defender*  
701-353-5855 x0000(W)~~Pro Se~~**Plaintiff** **State of North Dakota****Ladd Ronald Erickson**  
701-462-8541 x0000(W)~~**Rozanna Christine Larson**~~  
~~701-857-6480 x0000(W)~~**CHARGE INFORMATION****Charges: Schwarz, Misten Lee**

	<b>Citation</b>	<b>Statute</b>	<b>Level</b>	<b>Date</b>
1. DUI-Refusal-4th or subsequent off in 15yrs	00E0000696	39-08-01(1)(e)(2)	Felony C	03/18/2020
2. Driving under revocation-Alcohol related-4th or subsequent off in 5yrs	00E0000695	39-06-42(1)	Misdemeanor A	03/18/2020

**EVENTS & ORDERS OF THE COURT****OTHER EVENTS AND HEARINGS**

03/19/2020 **Citation** **Index # 1**  
*Count 1*

03/19/2020 **Citation** **Index # 2**  
*Count 2*

03/19/2020 **Affidavit of Probable Cause** **Index # 3**

03/19/2020 **Notice to Defendant and Consent to ITV** **Index # 4**

03/19/2020 **Initial Appearance** (1:00 PM) (Judicial Officer Mattson, Douglas L)  
*03/19/2020 Reset by Court to 03/19/2020*  
Result: Hearing Ended

03/20/2020 **Notification of Rights and Acknowledgement** **Index # 5**

03/20/2020 **Order** **Index # 6**  
*Bail*

03/20/2020 **Scheduling Order** **Index # 7**  
*Felony*

03/20/2020 **Waiver** **Index # 8**  
*of Extradition*

03/27/2020 **Bond** **Index # 9**  
*Envelope with Receipt*

04/01/2020 **Application for Indigent Defense Services** **Index # 10**

04/01/2020 **Order** **Index # 11**  
*on Application For Appointed Defense Services - Granted*

04/01/2020 **Notice of Eligibility for Appointed Counsel** **Index # 12**

04/02/2020 **Assignment** **Index # 13**  
*Assignment of Counsel - Ashley Gulke*

04/02/2020 **Rule 16 Discovery Request** **Index # 14**  
*Request for Discovery*

04/15/2020 **Response** **Index # 15**  
*Response to Rule 16 Discovery*

04/16/2020 **Service Document** **Index # 16**  
*Affidavit of Service-Gulke*

04/16/2020 **Substitution of Attorneys** **Index # 17**  
*Special Appointment*

04/22/2020 **Response** **Index # 18**

Supplemental Response to Rule 16 Discovery

04/24/2020 **Report** Index # 19  
Report of Addiction Evaluation

05/04/2020 **Report** Index # 20  
of Addiction Evaluation

06/03/2020 **Notice** Index # 21  
Rule 43 Notice of Appearance by Counsel and Waiver of Preliminary Hearing

06/03/2020 **Proposed Order** Index # 22  
Order Granting Waiver of Preliminary Hearing via Rule 43

06/03/2020 **Service Document** Index # 23  
Gulke Law served upon the State Rule 43 Notice of Appearance by Counsel and Waiver of Preliminary Hearing

06/03/2020 **Order** Index # 24  
on Waiver of Preliminary Hearing

06/04/2020 CANCELED **Preliminary Hearing and/or Arraignment** (1:30 PM) (Judicial Officer Louser, Stacy)  
Hearing Waived

07/09/2020 **Request** Index # 25  
Request for Telephonic Appearance

07/09/2020 **Proposed Order** Index # 26  
Proposed Order on Request for Telephonic Appearance filed by K. Rittenbach

07/09/2020 **Service Document** Index # 27  
Certificate of Service - Request for Telephonic Appearance and proposed Order (Gulke)

07/10/2020 **Order** Index # 28  
Granting Telephonic Appearance (McLean County State's Attorney to call 888#)

08/03/2020 **Waiver** Index # 29  
of Pretrial Conference

08/03/2020 **Order** Index # 30  
on Waiver of Pretrial Conference

08/05/2020 CANCELED **Pretrial Conference** (10:00 AM) (Judicial Officer Louser, Stacy)  
Hearing Waived  
Ladd Erickson, McLean County State's Attorney, to call 888#

08/15/2020 **Notice** Index # 31

08/18/2020 **Proposed Order** Index # 32  
Information

08/18/2020 **Service Document** Index # 33  
Certificate of Service on Ashley Gulke

08/21/2020 **Information** Index # 34

09/03/2020 **Motion** Index # 35  
Motion for Continuance

09/03/2020 **Notice** Index # 36  
Notice of Motion

09/03/2020 **Proposed Order** Index # 37  
Order Granting Continuance

09/03/2020 **Service of Motion** Index # 38  
Gulke Law served upon the State Motion for Continuance

09/21/2020 **Order** Index # 39  
Denying Continuance

09/23/2020 **Criminal Filing** Index # 40  
State's List of Exhibits

09/23/2020 **Criminal Filing** Index # 41  
Certificate of Service

09/23/2020 **Service Document** Index # 42  
Certificate of Service on Ashley Gulke

09/30/2020 **Criminal Filing** Index # 43  
Endorsement of Additional Witness on the Information

09/30/2020 **Criminal Filing** Index # 44  
Amended State's List of Witnesses

09/30/2020 **Service Document** Index # 45  
Certificate of Service

10/01/2020 **Criminal Filing** Index # 46  
Amended State's Requested Jury Instruction #1

10/02/2020 **Instructions** Index # 47  
State's Requested Jury Instruction #2

10/02/2020 **Request** Index # 48  
for Resetting Trial

10/02/2020 **Proposed Order** Index # 49  
for Resetting Trial

10/02/2020 **Order** Index # 50  
for Resetting Trial

10/05/2020 CANCELED **Jury Trial** (9:00 AM) (Judicial Officer Louser, Stacy)  
Awaiting new hearing date  
Priority #9

10/06/2020 **Notice of Hearing** Index # 51

10/13/2020 **Response** Index # 52  
2nd Supplemental Response to Rule 16 Discovery

10/13/2020 **Criminal Filing** Index # 53  
Amended State's List of Exhibits

10/13/2020 **Service Document** Index # 54  
Certificate of Service

11/02/2020 **Motion** Index # 55  
Motion to Revoke Bond

11/02/2020 **Affidavit** Index # 56  
Affidavit/Exhibit to Motion to Revoke Bond

11/02/2020 **Proposed Order** Index # 57  
Proposed Order to Apprehend filed by K. Rittenbach

11/02/2020	<b>Service of Motion</b> <b>Index # 58</b> Certificate of Service - Motion to Revoke Bond, Affidavit, and proposed Order (Gulke)
11/03/2020	<b>Order to Apprehend Warrant Issued</b> <b>Index # 59</b>
11/05/2020	<b>Notice of Hearing</b> <b>Index # 60</b>
11/09/2020	<b>Status Conference</b> (8:30 AM) (Judicial Officer Louser, Stacy) *Call 888 Conf# (judge directed) Result: Hearing Ended
11/10/2020	<b>Motion</b> <b>Index # 61</b> Motion to Amend Count I of the Information
11/10/2020	<b>Brief</b> <b>Index # 62</b> Brief in Support of Motion to Amend Count I of the Information
11/10/2020	<b>Proposed Order</b> <b>Index # 63</b> Proposed Order filed by M Albers
11/10/2020	<b>Information</b> <b>Index # 64</b> Proposed Amended Information
11/10/2020	<b>Affidavit of Probable Cause</b> <b>Index # 65</b> Affidavit of Probable Cause
11/10/2020	<b>Proposed Order</b> <b>Index # 66</b> Proposed Order Finding Probable Cause filed by M Albers
11/10/2020	<b>Service of Motion</b> <b>Index # 67</b> Certificate of Service on Ashley Gulke
11/10/2020	<b>Stipulation / Agreement</b> <b>Index # 68</b> Rule 43 Plea Agreement
11/10/2020	<b>Proposed Order</b> <b>Index # 69</b> Adopting Rule 43 Plea Agreement
11/10/2020	<b>Service Document</b> <b>Index # 70</b> Gulke Law served upon the State Rule 43 Plea Agreement
11/10/2020	<b>Order</b> <b>Index # 71</b> Denying Rule 43 Plea Agreement
11/10/2020	<b>Order</b> <b>Index # 72</b> Denying the State's Motion to Amend the Charge
11/12/2020	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer Louser, Stacy) Court Order Priority #3
11/17/2020	<b>Transcript</b> <b>Index # 73</b> Of Status Conference Held November 9 -2020

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**FINANCIAL INFORMATION**

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	<b>Bond Remitter Schwarz, Misten Lee</b>	
	Total Financial Assessment	35.00
	Total Payments and Credits	35.00
	<b>Balance Due as of 11/25/2020</b>	<b>0.00</b>
04/01/2020	Transaction Assessment	35.00
04/01/2020	Waived	(35.00)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Plaintiff,

vs.

Misten Lee Schwarz,

Defendant.

Ward County Cr. # 51-2020-CR-00564

INFORMATION

¶ 1 THE PROSECUTING ATTORNEY OF WARD COUNTY, CHARGES that:

On or about the 18<sup>th</sup> day of March, 2020, in the city of Minot, Ward County, North Dakota, the above-named Defendant committed the offenses of:

**COUNT I: DROVE WHILE UNDER THE INFLUENCE OF ALCOHOL (4<sup>th</sup> offense),** in violation of N.D.C.C. § 39-08-01 by then and there: Drove a vehicle upon a public highway while under the influence of alcohol and/or had an alcohol concentration of at least .08% within two hours after the time of driving. The Defendant previously pled guilty to Driving Under the Influence or Alcohol and had an alcohol concentration of at least .08% as follows:

1. On October 21, 2015 in Ward County Case No. 51-2015-CR-02372
2. On September 26, 2016 in Ward County Case No. 51-2016-CR-00947
3. On April 2, 2019 in Ward County Case No. 51-2018-CR-02100.

Class C Felony

Penalty Section: N.D.C.C. § 39-08-01

**COUNT II: DROVE WHILE LICENSE PRIVILEGE SUSPENDED (4<sup>th</sup> or more offenses in 5 years),** in violation of N.D.C.C. § 39-06-42 by then and there: Drove a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while his license or privilege to do so is suspended.


To-wit: The Defendant drove a motor vehicle in North Dakota while her license or privilege to do so is suspended and previously pled guilty to Drove While License Privilege Suspended as follows:

1. On October 21, 2015 in Ward County Case No. 51-2015-CR-02372
2. On October 13, 2017 in Ward County Case No. 51-2017-CR-00934
3. On November 20, 2018 in Devils Lake Municipal Court Case No. DL-2018-CR-00527
4. On March 11, 2019 in Ramsey County Case No. 36-2019-CR-00012
5. On February 13, 2020 in Ward County Case No. 51-2010-CR-02313.

Class A Misdemeanor  
Penalty Section: N.D.C.C. § 39-06-42(1)

¶ 2 All of this against the peace and dignity of the State of North Dakota.

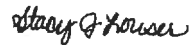
¶ 3 Dated this 15 day of April, 2020.

  
\_\_\_\_\_  
Ladd R. Erickson, Prosecuting Attorney Bar #  
Special Assistant State's Attorney for 05220  
Ward County

¶ 4 Based on the attached affidavit, the Court finds probable cause to initially charge the  
Defendant with the offenses on:

BY THE COURT:

Signed: 8/18/2020 10:13:55 AM



\_\_\_\_\_  
DISTRICT COURT JUDGE

State's Witnesses:  
Daniel Wheeler, Minot PD  
CO Cassie Wright, Ward Co. Jail  
ND DOT Keeper of the Records

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )

Plaintiff, )

-vs- )

Misten Lee Schwarz )

Defendant. )

Case No(s), 51-2020-CR-00564

**RULE 43 PLEA AGREEMENT**

I wish to plead guilty in this case and state to the Court the following:

1. I am the Defendant in this case and am charged as follows:
  1. DUI-Refusal-4th or subsequent off in 15yrs 39-08-01(1)(e)(2) Felony C
  2. Driving under revocation-Alcohol related-4th or subsequent off in 5yrs 39-06-42(1) Misdemeanor A
2. Upon negotiations between the State's Attorney and my Counsel, I am pleading **guilty as follows:**
  - i. **Count 1: Amended to DUI 3<sup>rd</sup> Offense (A Misdemeanor)**
  - ii. **Count 2: As Charged**
3. I understand that the maximum Penalty for a Class A Misdemeanor offense is 360 days imprisonment, a \$3,000 fine, or both, may be imposed. I understand that the maximum Penalty for a Class B Misdemeanor offense is 30 days imprisonment, a \$1,500 fine, or both, may be imposed.
4. I understand that I have the right to be admitted to reasonable bail.
5. I understand that I have the right to be represented by an attorney and that an attorney will be appointed to represent me to the extent that I am unable to pay for my own defense without undue hardship, which attorney is Ashley Gulke.
6. I understand that I also have the following constitutional rights which I knowingly and voluntarily give up:



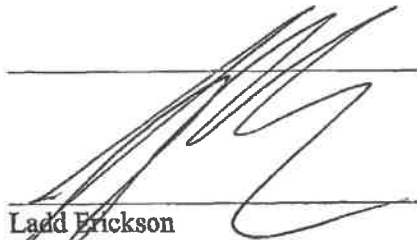
- a. The right to a trial by jury in which I am presumed innocent until proven guilty beyond a reasonable doubt;
  - b. The right to confront and cross-examine all witnesses against me;
  - c. The right to remain silent or to testify for myself;
  - d. The right to subpoena and present witnesses for me in my defense; and
  - e. The right to a pretrial hearing to contest the admissibility at trial of any confessions or admissions, or any evidence obtained from a search and seizure.
  - f. that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.
7. I am pleading guilty freely and voluntarily and without any promises except as indicated in number 8 below.
8. I am pleading guilty based upon the following plea agreement with the prosecutor:
- a. that the defendant plead guilty as outlined in each file as laid out below:
    - Count 1: 360 days in Ward County Jail first serve 120 Days, Credit for 16 days balance suspended for 2 years of supervised probation, Chemical Dependency Evaluation and Follow through with treatment while on supervised probation, Attend Victim Impact Panel within 30 days of release from custody, 2 years of 24/7 while on probation, \$325 in court costs, \$350 in attorneys fees,
    - Count 2: 120 days in Ward County Jail, credit for 16 days.
    - **I WILL REPORT TO SERVE MY DAYS ON 11/12/2020 @ 9:00 AM**
  - b. that such other conditions as the Court deems appropriate, including either a payment plan or date certain sufficiently in advance for the defendant to make the total payment of fees and costs.
  - c. as and for a factual basis in this matter, I freely admit to doing the following in WARD County: On or about 3/18/2020 I was pulled over while driving. I was asked to give a breath sample and refused initially. I have two prior DUI convictions within the past seven years. This was my fourth or subsequent DUS in five years.
  - d. I understand that if this plea of guilty is accepted, I have the right to be present at the time of sentencing and to speak and present evidence on my behalf.

- e. I knowingly and voluntarily give up my right to be present upon entry of my plea and sentencing and request that the Court sentence me in my absence, but according to the plea agreement stated in this petition.

Dated this 9<sup>th</sup> day of November, 2020.



**Misten Lee Schwarz**  
Defendant



**Ladd Erickson**  
Ward County State's Attorney's Office  
315 Third St. S.E.  
P.O. Box 5005  
Minot, ND 58702-5005  
51wardsa@wardnd.com  
701-857-6480



**ASHLEY GULKE, ND Bar ID #06829**  
Defendant's Attorney  
24 North Main Street Suite B  
Minot, ND 58702  
ASHLEYGULKE@gmail.com  
701-353-5855

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
)

Case No(s). 51-2020-CR-00564

Plaintiff, )  
-vs- )  
Misten Lee Schwarz, )  
)  
)  
Defendant. )

ORDER ADOPTING RULE 43 PLEA AGREEMENT

**DENIED**

[1] The state and the defendant have filed a rule 43 plea agreement with this court. The court finds adequate factual basis and adopts the plea agreement.

Sign: 1/10/2020 1:27:11 PM

*Stacy G. Brown*

Date: \_\_\_\_\_

BY THE COURT: \_\_\_\_\_

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Plaintiff,

v.

Misten Lee Schwarz,

Defendant.

Ward County Cr. # 51-2020-CR-00564

MOTION TO AMEND COUNT I  
OF THE INFORMATION

¶ 1 The State of North Dakota by and through Ladd R. Erickson brings this motion to amend count I of the Information charging the defendant with a Class A Misdemeanor on the grounds that there was no chemical test and there may be jury questions that could create a reasonable doubt:

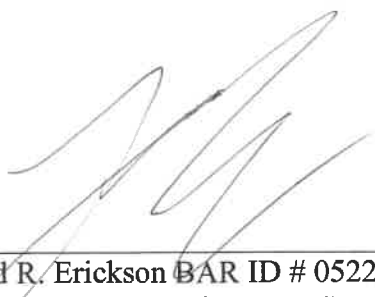
**COUNT I: DROVE WHILE UNDER THE INFLUENCE OF ALCOHOL/REFUSAL (3<sup>rd</sup> offense)**, in violation of N.D.C.C. § 39-08-01 and N.D.C.C. § 39-08-01(1)(e)(2) and (3) by then and there: Drove a vehicle upon a public highway while under the influence of alcohol and/refused to submit to a chemical test. The Defendant previously was convicted of Driving Under the Influence or Alcohol and had an alcohol concentration of at least .08% as follows:

1. On September 26, 2016 in Ward County Case No. 51-2016-CR-00947
2. On April 2, 2019 in Ward County Case No. 51-2018-CR-02100.

Class A Misdemeanor

Penalty Section: N.D.C.C. § 39-08-01(3)

¶ 2 Dated this 9 day of November 2020.

  
Ladd R. Erickson BAR ID # 05220  
Special Assist. Ward County State's Attorney  
P.O. Box 1108  
Washburn, ND 58577  
Telephone: (701) 462-8541  
Service: [28SA@nd.gov](mailto:28SA@nd.gov)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Plaintiff,

v.

Misten Lee Schwarz,

Defendant.

Ward County Cr. # 51-2020-CR-00564

**BRIEF IN SUPPORT OF MOTION  
TO AMEND COUNT I OF THE  
INFORMATION**

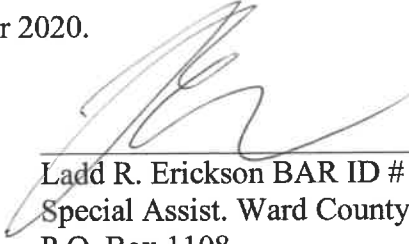
¶ 1 Rule 3(b) of the North Dakota Rules of Criminal Procedure allows a magistrate to permit a complaint to be amended at any time before a finding or verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

¶ 2 The State of North Dakota through Special Assistant Ward County State's Attorney Ladd R. Erickson moves this Court for an order to amend count I to a Drove While Under the Influence of Alcohol and/or Refusal (3<sup>rd</sup> offense), Class A Misdemeanor, as there was no chemical test and there may be jury questions that could create a reasonable doubt. In addition, the Defendant needs to do four months of county jail time in order to dry out before treatment providers can address her alcohol problem. This is based on her records and the results of her 24/7 alcohol testing – which show treatment and 24/7 testing in the past has largely been a failure.

¶ 3 To address the Courts concerns that were raised during the November 9, 2020 final pre-trial conference call, the State contacted Steven Hall who administers admissions for the North Dakota Department of Corrections (DOCR). Mr. Hall informed the State that DOCR is taking in new prisoners, but because the defendant is a female she will be sent to one of two places to be assessed for three weeks if she is sentenced to DOCR for one year and one day on a felony DUI. After her assessment period, she will most likely be placed in a halfway house and not be in custody. Therefore, a 366 day incarceration sentence from the Court will result in 21 days of incarceration. The State has experienced this many times in the past where the felony sentence is actually much lighter than the 120 days of incarceration required for third offense DUI. And in this case that is not adequate to address the defendant's alcohol problem. Given the defendant's history, if the defendant is going to get her life together that will only happen after a realistic dry out period that DOCR does not offer in these cases.

¶ 4 No additional or different offense will be charged nor will substantial rights of the defendant be prejudiced.

¶ 5 Dated this 9 day of November 2020.



Ladd R. Erickson BAR ID # 05220  
Special Assist. Ward County State's Attorney  
P.O. Box 1108  
Washburn, ND 58577  
Telephone: (701) 462-8541  
Service: 28SA@nd.gov

**STATE OF NORTH DAKOTA**

**IN DISTRICT COURT**

**COUNTY OF WARD**

**NORTH CENTRAL JUDICIAL DISTRICT**

The State of North Dakota,

Plaintiff,

v.

Misten Lee Schwarz,

Defendant.

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**Ward County Cr. # 51-2020-CR-00564**

**ORDER**

The State's Motion to Amend Information in the above-entitled case is

☐ GRANTED

☐ DENIED

Dated:

BY THE COURT:

---

District Judge



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Plaintiff,

vs.

Misten Lee Schwarz,

Defendant.

Ward County Cr. # 51-2020-CR-00564

AMENDED INFORMATION

¶ 1 THE PROSECUTING ATTORNEY OF WARD COUNTY, CHARGES that:

On or about the 18<sup>th</sup> day of March, 2020, in the city of Minot, Ward County, North Dakota,  
the above-named Defendant committed the offenses of:

**COUNT I: DROVE WHILE UNDER THE INFLUENCE OF ALCOHOL (3<sup>rd</sup> offense)**, in violation of N.D.C.C. § 39-08-01 by then and there: Drove a vehicle upon a public highway while under the influence of alcohol and/or had an alcohol concentration of at least .08% within two hours after the time of driving. The Defendant previously pled guilty to Driving Under the Influence or Alcohol and had an alcohol concentration of at least .08% as follows:

3. On September 26, 2016 in Ward County Case No. 51-2016-CR-00947
4. On April 2, 2019 in Ward County Case No. 51-2018-CR-02100.

Class A Misdemeanor

Penalty Section: N.D.C.C. § 39-08-01

**COUNT II: DROVE WHILE LICENSE PRIVILEGE SUSPENDED (4<sup>th</sup> or more offenses in 5 years)**, in violation of N.D.C.C. § 39-06-42 by then and there: Drove a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while his license or privilege to do so is suspended.

To-wit: The Defendant drove a motor vehicle in North Dakota while her license or privilege to do so is suspended and previously pled guilty to Drove While License Privilege Suspended as follows:

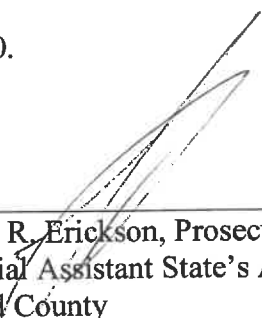
1. On October 21, 2015 in Ward County Case No. 51-2015-CR-02372
2. On October 13, 2017 in Ward County Case No. 51-2017-CR-00934
3. On November 20, 2018 in Devils Lake Municipal Court Case No. DL-2018-CR-00527
4. On March 11, 2019 in Ramsey County Case No. 36-2019-CR-00012
5. On February 13, 2020 in Ward County Case No. 51-2010-CR-02313.

Class A Misdemeanor

Penalty Section: N.D.C.C. § 39-06-42(1)

¶ 2 All of this against the peace and dignity of the State of North Dakota.

¶ 3 Dated this 9 day of November 2020.

  
\_\_\_\_\_  
Ladd R. Erickson, Prosecuting Attorney Bar ID 05220  
Special Assistant State's Attorney for  
Ward County

State's Witnesses:

Sgt. Dean Wheeler, Minot PD

CO Cassie Wright, Ward Co. Jail

ND DOT Keeper of the Records

STATE OF NORTH DAKOTA     )  
                                           )ss AFFIDAVIT OF PROBABLE CAUSE  
 COUNTY OF WARD                )

I, Sergeant Daniel B Wheeler, attest that the information contained in this affidavit is true and correct and that I am a trained and licensed Peace Officer employed with the Minot Police Department:

Misten Lee Schwarz was placed under arrest for the following charges on 03/18/2020:

- Drove While License Record Only Revoked (Eighth [8<sup>th</sup>] Offense)
- Drove a Vehicle While Under the Influence of Intoxicating Liquor and/or Drugs with a BAC of .08% or Greater and/or Refusal to Submit to Chemical Testing (Sixth [6<sup>th</sup>] Offense)

**The facts are as follows:**

On 03/18/20 at about 2006 hrs, Ward County Jail staff CO Cassie Wright called Minot Central Dispatch and reported that SCHWARZ, 24/7 participant, came in for testing and provided a sample of .088% BAC. SCHWARZ then left the testing site and drove away in a black Mercedes-Benz toward Valley St. The R/P thought the license plate for the car was ND 043 BSD. Minot Central Dispatch conducted a records check regarding SCHWARZ, which revealed her ND D/L status was Record Only Revoked. I drove to another listed address for SCHWARZ, 1900 6th St SE Apt B. I parked on the corner of 19th Ave & 6th St SE and at about 2021 hrs, I saw the black Mercedes-Benz driving northbound on 6th St SE from 20th Ave. It pulled into the apartment complex and I initiated a traffic stop behind it after it parked.

I made contact with SCHWARZ just after she parked and she opened the driver's door to speak with me. While speaking to her and advising her of the reason for the stop, I could detect the odor of intoxicating liquor coming from her and/or her breath. She admitted that she had been at 24/7 testing and left, but claimed not understanding what the problem was. I then asked her to exit her car and sit in the front, passenger's seat of my patrol vehicle, which she agreed in doing.

She claimed that the only thing she consumed today that might have alcohol in was Nyquil, and supposedly had three cups (small one provided with the Nyquil), and thought the first one was at about 1100 hrs. She said her last dosage was about an hour before she went to the 24/7 testing. She adamantly denied having consumed any alcohol today, yet when I confronted her with the fact I could detect the odor of intoxicating liquor coming from her, she offered nothing other than the Nyquil. Moreover, once inside my patrol vehicle, the odor was better detected than previously at her car. She again denied having consumed any alcohol today or supposedly recently.

The first test I conducted was the Horizontal Gaze Nystagmus. Before conducting the test, I ascertained if she had experienced any recent head trauma, to which none was stated. The test was assessed with the results of six (6) clues, which constitutes Impairment. Second test used was the Backwards Number Count, using the numbers 76-59. Based on performance, I considered this to show impairment. Third test used was the Alphabet, using the letters "L-V" repeating the letters. She commenced the test, and based on performance, I considered this to

show impairment. No other tests were conducted due to the snow that falling and extreme icy conditions outside.

She was advised of the ND Implied Consent Advisory and acknowledged understanding. An On-site screening (PBT) was requested from her; however, she verbally refused the testing.

She was placed under arrest for DUI and DUR at 2029 hrs. A records check of her D/L abstract revealed seven (7) prior offenses for DUS/DUR and five (5) prior offenses for DUI.

She was again advised of the ND Implied Consent Advisory and acknowledged understanding. Chemical testing was requested from her. She was handcuffed and searched by Lt Olson, Ward County Sheriff's Department.

She was transported to Ward County Jail for chemical testing (Intoxilyzer breath). At 2058 hrs, the first test was attempted to be administered, but could not provide a sufficient sample and was not sealing her lips entirely around the tube. After numerous attempts to provide a sample, she verbally stated that she was not willing to complete the testing and refused. The reported AC listed the results as deficient sample and was a .046% BAC.

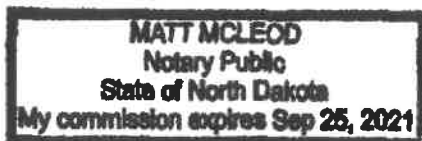
- X   No Victim
- Victim was provided the Marcy's Card: No
- Victim invoked their rights under Marcy's Law: No

I swear that this statement is true and correct to the best of my knowledge and belief.

Officers Signature \_\_\_\_\_

Department Minot Police Department

Subscribed and sworn to me before this 18<sup>th</sup> Day of March, 2020



\_\_\_\_\_  
Notary Public  
Ward County, North Dakota

My Commission Expires: \_\_\_\_\_

I have reviewed this affidavit and find there to be probable cause to hold the subject in jail pending an appearance in court.

Bond is set at \_\_\_\_\_ for the charge of \_\_\_\_\_

Judge: \_\_\_\_\_ Court: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF NORTH DAKOTA**

**IN DISTRICT COURT**

**COUNTY OF WARD**

**NORTH CENTRAL JUDICIAL DISTRICT**

The State of North Dakota,

Plaintiff,

vs.

Misten Lee Schwarz,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Ward County Cr. # 51-2020-CR-00564**

**ORDER FINDING PROBABLE CAUSE**

¶ 1 Based on the attached affidavit, the Court finds probable cause to charge the Defendant with the offenses on:

BY THE COURT:

\_\_\_\_\_  
District Court Judge

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Plaintiff,

v.

Misten Lee Schwarz,

Defendant.

Ward County Cr. # 51-2020-CR-00564

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> of November 2020, I served true and correct copies of **the NOTICE OF MOTION TO AMEND COUNT I OF THE INFORMATION PURSUANT TO RULE 3.2; MOTION TO AMEND COUNT I OF THE INFORMATION PURSUANT TO RULE 3.2; BRIEF IN SUPPORT OF MOTION TO AMEND COUNT I OF THE INFORMATION; proposed ORDER; AMENDED INFORMATION (COUNT I); AFFIDAVIT OF PROBABLE CAUSE; proposed ORDER FINDING PROBABLE CAUSE** upon the following named party by electronic mail as follows:

Ashely Gulke  
Attorney at Law  
ashelygulke@gmail.com

DATED: This 10<sup>th</sup> day of November 2020.

  
Marcella Albers

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WARD

NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Plaintiff,

v.

ORDER

Misten Lee Schwarz,

Case No. 51 2020 CR 564

Defendant.

[¶1] On March 19<sup>th</sup> 2020, Defendant, Misten Lee Schwarz (Schwarz) was charged with count one: driving under the influence/refusal (sixth offense) and count two: driving while license is suspended or revoked (alcohol related 8<sup>th</sup> offense). A felony scheduling order was thereafter issued on March 19<sup>th</sup> 2020.

[¶2] On August 21<sup>st</sup> 2020, the State filed its Information, confirming prior offenses concerning count one as being October 21<sup>st</sup> 2015 (51-2015-CR-2372), September 26<sup>th</sup> 2016 (51-2016-CR-947) and April 2<sup>nd</sup> 2019 (51-2019-CR-2100). Thereafter on September 23<sup>rd</sup> 2020, the State filed its List of Exhibits, which included certified copies of each of the above judgments. On September 30<sup>th</sup> 2020, the State filed its Amended List of Witnesses, which included Susan Hoffer, Ward County Clerk of Court.

[¶3] Notice of Trial was thereafter served on October 6<sup>th</sup> 2020 reflecting a trial

date of November 12<sup>th</sup> 2020.

[¶4] On November 2<sup>nd</sup> 2020, the State filed its Motion to Revoke bond, alleging Schwarz's failure to comply with 24/7 testing as required by the bail order.

[¶5] At the Court's directive, a status conference was held on November 9<sup>th</sup> 2020. Attorney Erickson appeared telephonically on behalf of the State. Attorney Gulke appeared in person. Schwarz did not appear. Attorney Gulke advised the Court an agreement had been reached between the parties and a stipulation regarding same had been forwarded to Schwarz. Attorney Gulke then advised the Court of the proposed resolution, which contemplates Schwarz pleading guilty to a third offense DUI.

[¶6] The Court made inquiry as to the basis of the proposed amended charge concerning count one. On behalf of the State, Attorney Erickson explained the basis of the proposed plea was so Schwarz could "dry out" and begin to take "treatment seriously." Attorney Erickson further advised the Court of the prosecutor's discretion in proceeding with cases and moreover, advised the Court if the matter proceeds to trial as calendared, the State would proceed with presenting its case as a third offense. Thereafter on November 10<sup>th</sup> 2020, the State filed its Motion to Amend Information, seeking to amend the charge to a class A misdemeanor, third offense. The State's Motion specifically addressed the prior



offenses in 51-2016-CR-947 and 51-2018-CR-2100. The State's Motion specifically omitted the October 21<sup>st</sup> 2015 plea in 51-2015-CR-2372.

[¶7] N.D.C.C. § 39-08-01 sets forth regulations concerning operators.

Specifically, subsection 5 defines the minimum mandatory sentence which must be imposed upon conviction.

[¶8] Here, based on the State's filings, the record is clear of its obligation to proceed with a felony level charge against Schwarz. Despite that, the State now argues it wishes to proceed on a third offense charge in order to avoid the risk of Schwarz being "turned out" of the DOCR, forcing Schwarz to serve 120 days rather than a year and a day in order to "dry out." In support of its position, the State argues a potential conviction of a class A misdemeanor will result in more jail time actually served, thereby allowing Schwarz additional time to "dry out" versus the year and a day if Schwarz were convicted of a class C felony. The State's argument fails to recognize *if* Schwarz were convicted of a class C felony or a class A misdemeanor, any sentence imposed would also include credit for time, if any, served. Thus, any concern that Schwarz "would be transferred to one of two places for assessment" followed by a "most likely halfway house placement" may or may not be an accurate representation of reality.

[¶9] It is the duty of the Court to enforce the laws as written, not as a judge or

the parties may wish the law to be. The legislature has clearly, statutorily defined the minimum mandatory sentence that must be imposed for a first, second, third and fourth or more DUI offenses.

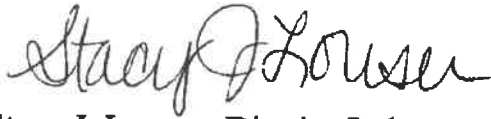
[¶10] The State has made no allegation nor has even suggested any of the prior offenses present evidentiary issues, other than a blanket statement that because this is a refusal, there may be jury questions to create reasonable doubt. In every case tried to a jury, there may be jury questions which could lead to reasonable doubt. Obviously this scenario was present at or prior to the pretrial conference. The State appears to be relying on prosecutorial discretion in its Motion. That discretion is subject to the felony scheduling order (Index #7). The State has made no serious, credible effort to justify the “eve of trial” attempt to amend of the Information. Moreover, it was before this very Court that Schwarz entered her plea of guilt, while represented, to the third offense charge in file 51-2019-CR-2100, the factual basis of which included Schwarz’s affirmance of two prior offenses in 2015 and 2016. For the State to now propose the Court ignore its statutory and ethical obligations merely to circumvent the minimum mandatory sentence is as stunning as it is disturbing. If the State is not in agreement with the minimum mandatory sentence, such issue is appropriately addressed with the legislature, not the Court.

[¶11] Attorneys and the Court alike are governed by the Rules of Professional Conduct, which are premised on honesty, candor and trustworthiness in order to preserve the integrity of the Court system. Although the State is correct in that it has the authority to elect which charges to pursue, it must do so in good faith. Based on the State's comments at the November 9<sup>th</sup> 2020 status conference and its subsequent Motion, the Court does not find the State's request to amend the charge to a third offense so Schwarz can "dry out" for 120 days rather than serve the mandatory one year and a day, to be in good faith. Adopting such a standard would not only render the statutorily defined minimum mandatory sentence meaningless but would also set the precedent for future defendants to challenge the application and imposition of minimum mandatory sentences based on disparate treatment.

[¶12] For these reasons, the State's Motion to amend the charge is *DENIED*.

[¶13] An Order to Apprehend was issued on November 2<sup>nd</sup> 2020. Schwarz has not been detained on same. The Order to Apprehend will remain outstanding and the jury trial cancelled, as the Court will not require members of the community to appear for the trial based on the outstanding Order to Apprehend.

Dated this 10th day of November 2020.

A handwritten signature in cursive script, appearing to read "Stacy J. Louser".

Stacy J. Louser, District Judge

cc: L Erickson- Special Ward County State's Attorney (via e-service)<sup>SP</sup>  
A. Gulke (via e-service)<sup>SP</sup>

**IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA**

State of North Dakota,	)	
	)	Supreme Court No.
Petitioner,	)	
	)	Criminal No. 51-2020-CR-00564
vs.	)	
	)	<b>PETITION FOR</b>
The Honorable Stacy J. Louser	)	<b>SUPERVISORY WRIT</b>
and Misten Lee Schwarz,	)	
	)	
Respondents.	)	

TO: The Honorable Stacy J. Louser, 315 Third St. S.E., Minot, ND 58702; Misten Lee Schwarz, 1900 6<sup>th</sup> Street SE, Apt. B, Minot, ND 58701-6708; Ashley Gulke, Attorney at Law, 24 North Main Street, Suite B, Minot, ND 58702

¶ 1 PLEASE TAKE NOTICE that the above named Petitioner hereby appeals to the North Dakota Supreme Court the Trial Court's Order, issued November 10, 2020, in which the Trial Court denied the state's Motion to Amend County I of the Information. This appeal is not taken for purpose of delay. Instead, the Trial Court's order is an unconstitutional violation of the separation of powers. At issue is the defendant's attempt to enter a written plea of guilty to an A misdemeanor DUI charge. The Trial Court denied the State's motion to amend its original felony charge to an A misdemeanor for reasoning that is wholly outside the Trial Court's jurisdiction and purview to consider. It is the State, and only the State, that can decide what to charge a defendant with and what evidence it will present to a jury to prove that charge. Trial judges do not have the ability to assess the quality of the evidence and witnesses the State has when charging decisions are made, or plea agreements reached. Therefore, the State will be presenting a writ to the Court to encourage the Court to define the proper constitutional roles between the State and trial courts in our criminal justice system.

¶ 2 An order for transcript of a November 9, 2020, pre-trial hearing has been requested, and the State will file its writ of supervision upon receipt of that transcript.

¶ 3 WHEREFORE the State prays the North Dakota Supreme Court grant supervision and order a stay of proceedings pending the appeal.

¶ 4 Dated this 10<sup>th</sup> day of November.

s/Ladd R. Erickson  
Ladd R. Erickson (ND ID #05220)  
Special Assistant State's Attorney  
Ward County State's Attorney's Office  
P. O. Box 1108  
Washburn, ND 58577  
Service: SA28@nd.gov

STATE OF NORTH DAKOTA  
IN THE SUPREME COURT  
Supreme Court No. 2020\_\_\_\_\_  
Ward County Case No. 51-2020-CR-00564

State of North Dakota,	)	
	)	
Petitioner-Appellant,	)	
v.	)	
	)	
The Honorable Stacy J. Louser	)	
and Misten Lee Schwarz,	)	
	)	
Respondents-Appellees.	)	

.....

**ORDER FOR TRANSCRIPT**

.....

¶ 1 The State of North Dakota through Special Assistant Ward County State's Attorney Ladd R. Erickson, pursuant to Rule 10, N.D.R.App.P., hereby orders a transcript for appeal to include:

1. Status Hearing on November 9, 2020, Ward County Case No. 51-2020-CR-00564

¶ 2 The number of copies required are three (3), one (1) electronic copy for the Supreme Court of North Dakota, and one copy for each party represented, that being one for the plaintiff and one for the defendant.

¶ 3 The names and address of the parties to be served with copies are:

Counsel for Plaintiff:  
Ladd R. Erickson  
Special Assistant Ward County  
State's Attorney  
P. O. Box 1108  
Washburn, ND 58577  
Service: SA28@nd.gov

Counsel for Defendant:  
Ashley Gulke  
Attorney at Law  
224 North Main Street Suite B  
Minot, ND 58702  
ashleygulke@gmail.com

¶ 4 Dated: 11/10/20

s/Ladd R. Erickson  
Ladd R. Erickson (ID 05220)  
McLean County State's Attorney

P.O. Box 1108  
Washburn, ND 58577  
Telephone: (701) 462-8541  
Facsimile: (701) 462-8212



STATE OF NORTH DAKOTA  
IN THE SUPREME COURT  
Supreme Court No. 2020 \_\_\_\_\_  
Ward County Case No. 51-2020-CR-00564

State of North Dakota, )  
 )  
 Petitioner-Appellant, )  
 v. )  
 )  
 The Honorable Stacy J. Louser )  
 and Misten Lee Schwarz, )  
 )  
 Respondents-Appellees. )

**CERTIFICATE OF SERVICE**

.....

¶ 1 hereby certify that on the 10<sup>th</sup> day of November 2020, I served a true and correct copy of the attached: **SUPERVISORY WRIT PETITION** and **ORDER FOR TRANSCRIPT** upon the following named party by email as follows:

Clerk of the North Dakota Supreme Court  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

Ashley Gulke  
Attorney at Law  
[ashleygulke@gmail.com](mailto:ashleygulke@gmail.com)

Shan Peccka  
Court Reporter  
[specka@ndcourts.gov](mailto:specka@ndcourts.gov)

¶ 2 Dated this 10<sup>th</sup> day of November 2020.

*s/Marcella Albers*

STATE OF NORTH DAKOTA, COUNTY OF WARD  
IN DISTRICT COURT, NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,	)	
	)	<u>STATUS CONFERENCE</u>
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Case No. 51-2020-CR-00564
Misten Lee Schwarz,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDING

BEFORE THE HONORABLE STACY LOUSER, DISTRICT JUDGE  
Ward County Courthouse  
Minot, North Dakota  
November 9, 2020

A P P E A R A N C E S

FOR PLAINTIFF:

Mr. Ladd Erickson  
Special Assistant Ward County State's Attorney  
PO Box 1108  
Washburn, North Dakota 58577

FOR DEFENDANT:

Ms. Ashley Gulke  
Attorney at Law  
12 S. Main St., Second Fl. #2  
Minot, North Dakota 58701

RECORDED AND TRANSCRIBED BY:

Shan Pecka  
Electronic Court Recorder  
315 3rd Street SE  
Minot, ND 58701

1           (The before-entitled matter came on for hearing  
2 before the Court, the Honorable Stacy Louser, District Judge,  
3 presiding, commencing at 8:31 a.m. on November 9, 2020, in the  
4 Ward County Courthouse in Minot, North Dakota. Present by  
5 phone were Ladd Erickson of Washburn, North Dakota,  
6 representing the plaintiff, the State of North Dakota; and  
7 Ashley Gulke of Minot, North Dakota, representing the  
8 defendant, Misten Schwarz.)

9           THE COURT: It is now 8:31 on the 9th of November  
10 2020. We are on the record in case 51-2020-CR-564, State of  
11 North Dakota versus Misten Schwarz. Appearing telephonically  
12 is Attorney Erickson and here in the courtroom representing Ms.  
13 Schwarz is Ms. Gulke.

14           We are scheduled for a jury trial to commence on the  
15 12th of this week. There is an order to apprehend that was  
16 issued it is still outstanding. Ms. Gulke?

17           MS. GULKE: Your Honor, I was talking to Ms. Schwarz  
18 on my way here this morning. I had sent her a plea agreement  
19 because we have reached an agreement. I think I sent it to her  
20 on Saturday. She has been trying to open and sign it. And  
21 essentially -- I was like it's not that complicated, and she  
22 told me she's been using a desktop computer and I assumed she  
23 was using a phone and could just sign it with her finger. So  
24 she's getting me a fax number so I can fax it to her and she  
25 will sign it and send it back. For the Court's understanding,

1 she would be reporting to serve her days on 11-12 at 9:00 a.m.  
2 And she was anticipating coming here on Thursday. In fairness  
3 to Ms. Schwarz, she did not see the plea agreement until Sunday  
4 night, which was last night and then couldn't figure it out.  
5 And I've been going back and forth with her. Her cell phone  
6 number changes frequently but her email address is constant.  
7 But she didn't check her email regarding this hearing and also  
8 the plea agreement until last night.

9 She, as we know, does not have a driver's license so  
10 was unable to arrange a ride to get her this morning. She  
11 asked if she could phone in, while I talked to her on the way  
12 here, and I was, like, a little late for that.

13 Anyways, with that being said, we have reached a plea  
14 agreement. It contemplates her pleading to a third DUI and  
15 serving 120 days starting on Thursday, credit for 16 days,  
16 suspended for two years of supervised probation, chemical  
17 dependency evaluation, follow through within 30 days of  
18 release, two years of 24/7 while on probation and then the  
19 fines and fees. And then 120 days flat on the DUS.

20 THE COURT: So this is charged as a fourth offense, C  
21 Felony. Why are we treating it as a third?

22 MS. GULKE: I will let Mr. Erickson discuss that with  
23 the Court.

24 THE COURT: Mr. Erickson?

25 MR. ERICKSON: Thank you, Your Honor. Yeah, because

1 she has to dry out, Your Honor. I need her in jail for 120  
2 days. The fourth offense is a weaker sentence if you send them  
3 to the Pen. They send them right out right now with COVID but  
4 even before that they're not in there long enough to dry out.

5 And the third offense based on her problems with  
6 alcohol, which have been persistent during the 24/7 period, she  
7 needs to dry out before she starts taking this treatment  
8 serious. So I don't see any point in proceeding on a Felony  
9 that's going to roll her back out under these same conditions.  
10 She needs to go to jail, sit hard time, dry out, and then come  
11 out and get into treatment, and be on 24/7 to get dried out.  
12 There is no other better solution that I can see. I put a  
13 motion in to arrest her last week or whatever because it wasn't  
14 working on 24/7. And if we send her to the Pen the way it is  
15 right now she's going to roll right in and out on a revolving  
16 door.

17 THE COURT: My understanding --

18 MR. ERICKSON: So I want her to dry out --

19 THE COURT: My understanding is that the Pen isn't  
20 taking people. If she were to do a year and a day most likely  
21 she would do it here locally. My concern frankly --

22 MR. ERICKSON: Yeah, that wouldn't -- I don't need a  
23 hearing --

24 THE COURT: -- is this not a way to circumvent the  
25 minimum mandatories at the Felony level? I'm not sure that the

1 Court or Counsel, for that matter respectfully, has the  
2 authority to circumscribe and override what the legislature has  
3 set as a minimum mandatory. So if this is a fourth offense and  
4 we're treating it as it's a third simply to avoid the minimum  
5 mandatory, I'm not comfortable with that.

6 MR. ERICKSON: Well, Your Honor, I'll just, frankly,  
7 and we don't know each other but it's a prosecutor's discretion  
8 on what we charge or don't charge or whether we put on a trial  
9 here. Right? My judgment is to what's put before the Court.  
10 I put before the Court a third offense. Right? I can prove a  
11 third offense. Right? If I charge it originally as a third or  
12 if I dismiss it tomorrow, I decide that stuff. So my judgment  
13 is the State wants to proceed on a third offense because it's  
14 the best solution for the case.

15 THE COURT: And my question is, but is this a fourth  
16 offense?

17 MR. ERICKSON: I'm not alleging a fourth, Your Honor.  
18 I'm alleging a third. She has a record that has four on her  
19 record -- or excuse me -- three others on her record.

20 THE COURT: Which would make this the fourth.

21 MR. ERICKSON: It would if I alleged it that way.  
22 Yes, Your Honor.

23 THE COURT: So --

24 MR. ERICKSON: But I'm not going to do that.

25 THE COURT: So, again, if she's picked up the next

1 time around, then she gets treated as the fourth? My concern  
2 is that we're setting this as the standard. That has not been  
3 the standard here in Ward County.

4 MR. ERICKSON: Your Honor, if we go to trial on  
5 Thursday, I'm going to present two priors. I'm going to  
6 present it as a third. I want a 120-day sentence. I'm not  
7 going to present four -- this as the fourth.

8 THE COURT: And I'm still having a hard time  
9 understanding why.

10 MR. ERICKSON: Because it's a better sentence for her  
11 circumstances, Your Honor.

12 THE COURT: Well --

13 Mr. ERICKSON: I will present two prior judgments --

14 THE COURT: Counsel, I think everybody has some  
15 obligations here. And I'm not comfortable with this agreement.  
16 If it is, in fact, presented I will look at it. There's no  
17 guarantee it's going to be approved. So at this point, I'm  
18 keeping the trial on the calendar. Anything else, Mr.  
19 Erickson?

20 MR. ERICKSON: That's it. No, Your Honor.

21 THE COURT: Ms. Gulke?

22 MS. GULKE: Nothing further, Your Honor.

23 THE COURT: Okay. Thank you.

24 (The proceeding concluded at 8:38 a.m.)

25

**CERTIFICATE OF COURT RECORDER**

I, Shan Pecka, a duly certified digital electronic court recorder and transcriber,

DO CERTIFY that I recorded the foregoing proceedings had and made of record at the time and place indicated.

DO FUTHER CERTIFY that the foregoing and attached typewritten pages numbered 1 through 6 contain a true, accurate, and complete transcript from the electronic sound recording then and there taken.

Dated at Minot, North Dakota, this 12th day of November, 2020.



Shan Pecka CER/CET  
Electronic Court Recorder

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO THE REPRODUCTION OF THE SAME BY ANY MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT RECORDER.