

IN THE TWENTIETH JUDICIAL CIRCUIT COURT  
FRANKLIN COUNTY, STATE OF MISSOURI

STATE OF MISSOURI, )  
 )  
Plaintiff, )  
 ) Cause Number: 22AB-CR00503-01  
v. )  
 ) Division: TWO (2)  
EMILY E. HERNANDEZ, )  
 )  
Defendant. )

DEFENDANT'S SENTENCING MEMORANDUM

Emily Hernandez comes before this Court for sentencing having pleaded guilty on November 5, 2024, to the felony offenses of Driving While Intoxicated (DWI) - Causing Death of Another Not a Passenger, a Class B Felony, in violation of Section 577.010.2(6)(c) of the Missouri Revised Statutes (RSMo.), and Driving While Intoxicated (DWI) - Causing Serious Physical Injury to Another, a Class D Felony, in violation of Section 577.010.2(4)(c), RSMo.

Introduction

Pursuant to Section 577.010 RSMo., the offense of Driving While Intoxicated (DWI) is classified as follows:

(4) A class D felony if:

\* \* \* \*

(c) While driving while intoxicated, the defendant acts with criminal negligence to cause serious physical injury to another person[;]

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(6) A class B felony if:

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(c) While driving while intoxicated, the defendant acts with criminal negligence to cause the death of any person who is not a passenger in the vehicle operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined in section 301.010, or the highway's right-of-way[;]

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Emily was charged by Complaint on March 24, 2022. She immediately surrendered to authorities to be booked and processed. She was subsequently released on pre-trial bond set at \$250,000 with several conditions. The conditions required that she obey all laws, refrain from consuming alcohol, and have a Secure Continuous Remote Alcohol Monitor (SCRAM) with the Global Positioning System (GPS) function ankle bracelet activated. Emily was released from custody on April 4, 2022. From the outset, Emily expressed a desire to accept the consequences of her actions. Legal counsel respectfully requests that this Honorable Court impose sentences consistent with what is set forth below.

**Background and Characteristics of Emily Elyse Hernandez**

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Emily Elyse Hernandez is a twenty-four (24) year old woman who resides with her parents in Sullivan, Missouri and works on a local farm. She is a kind, gentle and quiet young girl who participated in several sports at Sullivan High School. Her youth was idyllic. She was a member of the high school science club and a member of the student council. She was a volunteer and served as a mentor with the Special Olympics. She was also very active in the high school Interact Club - an organization that helps

with community charities by spending time at nursing homes, rotary clubs, and other community organizations. After graduating from high school she earned an Associate's degree from East Central College. Despite the mistakes she has made, she still hopes to further her education and get a job that allows her to serve her community. Prior to this event, Emily had no negative interactions with law enforcement and no criminal history.<sup>1</sup> In fact, Emily dreamed to become a police officer or paramedic to serve her community before this tragedy.

Perhaps most telling of her character (and there are several similar examples) is that after her arrest, a woman (S.B.)<sup>2</sup> in the local community contacted legal counsel by telephone and left a voicemail message offering to do anything she could to help Emily. In an emotional voicemail she talked of how kind Emily was to her son, a classmate with severe autism. It is difficult to expect members of the general public to speak in support of defendants charged in alcohol related traffic death cases in light of the harsh scrutiny that follows such a case. However, undersigned counsel spoke with (S.B.) shortly after she left the message. The concerned mother promptly called back and, again, fighting back tears, expressed how grateful she was for the genuine acts of kindness Emily showed her son over the years. She spoke of Emily dancing with her son at school dances when he had no friends, despite the snickering and remarks of the more

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1. Emily was previously charged as a participant in the events occurring at the United States Capitol on January 6, 2021. She pleaded guilty to one (1) count of Entering a Restricted Building (a misdemeanor). She received a thirty (30) day jail sentence and a period of probation. The case was concluded after Emily was involved in the fatal motor vehicle accident charged in this case.

On January 20, 2025 the President of the United States of America signed into law a proclamation which granted a full, complete, and unconditional pardon to all individuals convicted of offenses relating to events that occurred at or near the United States Capitol on January 6, 2021. The United States Attorney General has been directed to administer and effectuate the immediate issuance of certificates of pardon.

2. Because of the intense scrutiny that typically befalls those who speak out for individuals charged with alcohol related traffic fatality cases, and to protect the privacy of (S.B.)'s son, counsel has used only the initials in this public pleading.

popular girls. She spoke of Emily sharing her lunch and companionship with the young man during each lunch hour. She said Emily's true character showed through - that it was not just a one-time or periodic event, Emily was always kind and inclusive, and was there for (S.B.)'s son when no one else was. Many other friends and family have written letters of support for Emily and those letters are attached to this pleading (See, Defendant's Exhibits A through K attached hereto).

### **Circumstances of the Offenses**

Emily pleaded guilty to conduct set forth in the State's Indictment (filed on November 10, 2022) and which is described in the Missouri State Highway Patrol's Probable Cause Statement and full accident reconstruction report. Specifically, on Wednesday, January 5, 2022, Emily was driving a motor vehicle which was traveling the wrong direction on eastbound Interstate 44 at or near mile marker 236.4 in Franklin County, Missouri. Emily's vehicle collided with an eastbound vehicle occupied by Ryan and Victoria Wilson. Ryan Wilson was the driver. His beloved wife, Victoria Wilson, was the vehicle passenger. As a result of the collision, Victoria Wilson succumbed to her injuries. Ryan Wilson sustained a disabling injury to his right foot. Emily suffered multiple injuries including severe head trauma. While being treated for her injuries at a hospital in St. Louis County, Missouri, a search warrant was obtained by the Missouri State Highway Patrol (MSHP) and a sample of Emily's blood was taken. A certified toxicology report submitted by the Missouri State Highway Patrol (MSHP) Crime Laboratory Division indicated that Emily's blood alcohol content (BAC) was recorded as being 0.125 mg/dl. No other controlled substances were found to be present in her bloodstream.

**A 120-Day Sentence Pursuant to Section 559.115, RSMo., or the Statutory Minimum Sentence of Imprisonment with full Credit for Time Defendant Has Served on Electronic Monitoring Pursuant to Section 221.025, RSMo., Would Be Appropriate in this Case**

Emily's emotional make-up will forever contain feelings of remorse, grief, sadness and shame. During her interview for the private sentencing assessment report with probation officer Leland Smith, Emily readily came to terms with the fact that she "took someone's life". Speaking about remorse specifically, she stated that "I live with that shame every day. Right after it happened and I was home from the hospital, I was in my bed and realized I changed these people's lives forever. I feel like it should not have been her, it should have been me. She had a family and I was lost at the time. I couldn't leave my house for three months because of the shame. It is still hard for me to go out in public." Mr. Smith noted that as he spoke to Emily about remorse for the present offense she became emotional. He wrote in his report that he held the opinion that her remorse was deep and genuine. Remorse involves insight into what a person has done to others. Experts in the subject matter of remorse opine that it is the beginning of becoming aware of how one behaves and wanting to do something differently. It is a real breakthrough when a person can begin to experience genuine remorse for what they have done.

Feelings of profound regret often accompany remorse. Feeling regret--the regret that can be worked through and lead to remorse--is the strongest sign of a life meaningfully lived and of a healthy mind. Conversely, if one feels regret without a sense of deep remorse, it leads to the very difficult cycle of continuing to do something destructive without insight, causing damage to family and friends. Regret and remorse are often extremely painful. They can also be a gift in that they can be

the doorway to a better way of living. When asked by Probation Officer Leland Smith what she would say to the victims of the present offense, Emily stated, "I'm sorry for everything and especially to put you through all of this. I'll live with the shame for the rest of my life. I pray for them and I pray for forgiveness. I'm not going to live life like I lived before." Leading up to the tragic events of January 5, 2022, Emily certainly lived a meaningful and well-intentioned life. She always had, and continues to have, good intentions for everyone and has always wanted the best for people around her.

While it is extraordinarily difficult to attempt to reconcile a person's well-intentioned life with a tragedy such as the one that took place here, the State legislature made sure to offer several options in order to aid the decision-maker. In judicial sentencing, "the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly." See, Section 557.036.1 RSMo. The sentencing court has a duty to undertake a case-by-case, defendant-by-defendant, evaluation in determining an appropriate punishment fashioned to both the crime and the criminal. See, State v. Lindsay, 996 S.W.2d 577, 579-80 (Mo. App. W.D. 1999). The trial court's experience and expertise enable the judge to consider appropriate sentencing factors and to disregard improper matters. Lindsay, 996 S.W.2d at 579.

Section 559.115, RSMo., reads in relevant part as follows:

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3. The court may recommend placement of an offender in a department of corrections one hundred twenty-day program under this subsection. The department of

corrections shall assess each offender to determine the appropriate one hundred twenty-day program in which to place the offender, which may include placement in the structured cognitive behavioral intervention program or institutional treatment program. The placement of an offender in the structured cognitive behavioral intervention program or institutional treatment program shall be at the sole discretion of the department based on the assessment of the offender and available bed space. When the court recommends and receives placement of an offender in a department of corrections one hundred twenty-day program, the offender shall be released on probation if the department of corrections determines that the offender has successfully completed the program except as follows. Upon successful completion of a program under this subsection, the division of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. The court shall follow the recommendation of the department unless the court determines that probation is not appropriate. If the court determines that probation is not appropriate, the court may order the execution of the offender's sentence only after conducting a hearing on the matter within ninety to one hundred twenty days from the date the offender was delivered to the department of corrections. If the department determines the offender has not successfully completed a one hundred twenty-day program under this subsection, the division of probation and parole shall advise the prosecuting attorney and the sentencing court of the defendant's unsuccessful program exit and the defendant shall be removed from the program. The department shall report on the offender's participation in the program and may provide recommendations for terms and conditions of an

offender's probation. The court shall then have the power to grant probation or order the execution of the offender's sentence.

4. If the court is advised that an offender is not eligible for placement in a one hundred twenty-day program under subsection 3 of this section, the court shall consider other authorized dispositions. If the department of corrections one hundred twenty-day program under subsection 3 of this section is full, the court may place the offender in a private program approved by the department of corrections or the court, the expenses of such program to be paid by the offender, or in an available program offered by another organization. If the offender is convicted of a class C, class D, or class E nonviolent felony, the court may order probation while awaiting appointment to treatment.

\* \* \* \*

This Court may accomplish many specific goals relating to sentencing by imposing a sentence pursuant to Section 559.115, RSMo., in this case. First, there is certainly accountability and punishment. A one hundred twenty (120)-day jail sentence must be served in the custody of the Missouri Department of Corrections or if a term of "shock" incarceration is ordered, the Franklin County jail. Second, a sentence of years may be imposed for a period allowed by law. Third, the Defendant may be placed on a period of probation to last five (5) years after her release from custody. In this case, a sentence by the Court could amount to a cumulative period of twenty-two (22) years if ordered upon, and after, a violation and revocation of the period of probation served by Defendant. In other words, if the Court were to impose such a sentence, every incentive is given to an offender to



successfully complete the full term of State-supervised probation and remain unwaveringly compliant. If a revocation of the probation term occurs, the Defendant would be subjected to the previously ordered sentence of imprisonment (an aggregate total of twenty-two (22) years in this case). This type of sentence creates a just punishment. Emily would indeed serve a period of jail time (120-days). Afterwards, she could then presumably be released on closely monitored State-supervised probation and made to comply with any directives issued by the Missouri Board of Probation and Parole (MBPP) or the Court. The term of probation, extending up to a length of five (5) years, would serve to maintain close oversight over her life and to make sure that no negative lapses in her behavior take place. It is an ideal sentencing structure. In fact, as this Court is well aware, it is a sentencing structure that has been used repeatedly by courts throughout the State of Missouri with regard to similar cases or other serious cases that demand a measure of punishment, and oversight. It also factors in a person's good character, willingness and ability to rehabilitate from past destructive behaviors. Evidence pertaining to a defendant's character must be a primary factor considered by the court in sentencing. State v. Ervin, 979 S.W.2d 149, 158 (Mo. banc 1998); See also, Mann v. State, 245 S.W.3d 897, 908 (Mo. App. S.D. 2008).

Section 557.036.1, RSMo., reads that "Upon a finding of guilt, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly."

Legal counsel implores this Court to consider each of the following while deciding a sentence in this case: (1) the nature and circumstances of the offenses and the history and

characteristics of Defendant; (2) the kinds of sentences available; (3) the desire to avoid unwarranted sentencing disparities; (4) that the sentences on each count reflect the seriousness of the offense and promote a respect for the law. In this case, a one hundred twenty (120)-day term of confinement followed by a period of probation with general and special conditions will meet each of the listed purposes of sentencing and would be appropriate given Emily's history and characteristics.

Emily is not a person that consumes or has ever consumed alcohol on a regular basis. Emily can most accurately be categorized as a young person that rarely drank alcohol. She has never used illicit controlled substances and has never exhibited traits associated with reckless or dangerous behavior. Emily was arrested within weeks of the fatal accident once the charges were filed against her. She has remained on restrictive pre-trial bond for a total of 1,031 days (over 2.8 years) without a single violation. She has been fully compliant. It is important to note that while more than two (2) years have passed since Emily was charged, she always maintained her desire to resolve the case by accepting responsibility and pleading guilty at the earliest juncture. It took the parties more time than she may have wanted to examine evidence and work out detail's attendant to a plea, but the delay had nothing to do with Emily's decision from the outset to plead guilty.

Ultimately, on November 5, 2024, Emily entered open pleas of guilty. The applicable range of punishment for each offense under Sections 558.011 and 558.002, RSMo., is a term of imprisonment not less than five (5) years and not to exceed fifteen (15) years for the Class B felony; and a term of imprisonment not to exceed seven (7) years and, or, a monetary fine of up to \$10,000.00 for the Class D felony offense. The

terms of imprisonment would be served in the State Department of Corrections. Both statutes authorize a term of probation up to a period of five (5) years. Emily would be subject to all special conditions the Court would deem appropriate as part of a probation sentence.

Emily has been trying to cope with the enormity of her actions and their consequences since the date of the accident. In the aftermath, she deleted her social media accounts due to the tremendous torrent of negative reactions. She received hate mail and threats which, especially for a twenty-four (24) year old (then twenty-one (21) year old) girl were, and are, very difficult to process. She underwent mental health treatment and counseling. After the accident she felt socially isolated. All the while she remained deeply remorseful. She is ashamed to be seen in public. She was vilified by members of the public and placed in fear by the vitriolic hate mail, phone calls and messages she received. Despite the emotional and mental toll this has taken on her, she pressed for ways to learn how to cope with stressful and worrisome situations much better. She engaged with Compass Behavioral Health Services and received valuable, necessary mental health counseling.

Our nation's courts as well as legal scholars recognize that the purposes of sentencing include punishment, rehabilitation, deterrence, and at times, incapacitation. In this case, there is no need for incapacitation or outright rehabilitation. Emily's likelihood of recidivism is very low if not non-existent. The Missouri Department of Corrections, Board of Probation and Parole Sentencing Assessment Report (SAR) submitted to the Court and written by State Probation and Parole Officer Clay S. Gardner confirms this. The report cites that Emily has a limited criminal history and that there are no known barriers which exist for her to continue on a positive path. The report lists community

strategies which comprise a part of the Court's sentence. The community strategies suggest that she not consume alcohol nor enter any establishment where alcohol is the primary item for sale. Also, that she complete a substance use assessment as directed by the Missouri Board of Probation and Parole and abide by all treatment recommendations. Most notably, the Sentencing Assessment Report (SAR) states that there are no institutional recommendations and that Emily scores at the lowest risk level on the Ohio risk evaluation tool used by the State Board of Probation and Parole to determine an offender's suitability for residing safely in society. All of this along with her penitent nature provide assurance to the Court that she will do so much good in her life moving forward if given the chance. In fact, she once told legal counsel and separately probation officer Leland Smith that "If I didn't have some punishment [for this], I couldn't live with myself." She has expressed genuine remorse and contrition, she turned herself in immediately when charged. She always showed a desire to plead guilty and did so as soon as possible. Emily frequently voiced to legal counsel that she wished to avoid a trial which would have further prolonged the case not for her own benefit, but because she was adamantly opposed to anything that would cause more pain or emotional distress to Ryan Wilson and Ryan and Victoria Wilson's family and friends. Her acceptance of responsibility is without reservation. In over two decades of practicing criminal law, legal counsel has never experienced an individual make such a statement. To say that it is poignant, genuine and heartfelt would truly be an understatement. This one statement, perhaps more than any other, describes the type of soul that Emily Hernandez possesses.

The goal of deterrence has been, and will continue to be, served in this case by the consequences that have damaged the lives of all involved. The national and local media have made

available the details of Emily's case with the touch of a button. The public will be deterred by penalties meted out against those who continue to irresponsibly drive impaired and the negative publicity and collateral consequences that come with a conviction for such conduct. Those who would not be deterred by these consequences are likely not capable of being deterred. A period of probation constitutes strict punishment promoting deterrence as one's liberty interests are curtailed by travel restrictions, reporting obligations, and many significant limitations on one's personal freedoms.

Another factor to consider is that Emily accepted full, unconditional responsibility as early as her legal counsel permitted her to do so. While it is not appropriate to punish an individual for asserting their right to go to trial and to have the prosecution held to its burden of proof, there is a societal benefit when people who have done wrong acknowledge that wrongdoing in a public way without undue delay. This also has a deterrent effect on future wrongdoing and has a positive effect on others taking responsibility for their actions in a timely manner.

Additionally, counsel wishes to call attention to the need to avoid sentencing disparity in this case when compared to similar cases. Counsel understands that there is no scientific formula that will lead to sentencing uniformity for all cases. There can be no definitive sentence that addresses the unique facts and circumstances of each case. Sentences imposed in these types of cases vary from terms of probation to periods of incarceration and everything in between. While Emily's conduct was serious, a one hundred twenty (120)-day term of "shock" confinement followed by probation remain an appropriate resolution as it would not result in disparity.

In example, one particular case that comes to mind is that of a young Lincoln County, Missouri girl's impaired driving crash that took the lives of three (3) young people in February 2023. The case is that of Hailey Zenk adjudicated in St. Charles County Circuit Court. Ms. Zenk was charged with the Class B felony offense of Driving While Intoxicated (DWI)-Causing the Death of Two (2) of More Individuals. She was also charged with the Class D felony of Driving While Intoxicated (DWI)-Causing Serious Physical Injury to Another. It was reported that Zenk's blood alcohol content (BAC) was nearly twice the legal limit and she tested positive for the presence of benzodiazepines and cannabinoids in her blood during medical treatment after the crash. Hailey Zenk was nineteen (19) years of age at the time she was charged. After considering sentencing factors similar to the ones mentioned above and the Missouri Board of Probation and Parole's Sentencing Assessment Report (SAR), the Court imposed a ten (10) year prison sentence with regard to the Driving While Intoxicated (DWI)-Causing the Death of Two (2) of More Persons charge and a seven (7) year term of imprisonment for the charge of Driving While Intoxicated (DWI)-Causing Serious Physical Injury to Another charge. The Circuit Court ordered that both sentences run concurrently but, pursuant to Section 559.115, RSMo. The Court suspended the prison sentences and ordered that Zenk complete a one hundred twenty (120)-day term of "shock" confinement.

The facts of Zenk's case are far more egregious than those in the current case. First, Zenk is responsible for the deaths of three (3) young teenagers. She seriously injured a fourth. Her blood alcohol content (BAC) was exceedingly higher than Emily's. She drove recklessly on a secondary road at speeds of over eighty (80) miles-per-hour (mph) when the posted speed limit was restricted to thirty-five (35) miles-per-hour (mph). Even more,

she consumed vast amounts of illicit and powerful controlled substances on top of the alcohol she had already ingested. The story is unimaginably tragic. However, Hailey Zenk was given the sacred opportunity to rebuild her life without the burden of a long period of incarceration.

In Emily's case, she ingested no controlled substances. Her blood alcohol content (BAC), while still over the legal limit for intoxication, was not demonstrably high. Emily knows full-well that her offenses are ones that cannot be taken lightly. She knows that her conduct must be punished. The punishment must not only fit the crime but the person as well. The United States Supreme Court in its seminal decision in Gall v. United States, 552 U.S. 38 (2007), wanted to cement the notion that "A sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed merely as a means to dispense harsh punishment without taking into account the real conduct and [a defendant's] circumstances involved in sentencing." Further, if this Court reasons that these types of cases warrant long periods of incarceration because such sentences have sometimes been handed down by other Courts, counsel submits that those cases do not justify a sentence of extended incarceration for Emily given her age, her contrition, her lack of any violations while on pre-trial bond, her personal history and characteristics, and all of the other factors listed in this Memorandum. The Judge's rationale in the Zenk case confirms this belief.

In February 2023, the State provided defense counsel with a plea and sentencing offer. The State's recommendation was that Emily plead guilty to both counts and receive a sentence of twelve (12) years to serve in the State of Missouri Department of Corrections on Count One (I) and a concurrent seven (7) year term of imprisonment on Count Two (II). The kindest way one can describe the State's offer would be to call it "grossly

disproportionate" compared to the norms of common sense and fairness.

If this Court deems that a term of imprisonment in the Missouri Department of Corrections is just, legal counsel requests that the Court impose the statutory minimum sentence of imprisonment and afford Emily credit for all time she has served on electronic monitoring pursuant to Section 221.025, RSMo. The minimum sentence of imprisonment for a class B felony offense is a term of not less than five (5) years. The sentence for a class D felony offense has no minimum term of imprisonment. Therefore, the minimum statutory sentence which may be imposed by the court would amount to a five (5) year term of jail in the Missouri Department of Corrections. Moreover, under Section 221.025.2, RSMo., "A judge may, in his or her discretion, credit any such period of electronic monitoring against any period of confinement or incarceration ordered,..." The statute clearly gives authority to the sentencing court to allow credit for any period of electronic monitoring to be set-off against any period of confinement or incarceration which may be ordered.

After being placed on pre-trial bond on April 4, 2022, Emily has served a total of 1,031 days under a Court ordered electronic monitoring regimen. This amounts to two (2) years and eight (8) months. During this lengthy period of time, Emily has incurred absolutely no violations of pretrial bond. Most notably, Emily has not had a violation relating to use or consumption of alcohol, unauthorized travel or even one indicating a device tamper event. This point is made not in effort to reward Emily for doing the right thing while on pre-trial bond, but to draw attention to the most important factors in need of consideration when deciding whether to allow credit for a period of electronic monitoring. Undeniably, electronic monitoring has come with several sacrifices and restrictions which Emily has endured. She



has always not only remained compliant with the monitoring regimen, but never once complained of having to endure its hardships.

If the Court were to impose the minimum statutory term of imprisonment as set forth above, or any other term of imprisonment, there would be no justice in disallowing Emily full credit for the time she spent on the electronic monitoring program. Therefore, counsel respectfully requests that she be given full credit for the entire 1,031 days of electronic monitoring and that such credit be applied against any period of confinement or incarceration ordered by the Court. See, Section 221.025, RSMo.

**Conclusion**

In sum, this Court is faced with the task of imposing just and appropriate sentences on each charge given all of the factors involved. Defendant, **EMILY E. HERNANDEZ**, by and through legal counsel, respectfully requests that the Court consider a sentence pursuant to Section 559.115, RSMo., or, in the alternative, the minimum term of imprisonment allowable under Section 558.011, RSMo., with full credit being applied for Defendant's pre-trial bond supervision using electronic monitoring as allowed by Section 221.025, RSMo.

Respectfully Submitted,

**ETHAN B. CORLIJA**  
**ATTORNEY AT LAW**

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**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I, Ethan B. Corlija, Attorney for Defendant herein, **EMILY E. HERNANDEZ**, certify that a true and accurate copy of the forgoing Defendant's Sentencing Memorandum has been forwarded to counsel of record for the State of Missouri at the following address: Franklin County Prosecuting Attorney's Office, 15 South Church Street, Room 204, Union, Missouri 63084, this 24th day of January 2025.

/s/ Ethan B. Corlija