
THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2019-33

NAUMAN HUSSAIN,

Defendant.

PLEA AGREEMENT

1. Subject to the approval of the Court, the People and the Defendant (the "parties") have reached an agreement for the disposition of this case.
2. Nauman Hussain will plead guilty under Counts 21 through 40 of the Indictment, each charging Criminally Negligent Homicide, in violation of Section 125.10 of the Penal Law, in full satisfaction of the Indictment. Mr. Hussain consents to the Court's acceptance of victim impact statements at the time of his plea proceeding, with the understanding that, pursuant to the Court's discretion, such statements may be made by any member of the family of a victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim. In addition, Mr. Hussain shall waive his right to appeal to the full extent he is able in accordance with the terms as more fully set out in paragraph 17 hereof, including but not limited to any issue relating to the Court's acceptance of victim impact statements.
3. Upon the entry of his guilty plea, Mr. Hussain shall be placed on two years interim probation, during which, as a special condition thereof and as part of a treatment plan, he shall perform a total of 1,000 hours of community service, within whichever county he may reside. Such community service must be approved by the Court and shall be completed in increments of 125 hours every three months. Mr. Hussain's community service may include participation in speaking events concerning the importance of compliance with commercial vehicle regulations.
4. Upon the successful completion of his two years interim probation, Mr. Hussain shall be sentenced to a term of five years probation, with credit received for the two years thus served on interim probation (resulting in a remaining period of three years probation to be served post-sentencing). Mr. Hussain shall pay full restitution to Schoharie County. Mr. Hussain shall pay a fine at the Court's discretion, and pay the mandatory surcharge unless restitution is paid in full prior to sentencing. Mr. Hussain shall submit his DNA and pay a DNA surcharge.

The following special conditions shall apply to Mr. Hussain's interim and post-sentencing

terms of probation:

- a. Mr. Hussain shall be prohibited from, directly or indirectly, owning, operating or working for any commercial transportation business.
 - b. Mr. Hussain's probation shall not terminate early.
5. Pursuant to Criminal Procedure Law § 370.25, upon judgment of conviction for the above-referenced felonies, Mr. Hussain shall immediately surrender any or all firearms, rifles, shotguns owned or possessed by him.
 6. Criminally Negligent Homicide is a Son of Sam specified crime. The Court will provide the defendant with written notice of reporting requirements, procedures and potential penalty for failure to comply with the Son of Sam Law pursuant to Criminal Procedure Law § 410.10(3).
 7. Criminally Negligent Homicide is a Class E felony for which a possible maximum indeterminate term of imprisonment of 1½ to 4 years may be imposed, pursuant to Penal Law § 70.00. The term on each such count in this case is required by law to run concurrently, pursuant to Penal Law § 70.25(2), as each offense is alleged to have been committed through the same omission. Consequently, Mr. Hussain's maximum sentencing exposure for Criminally Negligent Homicide remains the same irrespective of the number of counts of conviction. The possible maximum term of imprisonment that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is 1½ to 4 years.
 8. The possible least sentence that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is an unconditional discharge, pursuant to Penal Law §§ 60.01(3)(d) and 65.20(1). When a sentence of an unconditional discharge is imposed, a defendant does not receive imprisonment or probation pursuant to Penal Law § 65.20(2).
 9. The legal and factual justifications for the disposition of five years probation agreed upon herein are set forth below.
 10. The parties jointly submit:
 - a. The Defendant cannot be guilty of *both* Criminally Negligent Homicide and Manslaughter as a matter of law because Criminally Negligent Homicide requires the element of "criminal negligence," meaning that a person "*fails to perceive* a substantial and unjustifiable risk" of death (Penal Law § 15.05(4) (emphasis added), while Manslaughter requires the contradictory element of "recklessness," meaning that a person "*is aware of and consciously disregards* a substantial and unjustifiable risk" of death. (Penal Law § 15.05(3)) (emphasis added).

- b. The weight of the evidence supports Criminally Negligent Homicide, based on a defendant's failure to perceive a risk (in contrast to his conscious disregard thereof). Criminally Negligent Homicide is the appropriate offense for purposes of a disposition in light of facts developed during the parties' ongoing investigation in this case.
- c. The mechanical cause of the tragic crash on October 6, 2018, from which this case arises, was catastrophic brake failure to a 2001 Ford Excursion Stretch Limousine (the "2001 Ford Excursion"), operated by the Defendant. The insufficient maintenance of the 2001 Ford Excursion left the right rear brake not working, the left rear brake with reduced braking function and the front brakes with reduced braking function. The limousine had a burst of the rear crossover brake tubing (resulting in a loss of brake fluid), which caused the vehicle to rely solely upon front braking system components that were unable to disburse the extreme heat and caused the brake fluid to boil. The air in the closed brake system caused the brakes to stop working.
- d. The designed brake system of the 2001 Ford Excursion would have been adequate and capable of properly slowing/stopping the vehicle had the brake system components undergone requisite routine and systematic inspection and maintenance.
- e. Records from Mavis Discount Tire ("Mavis"), discovered by the People during its ongoing investigation following Mr. Hussain's arrest, revealed that Mr. Hussain brought the 2001 Ford Excursion to Mavis for mechanical service on the following dates: September 10, 2016 (right rear brakes); May 17, 2017 (piece of brake line replaced); June 9, 2017 (alternator); September 28, 2017 (oil change and tire pressure); January 25, 2018 (exhaust work); May 11, 2018 (brake work); June 8, 2018 (AC compressor/invoice brake flush); and June 25, 2018. The 2001 Ford Excursion Limousine had brake repairs on September 10, 2016; and May 17, 2017. The aforementioned records included a customer invoice that Mavis provided to Mr. Hussain on May 11, 2018, which memorialized Mr. Hussain's specific request of Mavis to "CHECK BRAKES," and included, among other things, the following description of parts and additional services provided:

FACTORY REBUILT CALIPER
LABOR – BRAKE CALIPER
BRAKE HOSE/LINE
LABOR – BRAKE HOSE
REAR BRAKE PADS
PROFESSIONAL BRAKE SERVICE LIFETIME WARRANTY ON PADS
LABOR BRAKE PADS
BRAKE MASTER CYLINDER
LABOR – BRAKE MASTER CYLINDER
BRAKE SYSTEM FLUSH
NYS SAFETY/EMISSION INSPECTION

- f. On September 17, 2019, the People interviewed Virgil Park, Mavis's store manager, who informed the People of his billing practice at Mavis in which certain services were substituted on invoices for the ones actually performed, thereby resulting in inaccurate information on invoices. Mr. Park also stated that while the May 11, 2018 invoice referenced above reflects that a "brake system flush" was performed (in order to remove the brake fluid from the 2001 Ford Excursion's brake system and replace it with new and clean brake fluid, thereby removing air, moisture, sludge and other contaminants that impair braking ability), in fact, the brakes were bled (so as to purge the braking system of air bubbles). The evidence shows that Mr. Hussain paid Mavis for certain brake services, but such services were not described or reflected accurately on the Mavis invoices.
- g. Notwithstanding the foregoing, the 2001 Ford Excursion was required to undergo a semi-annual bus inspection by a Department of Transportation ("DOT") inspector. The evidence shows that the Defendant did not subject the 2001 Ford Excursion to a DOT semi-annual bus inspection and instead used Mavis to inspect the vehicle.
- h. The evidence shows that had the 2001 Ford Excursion undergone the aforementioned semi-annual DOT bus inspection (*i.e.*, an inspection not performed by Mavis), the brake deficiencies resulting in the catastrophic brake failure would have been uncovered.
- i. The People submit that Mr. Hussain failed to perceive a substantial and unjustifiable risk of death relating to catastrophic brake failure arising from his decision to have the 2001 Ford Excursion's brakes inspected by Mavis rather than during the course of a DOT semi-annual bus inspection. The People submit that the DOT roadside inspection on September 4, 2018 was not a semi-annual DOT bus inspection that would have tested the brakes' stopping ability. The People further submit that the failure to properly maintain the brake system after being told additional brake work was required, created a substantial and unjustifiable risk of death relating to the catastrophic brake failure. The People submit that these risks were of such nature and degree that the failure to perceive these risks constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation, as required for a finding of criminal negligence (Penal Law § 15.05(4)).
- j. In response to the People's position set forth in paragraph 10(i), the Defendant has submitted throughout these proceedings that there exists evidence to the contrary, which includes proof that: (i) Mavis is a nationally renowned mechanic with approximately 500 fully equipped service centers in 13 states, (ii) Mavis manager Virgil Park told Mr. Hussain during a recorded exchange on May 11, 2018, "I'm the only place that works on twenty passenger limousines," (iii) the Defendant had a reasonable basis to believe that Mavis was capable of properly servicing the 2001 Ford Excursion and (iv) the DOT Specialist, after previously inspecting the 2001 Ford Excursion and issuing a violation for deficient brakes on March 21, 2018, performed

a follow-up inspection on the 2001 Ford Excursion on September 4, 2018 (only 32 days before the October 6, 2018 accident) and no longer observed any deficiency with respect to the brakes.¹ Accordingly, the Defendant, prior to reaching the disposition contained herein, has taken the position that: (i) his decision to have the vehicle serviced exclusively by Mavis does not constitute a gross deviation from the standard of care that a reasonable person would observe in the situation, and (ii) the proximate cause (*i.e.*, legal cause) of the 2001 Ford Excursion's catastrophic brake failure was Mavis's failure to properly service the vehicle.

- k. The National Transportation Safety Board issued a Highway Accident Report, dated September 29, 2020 ("NTSB Accident Report"), which documents apparent failures relating to the inspection of the 2001 Ford Excursion by third-parties. Specifically, page 63 of the NTSB Accident Report states:

Based on the questionable quality of the Mavis Discount Tire inspection and the fact that two inspection stations ignored NYSDMV policy and inspected the stretch limousine when they should not have done so, the NTSB concludes that the NYSDMV did not provide effective oversight of state inspection stations, allowing Mavis Discount Tire and Wilton Truck Center to perform inadequate inspections of the crash limousine that failed to detect serious safety deficiencies before the crash.

11. In light of the circumstances set forth above, the People and the Defendant recognize that neither party can assuredly predict the outcome of a prospective jury trial. Yet, both parties seek an assured resolution to guarantee finality in this highly emotional case, for the benefit of all touched by the tragedy at the center of it. The parties are also cognizant of the circumstances surrounding the Covid-19 pandemic that has caused an ongoing delay of trial and the release of many nonviolent criminals from incarceration. Furthermore, the parties acknowledge Mr. Hussain's compliance with the GPS ankle bracelet since April 11, 2019, and his compliance with the Schoharie County Department of Probation's pretrial services.
12. Additionally, the parties recognize that in the absence of this agreed upon plea, Mr. Hussain would maintain his Fifth Amendment privilege against self-incrimination throughout these proceedings unless and until a final judgment of conviction is entered, if at all, following a

¹Following the September 4, 2018 inspection, the DOT Specialist placed an out-of service sticker on the 2001 Ford Excursion for three violations, relating to a dangling ABS line, a missing federal sticker, and emergency exits. While the People submit that the Defendant removed that sticker, both parties agree that the 2001 Ford Excursion was not placed out of service for defective brakes and that none of these violations was the proximate cause of the vehicle's catastrophic brake failure.

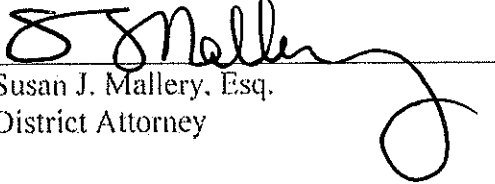
trial. In contrast, in accord with this plea agreement, Mr. Hussain shall forfeit such privilege, thereby subjecting him to civil testimony under oath concerning his conduct and interactions with, among others, Mavis. Moreover, Mr. Hussain's judgment of conviction and related plea allocution may be used in a civil litigation in order to advance the interests of any or all family members of the decedents involved therein. The parties understand that the recovery of civil damages may lessen the hardships endured by those aggrieved in this matter.

13. Based on the foregoing, the parties have reached the aforementioned agreement for the disposition of this case, subject to the approval of the Court.
14. Probation for a period of three, four or five years is authorized under Penal Law §§ 60.01(2)(a)(i) and 65.00 if (i) institutional confinement for the term authorized by law is or may not be necessary for the protection of the public, (ii) the Defendant is in need of guidance, training or other assistance which, in his case, can be administered through Probation supervision, and (iii) such disposition is not inconsistent with the ends of justice. Under Penal Law § 65.15, multiple periods of probation shall run concurrently.
15. The parties jointly submit that a disposition of probation for a period of five years is authorized and appropriate based on the considerations set forth in Penal Law §§ 60.01(2)(a)(i) and 65.00. First, institutional confinement is not necessary for the protection of the public, as the factual basis for the disposition would be an inadvertent omission (*i.e.*, criminal negligence) rather than a conscious affirmative act (*i.e.*, recklessness), the Defendant has a limited prior criminal history, and the Defendant has exhibited a respect for, and ability to follow, the law during the pendency of these proceedings, as evidenced by his full compliance with bail conditions, which have included the imposition of restricted travel, his regular in-person reporting with the Schoharie County Department of Probation's pretrial services (on a weekly basis until the start of the pandemic and continued bi-weekly basis thereafter), and electronic monitoring since April 11, 2019. Second, the Defendant would benefit from special conditions administered through Probation supervision. Third, the disposition would serve the ends of justice for compelling reasons, including the mitigating facts and circumstances set forth above, the desire for an expeditious and final resolution of these proceedings (*i.e.*, thereby avoiding the emotional toll of a trial and potential appeals), and the fact that the Defendant's liberty will have already been, by the time of the Defendant's plea, meaningfully restricted by travel prohibitions and electronic monitoring for over two years.²

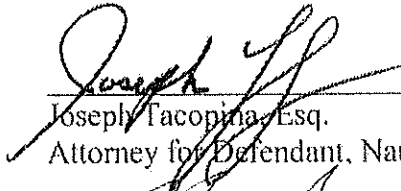
²A sentence of five years probation is further appropriate given that Penal Law §§ 60.01(3)(d) and 65.20(1) authorize the Court to sentence the Defendant to an unconditional discharge based on the agreed upon disposition, if the Court is of the opinion that no proper purpose would be served by imposing any condition upon the Defendant's release. The parties submit that a sentence of five years probation would serve a proper purpose, in accord with Penal Law §§ 60.01(2)(a)(i) and 65.00, for the reasons detailed herein.

16. The People agree that the Schoharie County District Attorney's Office will not pursue any further criminal actions against the Defendant in connection with the 2001 Ford Excursion's accident on October 6, 2018.
17. The Defendant agrees that he will not appeal or otherwise challenge collaterally his conviction and/or sentence in this case if effected in accordance with the disposition contained herein.

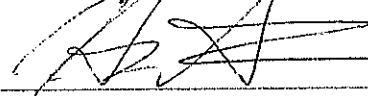
Dated: September 1, 2021



Susan J. Mallery, Esq.
District Attorney



Joseph Tacopina, Esq.
Attorney for Defendant, Nauman Hussain



Nauman Hussain, Defendant