NO. 104220-5
COA NO. 58212-1-II
Superior Court NO. 21-1-00423-08

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ANNA-CHRISTIE IRELAND,

Petitioner.

ANSWER TO THE PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Eric H. Bentson, Chief Criminal Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS DECISION

This Court's decision in *State v. Nordby*, 106 Wn.2d 514, 723 P.2d 1117 (1986), was neither incorrect nor harmful. The Court of Appeals' decision applying this precedent was appropriate. Because Ireland fails to raise grounds for review under RAP 13.4(b), the Respondent respectfully requests this Court deny review of the decision in *State of Washington v. Anna-Christie Ireland*, Court of Appeals No. 58212-1-II.

III. ISSUES PRESENTED FOR REVIEW

(1) Has Ireland shown the Court of Appeals' decision in *Nordby* to be so problematic that it must be rejected despite the many benefits of adhering to precedent?

IV. STATEMENT OF THE CASE

On Saturday morning, April 24, 2021, Arthur Anderson was loading a vehicle onto his flatbed tow truck on the shoulder of northbound Interstate-Five ("I-5") near milepost 38. RP 193-197. This stretch of I-5 had three northbound lanes, was flat and level, and had a wide right shoulder. RP 428, 471-72. Anderson was standing behind his tow truck; the driver of the disabled vehicle, Travis Stoker, and his parents, Richard and Karen Stoker, were sitting in their Kia Sorento parked directly behind Anderson. RP 196-201. They planned to follow Anderson to the tow yard after he secured the vehicle. RP 198. Anderson's amber flashing lights were illuminated above his tow truck. RP 140.

Erich Uhlman was driving north from Portland, Oregon, headed towards Shelton, Washington, for an amateur auto race. RP 137. Uhlman was driving a Mazda minivan and was accompanied by his girlfriend and her son. RP 138. As Uhlman drove past Longview, visibility on the freeway was good. RP

138. Traffic was fairly spread out. RP 139. After coming out of a turn, Uhlman entered a stretch of straight, flat roadway. RP 139-40. The road was level, and Uhlman "could see up quite a ways." RP 140. Uhlman was traveling at around the speed limit of 70 MPH, driving in the right lane of travel. RP 140. Up ahead, Uhlman observed Anderson's amber flashing lights on the right shoulder. RP 140. Uhlman moved his minivan into the center lane, slowed his vehicle, and became less passive in his driving. RP 141-42. Uhlman's purpose in moving over was to give clearance to the vehicle and any person on the right shoulder. RP 142.

As Uhlman approached the amber lights, he observed a blue BMW, driven by Ireland, driving north in either the left or center lane.[1] RP 143. As he came closer, Uhlman observed Anderson's flatbed tow truck with a vehicle loaded onto it, and the Stokers' Sorento directly behind it. RP 143. Uhlman then

[1] The BMW was owned by Justin Huckleberry. RP 533.

observed Ireland change direction and drive directly toward the flashing lights. RP 143. The BMW did not drift, but actually changed its yaw and turned in a direction consistent with turning the steering wheel toward the lights. RP 144.

Ireland drove directly into the Stokers' Sorento. RP 145. Ireland did not brake or make any attempt to slow the BMW down. RP 145-46. The BMW went airborne and off the road onto the right shoulder, then rested in a ditch. RP 145, 431. Nothing on the road would have required a vehicle to alter its path. RP 146. To Uhlman, it appeared that Ireland had fixated on the lights of the tow truck as if they were a beacon, and proceeded to follow the lights, even though the tow truck was stopped. RP 148.

Detective Russell Haake of the Washington State Patrol's ("WSP") Major Accident Investigative Team arrived on scene and investigated the collision, strongly corroborating Uhlman's direct observations of the collision. RP 421-495. Haake noted that the lanes of travel approaching the collision scene were

straight and level. RP 428. The line of sight was clear, so that an approaching driver had a "good line of sight." RP 471. To the right was a "wide paved shoulder" that was sufficiently wide for a vehicle to pull off the roadway and park. RP 428, 471-72. There was a rumble strip between the right lane and the shoulder to alert a driver if drifting onto the shoulder. RP 429. Lines painted on the freeway were also in good condition at this location. RP 472. The emergency lights on the tow truck were activated and were visible to Uhlman and Ireland as they approached from the rear. RP 490.

Haake found no evidence that vehicle malfunction or environmental factors contributed to the collision. RP 492. Rather, the evidence showed the sole contributing factor to the collision was the driver of the BMW. RP 493. Using two different methods for estimating speed, Haake determined Ireland drove the BMW into the Kia Sorrento at an estimated speed of 77 to 88 miles per hour. RP 491. There was no indication of preimpact braking by Ireland, such as tire or

squeegee marks. RP 491-92. There was no indication of tactics employed by Ireland to avoid the collision. RP 491. The collision between Ireland and the Sorento was nearly perfectly "in-line." RP 452. Once on the shoulder, Ireland even corrected back toward the Sorrento by a slight angle of 2.6 degrees. RP 456-57.

Ireland's BMW struck the Sorento and forced it forward into Anderson, crushing him between the Sorento and his tow truck. RP 447. Anderson, Richard, and Karen all died as a result of the collision. CP 9-12, 17-18. In addition to losing both his parents, Travis suffered extensive injuries, including several rib and vertebra fractures, a right wrist injury requiring surgery, a fractured knee, and internal injuries to his intestines requiring an ostomy bag to defecate. CP 19-20; RP 203-07. Travis spent 31 days in the hospital. RP 204. He was unable to work for six months, has long term back pain, difficulty walking, and difficulty lifting items. RP 208.

Several different witnesses observed Ireland exhibiting signs of intoxication. The paramedic that responded to the scene and the emergency room doctor were able to distinguish these from head trauma.[2] RP 288, 331, 348-50. Ireland was confused and unable to remember what happened. RP 287, 334. She had delayed and slurred speech and appeared to be tired and drowsy. RP 290. She kept asking if her child was ok, despite no child having been in the BMW. RP 329. She did not know the date or time. RP 328. Ireland was extremely drowsy and fell asleep while speaking with a Drug Recognition Expert ("DRE"). RP 368-69. She exhibited six of six clues on the horizontal gaze nystagmus test. RP 382.

Her demeanor was consistent with intoxication from benzodiazepines, which are extremely addictive central nervous

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[2] Although Ireland was not exhibiting symptoms of a head injury, she did have a small subdural hematoma. RP 332. However, after this was referred to another hospital it was determined no further intervention was necessary, and she was released. RP 333.

system ("CNS") depressants that should never be taken with other benzodiazepines or with Suboxone. RP 319-20, 323, 331. The side effects of benzodiazepines include causing drowsiness, sleepiness, dizziness, disorientation, confusion, slower reaction time, difficulty maintaining focus, and difficulty performing divided attention activities, including the complex divided attention activity of driving. RP 409-10. Benzodiazepines are extremely addicting, are only intended for short term use, and refills should never be given. RP 322-23. Ireland admitted to taking Lorazepam—a benzodiazepine—and Suboxone prior to driving. RP 369.

During a blood draw, she told the trooper that because her doses had gotten smaller in the last month or two, she had to take more. RP 263. After the blood draw was conducted, Ireland's blood was sent to the WSP Toxicology Laboratory for testing. CP 14. Ireland's blood was found to contain Diazepam, Nordiazepam, Lorazepam and Oxazepam—all benzodiazepines. RP 401-02, 405-07.

Ireland's blood also contained Pseudoephedrine, Buprenorphine, Norbuprenorphine, and Naloxone. RP 402, 403. Buprenorphine is a psychoactive drug that can have opioid effects. RP 415. The trade name for buprenorphine is Suboxone. RP 415. Like benzodiazepines, buprenorphine can cause sedation, drowsiness, inability to maintain focus, and delayed reaction time. RP 416. Manufacturers specifically warn against taking Suboxone with CNS depressants. RP 417. Taking both together would add to the effects that impair a driver's ability to divide attention. RP 417.

Pursuant to a search warrant, a search of the BMW revealed Ireland to have been in possession of a large number of prescription pill bottles, where pills appeared to have been taken far in excess of the prescription. RP 535. Her prescription for Diazepam had been filled with 60 pills on April 6, 2021. RP 535-36. The instructions indicated one tablet should be taken if needed for anxiety, and that the pills "must last 30 days or longer." RP 536. No pills remained in the bottle. RP 536. Her

bottle of Lorazepam had been filled one day prior to the collision on April 23, 2021, with 240 pills. RP 536-537. Of the 240 pills, 170 were remaining. RP 537. The instructions on the bottle stated: "Take two tablets by mouth every 6 hours if needed for anxiety. Must last 30 days or longer." RP 537.

Both of these benzodiazepine prescriptions contained warnings that they may cause drowsiness and cautions regarding operating a motor vehicle. RP 536-37. Also located in the vehicle were 19 Suboxone packages. RP 540. Additional Suboxone strips were found in her wallet. RP 542-43.

Ireland was charged with three counts of vehicular homicide and one count of vehicular assault. CP 4-6. The State gave notice of intent to seek an exceptional sentence. CP 7. Ireland waived her right to a jury, and her case proceeded to trial. CP 8. Ireland was found guilty as charged. RP 720. On each crime, the court found she drove under the influence, in a reckless manner, and with disregard for the safety of others. RP 720.

Pursuant to *State v. Nordby*, 106 Wn.2d 514, 723 P.2d 1117 (1986), and *State v. Morris*, 87 Wn. App. 654, 943 P.2d 329 (1997), the court found beyond a reasonable doubt that Ireland knew or should have known each of the four victims on side of the freeway were especially vulnerable or incapable of resistance. RP 811; CP 37. Regarding the vehicular assault, the court found beyond a reasonable doubt that Travis' injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense. RP 721; CP 37. Based on these aggravating factors, the court found there were substantial and compelling reasons to sentence Ireland above her standard range of 146 to 194 months to a sentence of 240 months. RP 812; CP 37.

V. THIS COURT SHOULD DENY REVIEW BECAUSE THE PETITION FAILS TO RAISE GROUNDS UNDER RAP 13.4(B) AND FAILS TO SHOW PRIOR PRECEDENT RELIED UPON BY THE COURT OF APPEALS WAS INCORRECT AND HARMFUL.

Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Ireland's petition makes no attempt to raise grounds for relief under RAP 13.4(b). Rather, she argues the precedent from *Nordby* relied upon by the Court of Appeals is both incorrect and harmful. Ireland claims this prior decision of the Supreme Court gives courts unfettered discretion to find victims of vehicular homicide to be particularly vulnerable and results in exceptional sentences too frequently. Yet Ireland fails to consider that it was the legislature, rather than the courts, that gave authority to the courts to aggravate a sentence beyond the standard range when a victim is particularly vulnerable. Thus, resulting sentences have been contemplated by the legislature. Further, even if vehicular

homicide and vehicular assault more frequently involve particularly vulnerable victims than do other crimes, this does not make the result incorrect or harmful. When a victim is particularly vulnerable, an exceptional sentence is entirely appropriate. Because Ireland fails to raise grounds for review under RAP 13.4(b), review should not be granted.

A. IRELAND DOES NOT RAISE GROUNDS FOR REVIEW AND THIS COURT'S DECISION IN *NORDBY* IS NEITHER INCORRECT NOR HARMFUL.

Because the precedent of this Court relied upon by the Court of Appeals was not incorrect or harmful, review should not be granted. "We will abandon precedent only if it is clearly shown to be incorrect and harmful." *State v. Glasmann*, 183 Wn.2d 117, 124, 349 P.3d 829 (2015). Ireland maintains that except for cases where the victim contributed to the accident, *Nordby's* holding allows for a finding of particular vulnerability in every vehicular assault/homicide. This is not so. In each instance where particular vulnerability of the victims has been upheld, there were facts that distinguished the vulnerability of

those victims from the victims of vehicular homicide or vehicular assault more generally. Moreover, even if the finding of a particularly vulnerable victim occurs more frequently for vehicular homicide and vehicular assault than other crimes, this does not mean it is harmful. Rather, because this aggravating circumstance was put forth by the legislature, its greater applicability to these offenses may be intentional.

This Court has stated: "[W]e endeavor to honor the principle of stare decisis, which 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Keene v. Edie*, 131 Wn.2d 822, 831, 935 P.2d 588 (1997) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720, *reh'g denied*, 501 U.S. 1277, 112 S.Ct. 28, 115 L.Ed.2d 1110 (1991)). "We do not lightly set aside precedent, and the burden is on the party seeking to overrule a decision to show that it is both incorrect and harmful." *State v. Kier*, 164 Wn.2d 798,

804, 194 P.3d 212 (2008). "Moreover, we will not 'overrule prior decisions based on arguments that were adequately considered and rejected in the original decision themselves." *State v. Johnson*, 188 Wn.2d 742, 757, 399 P.3d 507 (2017) (quoting *State v. Barber*, 170 Wn.2d 854, 864, 248 P.3d 494 (2011)). The doctrine of stare decisis "requires a clear showing that an established rule is incorrect and harmful before it is abandoned." *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970).

"Determination of crimes and punishment has traditionally been a legislative prerogative, subject only to very limited review in the courts." *State v. Bryan*, 93 Wn.2d 177, 181, 606 P.2d 1228 (1980). "The wisdom of a statute, its expediency and policy, are legislative, not judicial, questions." *Point Roberts Fishing Co. v. George & Barker Co.*, 28 Wash. 200, 204, 68 P. 438 (1902). Under the separation of powers, "legislative authority must be exercised to define crimes and sentences…[while] judicial power must be exercised to confirm

guilt and to impose an appropriate sentence." *State v. Rice*, 174 Wn.2d 884, 901, 279 P.3d 849 (2012).

The legislature has authorized courts to impose sentences above the standard range after a finding that "[t]he defendant knew or should have known the victim of the current offense was particularly vulnerable or incapable of resistance." RCW 9.94A.535(3)(b). "[T]his court has recognized that a vehicular assault victim can be particularly vulnerable where the victim was relatively defenseless." *State v. Suleiman*, 158 Wn.2d 280, 291, 143 P.3d 795 (2006) (citing *Nordby*, 106 Wn.2d at 518).

In *Nordby*, a pedestrian pushing her bicycle along the side of the road was badly injured when the defendant grabbed the steering wheel from a driver and unexpectedly swerved the vehicle into her. 106 Wn.2d at 515. This Court recognized that the pedestrian victim could be distinguished from a victim in a second automobile for two reasons. *Id.* at 518. First, when the defendant swerved the vehicle into the victim, she had no opportunity to evade the car before it struck her. *Id.* Second, she

did not have the protection of a vehicle around her. *Id.* As a result, the victim was "completely defenseless and vulnerable." *Id.*

At the time *Nordby* was decided, former RCW 9.94A.390 gave trial courts the authority to sentence defendants above the standard range for reasons that were not expressly stated as aggravating circumstances. *Id.* at 516. In *Nordby*, the trial court made three findings to support the exceptional sentence: (1) the particular vulnerability of the victim, (2) the intentional mental state of the defendant when he committed the crime, and (3) the seriousness of the victim's injuries. *Id.* This Court upheld an earlier commissioner's ruling that both the victim's vulnerability and the defendant's mental state supported the exceptional sentence, but the seriousness of the injuries did not. *Id.* at 517.

Later cases have also recognized victims of vehicular homicides and assaults as particularly vulnerable. As in *Nordby*, in each instance the court distinguished between the involved victims and victims of these crimes generally. Bicyclists riding

along the road, have been found particularly vulnerable because their opportunities "to evade the car approaching from the rear are more limited." *State v. Morris*, 87 Wn. App. 654, 667, 943 P.2d 329 (1997). They also lacked the protection that "riding in a vehicle might provide." *Id.*

A victim who was standing in her backyard when a vehicle crashed through her retaining wall was particularly vulnerable because she had "no reason to suspect she might be in imminent danger." *State v. Cardenas*, 129 Wn.2d 1, 10, 914 P.2d 57 (1996), *superseded by statute on other grounds as recognized in State v. Papas*, 176 Wn.2d 188, 193-97, 289 P.3d 634 (2012). Her backyard was "an area where she expected to be safe[.]" *Id.* at 10-11. Thus, she was particularly vulnerable when contrasted with a vehicle occupant on the roadway. *Id.* at 10.

Here, it is Ireland's burden to show *Nordby* is both incorrect and harmful; however, she fails to make either showing. First, she fails to show *Nordby* was incorrect. Ireland claims *Nordby* is incorrect because it involved "an unusually

unsympathetic defendant" and asserts this Court was motivated to affirm the exceptional sentence for this reason alone. Petition at 15. Yet, the *Nordby* decision does not support the assertion that animus for the defendant caused the Court not to evaluate the vulnerability of the victim appropriately. The *Nordby* Court specifically considered the particular vulnerability of the victim independent of the defendant's mental state. It found she was more vulnerable as a pedestrian because she was unable to evade the vehicle and did not have the protection of a vehicle that another driver would have. This distinguished her from other victims of vehicular assault, and Ireland fails to show otherwise. Thus, Ireland fails to show the decision was incorrect.

Ireland also fails to show the decision was harmful. Ireland claims that *Nordby* has resulted in all vehicular homicides being eligible for exceptional sentences. Petition at 14. As demonstrated by the caselaw, this is not correct. Just as this Court found in *Nordby*, in every case where an exceptional sentence was based on a finding that the victims were particularly

vulnerable, the courts have distinguished those victims from victims of vehicular homicide and vehicular assault generally. Ireland fails to cite any example where the driver or passenger of another moving vehicle was found to be a particularly vulnerable victim.

Further, even if Ireland's claim that vehicular homicides and vehicular assaults result in exceptional sentences one-sixth of the time is correct, this does not make the *Nordby* decision harmful.[3] Some crimes, such as the assault of a child or a vehicular homicide involving a pedestrian are more likely to involve a particularly vulnerable victim. Other crimes, such as theft of a motor vehicle, are less likely to result in this finding. There is nothing harmful about this practical reality. The legislature gave courts the authority to find and apply this

[3] The converse of Ireland's claim is that roughly 83% of the time vehicular homicides and vehicular assaults result in standard range sentences. This demonstrates, by a wide margin, that courts do not ordinarily impose exceptional sentences.

aggravating factor when it is warranted. The resulting outcomes do not evince harm.

VI. CONCLUSION

Because Ireland does not meet any of the considerations governing acceptance of review under RAP 13.4(b), and fails to show that *Nordby* was incorrect or harmful, the petition for review should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 3,454 words, as calculated by the word processing software used. Font is 14-pt.

Respectfully submitted this 11th day of July, 2025.

Eric H. Bentson, WSBA #38471
Chief Criminal Deputy
Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the ANSWER TO THE PETITION FOR REVIEW was filed electronically through the Supreme Court Portal and which will automatically cause such filing to be served on the opposing counsel listed below:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on the 11th day of July, 2025.

Jacqueline Renny

Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

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