

South Dakota Supreme Court
Opinion in
Craig v. Jensen

**Craig v. Jensen, 66 S.D. 93,
278 N.W. 545 (1938)**

March 29, 1938 · South Dakota
Supreme Court · File No. 8165
66 S.D. 93, 278 N.W. 545

CRAIG, Appellant,

v.

JENSEN, Respondent

(278 N. W. 545)

Doyle & Mahoney
and *Tom Kirby*, all of
Sioux Falls, for
Appellant.

E. D. Barron and *T. M.*
Bailey, both of Sioux
Falls, for Respondent.

Opinion

Author: *WIDENBERG, J.*

On the 15th day of June, 1937, the Governor of this state caused to be served upon the plaintiff, Leo F. Craig, who is a member of the Board of Charities and Corrections, written charges alleging that the said Craig had been guilty of misconduct in the performance of the duties of his office. The alleged acts constituting the misconduct were set forth in detail. The Governor thereafter fixed a time for hearing upon the said charges and gave the plaintiff notice of the time fixed. A hearing was held at which the plaintiff, Craig, appeared personally and by counsel, and evidence was submitted. The Governor thereafter entered written findings of fact, and upon such findings entered his order removing the plaintiff as a member of the Board' of Charities and Corrections. After the entry of the order of the Governor, the circuit court of Minnehaha county,

upon the application of the plaintiff, issued its writ of prohibition, prohibiting the Governor from further proceeding with the removal of the plaintiff until the further order of the court. A hearing was had upon the writ thus issued, and the court thereafter entered its finding of fact and conclusions of law upon which it based a judgment vacating and setting aside the writ of prohibition which it had entered. The plaintiff has appealed.

The statute under which the Governor acted, is section 7009, Rev. Code 1919, which provides as follows: "All constitutional state officers not liable to impeachment may be removed by the governor, after notice and hearing, for crimes, misconduct or malfeasance in office or for drunkenness or gross incompetency."

Appellant makes no contention here that he was not given no-

tice or that he was not given a hearing and afforded an opportunity to defend against the charges of the Governor. The single contention of the plaintiff upon this appeal is that there was no evidence presented to the Governor at the hearing sufficient upon, which to base the order of removal. This contention makes it necessary for us to first consider the extent of the review by the court of the evidence presented to the Governor.

The above-mentioned section 7009 of our Code was without question adopted pursuant to section 4 of article 16 of the Constitution of this state, which provides: "All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by

law.”

The Legislature has seen fit to vest in the Governor this- power of removal "provided in the Constitution. It should be noted that under this constitutional and Code provision, the Governor is not vested with an unlimited power of removal. The power may be exercised only for certain specified causes. If none of the specified causes for removal exist, the Governor is- without power. As stated in the early case of *State ex rel.*

Holmes v. Shannon, 7 S. D. 319, 64 N. W. 175, 179: “By expressly enumerating' the causes for which such an officer may be removed, the constitution not only limits the causes, but limits removals to cases where such causes exist. We- must not -be understood as saying o-r meaning that such cause must first be judicially declared to exist before any power of removal can be exercised, but we

do- mean to- say that the constitution plainly and unmistakably does forbid the removal of such an officer at the pleasure of anybody, whether governor, legislature, or court. It not only projects a theory, but it declares a rule, and establishes the plan that constitutional officer's, at least, unless otherwise provided in the constitution, do not hold their office during the will or pleasure of any officer or department of state."

The Governor not having the power under the Constitution to remove except for the specified causes, we believe that there must be some review by the court in a, proper proceeding to examine the evidence, otherwise the Governor might remove a constitutional officer not subject to impeachment arbitrarily and at will, and thereby deprive such officer of a right he has under the Constitu-

tion. Much has been written in judicial opinions and in texts concerning the exact manner, whether executive, judicial, or quasi judicial in which the Governor acts when he purports to remove an officer for cause. However, in view of constitutional provision, we deem it unnecessary to attempt to precisely classify the actions of the Governor in this proceeding. We think it clear, under this constitutional provision, that the Governor is not acting in a purely executive capacity. His acts are limited to the specified constitutional causes for removal, and are not subject to that unlimited discretion which inheres in a purely executive act. See *State ex rel. Wehe v. Frazier*, 47 N. D. 314, 182 N. W. 545. And this constitutional provision differentiates the power of the Governor to remove, from the power of the President of the United States to remove, an inferior officer

appointed by him, as that power is defined in the case of *Myers v. United States*, 272 U. S. 52, 47 S. Ct. 21, 71 L.Fd. 160. There is no limitation contained in the Federal Constitution upon the power of the President to remove inferior officers appointed by him. We have been unable to find in any other state a constitutional provision and statute similar to ours. North Dakota under an identical constitutional provision has vested the power of removal of constitutional officers not subject to impeachment in the courts by direct judicial proceeding. See section 197, Constitution of North Dakota; North Dakota Comp. Laws 1913, §§ 10467 to 10482. Florida has a constitutional provision relating to the general subject, but the final power of removal is left with the state Senate. -Constitution of Florida, art. 4, § 15. The Florida court has held that their -constitutional provision

“defines a complete scheme under which the power of removal is accomplished by making it a joint action on the part of the Governor and the Senate.” State ex rel. Hardie v. Coleman, 115 Fla. 119, 155 So. 129, 135, 92 A. L. R. 989. Obviously, our constitutional provision is not similar to that of Florida. There is no “complete scheme” of removal under our Constitution, but a simple mandate that officers within its meaning shall not be removed except for certain specified causes. However, even in the absence of constitutional provision, where the Legislature has vested in the Governor the power of removal only for specified causes, it is quite generally held that the court may consider the evidence. See annotations, 52 A. L. R. 8, 92 A. L. R. 998. We believe such should be the rule under our constitutional provision.

It should be noted that no provision for an appeal from the action of the Governor is provided by the statute. The Governor's action is final, except in so far as it might be reviewed in some other proceeding. The present proceeding is one in prohibition. The Governor, not acting in a purely executive capacity, and it being contended that he is exceeding his authority under the Constitution, we believe this proceeding is proper. Our Code section 3019, as amended by chapter 424, § 1, Laws 1921, defines this proceeding, as follows: "The writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings, administrative or judicial, or [of] any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person, or are without or in excess of the powers or

authority conferred -by law upon such tribunal, corporation, board or person.”

In this proceeding, therefore, we review the action of the Governor for two purposes only: First, to determine whether he acted in excess of his jurisdiction; and, second, whether he acted in excess of the powers or authority conferred upon him by law. Some courts have taken the position that a lack of evidence tending to show any of the specified causes for removal by the Governor goes to the jurisdiction of the Governor to act. However, in this proceeding it is not necessary for us to say that the existence of competent evidence is a necessary element of the jurisdiction of the Governor. Under the last portion of the above section relating to prohibition, this court is permitted to determine whether the removal was in excess of the pow-

er or authority conferred law.

In reviewing the evidence for the single purpose of determining whether the Governor has exceeded his authority, the court will not attempt to weigh the evidence, but will review the evidence only for the purpose of determining whether there was any competent evidence before the Governor tending to support a finding of any of the constitutional causes for removal. If there is any such evidence, its weight, we is to be determined by the Governor. We so conclude, not only because no appeal has been allowed from the Governor's action, and we review simply to determine his authority ('which must be dependent upon the existence of evidence and not its weight), but also because the Legislature has seen fit to vest this power in the Governor. The court should carefully avoid anything which would appear

like an improper interference with the actions of the Governor in the discharge of this function. As stated by the Minnesota court in the case of *State ex rel. Hart v. Common Council*, 53 Minn. 238, 55 N. W. 118, 119, 39 Am. St. Rep. 595: "The evidence may be brought up, not for the purpose of weighing it, to ascertain the preponderance, but merely to ascertain whether there was any evidence at all to sustain the decision of the inferior tribunal, * * * yet, this power [of removal] being designed to insure efficiency and fidelity in the discharge of official duty, the degree of incompetency or inefficiency which amounts to sufficient cause for removal must of necessity, within certain established limits, rest-somewhat in the sound discretion in the officer or body in whom the power of removal is vested."

The court should not substitute

its judgment for that of the Governor, and, if there is any competent evidence in the record tending to support the Governor's action, his authority to act should be sustained.

The charge is misconduct in office. This term "misconduct in office" is a general term, and, so far as we can determine, has no well-defined meaning. The misconduct sufficient to justify a removal must be a misconduct in the conduct of the office, but just what constitutes misconduct is difficult of definition. The term itself implies as much as any definition of the term. It has been defined as "such acts as amount to a breach of the good faith and right action that are tacitly required of all officers," *Etzler v. Brown*, 58 Fla. 221, 50 So. 416, 417, 138 Am. St. Rep 113; or "any act which is contrary to justice, honesty, principle, or good morals, if performed by

virtue of office or by. authority of office,” State ex rel. Wynne v. Examining & Trial Board, 43 Mont. 389, 117 P. 77, 78, Ann. Cas. 1912C, 143. Other definitions might be found, but none of them are very helpful. We think misconduct in office means simply the doing of something which the officer ought not to do, or the failure to do something' which he ought to do, in the conduct of his office. Each case must rest upon its own facts.

The specified acts which the Governor found to constitute misconduct are as follows: First, that tire plaintiff acted as warden of the state penitentiary ;while a member of the Board of Charities and Corrections, contrary to the provisions of section 53,71, Rev. 'Code 1919, as amended by Laws 1925, c. 275, § 1, which provides that “No officer of any such institution shall be eligi-

ble to membership' on such board"; second, that the plaintiff presented a voucher for lodging and meals while attending a meeting of the board at Sioux Falls, S. D., the residence of the plaintiff; third, that the plaintiff made expenditures from funds appropriated to the Board of Charities and Corrections without any action on the part of the board to the extent that the board's funds were depleted, and in order to obtain funds for the use of the board, he caused to be charged certain items of expense incurred by the board to the funds of the twine plant of the state penitentiary; fourth, that the plaintiff failed and refused to visit or inspect the state institutions as required by law; fifth, that the plaintiff failed and refused to cooperate with other members of the board. The trial court in its findings of fact found that there was some competent evidence tending to

sustain the Governor on the first, second, third, and fourth alleged acts of misconduct. We will confine our discussion to the first, third, and fourth findings of the Governor.

Regarding the first act of misconduct, the evidence discloses that following the death of the then warden of the penitentiary, the plaintiff, Craig, proceeded to perform the duties of warden for a period of nine months. The evidence discloses that the plaintiff, while so acting, signed vouchers pertaining to the official business of the penitentiary, and then as president of the Board of Charities and Corrections approved such vouchers. The evidence further discloses that the plaintiff was actually performing the functions of the warden of the state penitentiary. -Craig contends that he was only acting in his capacity as president of the Board of Charities and (Correc-

tions, that he no salary as warden, and that, while he was so acting, the penitentiary was conducted in an orderly and efficient manner; -but, as stated above, it is not the function of this court to weigh the evidence. The fact that the plaintiff performed the 'duties of warden and signed the vouchers is some competent evidence in support of the Governor's finding that the plaintiff, Craig, did act as warden of the state penitentiary while holding the office of president of the Board of Charities and Corrections, contrary to the spirit if not the letter of the statute.

Section 5385, Rev. Code 1919, provides that the Board of Charities and Corrections shall visit at least once each month all state institutions under its control. The record discloses that plaintiff, Craig, visited the State School and Home for the Feeble-Minded at Redfield but

four times during a two-year period, that during these two years he called meetings of the board at Sioux Falls, S. D., and requested that the head of the Redfield institution attend these meetings. When questioned by his own counsel, plaintiff testified, as follows: "Q. Then, they also charge here that you, while acting as president of the (board, insisted that the monthly meeting's be held in Sioux Falls. A. I did that on two- or three occasions."

Plaintiff offered testimony to justify his actions in calling the meetings of the board at Sioux Falls rather, than at the -different state institutions, but certainly plaintiff's insistence that meetings be hel-d at Sioux Falls and the fact that only four times in a two-year period were meetings hel-d at Redfield is some competent evidence tending to support the finding of the Governor that the plaintiff

as a member of the Board of Charities and Corrections failed to conform to the statute last above quoted.

We do not- believe a further discussion of the evidence is necessary or would be helpful. We have not attempted to set out in detail the evidence of the plaintiff in explanation of his acts in connection with the alleged charges of misconduct because that we believe to be unnecessary for the purpose of this opinion. This evidence is such that the only purpose in setting it forth would be to weigh it against the evidence tending to support the findings of the Governor.

Giving full effect to' the findings of the Governor on these three charges, which we must in view of the fact that they find some support in the evidence, 'we are convinced that these facts as found are sufficient to constitute a miscon-

duct in office within the meaning of the constitutional and statutory provision. It is the province of the Governor and not the court to determine the action to be taken. Even though the court should be of the opinion after viewing all the evidence that the misconduct is slight, and that removal from office for such slight misconduct is harsh, nevertheless, it is not for the court to interfere.

The judgment appealed from is affirmed. No costs to be taxed.

All the Judges concur.

South Dakota Public Broadcasting Article

Ravnsborg's punishment, charges similar to others in comparable accidents

SDPB Radio | By Arielle Zions

Published April 19, 2022 at 6:54 AM CDT



LISTEN • 7:17

Outcome for legally sober drivers who kill pedestrians

WHAT I THINK

He is guilty as can be. You or I would be in jail. He needs to step down. He is not above the law, I don't care what position he has.

Like Reply

20 not cited/charged

11 cited/charged



He should be in prison he killed a man, if it were anybody else they would have been charged, and put away. What a bunch of crap

Like Reply

Josh Haiar / SDPB

Attorney General Jason Ravnsborg was impeached last week, but some state leaders

and South Dakota residents are outraged that he avoided felony charges and jail time after he accidentally killed a pedestrian with his car.

Ravnsborg drifted onto the shoulder of a highway where he hit and killed Joe Boever in the fall of 2020. The attorney general says he thought he hit a deer and didn't discover the body until the morning after the crash.

The attorney general was charged with three misdemeanors: Careless driving, an illegal lane change and driving while using his phone. He paid a \$1,000 fine after pleading no contest to the latter two crimes.

Ravnsborg got a "slap on the wrist," said Jenny Boever, the victim's widow.

Boever's cousin, Nick Nemec, said if the roles were reversed, "Joe Boever would be in prison."

Craig Price, secretary of the Department of Public Safety, said Ravnsborg should have been charged with second-degree manslaughter.

And Gov. Kristi Noem said she was "disappointed in how this process was handled by prosecutors."

But an SDPB investigation shows that the attorney general did not receive lighter charges or punishment than other South Dakota drivers involved in comparable fatal accidents.

SDPB analyzed data from the Department of Public Safety and combed through crash reports and state court records from 2016 through 2020.

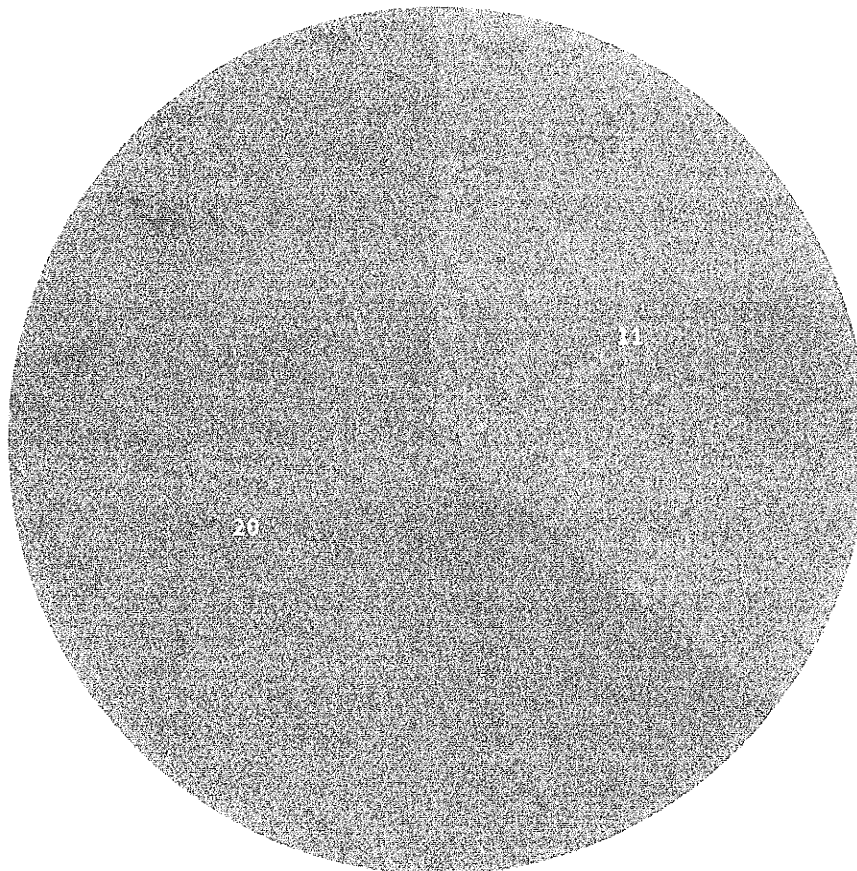
Ravnsborg was among at least 31 other drivers who were not legally intoxicated when they accidentally hit and killed pedestrians during this time period.

Twenty of these drivers — or about two-thirds of them— were not charged with any offense or crime related to their driving.

The remaining 11 drivers were cited for traffic offenses or charged with low-level misdemeanors.

Outcome for legally sober drivers who accidentally killed pedestrians From 2016 through 2020 in South Dakota

Cited/charged Not cited/charged



Source: DPS data, court records, crash reports.

Note: Data excludes crashes in tribal jurisdictions and charges related to insurance+driver's licenses.



None of the 31 drivers served jail or prison time, and none paid a fine close to the \$1,000 imposed on the attorney general. None of them, including Ravnsborg, appear to have been arrested at the scene.

SDPB only analyzed cases within state jurisdiction where drivers are subject to state laws, not tribal or federal statutes.

Tim Rensch, Ravensborg's attorney, said he was not surprised by SDPB's findings.

"It sounds like exactly what I would expect," he said. "That somebody's not intoxicated, and those accidents happen, then there are those low misdemeanors to take care of it."

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SDPB also shared its findings with Michael Moore, the Beadle County state's attorney who helped make the charging decision in the Ravensborg case. Moore said Noem and Price's views on the prosecution and charges are unwarranted.

"I'm actually surprised that it was pushed as hard as it was by the governor's office and the Department of Public Safety, because the truth is is that most times that this happens nobody's charged — with manslaughter, at least," Moore said.

Moore has faced criticism over what some call lenient charges and punishment against the state's top law enforcement official. But he says any special treatment the case received actually led to more scrutiny.

"The only difference in this case, if it was not the attorney general, is the level of the investigation," Moore told SDPB. "There's no way they would have investigated a case like this if it wasn't the attorney general."

Moore and Emily Sovell, the Hyde County deputy state's attorney who filed the charges, said their decision was based on South Dakota law and guidance from the state Supreme Court.

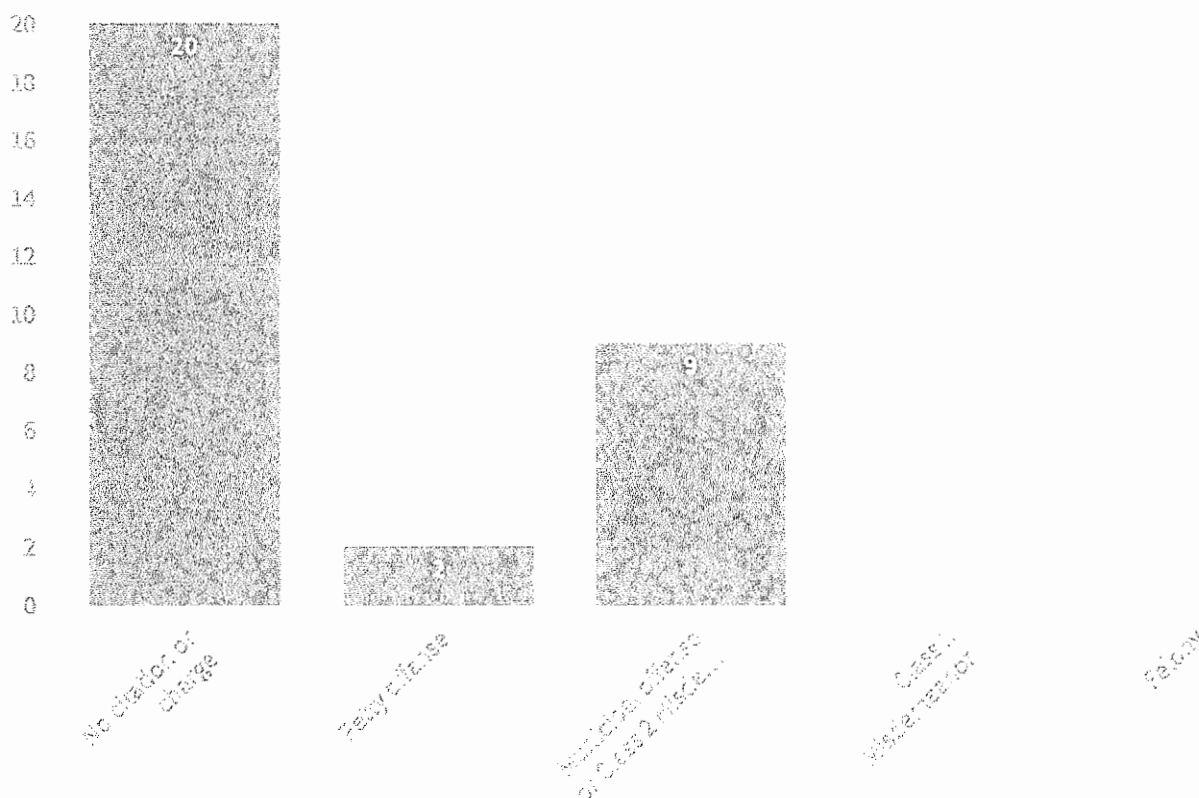
South Dakota leaders should change the law if they want more serious punishment, Moore said. He said one option would be to make negligent homicide a crime.

"If the governor wanted that to be a law, let's see it," Moore told SDPB last fall. "If the legislators want it to be a law, propose it in the next legislative session. But quit criticizing the criminal justice system, because we're bound by what you tell us to do,

and we followed the law in this case.”

Charging outcome for sober drivers who accidentally killed

Graphic by the SDPB, based on data from
Marketplace



Source: DPS data, court records, crash reports.

Note: Data excludes crashes in tribal jurisdictions and charges related to insurance+driver's licenses.



Crash comparisons

Joe Boever, 55, was holding a small flashlight as he walked along a highway shoulder near his hometown of Highmore on the night of Sept. 12, 2020.

Attorney General Jason Ravnsborg was driving back from a dinner in Redfield to his home in Pierre when he veered onto the shoulder and hit Boever with his car.

The responding sheriff did not test Ravnsborg for drugs or alcohol, but investigators say there's no evidence Ravnsborg was under the influence based on interviews with people who attended the dinner.

Ravnsborg said he didn't see Boever before the crash, during the impact or when he searched the road that night. He said he only realized he hit a person when he found Boever's body the next morning.



*Kahler-Brende Funeral Home*

Joe Boever

Ravnsborg acknowledges that some of the reported facts about his crash are unusual.

"I know how some of this looks, but I did not see a man until the next day," he said during one of his interrogations.

But Ravnsborg was not the only one of the 31 drivers in the dataset examined by SDPB who killed a pedestrian they thought was a deer.

Trucker Larry Tschetter was driving a semi in Box Elder during a blizzard before sunrise in February 2018, according to a crash report from a state trooper.

A crash report is a standard form written by the lead agency responding to a vehicle

accident. SDPB obtained these public records from the state Department of Public Safety, which gathers the documents for data-collection purposes.

Another driver later reported finding a body on the same road Tschetter had driven. The victim was identified as a 16-year-old boy.

Investigators connected Tschetter and his vehicle to the crash by the next day, according to the Pennington County Sheriff's Office.

Law enforcement found debris on the road with the semi's logo on it and the victim's DNA on the truck, the crash report says.

Tschetter told law enforcement he thought he hit a deer since he'd seen several of them along the road.

However, a video recording from the semi confirmed that Tschetter hit the victim in the roadway, according to Pennington County State's Attorney Mark Vargo.

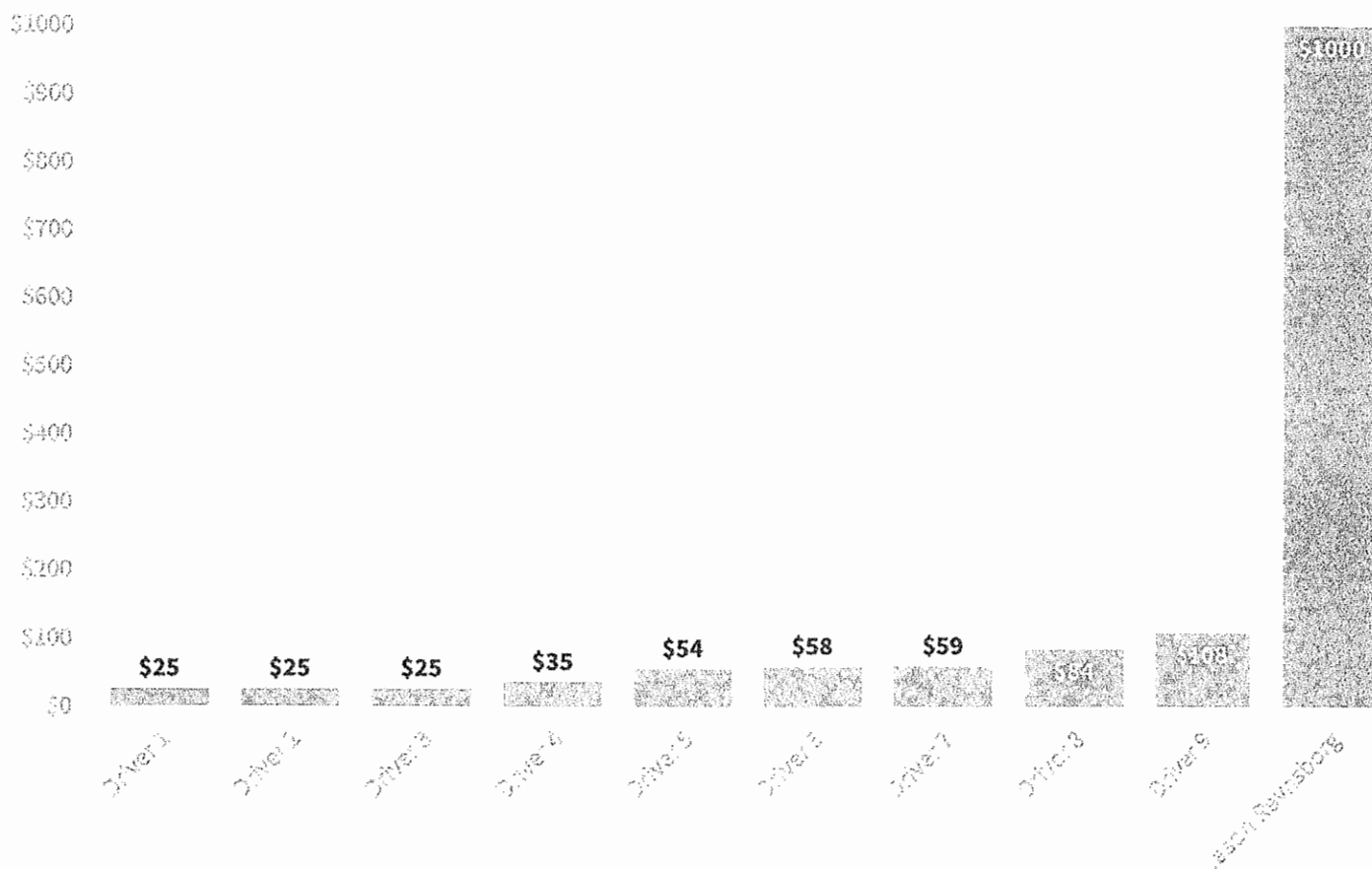
Vargo said a felony hit-and-run charge would only be possible if there was proof Tschetter knew he hit a person and fled the scene.

But he said Tschetter's vision may have been compromised due to the dark and whiteout conditions. The crash report also notes that the victim was intoxicated.

Tschetter paid a \$54 fine after pleading guilty to careless driving, a Class 2 misdemeanor.

Fines for legally sober drivers convicted after accidentally killing pedestrians

From 2016 through 2020 in South Dakota



Source: DPS data, court records, crash reports.

Note: Data excludes crashes in tribal jurisdictions and charges related to insurance+driver's licenses.



SDPB was not able to reach Tschetter or the victim's family.

Tschetter's case is one of a number of fatal crashes where drivers accidentally hit pedestrians walking or lying in a roadway, sometimes in the dark.

One incident involved two different drivers who hit the same pedestrian walking on an interstate exit at night. Others involved pedestrians darting across a street.

But at least five of the 31 pedestrian victims were killed while using a crosswalk.

A crash report says a trucker accidentally hit and killed a man using a wheelchair in a crosswalk during the daytime. The driver was cited for failing to yield to a pedestrian, which is a petty offense.

The prosecutor told SDPB he didn't file a more serious charge because the trucker couldn't see the pedestrian due to the height of his semi and an adjacent vehicle obstructing the view.

Other crashes involve unique circumstances, such as a driver who hit a pedestrian that he said lunged in front of his semi near a construction zone on a highway.

In another accident, a trucker hit and killed two pedestrians after he jackknifed on an icy road.

Both victims were standing outside their cars after one crashed and the other stopped to help.

In yet another crash, a woman did not call authorities when she hit her husband. Police say the husband was trying to prevent his wife and children from fleeing a domestic violence situation. The husband died from the impact and the woman was not charged with any crime.

The state's attorney did not respond to SDPB messages asking how her office determined the fatality was an accident.

When sheriffs respond

Jason Ravnsborg called 911 after his accident, and the operator dispatched Hyde County Sheriff Mike Volek to the crash site, about half a mile from Volek's house. Volek died in November 2021.

The attorney general and Volek said they walked along the road to see if they could find a deer. Investigators said data from Ravnsborg's phone show he turned on the phone light and walked close to Boever's body.

Ravnsborg's car was totaled, so Volek offered his personal vehicle so the attorney general could drive home to Pierre.

The next morning, Ravnsborg drove Volek's car back to Highmore. Tim Bormann, Ravnsborg's chief of staff, followed in his own car so he could give Ravnsborg a ride home.

The attorney general said he stopped at the crash site again to search for a deer. That's when Ravnsborg says he found Boever's body.

Investigators said the body was in a grassy ditch no more than 3 feet from the shoulder of the highway. They also found Boever's small, illuminated flashlight.

Instead of calling 911, Ravnsborg and Bormann drove to Volek's house to report what they'd found.

Volek reported the incident to the Highway Patrol and Division of Criminal Investigation. The Highway Patrol is part of the Department of Public Safety, while DCI is part of the Attorney General's Office.

Volek then allowed Bormann and Ravnsborg to return to Pierre without further questioning, Bormann said.

"It didn't seem like normal operating procedure," Bormann said. "But I've also never been a sheriff. So, I wasn't about to second-guess how he was going to handle things."

Bormann made his comments to the special House committee that investigated whether to impeach Ravnsborg.

Some South Dakotans have questioned whether Ravnsborg received special treatment.

"I think it's easy to imagine that some people would think that's like a good old boy

network, or you know special treatment for insiders,” Jackson County Sheriff Matt Haugen said of Volek loaning his car to Ravnsborg.

But it’s not unheard of for rural sheriffs to do favors for their constituents, said Haugen, who oversees a county with fewer than 3,000 residents. He pointed to a former sheriff who once let a stranded driver heading to a funeral borrow his personal car.



Arielle Zionts / SDPB

Sheriff Matt Haugen and one other deputy oversee Jackson County, which has less than 3,000 residents spread across 1,871 square miles.

Like Sheriff Volek, Haugen has been called to the scene of a fatal pedestrian crash involving someone he knew.

Volunteer firefighter Dustin Enders accidentally hit and killed a child while driving in

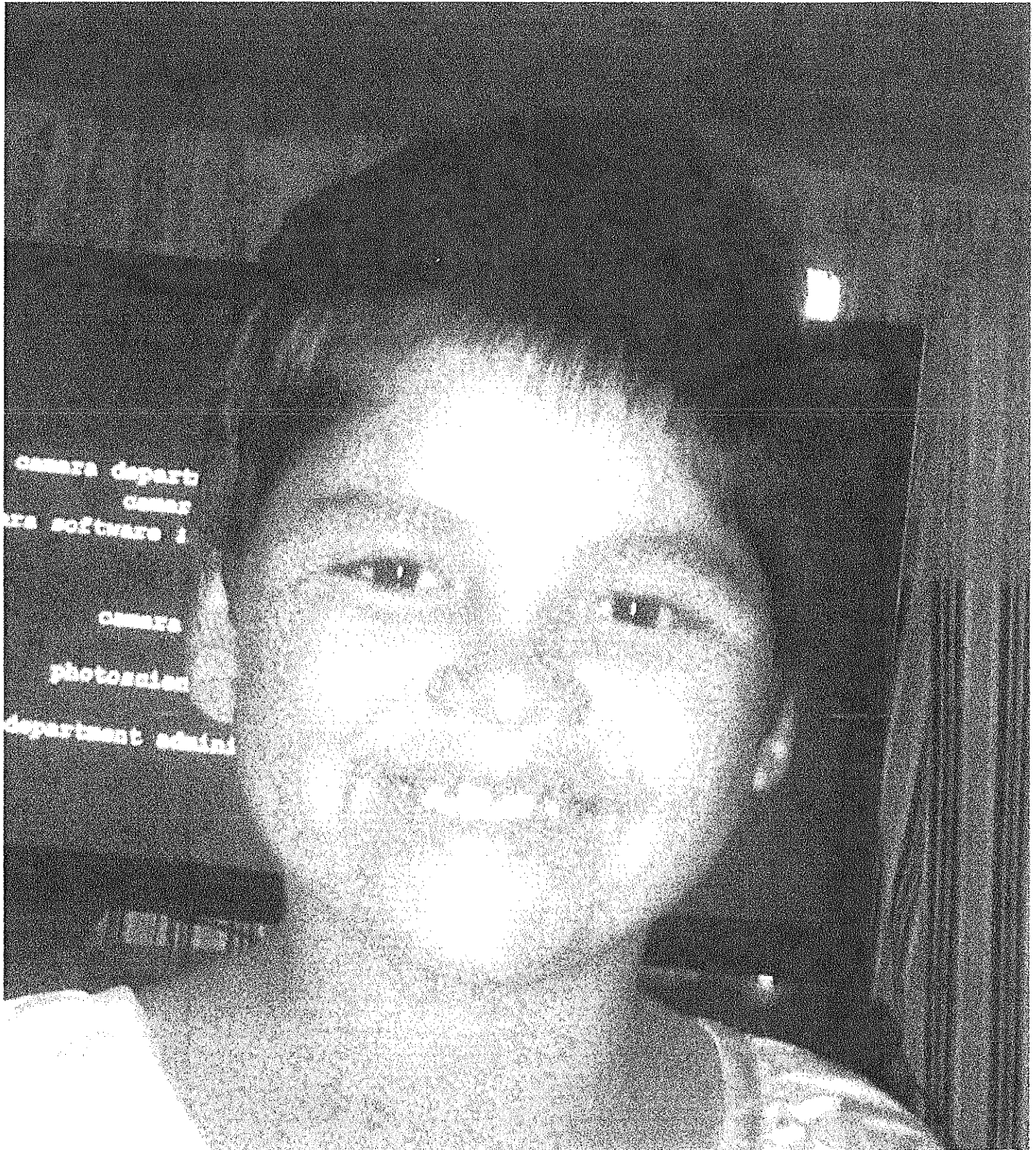
Kadoka in October 2019, according to the crash report.

The report said Enders was driving below the speed limit at night when he felt a thump. Enders later told law enforcement he didn't realize he'd hit anything, but did notice a group of children walking behind him.

A short time later, an emergency text to first responders told Enders a girl was bleeding on the side of the road he had been driving on.

Seven-year-old Margo Martinez died on the way to the hospital.

"Margo was a bright, smart, creative, loving, beautiful Lakota girl, and she had a heart of gold. She was her daddy's little girl," her aunt Danette Martinez told SDPB.



Danette Martinez

Margo Martinez, 7, died after being hit by a driver during a 2019 accident in Kadoka.

Like Ravnsborg did the morning after his crash, rather than calling 911, Enders directly called a law enforcement officer he knew, Deputy Jonathan Beck.

Beck took photos of Enders' car and collected a written statement and drug and alcohol tests as part of his crash report. He allowed Enders to drive home with instructions not to clean or use the vehicle, which was later taken into custody.

Danette Martinez and her son told SDPB that Margo was with a group of children walking on the shoulder of the road.

Martinez questions why law enforcement didn't interview the children even though she says the family reached out to offer information. She also questions why law enforcement initially allowed Enders to take his car home, and is upset Enders wasn't charged or fined.

"From the night of the accident when (law enforcement) told us that he's a good kid and he's a volunteer firefighter, in the back of my mind I knew it wasn't going to go further," Martinez said. "If the tables were turned and my brother hit his daughter, he probably would have been taken in."

Haugen said he didn't want to re-traumatize the children by asking what they remembered about the crash. He said he didn't receive messages from the family, but if he had, he would have agreed to arrange for interviews.

*Arielle Zions / SDPB*

Dakota Carpio stands next to the roadside memorial for his cousin Margo Martinez, who died after being hit by a car in Kadoka.

Daniel Van Gorp, the state's attorney for Jackson County, said he's prosecuted one of his bowling teammates and two former deputies.

"We don't give a pass to anybody just because of who they are, where they work, who they know or anything like that," he said.

But Van Gorp said there's no evidence Enders was distracted, speeding or driving on the shoulder. He said hit-and-run charges didn't apply because Enders reported the incident as soon as he realized what the bump he felt might have been.

Enders declined an interview request.

Ravnsborg investigation, charges

The investigation and evidence-collecting process for Ravnsborg's crash lasted more than five months.

"I've been involved in homicide cases that haven't been as thoroughly investigated," said Michael Moore, one of the attorneys who helped make the charging decision.

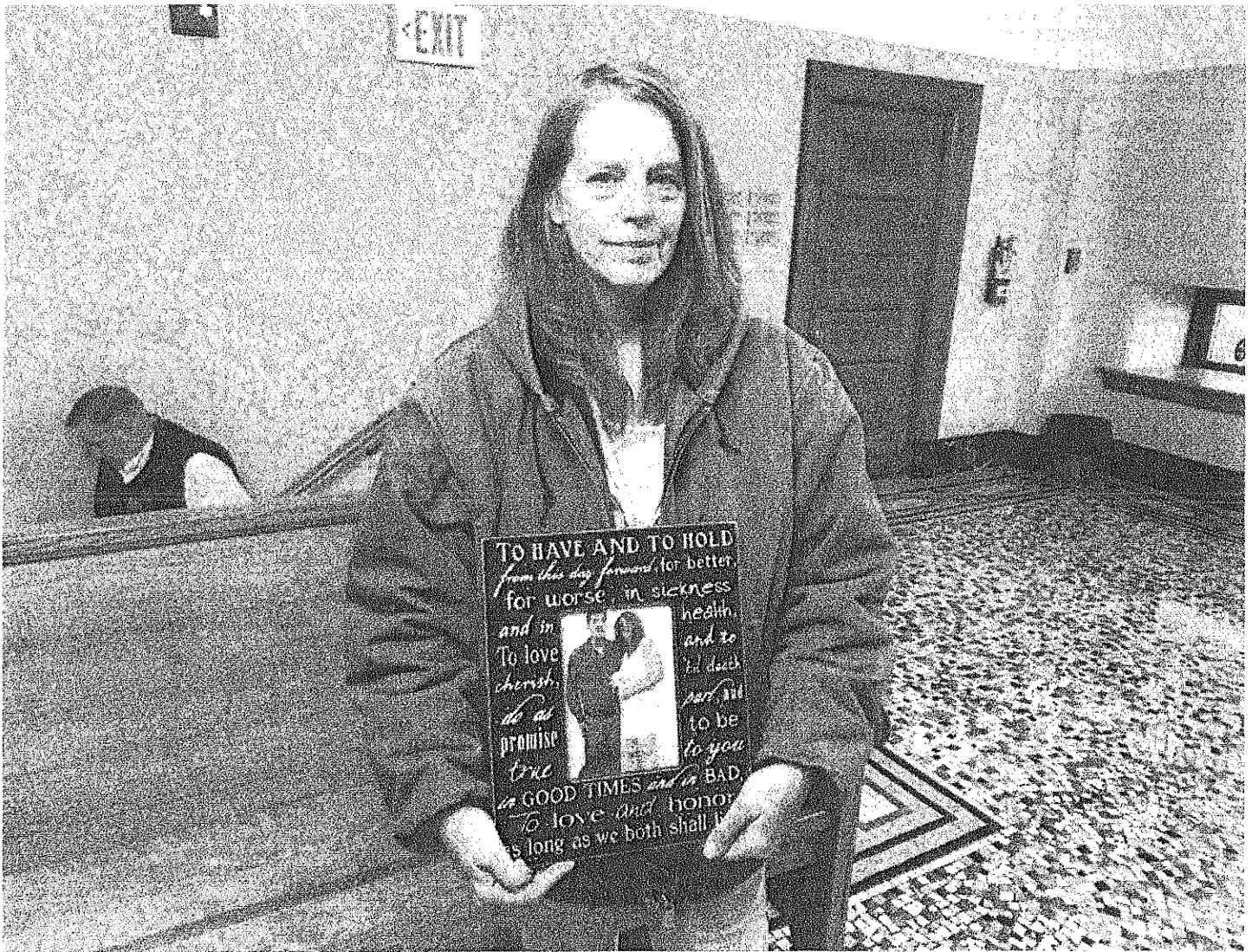
Department of Public Safety Secretary Craig Price and others critical of Ravnsborg and the outcome of the case said they were happy with the investigation.

The Highway Patrol, which is part of DPS, led the investigation. It also received help from North Dakota investigators and a third-party crash reconstructionist.

Investigators searched for surveillance cameras along the highway that captured Ravnsborg as he drove from Redfield until the crash near Highmore.

They interviewed people who attended the dinner, drivers who saw Boever walking on the shoulder before the crash, and people who spoke with Ravnsborg after the accident.

Law enforcement also searched and analyzed data from Ravnsborg's two phones and his vehicle. They conducted crash reconstructions and calculated when Ravnsborg's headlights would have illuminated Boever.



Lee Strubinger / SDPB

Jenny Boever holds a photo of herself and her late husband, Joe Boever, at the Capitol in Pierre.

Investigations into other fatal crashes don't usually involve all of those steps, Moore said.

Moore said most investigations don't use a third-party expert or search for surveillance footage. He said Ravensborg was interviewed more times than usual and his phone was analyzed with greater detail.

Emily Sovell, the deputy state's attorney in Hyde County, charged Ravensborg with three Class 2 misdemeanors: Careless driving, an illegal lane change and driving while using his phone.

The first two charges relate to Ravnsborg failing to see Boever and driving onto the shoulder.

The phone charge involved Ravnsborg using his work cell multiple times to read emails and visit political websites during his drive. However he stopped using the phone a few minutes before the crash.

READ: Neighboring states have harsher charging options for sober drivers who kill people

Some law enforcement officials said Ravnsborg violated more serious laws.

The North Dakota agents said they would have recommended Ravnsborg face a manslaughter charge if the crash occurred in their state. DPS Secretary Price said Ravnsborg's actions constituted second-degree manslaughter under South Dakota law.

Second-degree manslaughter can apply to various situations, including car accidents involving sober or intoxicated drivers. It requires a finding that the driver killed someone due to reckless driving.

Ravnsborg's prosecutors said they did not have evidence that the attorney general was reckless.

In South Dakota, a careless driver is defined as one who should realize, but doesn't, that their driving behavior is dangerous. A reckless driver is one who realizes they are driving dangerously and doesn't stop their risky behavior.

Distinguishing between carelessness and recklessness/second-degree manslaughter can be difficult, said Mark Vargo, Pennington County state's attorney.

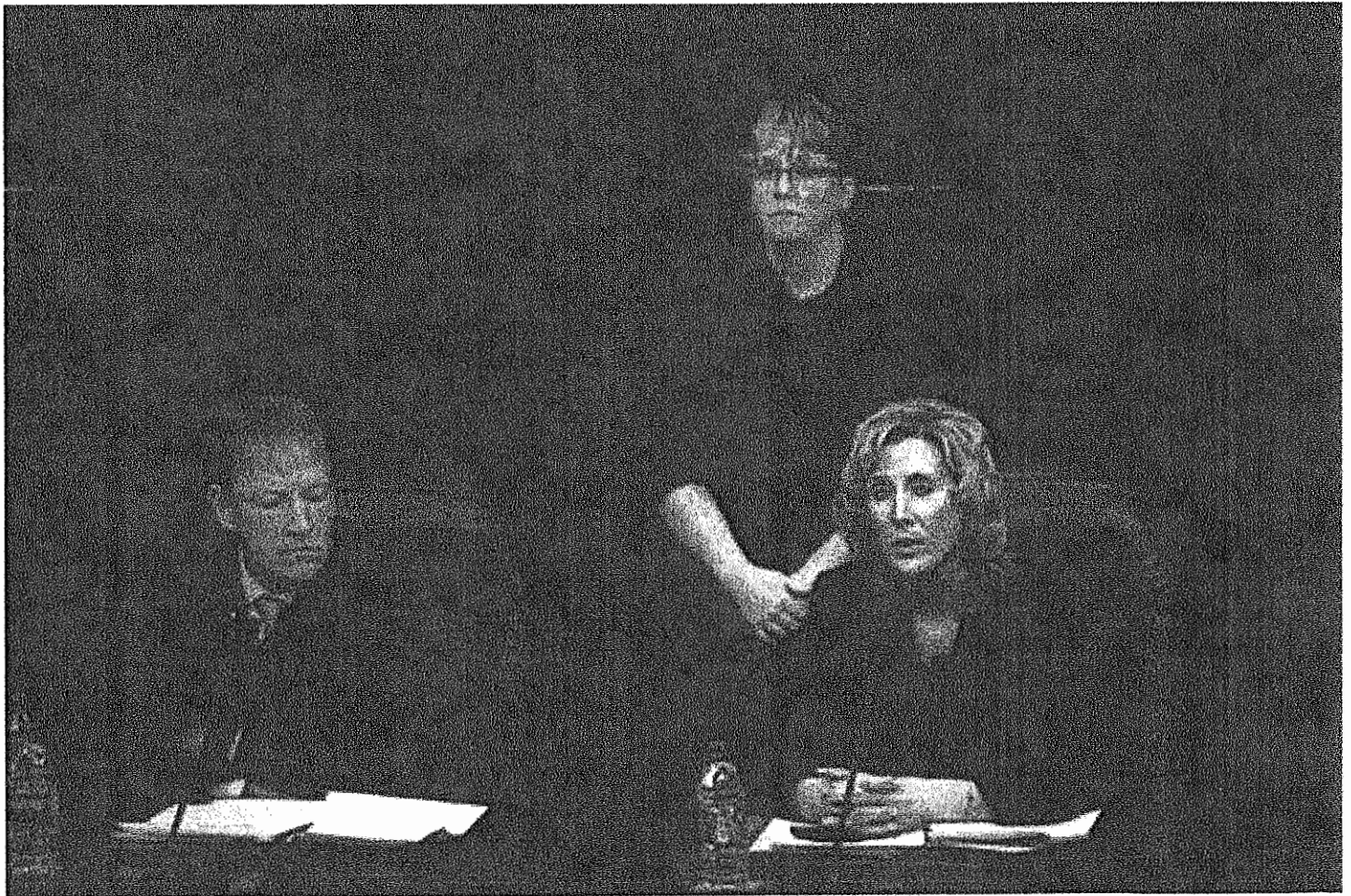
"All of these statutes where we kind of have gradations based on your mental state are some of the most difficult to charge out and most difficult to prove to a jury," Vargo said. "We're trying to figure out what was in the offender's head at the time and

immediately prior to the time of the charged offense.”

Vargo initially helped prosecutors analyze charging options in Ravnsborg's criminal case. He was recently selected to serve as a prosecutor in Ravnsborg's upcoming Senate trial, where he will argue that lawmakers should remove the attorney general from office.

Moore noted that while investigators said Ravnsborg entered the shoulder due to a distraction, they couldn't determine how he was distracted.

“Without them being able to determine why he was outside the lane, how can I say that he was reckless?” Moore told SDPB. “They don't know how long he was outside the lane, they don't know when he went outside the lane. All they said is that the impact happened outside the lane. Well, what was he doing? He wasn't texting.”



SDPB

Prosecutors Michael Moore and Emily Sovell announced the charges against Jason Ravnsborg in February 2021. Julie Paluch, American Sign Language interpreter, stands behind them.

Accidents, distractions, violations not always criminal

SDPB's investigation shows that drivers who are distracted, violate driving rules, or break laws may not face serious charges or any punishment after accidentally killing pedestrians.

Rebecca Egemo was driving home after midnight in October 2016 when she slowed down for three men walking in the middle of a Rapid City street.

Egemo witnessed another driver hit one of the men, who was stumbling on the edge of the road.

"The person was just kind of starting to stand but he was on all fours, but by then the (driver) wouldn't have been able to see him, and hit him so it was too late," she told SDPB.

"They weren't going fast in my mind," Egemo said of the driver. "They weren't driving carelessly or recklessly. They stopped right away. They did not leave the scene of the crime, they waited there. So, to me it was just a very, very unfortunate situation."

Mariah Todd, who was 23 at the time, told police she was looking at her speedometer just before she hit the pedestrian. The crash report said the victim was intoxicated.

Todd did not return an interview request and SDPB was not able to reach a relative of the victim.

Substance use in pedestrians killed by legally sober drivers From 2016 through 2020 in South Dakota

Sober or unknown Blood alcohol content of .08% or higher Drug, type not listed
Boever: Overmedicated amount of prescribed drug



Source: DPS data, court records, crash reports.

Note: Data excludes crashes in tribal jurisdictions.



Todd's case is an example of a driver who was momentarily distracted but not charged with any crime.

But other drivers with momentary distractions are charged.

One driver was charged with careless driving after she accidentally killed a pedestrian while reaching into her purse at night. But unlike Todd, this driver hit a man walking through a crosswalk.

Another driver, Gary Vandenberg, was driving during the daytime when he fatally hit Jerry Watkins in a Sturgis crosswalk in October 2019.

Watkins, 68, loved to attend the Open Bible Church, and serve as a volunteer, Rev. Reginald Lewis told SDPB. Watkins was likely hit while on his way to volunteer at the senior center, according to the crash report.

Vandenberg, who was 59 at the time of the accident, declined an interview with SDPB.

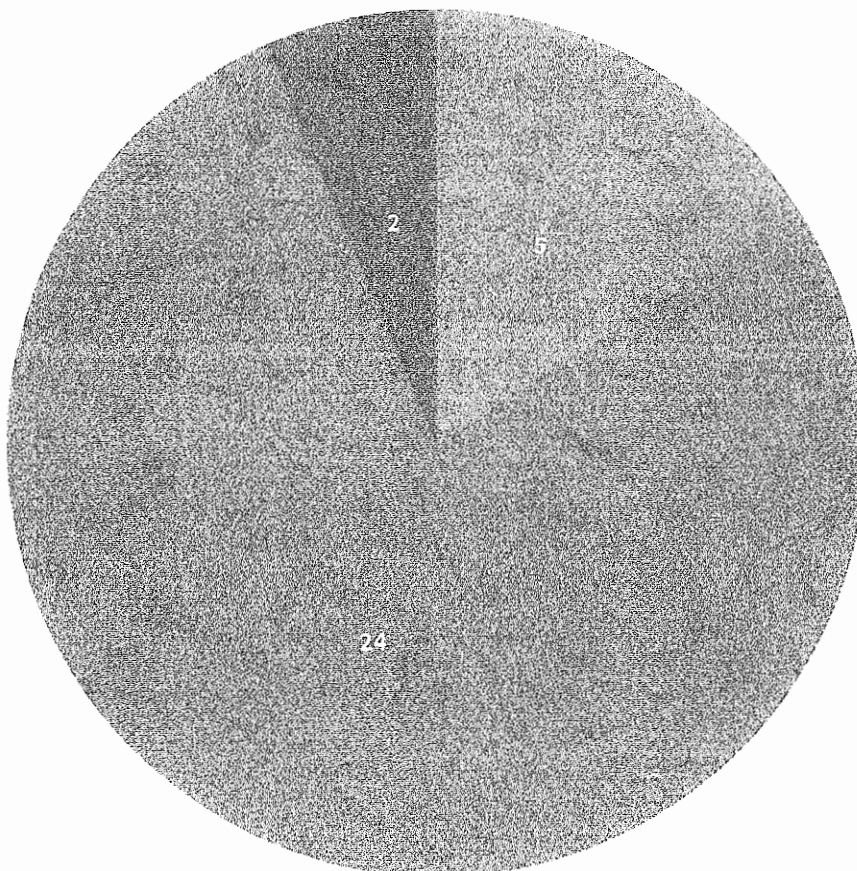
The crash report says Vandenberg told police he was driving slowly since he had just stopped at a stop sign. Vandenberg said he didn't see Watkins but stopped once he heard that he'd hit something and saw a hat on his windshield.

His car had snow and ice on its hood and windshield, which Vandenberg told police might have blocked his view.

Vandenberg paid a \$25 fine after police cited him for the obstructed windshield, a petty offense.

Crosswalk use among pedestrians killed by legally sober drivers From 2016 through 2020 in South Dakota

Hit while using crosswalk Hit while outside of a crosswalk Unclear location



Source: DPS data, court records, crash reports, police spokespeople.

Note: Data excludes crashes in tribal jurisdictions.



Meade County State's Attorney Michele Bordewyk said she reviewed the case after Watkins' family asked her to and investigated whether she could charge Vandenberg with careless driving.

There's no evidence Vandenberg was speeding, Bordewyk told SDPB. She said a partially blocked windshield does not meet the definition of carelessness, especially because some of the snow and ice had melted before officers arrived. That made it unclear how much visibility issues contributed to the crash.

"I can't speculate. I need to be able to prove beyond a reasonable doubt," Bordewyk said.

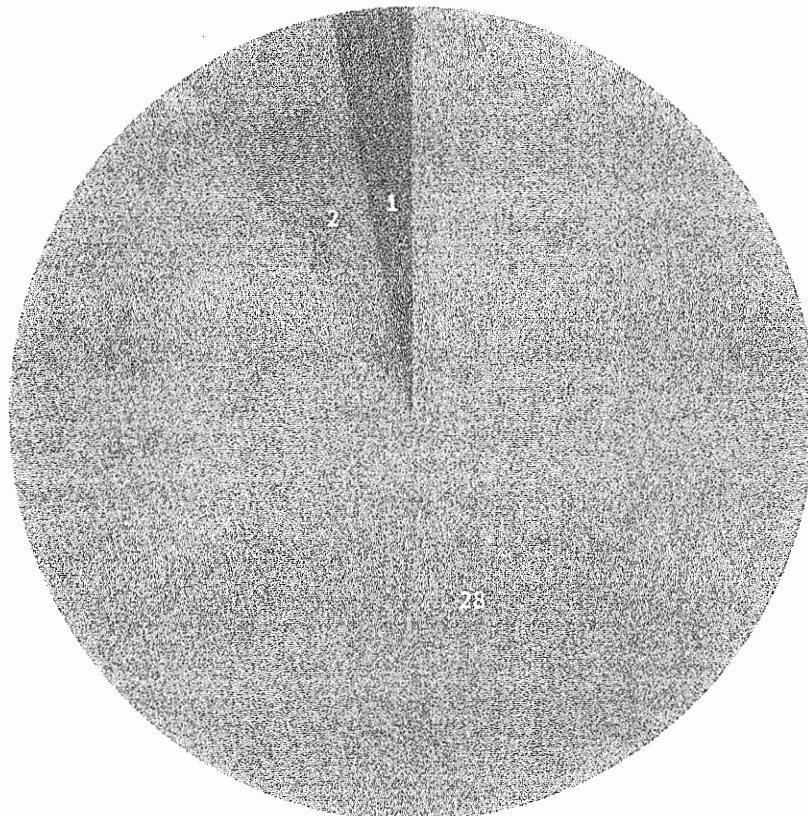
In another case, Corey Aga hit two toddlers during a February 2016 accident near Rapid City, according to a crash report. One of the children died.

Aga, who was 19 at the time, was estimated to be driving 12 miles-per-hour over the speed limit at night near a group of homes.

Speeding among legally sober drivers who accidentally killed pedestrians

From 2016 through 2020 in South Dakota

Not speeding Charged with speeding Speeding but not charged



Source: DPS data, court records, crash reports.

Note: Data excludes crashes in tribal jurisdictions.



Aga paid a \$59 fine after pleading guilty to speeding but was not charged with any crime for hitting the children.

The crash reconstruction found "it would be next to impossible" to see the children in time to stop, even if Aga had been going the speed limit.

Aga and the victim's mother declined to comment for this story.

Sentencing

Jason Ravnsborg pleaded no contest in August 2021 to making an illegal lane change and driving while using his phone.

A no contest plea is when a defendant consents to a conviction without personally admitting guilt.

Ravnsborg was facing 60 days in jail after prosecutors dropped the careless driving charge as part of a plea deal.

The judge ordered the attorney general to pay a \$1,000 fine and thousands more in court costs but did not impose any jail time.

The judge also wanted Ravnsborg to perform an annual community service event for the next five years but realized he couldn't require this under South Dakota law.

Ravnsborg was one of the 11 drivers cited or charged among the 31 drivers whose cases were examined by SDPB. He was the only one who faced three charges.

Ten of the drivers were convicted, and two of them were sentenced to jail. One sentence was for five days, the other was 30 days.

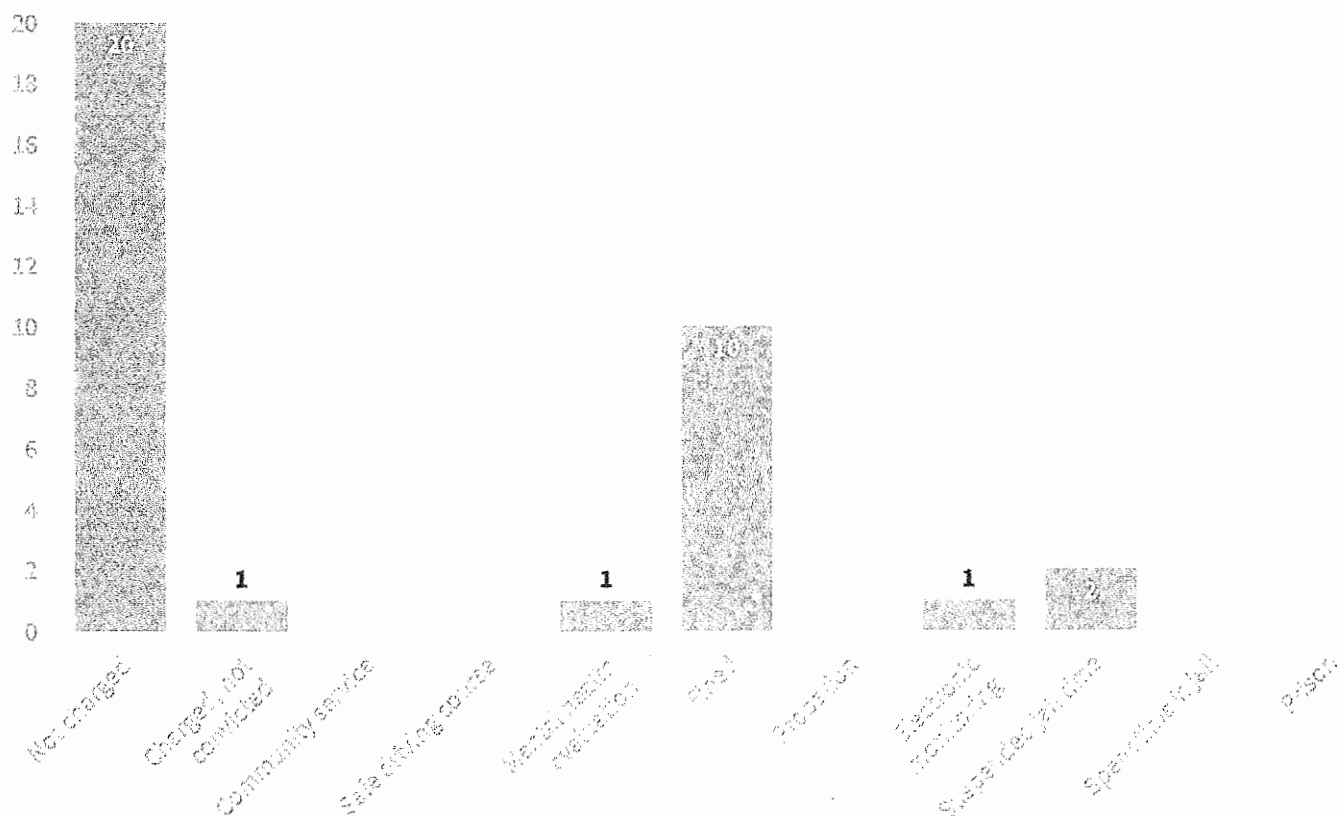
But those sentences were suspended, meaning the drivers would only go to jail if they broke another law or sentencing condition.

All 10 of the convicted drivers received a fine, but none were close to Ravnsborg's \$1,000 fine. The second-highest fine was \$108.

One of the drivers was ordered to complete a mental health screening and had her license suspended for 30 days. None of the drivers were sentenced to community service.

Sentencing outcome for legally sober drivers who accidentally killed pedestrians

2016 through 2020 in South Dakota



Source: DPS data, court records, crash reports.

Note: Data reflects multiple punishments for some drivers. Data excludes crashes in tribal jurisdictions and charges related to insurance+driver's licenses.



What's next

Some South Dakotans say the outcome of Jason Ravnsborg's crash shows the state needs harsher laws and punishments for drivers who accidentally kill pedestrians.

Ian Reagan, who researches distracted driving at the Insurance Institute for Highway Safety, is skeptical that would make a difference.

"There's sort of mixed results about harsh penalties," Reagan said. "The wealth of the evidence suggests that the perceived likelihood that you're going to get pulled over is a much more robust sort of effect on behavior than the severity of the punishment."

Local data support Reagan's skepticism.

All of South Dakota's neighboring states have harsher charging options for sober drivers who cause fatal accidents. But that doesn't always result in lower pedestrian fatalities.

South Dakota had an average of .87 pedestrian deaths per 100,000 people from 2016 through June 2020, according to data from the National Highway Traffic Safety Administration and the Governors Highway Safety Association.

That's higher than North Dakota, Minnesota, Iowa and Nebraska. But it's lower than the national average, Montana and Wyoming.

SDPB asked friends and loved ones of pedestrian victims about changes they want to see.

Many called for more awareness, and some called for harsher punishment.

But others said more severe punishment may not make a difference or be the only solution. They suggested alternative or additional ways to hold people accountable, through probation, community service and safe driving classes.

Michael Moore, who helped prosecute the Ravnsborg case, said while dangerous

driving and fatal crashes can't always be prevented, there's a way to ensure a rigorous investigation and fair outcome.

He said law enforcement officers should alert their state's attorney to review all fatal crashes, even if they don't think citations or charges are needed.

Moore's advice stems from his own experience.

He said a semi driver couldn't stop in time for a red light, so the trucker went through an intersection, killing another driver.

Six months later, law enforcement was still investigating the case and hadn't yet recommended any charges.

But family members of the victim contacted Moore, who looked into the accident. He learned the trucker knew his vehicle had only one working brake.

Moore charged the trucker and his father, who owned the semi, with second-degree manslaughter since they allegedly knew the vehicle was unsafe and ignored that danger.

The driver and his father faced 10 years in prison but the truck owner pleaded guilty and his son's charges were dropped as part of the plea deal.

The owner was sentenced to 90 days in jail, two years of probation and a \$5,000 fine.

"If the victim's family wouldn't have called, that case would probably never have been charged or investigated appropriately," Moore said.

Credits:

- *SDPB's Kate Smith, Seth Tupper and Cara Hetland helped edit this story.*
- *SDPB's Josh Haiar created art and assisted with charts.*
- *Investigative journalist Megan Luther provided data coaching for this story.*

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