

IN THE COUNTY COURT OF DAWES COUNTY, NEBRASKA

THE STATE OF NEBRASKA,)	CASE NO. CR95-512
)	
Plaintiff,)	
)	<u>COMPLETE TRANSCRIPT</u>
-vs-)	
)	VOLUME 1 - PROCEEDINGS
TIMOTHY J. WALZ,)	(Pages 1 to 11, incl.)
)	
Defendant.)	

Arraignment, plea and sentencing held before the
HONORABLE JAMES HANSEN, JUDGE, at Chadron, Nebraska, on
March 13, 1996.

APPEARANCES

For the plaintiff	Rex C. Nowlan, No. 18214 Dawes County Attorney P.O. Box 1346 Chadron, Nebraska 69337
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For the defendant:	Russell W. Harford, No. 18713 Attorney at Law P.O. Box 1070 Chadron, Nebraska 69337
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Linda Thayer
Court Stenographer
Dawes County Court

C E R T I F I C A T E

I, Linda Thayer, court stenographer for the Dawes County Court, in the Twelfth Judicial District of the State of Nebraska, do hereby certify that the within and following complete transcript contains all the evidence requested to be transcribed by me, and the rulings of the Court thereon, from the proceedings had in the foregoing cause in said court; that said complete transcript is a correct and complete transcription of the evidence requested to be transcribed from the official tape recording made at the time of the proceedings as indicated by the files and records of this court; that the cost of said complete transcript is \$ 35.75, said amount being that which is permitted to be charged by the Nebraska Supreme Court

Dated this _____ day of _____, 2006.

Court Stenographer

VERIFICATION

I, James Hansen, county judge for the Dawes County Court in the Twelfth Judicial District of the State of Nebraska, do hereby state that the tape recording from which this complete 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 tape recording constituting the official record has been at all times in the custody or under the control of the Dawes County Court.

Dated this ____ day of _____, 2006.

County Judge

(On March 13, 1996, in the County Court of Dawes County, at Chadron, Nebraska, before the HONORABLE JAMES HANSEN, judge of said court, with Mr. Rex C. Nowlan appearing as counsel for the plaintiff, and Mr. Russell W. Harford appearing as counsel for the defendant, and the defendant being present in person, the following proceedings were had:)

THE COURT: At this time then we'll take up the case of, The State of Nebraska versus Timothy J. Walz. Mr. Walz is present in court with Mr. Harford, his counsel, Mr. Nowlan is here, the Dawes County Attorney. Is there going to be an amendment to the complaint then by plea agreement?

MR. NOWLAN: Yes, Your Honor. Pursuant to a plea agreement, the State would reduce the charge to a reckless driving from a DUI.

THE COURT: And Mr. Harford, there will be a plea then to the (indiscernible)?

MR. HARFORD: Judge, that's correct. I think that the complaint may reflect that -- It -- It may not. I'm not sure if there was a speeding count.

THE COURT: There is a speeding and a --

MR. HARFORD: It's my understanding that the speeding and the DWI would be amended to reckless driving, and there will be a plea to that, Judge.

THE COURT: Will there be an amended complaint

filed?

MR. NOWLAN: Yes, Your Honor.

THE COURT: Mr. Walz, we'll proceed on today. You'll not have a written copy of this complaint, but it will charge you with what is commonly called reckless driving. Reckless driving carries a maximum three months in the county jail, a \$500 fine. That is the maximum possible penalty. There is no minimum penalty required by the law. There is no court ordered suspension on reckless driving, but there could be a loss of license if you have points problems. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Walz, also it's true on reckless driving, somewhat similar to DWI-second offense, that at a later time it would be more serious than a first offense. It's also an offense that can be enhanced. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And finally, Mr. Walz, the complaint would -- would allege that you drove a vehicle in a manner as to indicate an indifferent or wanton disregard for the safety of persons or property. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: How do you want to plead to that charge then of reckless driving?

THE DEFENDANT: I plead guilty.

THE COURT: And again, do you understand what this

charge is now and what the penalties could be?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you received any promises or threats or pressure to get you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: The county attorney has agreed to dismiss these other two charges and charge you only with reckless driving. Has anything else been agreed to by the county attorney that you know of?

THE DEFENDANT: No, Your Honor, not that I know of.

THE COURT: Do you understand that by pleading guilty now you give up your right to a jury trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Also then your right to see, hear, and have a lawyer question the witnesses against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Also you give up your right to testify and present a defense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And finally, you give up your right to remain silent?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The Court finds then the plea of guilty is knowingly, voluntarily, and intelligently made. Mr. Nowlan, can

you provide a factual basis then?

MR. NOWLAN. I don't remember the exact date. Your Honor, and I don't have that file. Mr. Walz was driving south of town on 385 in Dawes County at a high rate of speed. Actually, he was driving away from the police officer. I think that he eventually hit a speed of over 80, as I recall. When he was stopped, he was given a blood test which did show a .128 blood alcohol. Those would be the bases for the reckless driving, Your Honor. I'm sorry, the exact date I don't have. It appears on the complaint.

THE COURT. It would be on September 23, 1995?

MR. NOWLAN. Yes, September 23, 1995.

MR. HARBORD. Judge, I think I can probably add just a little bit to that. I apologize, both to the Court and to Mr. Nowlan, for -- I thought this was scheduled for pretrial conference today, so I had Mr. Walz come. I appreciate the Court allowing us to do this today. It was, in fact, the date that was alleged in the complaint. He initially, I think, was clocked by one of the state patrol officers at about 70. The state patrol officer turned around and -- This is a little -- a little bit bizarre, but Mr. Walz thought somebody was chasing him. The officer didn't turn on his red lights and he -- and somebody came up real fast behind him and he didn't know what they were doing, so he sped up to try to get away, fearing that somebody was after him. Low and behold, it was a state patrolman that was behind him, so the faster he went,

the faster the state patrol officer went. Finally, he did turn on his red lights. The speed was fairly excessive, Judge, a lot over the speed limit. I don't even know what was alleged in the complaint, it may have been ninety something. Mr. Walz had been -- had been drinking, so I think there's a sufficient factual basis, Judge, to support the plea.

THE COURT: The Court finds then the factual basis by the county attorney is sufficient. The Court accepts the plea of guilty and finds the defendant guilty then of reckless driving. Any comments for the State on sentencing?

MR. NOWLAN: I think given the circumstances, Your Honor, that the -- the fine that the Court has been imposing on the reduction from a DUI to a reckless would be appropriate.

THE COURT: Mr. Harford, any comments?

MR. HARFORD: Judge, I do have a few comments, I guess. I -- Mr. Walz is asking the Court to impose a fine. I think that this is the kind of case that a fine would not show any disrespect for the law. His -- He did have a relatively low test, Judge, a .128. In addition, I believe this court has suppressed the test results as a result of the Smith case and the Magerk (phonetic) case and some of those cases. More importantly though, I think the Court should know Mr. Walz is a teacher at the Alliance High School, has been for quite a few years. He felt terrible about this, was real disappointed, I guess, in himself. He went and immediately reported this incident to his principal. He resigned.

all of his extracurricular duties at the high school, which included some coaching responsibilities, I believe. He also offered to resign his teaching position because he felt so bad. He, I think, takes the position that he's a role model for the students there. He let them down, he let himself down. Because of that, he was ready to resign his position. Fortunately, the principal talked him out of resigning from school. He did, in fact, though resign from his extracurricular activities. Mr. Walz now, I think, has taken the opportunity to turn this into a positive for him and his students. Now he is, I guess, ministering, so-to-speak, to the students about all the bad things that can happen to you if you drink and drive and get caught for drinking and driving. I wanted the Court to know that he did, Judge, lose his license administratively for 90 days. He's done that suspension and jumped through all the hoops to be reinstated. I think because of these things, Judge, and because I think there is some good to come from this in the fact that he now hopefully can -- can reach out to younger people and hopefully tell them what he's went through, that a fine would probably be appropriate.

THE COURT: Mr. Walz, anything you want to say here before the Court imposes a sentence then?

THE DEFENDANT: No, Your Honor.

THE COURT: Mr. Walz, on this case there will be a fine of \$200, plus court costs, which will include the test fee. Mr. Walz, I -- I guess it may -- I don't know if it may or may not

surprise you, but we do have school teachers come in on this offense and -- and I always have the same concern that your attorney has expressed. You know, this is a real problem for me to see a teacher get picked up for this offense because you do have a role model, that's -- that's why you're a teacher. If you didn't think you could affect children's' lives, why would you be a teacher? I want to share a couple things that I tell people on -- on -- on -- on a DWI offense. The first thing -- The first thing I ask them is, you know, why is it against the law to drive with -- with a .128 blood alcohol content? Why is that against the law?

THE DEFENDANT. Not just statutory, it's just a dangerous situation, Your Honor, not just to myself, but to others who are -- who aren't even involved with it.

THE COURT. Uh-huh. Absolutely. You run -- You are an impaired driver at that situation and you run the risk of killing yourself and killing somebody else. What is the first effect that alcohol has on -- on you when you drink alcohol?

THE DEFENDANT. I think it impairs your ability to make sound decisions, correct decisions.

THE COURT. Right. The first effect is that it affects your judgment. You'll see people doing dumb things, stupid things long before they have trouble talking, walking around, and vision problems, etcetera. Most people that get picked up for DWI are in the same situation that you were in, when you think you have had a little bit to drink, but you think you can handle it. But the

problem with that is the alcohol has affected your judgment. If you hadn't been drinking, you would have known that you probably shouldn't have been driving. So the rule is you don't drive a vehicle after you have had more than one beer. Anytime you've had more than one beer, you don't drive the vehicle, or more than one drink, and you'll never be back in court again. Mr. Walz, I hope that -- I sincerely hope that it's true that you have turned this -- There's an old saying: Every adversity -- Every ad -- ad -- adversity has a seed of a greater benefit. If you can make this into -- into a better thing for you, then that's great. I would certainly suggest to you, in your position, that you educate yourself on the use of alcohol because it's a terrible problem among teenagers, it's a terrible problem among college students. Unless we get support from people that have an affect on children's' lives, you know, a lot of children grow up and have terrible -- terrible lives because of their use of alcohol or their abuse of alcohol and high risk use of alcohol. So I certainly hope that you've learned from this and I hope that you can share that with your students. Mr. Walz, if you will take this out to the clerk and settle up with the clerk then.

THE DEFENDANT: Thank you, Your Honor

THE COURT: Uh huh

(END OF PROCEEDINGS)