No. 58212-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

ANNA-CHRISTIE IRELAND

PETITION FOR REVIEW

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

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A. Identity of Petitioner

Anna-Christie Ireland asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

On April 29, 2025, the Court of Appeals affirmed Ms. Ireland's Judgment and Sentence in a part published decision. Ms. Ireland seeks review only of the portion of the decision that was published. A copy of the full decision appears in the Appendix.

C. Issues Presented for Review

1. Should this Court conclude its jurisprudence finding that defenseless victims of vehicular homicides and assaults are particularly vulnerable is incorrect and harmful and overturn *State v. Norby* and its progeny?
2. Should this Court overturn Ms. Ireland's exceptional sentence based upon victim vulnerability and remand for resentencing?

D. Statement of Facts

Anna-Christie Ireland was charged by Information with three counts of Vehicular Homicide and one count of Vehicular Assault following a tragic three-vehicle accident on I-5 in Cowlitz County, Washington. CP, 4. The victims of the accident were Karen Stoker (Count one), her husband Richard Stoker (Count two), tow truck driver Arthur Anderson (count three), and Travis Stoker (count four), the adult son of Karen and Richard Stoker. CP, 4-5. For ease of analysis, the Stokers will be referred to by their first names. Ms. Ireland waived jury and proceeded to a bench trial. CP, 8.

On April 21, 2021, Travis was driving north on I-5 in the early morning. RP, 191. That section of the road was straight and flat with three lanes in each direction. RP, 139. The weather conditions were raining and there was water on the road that threw up mist as cars traveled on it. RP, 138-39. He was traveling at 85 to 90 miles per hour. RP, 193. The speed limit is 70 miles per hour on that stretch of road. RP, 140. Travis hit a

puddle of water and hydroplaned into a ditch. RP, 193. He was uninjured. RP, 194. He called his father to ask for assistance. RP, 195. Shortly after that, Washington State Patrol (WSP) Trooper Michael Canham arrived. RP, 166, 196. Trooper Canham called for a tow truck. RP, 196. Mr. Anderson, a sixty-three year old man with over thirty years' experience driving tow truck and nearing retirement, arrived. RP, 195-96; RP, 732, 735. Travis' parents arrived separately in a blue Kia Sorento. RP, 168-69. Mr. Anderson hoisted the disabled vehicle onto his flatbed. RP, 198. The three Stokers then got into the Kia Sorrento and all three put on their seatbelts. RP, 198, 469. The parents were in the front seats and Travis was in the back passenger seat. RP, 200. Mr. Anderson was working on strapping down the disabled vehicle standing directly in front of the Kia Sorrento and behind the tow truck. RP, 200-201.

Shortly after that, Trooper Canham determined the scene was secure and left while the tow truck driver was still working with the disabled vehicle. RP, 175, 195. As he was pulling into

the WSP parking lot, he received notice of a collision on I-5. RP, 175. At first, Trooper Canham thought a mistake was made and someone was calling in the accident he had just left. RP, 175. But then he learned there had been a second accident. He immediately turned around and returned to the scene of the original accident. RP, 175.

Erich Uhlman was driving north on I-5 just north of Longview when he observed the second accident. RP, 138. He told investigators that due to the rainy, misty conditions visibility was not great. RP, 156. He first became aware of the situation about one thousand meters back when he saw flashing emergency lights, which he later determined were from the tow truck. RP, 140. Mr. Uhlman slowed a bit and moved from the right lane to the center lane. RP, 141. There was a blue car, later determined to be a blue BMW driven by Ms. Ireland, in the left lane. RP, 141. There was nothing about the blue BMW's speed or driving pattern that caused Mr. Uhlman any concern. RP, 158-59. As he got closer to the flashing lights, he saw they were

coming from a tow truck with a vehicle on its flat bed and a second vehicle parked behind it. RP, 143. He then saw the blue BMW change its direction and head directly towards the flashing lights. RP, 144. The blue BMW drove straight into the parked car. RP, 144. He did not see the blue BMW's brake lights activate or any indication the car was slowing. RP, 145. An accident reconstructionist later determined the blue BMW's speed was between 78 and 88 miles per hour. RP, 477. The collision caused debris to be scattered onto the road forcing Mr. Uhlman to have to steer around it. RP, 145.

By happenstance, Laurie Jagger, a member of the Department of Transportation Incident Response Team, had just logged in for work and was driving north on I-5 immediately after the accident. RP, 213, 219. She noted the roadway was wet creating road spray. RP, 220. She saw the immediate aftermath of the accident, pulled over and called in the accident, requesting assistance. RP, 214. The time was approximately 7:49 a.m. RP, 491. She turned on her emergency lights and

began immediately redirecting traffic from the accident. RP, 214.

When Trooper Canham arrived a second time at the scene, he saw a significant three-vehicle accident. It appeared the blue BMW had left the roadway and rearended the Kia Sorrento, sending it jolting forward and crushing Mr. Anderson. RP, 239-40. Trooper Canham first checked on the status of the people. Mr. Anderson did not have a pulse. RP, 176-77. Karen Stoker was seated in the driver's seat of the Kia Sorrento and was alive when Trooper Canham initially arrived. RP, 177. About that time, fire fighters arrived and Trooper Canham stepped back to allow them access to the victims. RP, 177. When fire fighter Kyle McCoy checked on the Stoker parents, both were deceased. RP, 231. Travis Stoker was in the backseat yelling for help. RP, 178.

The trial court concluded Ms. Ireland was the sole contributor to the accident and that her driving proximately caused the deaths of Mr. Anderson and the Stoker parents, as

well as the injuries to Travis Stoker. The trial court concluded Ms. Ireland was under the influence of prescription medication which lessened her ability to drive to an appreciable degree. The trial court concluded Ms. Ireland was driving in a reckless manner.

Ms. Ireland was born on April 4, 1978, making her 43 years old at the time of the accident. CP, 1. She has no criminal history. At sentencing, the Court calculated Ms. Ireland's standard range as 146-196 months on Counts 1-3 and 33-43 months on Count 4. The Court imposed an exceptional sentence based upon two aggravating factors. As to all four counts, the Court concluded Ms. Ireland knew or should have known the victims were particularly vulnerable or incapable of resistance. CP, 37. As to Count four, the Court concluded Travis' injuries substantially exceeded the level of bodily harm necessary to satisfy the elements. CP, 37. The Court imposed concurrent sentences of 240 months (Counts 1-3) and 120 months (Count 4).

E. Argument in Support of Review

When an intoxicated or reckless driver is involved in a collision that results in death or serious bodily injury, they are routinely charged with vehicular homicide or assault. Washington recognizes an aggravating factor if the "defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance." RCW 9.94A.535(3)(b).

For the past forty years, Washington courts have been imposing exceptional sentences in vehicular homicide and assault cases based upon the particular vulnerability of the victim. *State v. Nordby*, 106 Wn.2d 514, 723 P.2d 1117 (1986). *Norby* was one of the earliest exceptional sentence cases to reach this Court after the Sentencing Reform Act of 1981 (SRA) went into effect. The six-Justice majority concluded the pedestrian was particularly vulnerable because "she had no opportunity to evade [the defendant's] car." Since *Norby*, both this Court and the Court of Appeals have continued to apply

this principle. But *Norby* has proved both incorrect and harmful and should be overruled. *State v. W.R.,* 181 Wn.2d 757, 768, 336 P.3d 1134 (2014).

Under this Court's current case law, in the context of a vehicular homicide or assault, a person is particularly vulnerable and deserving of an exceptional sentence if the victim has no opportunity to evade the on-coming vehicle. *State v. Morris*, 87 Wn.App. 654, 667, 943 P.3d 939 (1997), citing *Nordby.* Over time, this concept has expanded to include almost every conceivable vehicular homicide and assault. We now know that the following individuals are particularly vulnerable.

- Fifteen-year-old pedestrian pushing a bicycle on the shoulder of the road. *Nordby*, 106 Wn.2d 514, 723 P.2d 1117 (1986).
- Bicyclists riding in tandem on the road. *Morris*, 87 Wn.App. 654, 943 P.3d 939 (1997).

- Four-year-old pedestrian walking through a convenience store parking lot. *State v. Thomas*, 57 Wn.App. 403, 788 P.2d 24 (1990).
- Sixty-nine-year-old woman inside her fenced in yard taking out the trash. *State v. Cardenas*, 129 Wn.2d 1, 914 P.2d 57 (1996).
- Tow truck driver standing on the side of the road between two parked cars. Art Anderson.
- Seatbelted occupants of a car parked on the side of the road. The Stoker family.

This list reflects the appellate courts' conclusions that each of these people was "relatively defenseless" during the collision and that an exceptional sentence is justified. *Ireland*, slip opinion, 15, citing *State v. Suleiman*, 158 Wn.2d 280, 291, 143 P.3d 795 (2006).

In other words, every victim of a fatal accident is particularly vulnerable absent evidence that the victim somehow contributed to the accident. While this result has a

certain appeal, it totally eviscerates the purpose of the Sentencing Reform Act of 1981 (SRA). Because every victim is defenseless, every vehicular homicide and assault is eligible for an exceptional sentence.

When Washington adopted the SRA, it did so in order to correct a serious defect in Washington sentencing. Prior to the SRA, sentencing judges had virtually unfettered discretion to sentence defendants. *Blakely v. Washington,* 542 U.S. 296, 315, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) (Justice O'Connor, dissenting), citing Boerner & Lieb, "Sentencing Reform in the Other Washington," 28 Crime and Justice, 71, 73 (M. Tonry ed. 2001) and Boerner, "Sentencing in Washington" (1985). This unguided discretion inevitably resulted in severe disparities in sentences received and served by defendants committing the same offense and having similar criminal histories. *Id.*

Norby is harmful because, in the context of vehicular homicide and assault cases, the particularly vulnerable aggravating factor has completely swallowed up the certainty

the SRA is supposed to provide, resulting in the "severe disparities" it was designed to prevent. According to the Washington Forecast Caseload Report for 2023, 18.2% of the Vehicular Homicide-DUI cases, 17.6% of the Vehicular Homicide-Reckless Driving cases, and 15.8% of the Vehicular Assault-DUI cases resulted in exceptional sentences.[1] When all vehicular homicide and assaults are eligible for exceptional sentences, with judges imposing such sentence more than one-sixth of the time, there is no certainty in sentencing.

As any experienced criminal practitioner will tell you, vehicular homicide and assault cases are some of the hardest cases to resolve. The victims are random and almost always innocent. In most cases, the first and only time the defendant and the victim ever encounter each other is at the moment of the accident. Accidents do not discriminate. The victims are as

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1 https://cfc.wa.gov/sites/default/files/Publications/Adult_Stat_Sum_FY2023.pdf, page 47.

likely to be recreational bicyclists out for an afternoon ride (*Morris*) or career tow truck drivers nearing retirement doing their job (Art Anderson). They could be people engaged in the mundane tasks of life such as taking out the trash (*Cardenas*) or people seated seatbelted in a car after picking up their stranded son (the Stoker family). They could be walking on the side of the road (*Norby*) or in their fenced in yard (*Cardenas*). They could be super-young (*Thomas*), teenaged (*Norby*), 20something (Travis Stoker)[2], 40something (Stoker parents)[3], 60something (Art Anderson), or elderly (*Cardenas*). In other words, they could be anyone, anytime, anywhere. And none of them saw it coming.

For these reasons, the victims' families rarely see the need for leniency. As Mr. Anderson's daughter bluntly put it at sentencing, "I'm asking the Judge to set an example of today's

[2] Travis was 27 years old at the time of trial. RP, 189.

[3] Karen and Richard Stoker ages are not in the record. Sarah Schieron, Karen's cousin, bridesmaid, and close friend was 47 years old. RP, 743.

case to show people that driving impaired has severe consequences. Three people were killed, one severely injured, and their families are just trying to find a purpose and a reason to move forward. First offense or no, you took three lives and you still have yours. We ask the Judge today to impose the maximum sentence and set an example. This isn't a light crime, there should not be a light sentence. Please, Judge, provide justice today and be the voice for the victims that are not here. Please don't let our families die in vain. I beg of you, impose the maximum sentence today." RP, 735. For the victim's families, hearing the judge impose an exceptional sentence is not about the extra prison time, it is about hearing the judge "be the voice for the victims" and give validation that their loved one did not "die in vain." Given that all vehicular homicide and assault cases involve particularly vulnerable victims within the meaning of *Norby*, it should come as little surprise that these cases are particularly susceptible to sentence disparities. If ever

a crime needs the stabilizing influence of the SRA in order to avoid sentence disparities, vehicular homicide is it.

That *Norby* is incorrect is demonstrated by the decision itself. The defendant in *Norby* was an unusually unsympathetic defendant compared to most vehicular homicide defendants. Unlike Ms. Ireland, who suffers from addiction to prescription medications, the defendant in *Norby* intentionally yanked on the steering wheel in order to collect two Death Race 2000 "points." Given his callous disregard for the safety of others, this Court's majority undoubtedly was looking for ways to affirm the exceptional sentence. Nevertheless, as the dissent points out, an exceptional sentence based upon victim vulnerability created the risk of severe sentencing disparities.

Justice Utter, speaking for the three dissenters, quotes from the same source as Justice O'Connor in *Blakely*, saying, "A sentence outside the presumptive sentencing range is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category."

Norby at 520 (Justice Utter, dissenting), citing Professor Boerner's "Sentencing in Washington." He then concludes there is nothing uniquely distinguishable about harming a pedestrian.

> The fact that the victim of Nordby's vehicular assault was a pedestrian is not exceptional. A significant number of the motor vehicle accidents that produce injury or death involve pedestrians. Nationwide, collisions involving pedestrians account for the largest number of fatal motor-vehicle accidents in urban areas. . . In light of these statistics it would be erroneous to assume that the Legislature did not consider accidents involving pedestrians when it adopted the sentencing guidelines for vehicular assault. The majority errs when it concludes that the fact that Nordby hit a pedestrian is a factor that justifies an exceptional sentence.

Norby at 521 (Justice Utter, dissenting).

Little could Justice Utter have known when he wrote those words that, forty years later, all vehicular homicides and assaults would be exceptional and result in aggravated sentences over one-sixth of the time. If all vehicular homicides and assaults are exceptional, then none are standard.

The way to address the concerns of the *Norby* majority is not to make every vehicular homicide and assault eligible for an

exceptional sentence, but for the legislature to increase the standard range, something that has in fact happened. The defendant in *Norby*, whose victim suffered two broken legs, a broken arm, and lapsed into a coma for several days, had a standard range of 6 to 12 months, and received an exceptional sentence of 16 months. The defendants in *Cardenas* and *Thomas* both received 60-month exceptional sentences. The defendant in *Morris*, who killed one victim, seriously injured a second, caused minor injuries to "several other cyclists," and left the scene of the accident, received an exceptional sentence of 72-months. In contrast, Ms. Ireland had a standard range of 146-196 months and received an exceptional sentence of 240-months.

This Court should grant review of Mr. Ireland's case and reconsider *State v. Norby* and its progeny. The decision was ill-considered when it was decided and it has evolved to become even worse, resulting in gross sentencing disparities. *Norby* and its progeny are incorrect and harmful and should be overturned.

F. Conclusion

This Court should grant review, overturn *Norby*, reverse Ms. Ireland's Judgment and Sentence, and remand for resentencing.

This Petition for Review is in 14-point font and contains 2843 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 26th day of May, 2025.

Thomas E. Weaver

Thomas E. Weaver, WSBA #22488
Attorney for Appellant

Appendix

Filed
Washington State
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Division Two

April 29, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANNA-CHRISTIE IRELAND, Appellant.	No. 58212-1-II PART PUBLISHED OPINION

CHE, J. — Anna-Christine Ireland appeals her convictions and exceptional sentences for three counts of vehicular homicide and one count of vehicular assault.

Travis Stoker and his parents, Richard and Karen Stoker, were seat-belted in Richard and Karen's[1] vehicle parked on the shoulder of northbound Interstate 5 (I-5). They were waiting for tow truck driver Arthur Anderson to finish strapping Travis's disabled vehicle onto the truck bed when Ireland collided with them. Anderson, Richard, and Karen died at the scene, and Travis suffered serious injuries.

The evidence admitted at the bench trial included the testimony of a paramedic who opined that Ireland's presentation right after the collision was consistent with impairment. A drug recognition expert (DRE) also testified.

[1] We do not intend any disrespect by using the first names of the Stoker victims and only do such for clarity because they share the same surname.

The trial court found Ireland guilty of multiple counts of vehicular homicide and vehicular assault. The trial court also found that Anderson was not protected by a vehicle and both Anderson as well as the three Stokers had no ability to detect the danger that was approaching or avoid the collision. The trial court then concluded that both Anderson and the three Stokers were all particularly vulnerable victims. Finding aggravating factors beyond a reasonable doubt, the trial court imposed exceptional sentences.

Ireland argues that insufficient evidence supported the trial court's finding that Anderson was not protected by a vehicle and, relatedly, its finding that the aggravating factor of particular vulnerability was present for Anderson and the three Stokers. Ireland also argues that the trial court erred by admitting certain opinion testimony.

We hold that substantial evidence supported the trial court's findings of fact that Anderson was not protected by a vehicle and that he, as well as the three Stokers, were particularly vulnerable victims. In the unpublished portion of this opinion, we reject Ireland's remaining claims that the trial court erred in admitting certain opinion testimony.

Accordingly, we affirm.

FACTS

BACKGROUND

On an intermittently rainy morning in late April 2021, Travis was driving northbound on I-5 when he lost control of his vehicle and ended up in a ditch on the right side of the roadway. Trooper Michael Canham contacted Travis, who was uninjured but needed a tow. The roadway where Travis and Trooper Canham were located was a fairly level, straight stretch of road with minimal obstructions for a significant distance. The right shoulder, marked by a solid painted

white line and a rumble strip,[2] consisted of a 10-foot paved shoulder and an unimproved shoulder leading to a ditch. Because of the weather, drivers on the roadway found visibility to be between poor and fair.

Shortly after Trooper Canham contacted Travis, a tow truck driven by Anderson arrived at the scene. Anderson positioned his tow truck in front of Travis's car, pulled Travis's car out of the ditch, and began to load it onto his tow truck. Both Trooper Canham's emergency lights and Anderson's tow truck overhead lights were activated.

Not long after, Richard and Karen arrived at the scene and parked their vehicle behind the tow truck, which was still in the process of loading Travis's vehicle. Trooper Canham left the scene. While Anderson finished loading Travis's vehicle, Travis and his parents sat in his parents' vehicle with their seatbelts fastened.

During this time, Ireland and another driver, Erich Uhlman, were driving north on I-5 toward the location of the three vehicles. Uhlman worked as an automotive technician for professional, hobbyist, and amateur racing groups. He also frequently participated in various forms of automobile racing. Both gave him experience in being in as well as watching vehicles drive off the road or crash.

Uhlman drove in the far-right lane some distance behind Ireland who drove either in the left or center lane. Upon approaching Anderson and the Stokers's location, Uhlman observed "flashing amber lights. Like an emergency vehicle, or a construction vehicle, some kind of warning [lights]" on the shoulder of the roadway. 1 Rep. of Proc. (RP) (Mar. 28, 2023) at 140. Uhlman had slowed and moved into the center lane when he saw Ireland's vehicle turn out of its

[2] A rumble strip provides both auditory and tactile warnings to drivers in case they are driving into the shoulder.

lane, head straight toward the lights, and collide into Richard and Karen's vehicle. Uhlman did not see Ireland's vehicle's brake lights activate; the vehicle hydroplane; or the vehicle attempt to slow down, change its course, or avoid the collision.

According to Ireland, as she approached Anderson and the Stokers's location, the weather and spray off of an adjacent vehicle caused her to have difficulty seeing, and so Ireland moved from the center lane to the right lane. Ireland observed red lights ahead of her but believed they were the brake lights of slow-moving traffic just ahead in the same lane, not stopped traffic. Ireland did not remember anything after seeing the lights until she woke up in the hospital.

Ireland's collision with the Stoker parents' vehicle pushed their vehicle forward, pinning Anderson between Richard and Karen's vehicle and the back of the tow truck. An accident reconstructionist explained that Richard and Karen's vehicle and the tow truck were clear of the roadway before Ireland collided with them and Ireland collided with the Stokers's vehicle from nearly directly behind. From examining the Stokers's vehicle's data, the accident reconstructionist concluded that Ireland must have been traveling between 77 and 88 miles per hour just before impact. The accident reconstructionist found no indication that Ireland braked, slowed down, avoided, or attempted to avoid the collision prior to impact.

Lt. Andrew Worth, a paramedic, contacted Ireland when he arrived at the scene and found her sitting in her vehicle complaining of left hip pain and with a contusion on her chest area. When Worth inquired about any head pain, Ireland denied having a headache, and Worth did not observe any head trauma nor significant injuries. Worth observed Ireland display delayed responses, slurred speech, sleepiness, confusion, and signs of retrograde amnesia. Worth also observed that both of Ireland's pupils were the same size and neither had any signs of

nystagmus.[3] After Worth placed a spinal collar on Ireland and administered her an electrolyte solution, Worth transported Ireland to the hospital.

Once at the hospital, Dr. Shannon Lucas conducted a drug screen of Ireland, who tested positive for benzodiazepines. Benzodiazepines are a type of central nervous system (CNS) depressant that causes a person, in small doses, to be calm, potentially sleepy, or lethargic. At higher doses, this class of drugs can make an individual unresponsive, affect a person's reaction times, cause slurred speech, and affect one's judgment.[4]

When Dr. Lucas conducted a neurological assessment of Ireland, she found Ireland to be confused, unable to remember what had happened, and with an altered mental state. Dr. Lucas ordered a CT scan, which revealed that Ireland had a two millimeter in size subdural hematoma.[5] To address any pain, Dr. Lucas then administered intravenously a half of a typical dose of Dilaudid, a type of narcotic analgesic used to treat pain, to Ireland. Dr. Lucas observed no change in Ireland's presentation after administering the medication and, because of the low dose given, Dr. Lucas did not expect to see any signs of drowsiness, slurred speech, or horizontal gaze nystagmus (HGN).

After being treated by Dr. Lucas, Officer Daniel Auderer observed Ireland unable to stay awake and with slurred speech. Officer Auderer asked Ireland if she had taken any prescription

[3] Nystagmus is involuntary jerking in one's eye.

[4] Diazepam, lorazepam, and nordiazepam are types of benzodiazepines.

[5] Dr. Lucas opined that it was possible that a trauma-caused intercranial bleed could cause confusion; however, she could not opine whether Ireland's small bleed could cause memory loss, disorientation, personality changes, or drowsiness.

drugs, and Ireland responded that she "takes" lorazepam and Suboxone.[6] 1 RP (Mar. 29, 2023) at 369.

When Trooper Christopher Huhta contacted Ireland at the hospital, Ireland repeated to Trooper Huhta that she "takes" Suboxone and lorazepam. 1 RP (Mar. 28, 2023) at 263. Trooper Huhta conducted two blood draws, one right after contacting Ireland and another later in the day. Both blood samples tested positive for diazepam, lorazepam, nordiazepam, pseudoephedrine—a mild CNS stimulant, Suboxone, and Suboxone's metabolite, norbuprenorphine.[7] The second sample, taken later in the day, additionally tested positive for oxazepam, the metabolite of nordiazepam.

Upon Ireland's release from the hospital, Trooper Huhta and his partner interviewed Ireland. In the interview, Ireland admitted she had taken, among other things, diazepam, lorazepam, Suboxone, and Ambien before driving the morning of the collision. When Trooper Huhta searched Ireland's car, he found Suboxone strips, an empty prescription bottle for diazepam, a prescription bottle for lorazepam, a prescription bottle for methocarbamol,[8] Sudafed, and other medications. Ireland's diazepam prescription was filled 18 days prior to the collision

[6] Suboxone (otherwise known as buprenorphine) is a type of narcotic analgesic that can impact a person's alertness and concentration and cause drowsiness. It is typically prescribed to assist people in opioid addictions. Dr. Lucas testified that taking Suboxone and a benzodiazepine together is "highly discouraged" because the additive effect of both of them can cause death as well as "extreme sedation, difficulty with concentration, [and] difficulty with reaction time." RP (Mar. 29, 2023) at 319.

[7] Something that is a metabolite of another means, over time, the body converts the first chemical compound into another.

[8] Methocarbamol is a medication to treat muscle spasms.

with 60 pills and none remained. The lorazepam and methocarbamol bottles, filled one and three days prior to the collision, respectively, had 70 lorazepam pills and 32 methocarbamol pills missing. The diazepam and lorazepam prescriptions included a warning that the drugs "[m]ay cause drowsiness" and the methocarbamol prescription warned that using the medication could impair one's thinking or reactions. 2 RP (Mar. 30, 2023) at 536. All three warnings included a caution for operating a vehicle while taking the drugs, and the lorazepam label additionally warned that "breathing problems or drowsiness may occur" if taken with an opioid. 2 RP (Mar. 30, 2023) at 538.

Anderson, Richard, and Karen all died at the scene due to the collision. Travis sustained substantial bodily injury from the collision, including multiple fractures and internal injuries,[9] which caused him to be hospitalized for 31 days.

PROCEDURAL HISTORY

The State charged Ireland with three counts of vehicular homicide and one count of vehicular assault, and notified Ireland of its intent to seek an exceptional sentence based upon two aggravating factors: (1) that Ireland knew or should have known that the victims of the crimes were particularly vulnerable, as provided in RCW 9.94A.525(3)(b) and (2) that Travis Stoker's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the vehicular assault offense, as provided by RCW 9.94A.535(3)(y). Ireland waived her right to a jury.

[9] The parties stipulated to the following facts: that Ireland's collision proximately caused the injuries of Travis and the deaths of Anderson, Richard, and Karen, the foundational of the collision reconstructionist, Ireland's medical records, and the timing and results of the toxicology report.

At trial, witnesses testified consistently with the above facts and introduced exhibits, later admitted, that included footage from Trooper Canham's dashcam, photos from the collision site, the toxicology report from Ireland's blood draws, and a transcript of Ireland's interview with Trooper Huhta and his partner.

The trial court entered written findings of fact and conclusions of law, concluding that Ireland was guilty beyond a reasonable doubt of three counts of vehicular homicide and one count of vehicular assault, all committed while under the influence of a drug, driving in a reckless manner, and with disregard for the safety of others. The court noted that its written findings and conclusions were a summary of, not a substitute for, its oral ruling.

The trial court also found beyond a reasonable doubt two aggravating factors: (1) that Travis's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the vehicular assault offense, and (2) that Ireland knew or should have known that all four victims were particularly vulnerable or incapable of resistance.

In finding of fact (FF) 20, the trial court found beyond a reasonable doubt that Anderson was a vulnerable victim because he "did not have the protection of a vehicle surrounding him" despite "ha[ving] every safety feature that was available to him in place when [the collision] occurred, and unfortunately, that still was not sufficient." 2 RP (May 8, 2023) at 810, CP at 47 (FF 20). The court additionally found that the other victims were vulnerable because "[t]hey were inside of a vehicle, had the small layer of a safety net, as far as whatever the vehicle could provide, as far as protection from the impact from behind, between 78 and 88 miles an hour" and "had no ability to detect the danger that was approaching or avoid the collision." 2 RP (May 8, 2023) at 811, CP at 47 (FF 20).

The trial court imposed an exceptional sentence of 240 months of total confinement as well as other conditions. Ireland appeals.

ANALYSIS

Ireland challenges her exceptional sentence and argues that insufficient evidence supported the trial court's FF 20 that Anderson was not protected by a vehicle at the time of the collision. Relatedly, Ireland argues that insufficient evidence supported the trial court's finding that the victims were particularly vulnerable.[10] We disagree.

I. LEGAL PRINCIPLES

A. *Standard of Review*

To reverse an exceptional sentence, we must find either that (1) the sentencing court's reasons are not supported by the trial court record, (2) the reasons do not justify a sentence outside the offense's standard sentence range, or (3) the imposed sentence was clearly excessive or clearly too lenient. *State v. Fletcher*, 20 Wn. App. 2d 476, 488, 500 P.3d 222 (2021); *see also* RCW 9.94.585(4). The first prong applies here as Ireland challenges one of the trial court's bases for imposing an exceptional sentence.

We review whether the trial court's reasons for an exceptional sentence are supported by the record under a "'clearly erroneous'" standard. *Id.*; *see also State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). "A finding of fact is clearly erroneous if no substantial evidence supports it." *Id.* at 488-89 (citing *State v. Morris*, 87 Wn. App. 654, 659, 943 P.2d 329 (1997)).

[10] Ireland argues the trial court erred based upon "particular vulnerability or incapability of resistance" in FF 20. But because the trial court found the aggravating factor based only on the victims's vulnerability, we only address Ireland's challenge to the particular vulnerability finding. *See* RP (May 8, 2023) at 810-12.

Evidence is substantial if it is "'sufficient to persuade a fair-minded person of the truth of the asserted premise.'" *State v. A.X.K.*, 12 Wn. App. 2d 287, 293, 457 P.3d 1222 (2020) (quoting *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014)). When a defendant brings an insufficient evidence claim, "the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it." *Homan*, 181 Wn.2d at 106. On appeal, we treat any unchallenged findings of fact as verities. *Id*. Additionally, we evaluate both circumstantial and direct evidence equally. *State v. Smith*, 185 Wn. App. 945, 957, 344 P.3d 1244 (2015); *see also State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Furthermore, we defer to the trier of fact when credibility determinations arise from conflicting testimony or the persuasiveness of the evidence is challenged. *Homan*, 181 Wn.2d at 106.

B. *Particularly Vulnerable Aggravating Factor*

Under the Sentencing Reform Act of 1981, chapter 9.94A RCW, a trial court may impose a sentence above the standard sentencing range if the court finds that the defendant "knew or should have known that the victim[s] [were] particularly vulnerable." RCW 9.94A.535(3)(b). To impose an exceptional sentence based on finding that a victim was particularly vulnerable, the trial court must find beyond a reasonable doubt "'(1) that the defendant knew or should have known (2) of the victim's particular vulnerability and (3) that vulnerability must have been a substantial factor in the commission of the crime.'" *State v. Moses*, 193 Wn. App. 341, 366, 372 P.3d 147 (2016) (quoting *State v. Suleiman*, 158 Wn.2d 280, 291-92, 143 P.3d 795 (2006)) (original emphasis omitted). We may consider a trial court's oral decision along with its entered written findings and conclusions so long as the oral findings and conclusions are consistent with those written. *State v. Kull*, 155 Wn.2d 80, 88, 118 P.3d 307 (2005).

In considering whether a victim was particularly vulnerable, "the focus is on the victim" and the court assesses "'if the victim [was] more vulnerable to the offense than other victims and if the defendant knew of that vulnerability.'" *State v. Ogden*, 102 Wn. App 357, 366, 7 P.3d 839 (2000) (quoting *State v. Bedker*, 74 Wn. App. 87, 94, 871 P.2d 673 (1994)). Beyond the characteristics personal to the victim, the circumstances of the crime can also make a victim particularly vulnerable. *E.g.*, *State v. Baird*, 83 Wn. App. 477, 922 P.2d 157 (1996) (victim assaulted while unconscious); *State v. Hicks*, 61 Wn. App. 923, 812 P.2d 893 (1991) (victim raped while asleep); *State v. Kidd*, 57 Wn. App. 95, 786 P.2d 847 (1990) (victims shot at while enclosed in a bus); *State v. Thomas*, 57 Wn. App. 403, 788 P.2d 24 (1990), *overruled on other grounds by State v. Parker*, 132 Wn.2d 182, 190, 937 P.2d 575 (1997) (pedestrian in parking lot hit by a speeding car).

II. SUBSTANTIAL EVIDENCE SUPPORTED ANDERSON NOT BEING PROTECTED BY A VEHICLE

Ireland argues that substantial evidence does not support the trial court's factual finding that Anderson "did not have the protection of a vehicle surrounding him" when the collision occurred. Br. of Appellant at 19. Ireland submits that, instead, Anderson "was actually cocooned between two substantial vehicles which should have provided ample protection." Br. of Appellant at 19. We disagree.

It is undisputed that, at the time Ireland's car collided with the Stoker parents' vehicle, Anderson was outside of any vehicle, on the shoulder of I-5, with his tow truck in front of him and the Stokers' vehicle directly behind him. *Homan*, 181 Wn.2d at 106 ("We treat unchallenged findings of fact. . . as verities on appeal."). Anderson was a pedestrian between two vehicles and alongside a roadway where cars were traveling at least 70 miles per hour. When Ireland's vehicle collided with the Stokers' vehicle, the force caused Anderson to be

pinned between his tow truck and the Stokers' vehicle. Contrary to Ireland's claim that the vehicles should have provided added safety by "cocooning" Anderson, the two vehicles instead "crush[ed] [] Anderson" as a direct result of Ireland colliding with the Stokers's vehicle, causing his death. CP at 45 (FF 8, 9). We hold that a fair-minded person could have concluded that Anderson was not protected by either his tow truck nor the Stoker's vehicle.

III. SUBSTANTIAL EVIDENCE SUPPORTED THE VICTIMS BEING PARTICULARLY VULNERABLE

Ireland argues that neither Anderson nor the Stokers were particularly vulnerable under our present case law. We disagree.

In considering vulnerable victims in the context of vehicle-based crimes, we have recognized that victims of such crimes "can be particularly vulnerable where the victim was relatively defenseless." *Suleiman*, 158 Wn.2d at 291. In *State v. Nordby*, a defendant pleaded guilty to committing a vehicular assault against a pedestrian pushing her bicycle alongside a road. 106 Wn.2d 514, 515, 723 P.2d 1117 (1986). The trial court imposed an exceptional sentence due to, in part, the particular vulnerability of the victim. *Id.* at 516. Our Supreme Court affirmed this basis for an exceptional sentence, reasoning that

> [u]nlike a potential victim in a second automobile, [the victim] had no opportunity to evade . . . [n]or was she afforded the additional protection against injury that a second automobile might provide for a driver or passenger of that automobile . . . the victim here was, in fact, completely defenseless and vulnerable.

Id. at 518.

Similarly, in *Thomas*, a defendant pleaded guilty to vehicular homicide after he was speeding through a parking lot and hit and killed a four-year-old walking through the lot. 57 Wn. App. at 404-05. The trial court subsequently imposed an exceptional sentence because of, among other reasons, the victim's vulnerability. *Id.* at 406. Division Three of this court held

that the circumstances regarding the defendant's crime, "excessive speed and that [] Thomas used the parking lot as a roadway," supported the trial court's finding of particular vulnerability because "[l]ike the victim in *Nordby*, part of th[e] victim's inability to avoid the consequences of [] Thomas' negligence flowed from the fact that she was a pedestrian in an area where she had little reason to expect a speeding vehicle." *Id.* at 408.

In another pedestrian case, *State v. Cardenas*, our Supreme Court considered an exceptional sentence imposed on a defendant who pleaded guilty to vehicular assault after speeding through a residential area, losing control of his car, and eventually crashing through a retaining wall and into a backyard where he hit the victim with his car. 129 Wn.2d 1, 4, 12, 914 P.2d 57 (1996). Division Three of this court distinguished the case from *Nordby* and *Thomas* because "Cardenas had not 'intended to drive in an area where he knew, or should have known, there would be vulnerable pedestrians.'" *Id.* at 11 (quoting *State v. Cardenas*, 77 Wn. App. 112, 115, 890 P.2d 21 (1995)).

While our Supreme Court agreed that the particular-vulnerability factor required the defendant's knowledge that vulnerable victims were nearby, the court disagreed with Division Three's conclusion that Cardenas did not have this requisite knowledge. *Id.* at 11-12. The court based its holding on the undisputed fact that the incident occurred in a residential area with no evidence that Cardenas did not know that vulnerable victims were nearby and that it was "reasonable to assume that given this [fact], Cardenas either knew or should have known that there would be people such as the victim here, totally unprepared and vulnerable." *Id.* at 12.

Moreover, in *State v. Morris*, a defendant pleaded guilty to multiple vehicle-related crimes after she struck bicyclists riding alongside a road from the rear while passing them in her car. 87 Wn. App. 654, 658-59, 943 P.2d 329 (1997). The trial court imposed an exceptional

sentence after, in addition to another factor, finding the victims particularly vulnerable. *See Id.* at 663-69.

On appeal, Morris argued that vulnerability of pedestrians is distinct from any vulnerability of bicyclists because "a cyclist has a much greater capacity to avoid being struck." *Id.* at 667 (internal quotations omitted). Division One of this court rejected this distinction, relying on the reasoning of *Nordby* and holding that "[a] car approaching from the cyclist's rear places the cyclist in a particularly vulnerable position not only because of the superior weight of the car, but also because opportunities for a bicyclist to evade the car approaching from the rear are more limited." *Id.* The court additionally held that Morris knew that the victims were particularly vulnerable because "the cyclists were exercising all reasonable care and were complying with all applicable traffic laws" and one of the cyclists wore a reflective vest which Morris "saw or should have seen [the cyclist] and knew that he was particularly vulnerable as a cyclist." *Id.* at 668.

As discussed above, the trial court found that Anderson was without the protection of any vehicle when the incident occurred—a finding supported by substantial evidence. Therefore, like the victims in *Nordby*, *Thomas*, and *Cardenas*, at the time of the collision, Anderson was a pedestrian who was completely defenseless and vulnerable, especially given that he was next to a roadway where vehicles were traveling at high speeds with only either fair or poor visibility. Given these circumstances and the applicable case law, a fair-minded person could have found that Anderson was a particularly vulnerable victim. We hold that substantial evidence supported the trial court's finding that Anderson was a particularly vulnerable victim.

Furthermore, at the time of the collision, the three Stokers were in a parked vehicle facing away from oncoming traffic on I-5. Because the Stokers were not moving at the time of impact,

they experienced an impact of a vehicle traveling between 77 and 88 miles per hour when Ireland collided with their stopped vehicle, which was behind a tow truck with activated overhead lights and loading Travis's vehicle. Richard and Karen both died at the scene, and Travis sustained substantial bodily injury from the collision including multiple fractures and internal injuries despite all three wearing their seatbelts.

Upon considering the facts in the light most favorable to the State, a fair-minded individual could have concluded that, while the Stokers were afforded some protection from injury through being seat-belted within a vehicle at the time of the collision, their position parked alongside the interstate, behind a tow truck with activated overhead lights and loading Travis's vehicle, made them particularly vulnerable as compared to other vehicles on the roadway. Such a person could also have found that Ireland knew or should have known the vehicles were stopped on the shoulder and the Stokers were particularly vulnerable.

Like the bicyclists in *Morris*, the Stokers had limited opportunities to evade a collision with a significantly faster moving object from behind. *See Morris*, 87 Wn. App. at 667. Although the Stokers had their seatbelts on, they were stopped, facing away from oncoming traffic, and behind Travis's disabled vehicle being loaded up into the tow truck with its overhead lights activated. Their vehicle was parked on a shoulder marked with a rumble strip, alongside a freeway where other vehicles were moving at high speeds despite the weather and limited visibility. In their position, the Stokers's had little to no opportunity to avoid Ireland's collision from the rear. A rational person could have found that, unlike a moving vehicle on I-5, the Stokers's position made them "relatively defenseless" in this collision. *Suleiman*, 158 Wn.2d at 291. Thus, a fair-minded individual could have found that the Stoker's were particularly vulnerable. We hold that, because of the circumstances of the collision, substantial evidence

supported the trial court's conclusion that all three Stokers were also vulnerable victims in the collision.

We hold that substantial evidence supported the trial court's findings of fact that Anderson and the three Stokers were particularly vulnerable victims and, thus, these findings of fact were not clearly erroneous.

CONCLUSION

We affirm.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

UNPUBLISHED TEXT FOLLOWS

In the unpublished portion of this opinion, we hold that, even if the trial court erred by allowing either or both the DRE's testimony and the paramedic's testimony, any error was nevertheless harmless.

ADDITIONAL FACTS

As a paramedic since 2009, Worth frequently responded to situations where patients were impaired and, in such circumstances, needed to "[r]ecognize signs and symptoms of impairment." 1 RP (Mar. 28, 2023) at 283. Worth testified at trial that, based on his observations of Ireland when he contacted her at the scene, Ireland's presentation "would be consistent with impairment."[11] 1 RP (Mar. 28, 2023) at 291.

[11] Ireland objected to this testimony because Worth's statements "go[ ] to the ultimate issue"; however, the trial court allowed it. RP (Mar. 28, 2023) at 291-92.

Officer Auderer was a drug recognition expert (DRE). When he contacted Ireland at the hospital, Officer Auderer administered an HGN test.[12] He observed Ireland presenting all six clues that the HGN test examines. At trial, Officer Auderer testified that, under the test procedures, observation of four to six clues would be consistent with impairment.[13] He also testified that, according to the National Highway Traffic Safety Administration's (NHTSA) standards, HGN is consistent with a CNS depressant and not consistent with a narcotic analgesic.[14]

ANALYSIS

Ireland argues that the trial court erred in allowing the opinion testimonies of the DRE, Officer Auderer, and the paramedic, Worth. We hold that, even if an evidentiary error occurred, such error was harmless given the other evidence presented.

We generally review a trial court's decision to admit or exclude evidence for an abuse of discretion. *State v. Otton*, 185 Wn.2d 673, 677, 374 P.3d 1108 (2016). A trial court abuses its discretion when it "'relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law.'"

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[12] Officer Auderer testified that the HGN test "allow[s] the person administering the test to observe an involuntary jerking of the eye." 1 RP (Mar. 29, 2023) at 371-72. The test involves looking for six "clues" or observations, three for each eye. 1 RP (Mar. 29, 2023) at 373. The three sets of clues are (1) "a lack of smooth pursuit" or how smoothly the eyes operate in a side-to-side motion, (2) "continual, involuntary jerking of the eye" when one moves their eyes out as far left or far right, and (3) onset of the involuntary jerking prior to the eyes being directed out towards a 45-degree angle. 1 RP (Mar. 29, 2023) at 373-74.

[13] Ireland objected and moved to strike the testimony related to impairment, not whether Ireland passed or failed. The trial court overruled the objection with the understanding that HGN alone does not show impairment or a specific level of impairment.

[14] When Officer Auderer testified to this, Ireland made no objection.

State v. Keller, 2 Wn.3d 887, 921, 545 P.3d 790 (2024) (quoting *State v. Arndt*, 194 Wn.2d 784, 799, 453 P.3d 696 (2019)).

An error in admitting evidence does not warrant reversal of a conviction unless such decision has prejudiced the defendant. *State v. Davis*, 176 Wn. App. 385, 396, 308 P.3d 807 (2013) (citing *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997)). If a trial court abuses its discretion, we then review the error for prejudice to determine whether it was reasonably probable, absent the error, that the outcome of the trial would have been materially affected. *State v. Barry*, 183 Wn.2d 297, 303, 352 P.3d 161 (2015). "[I]f the evidence is of minor significance" relative to evidence as a whole, the improper admission is harmless. *Davis*, 176 Wn. App. at 396 (quoting *Bourgeois*, 133 Wn.2d at 403). If the evidentiary error reaches constitutional magnitude, such as by allowing an improper opinion on guilt, such error is harmless if the State can show "beyond a reasonable doubt that any reasonable jury would have reached the same result absent the error." *State v. Quaale*, 182 Wn.2d 191, 202, 340 P.3d 213 (2014).

Ireland points to three instances of opinion testimony the trial court erred in admitting: (1) Officer Auderer's affirmative response to the State's question whether, according to " [the NHTSA], [HGN is] consistent with CNS Depressants"; (2) Officer Auderer's comments that the HGN test procedure's passing or failing boundary lies when four of six clues are observed; and (3) Worth's testimony that the observations he made of Ireland—that she had delayed responses, slurred speech, retrograde amnesia, confusion, and difficulty recalling things—would be "consistent with impairment" according to his training experience. Br. of Appellant at 23, 26.

Contrary to Ireland's characterization, none of these statements directly opined whether Ireland was impaired or not or whether Ireland was guilty. Officer Auderer's statements merely

described whether a government agency considers HGN indicative of CNS depressants and the number of observed clues that the HGN test procedure considers a pass or a fail. Additionally, Worth stated that, according to his training, the types of physical and behavioral presentations he personally observed in Ireland would be *consistent with* impairment—a permissible expression that a witness's certain perceptions are consistent with a conclusion and not one indicating that the witness personally believes that the defendant is guilty. *See State v. Montgomery*, 163 Wn.2d 577, 592-93, 183 P.3d 267 (2008). Because it is not clear how any error related to these testimonies would reach constitutional magnitude, we do not reverse unless it is reasonably probable that, absent the testimonies, that the outcome of the trial would have been materially different. *Barry*, 183 Wn.2d at 303.

Beyond Officer Auderer and Worth's observations, significant other evidence supported the trial court's conclusion that Ireland's driving was affected by drugs at the time of the collision. Despite the section of the roadway being fairly level and straight with minimal obstructions, Ireland drove, at a high speed, across at least one lane and over the auditory and tactile warning of a rumble strip before crashing nearly in-line with the Stokers's vehicle. Both Uhlman and the accident reconstructionist testified that there was no indication that Ireland braked, slowed down, or tried to otherwise avoid the collision.

Toxicology reports from blood taken the same day of the collision showed the Ireland had multiple benzodiazepines in her system as well as Suboxone which an expert witness testified, when taken with a benzodiazepine, would create the additive effects of "extreme sedation, difficulty with concentration, [and] difficulty with reaction time." 1 RP (Mar. 29, 2023) at 319. Law enforcement found prescription bottles, recently filled and with many pills

missing, in Ireland's vehicle, and the bottles themselves cautioned against taking the medications while operating a vehicle.

And, beyond observations of HGN, multiple witnesses testified that, after the collision, Ireland appeared drowsy, had slurred speech, and had an altered mental state. Dr. Lucas also could not opine whether Ireland's small bleed caused such symptoms. With the evidence presented taken as a whole, it is improbable that, even if the testimonies were improper, their inclusion materially prejudiced the outcome of Ireland's case.

Even if the challenged testimonies were improperly admitted, with the other significant evidence before the trial court, we hold that it is not reasonably probable that the verdict would have changed had the three challenged testimonies been omitted and, thus, any error would have been harmless.

CONCLUSION

We hold that, even if the trial court erred by allowing either or both Officer Auderer and Worth's testimonies, any such error would have been harmless, and, thus, we affirm Ireland's convictions.

Che, J.

We concur:

Maxa, J.

Veljacic, A.C.J.

THE LAW OFFICE OF THOMAS E. WEAVER

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