No._____

In The
Supreme Court of the United States

JASEN RANDHAWA,

Petitioner,

vs.

STATE OF WISCONSIN,

Respondent.

On Petition for a Writ of Certiorari to The Wisconsin Supreme Court

APPENDIX

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FILED
10-30-2023
CLERK OF WISCONSIN
SUPREME COURT

October 30, 2023

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John Blimling
Electronic Notice

Jerome F. Buting
Electronic Notice

Dudley A. Williams
Electronic Notice

You are hereby notified that the Court has entered the following order:

No. 2021AP1818-CR State v. Randhawa, L.C.#2016CF4787

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Jasen Randhawa, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Samuel A. Christensen
Clerk of Supreme Court

COURT OF APPEALS
DECISION
DATED AND FILED

July 5, 2023

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2021AP1818-CR **Cir. Ct. No. 2016CF4787**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASEN RANDHAWA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARK A. SANDERS, Judge. *Affirmed.*

Before Brash, C.J., Donald, P.J., and White, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Jasen Randhawa appeals the judgment, entered on his guilty pleas, convicting him of three counts of second-degree reckless homicide and one count of second-degree reckless injury. He also appeals the order denying his postconviction motion for resentencing. We affirm.

I. BACKGROUND

¶2 According to the criminal complaint, at approximately 2:34 a.m. on October 23, 2016, Randhawa's vehicle ran a red light and crashed into the driver's side of an Uber vehicle. Randhawa's vehicle crash data recorder indicated he was traveling 63 mph just prior to impact, which was more than twice the posted speed limit. Three women who were passengers in the back seat of the Uber vehicle were killed, and the driver was seriously injured. Witnesses told police that Randhawa and his passenger fled the scene on foot.

¶3 The complaint relayed the contents of two different videos, taken during cab rides in the hours after the accident, during which Randhawa discussed making a false allegation that his car had been stolen in order to avoid responsibility for the crash. The complaint additionally alleged that Randhawa's license was revoked at the time of the crash as a result of a 2015 conviction for operating while intoxicated. According to the complaint, Randhawa had one prior conviction for operating after revocation.

¶4 The State charged Randhawa with twelve offenses: three counts of second-degree reckless homicide; one count of second-degree reckless injury; three counts of hit and run involving death; one count of hit and run involving great bodily harm; three counts of operating a motor vehicle while revoked causing death; and one count of operating a motor vehicle while revoked causing great bodily harm.

¶5 Randhawa ultimately pled guilty to three counts of second-degree reckless homicide and one count of second-degree reckless injury causing great bodily harm. The other charges were dismissed and read in at sentencing. The circuit court imposed consecutive fifteen-year prison terms with initial periods of confinement of eleven years on the second-degree reckless homicide charges and a consecutive ten-year prison term with six years of initial confinement on the charge of second-degree reckless injury. The total sentence of fifty-five years requires Randhawa to serve thirty-nine years of initial confinement followed by sixteen years of extended supervision.

¶6 Postconviction, Randhawa sought resentencing. He argued that his sentences were based on inaccurate information and improper factors. Additionally, Randhawa claimed that the circuit court erred when it imposed consecutive sentences without explaining its reasons for doing so. The circuit court denied the motion without a hearing.

II. DISCUSSION

¶7 On appeal, Randhawa continues to challenge his sentences. Sentencing is left to the broad discretion of the circuit court, subject to review only for an erroneous exercise of that discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17, 39, 270 Wis. 2d 535, 678 N.W.2d 197. A court properly exercises its sentencing discretion when it relies on a "process of reasoning ... reasonably derived by inference from the record" and reaches conclusions "founded upon proper legal standards." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Because circuit courts are presumed to have acted reasonably, as there is a strong policy against interference with the court's discretion, the complainant must show by clear and convincing evidence some unreasonable or unjustifiable basis

on the record to demonstrate an erroneous exercise of discretion. *See* ***id.*** at 183-84; *see also* ***State v. Harris***, 2010 WI 79, ¶34, 326 Wis. 2d 685, 786 N.W.2d 409; ***Gallion***, 270 Wis. 2d 535, ¶18.

¶8 Randhawa frames portions of his argument as implicating his due process right to be sentenced upon accurate information. This court independently reviews the constitutional issue of whether a defendant has been denied his due process right to be sentenced upon accurate information. ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1.

¶9 "A defendant who requests resentencing due to the circuit court's use of inaccurate information at the sentencing hearing must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing." ***Id.***, ¶26 (citation and one set of quotation marks omitted). Actual reliance generally requires that the sentencing court gave "explicit attention" or "specific consideration" to the inaccurate information and that the inaccurate information "formed part of the basis for the sentence." ***State v. Travis***, 2013 WI 38, ¶28, 347 Wis. 2d 142, 832 N.W.2d 491 (citation omitted). Here again, the defendant must establish this reliance "by clear and convincing evidence." ***Id.***, ¶22. If the defendant shows that the court actually relied upon inaccurate information at sentencing, the burden shifts to the State to prove that the error was harmless. ***Id.***, ¶23.

¶10 With these standards in mind, we will analyze Randhawa's claims as to how the circuit court erred at sentencing.

A. *The circuit court properly considered information provided by private counsel retained by the family of one of the victims.*

¶11 Randhawa argues that the circuit court considered misleading and prejudicial information provided by a private attorney for one of the victims who, according to Randhawa, improperly inserted himself into the role of prosecutor. He claims that the circuit court's consideration—over Randhawa's objection—of the materials and information provided by private counsel violated long-standing public policy and statutes precluding private prosecution.

¶12 The State does not challenge the core proposition that private counsel may not prosecute a case. *See generally* ***State v. Peterson***, 195 Wis. 351, 355-56, 218 N.W. 367 (1928) ("In the prosecution of criminal actions, the district attorney prosecutes for public wrongs, not for private wrongs, and such prosecution should be by a public officer, and not a private party. This court … has declared it to be the public policy of the state."). Instead, the State's position is that that is not what happened here. The State contends that private counsel merely advised the circuit court of the position of one of the victim's families as to sentencing.

¶13 The parties agree that crime victims in Wisconsin have the right to "have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court." WIS. STAT. § 950.04(pm) (2021-22)[1]; *see also* WIS. CONST. art. I § 9m(2)(j); ***Gallion***, 270 Wis. 2d 535, ¶65. The parents of a

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

deceased person are "victims" within the meaning of Wisconsin's Constitution. *See* WIS. CONST. art. I § 9m(1)(a)2.

¶14 Randhawa claims that private counsel's submission went far beyond simply advising the court of the victim's family's position on sentencing. He contends that the submission included misleading information about both the police investigation into the crash and Randhawa's history. Randhawa challenges private counsel's assessment of Randhawa's "braggadocio" in a Facebook post, as well as the allegation that Randhawa was street racing at the time of the crash and that Randhawa declined to answer questions from police about it.

¶15 Private counsel's submission to the court, which was offered *after Randhawa pled guilty and after his sentencing exposure was set*, made clear that he was expressing the position of the victim's family. We agree with the State that an attorney providing that information to a circuit court no more prosecutes a case than does a crime victim delivering a statement at a sentencing hearing. Such involvement does not amount to a violation of the public policy against private party involvement in a criminal prosecution.

¶16 While Randhawa may have disagreed with the descriptions used by private counsel, they amounted to subjective value judgments and assessments of the circumstances surrounding the accident offered to support the sentencing request by the victim's family—value judgments and assessments the circuit court was free to reject. Randhawa was not entitled to resentencing on this basis.

B. *The circuit court properly considered general deterrence as a significant factor in calculating Randhawa's sentence.*

¶17 Randhawa additionally claims that the circuit court relied on inaccurate information at sentencing. Specifically, Randhawa contends that the

circuit court relied on general deterrence as a primary reason for imposing the fifty-five-year sentence and wrongly assumed that others would be deterred by the extreme sentence. He argues that it is widely accepted in social science that general deterrence is not accomplished by long sentences and that long sentences do not make for fewer crime victims by deterring others from committing crimes.

¶18 Randhawa is not arguing that general deterrence is an improper factor for a circuit court to consider in sentencing a defendant. Indeed, far from being improper, the law is settled that "deterrence to others" is a proper sentencing objective. *See* ***Gallion***, 270 Wis. 2d 535, ¶40. Although "general deterrence" should not be the "*sole* aim in imposing sentence," ***United States v. Barker***, 771 F.2d 1362, 1368 (9th Cir. 1985), what weight to give it among relevant sentencing factors in a particular case is left to the sentencing court's "wide discretion." ***State v. Leighton***, 2000 WI App 156, ¶52, 237 Wis. 2d 709, 616 N.W.2d 126. A court errs in this endeavor only if it "gives too much weight to one factor in the face of other contravening factors." ***State v. Steele***, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112.

¶19 Randhawa contends that the circuit court's belief that a lengthy sentence might deter others who would drive drunk involved reliance on inaccurate information about the deterrent effect of sentences on other would-be drunk drivers. He argues that the circuit court relied on inaccurate information because his lengthy sentence is "certain to be completely ineffective for its stated purpose" as "individual severe sentences, especially in non-intentional crimes involving impairment or recklessness, cannot be expected to deter others."

¶20 The sources Randhawa relies on, which include an expert's opinion and citations to journal articles, cannot define the bounds of a constitutionally

appropriate sentence. *See generally* ***State v. Roberson***, 2019 WI 102, ¶¶37-38, 389 Wis. 2d 190, 935 N.W.2d 813 (holding that "social science research cannot be used to define the meaning of a constitutional provision" and adding that "[i]t is the legislature that is structured to assess the merits of competing policies and ever-changing social science assertions"). In its decision resolving Randhawa's postconviction motion, the circuit court noted: "The differing view of an expert does not render the court's determination inaccurate." We agree. Differing opinions about the circuit court's sentencing objective of general deterrence does not constitute inaccurate information so as to allow for resentencing under ***Tiepelman***.

¶21 Moreover, established precedent accepts general deterrence as a valid sentencing objective for cases involving defendants who commit drunk driving offenses. *See, e.g.*, ***Gallion***, 270 Wis. 2d 535, ¶61 (explaining that part of the circuit court's reasoning behind the defendant's sentence was society's "interest in punishing [the defendant] so that his sentence might serve as a general deterrence against drunk driving"); *see also* ***State v. Whitaker***, 2021 WI App 17, ¶33, 396 Wis. 2d 557, 957 N.W.2d 561 (citing ***Gallion*** for the aforementioned proposition). Randhawa's claim that the circuit court violated his due process rights by relying on inaccurate information in this regard fails.

C. *The circuit court did not give undue weight to improper factors by imposing a sentence at odds with Randhawa's evidence showing sentences imposed in other vehicular homicide cases.*

¶22 Next, Randhawa argues that the circuit court gave undue weight to improper factors when it sentenced him. He claims the circuit court refused to consider his evidence of sentences in comparable cases and asserts that "[n]o sentence in the 30 cases documented came close to the 39 years of initial

confinement ordered here." According to Randhawa, the "virtual life sentence" he received "was both unusual and extremely harsh." He asserts that the circuit court improperly relied on the "charged emotional environment of the sentencing hearing."

¶23 We begin by noting that individualized sentencing has been a cornerstone of Wisconsin's criminal justice jurisprudence because no two convicted felons stand before the sentencing court on identical footing and no two cases will present identical factors. *See* ***Gallion***, 270 Wis. 2d 535, ¶48. Insofar as Randhawa relies on ***State v. Counihan***, 2020 WI 12, 390 Wis. 2d 172, 938 N.W.2d 530, for the proposition that a court "may … consider information about the distribution of sentences in cases similar to the case before it," the decision does not suggest that a sentencing court erroneously exercises its discretion by electing *not* to consider sentences in other cases. ***Id.*** ¶43 (citation omitted).

¶24 Randhawa's reliance on ***In re Judicial Admin. Felony Sentencing Guidelines***, 120 Wis. 2d 198, 353 N.W.2d 793 (1984) (per curiam), is similarly misplaced. In that case our supreme court declined the legislature's request to promulgate felony sentencing guidelines and stated that it would not interfere with circuit courts' sentencing discretion "by requiring judges to consider how convicted felons have been treated in other Wisconsin courts[.]" ***Id.*** at 202-03.

¶25 Randhawa has not shown by clear and convincing evidence that the circuit court relied on an improper factor—i.e., the charged emotional environment—when it sentenced him. Rather, the record reflects that the circuit court exercised its discretion *not* to consider the other cases that Randhawa contended were comparable. Randhawa engaged in reckless behavior that he knew was illegal, which resulted in the deaths of three innocent people and serious

injuries to a fourth. He then fled from the scene and initially sought to cover up the crimes. Randhawa agreed to a plea deal that included a recommendation for a thirty-five to forty-year period of initial confinement by the State and ultimately received a sentence of initial confinement time within that range. We are not convinced that this was unduly harsh. *See* ***State v. Davis***, 2005 WI App 98, ¶15, 281 Wis. 2d 118, 698 N.W.2d 823 (holding that a sentence is unduly harsh only if the length of the sentence imposed by a trial court is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)).

¶26 Randhawa has not satisfied his burden of showing that the circuit court relied on an improper factor when it sentenced him. Like the ones before it, this claim fails.

D. *The circuit court did not erroneously exercise its discretion by imposing consecutive terms of imprisonment.*

¶27 Lastly, Randhawa argues that the circuit court erroneously exercised its discretion when it did not explain why it imposed consecutive rather than concurrent sentences. Given that all of the charges related to one reckless act by the defendant, Randhawa claims the rationale for concurrent sentences is strong.

¶28 In sentencing Randhawa, the circuit court discussed the "ripples" of effect that Randhawa's actions had. The circuit court specifically mentioned the separate and distinct effects that Randhawa had on each of the four victims and their families. The circuit court also noted in its order denying Randhawa's postconviction motion, its decision to sentence Randhawa to consecutive terms was based on the same factors warranting the overall length of the sentence. The

circuit court explained that it had structured the sentence to "account for the separate harms to each of the separate victims." *See* ***State v. Stenzel***, 2004 WI App 181, ¶22, 276 Wis. 2d 224, 688 N.W.2d 20 (affirming a sentencing involving consecutive terms in an OWI homicide case with multiple victims). "To impose anything less than consecutive sentences in this case," the court continued, "would unduly depreciate the profound, life-long and life-*ending* impact the defendant's conduct had on the four separate victims and their families." These remarks provide a "rational and explainable basis" for the sentences imposed. *See* ***Gallion***, 270 Wis. 2d 535, ¶39 (citation omitted); *see also* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that a postconviction motion challenging a sentence affords the circuit court an opportunity to further explain the sentencing rationale).

¶29 We conclude that the court properly exercised its discretion when it imposed consecutive rather than concurrent sentences.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

BY THE COURT:

DATE SIGNED: October 2, 2021

Electronically signed by the Hon. Mark A. Sanders
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT Branch 28 MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 16CF004787

JASEN RANDHAWA,

Defendant.

DECISION AND ORDER
DENYING MOTION FOR POSTCONVICTION RELIEF

On April 12, 2021, the defendant by his attorney filed a Rule 809.30 motion for resentencing based on claims that the court relied on inaccurate information about the effectiveness of general deterrence, gave undue weight to "improper factors," and failed to appropriately exercise its sentencing discretion in imposing consecutive sentences. On February 13, 2017, the defendant entered guilty pleas to three counts of second degree reckless homicide and one count of second degree reckless injury. A number of additional counts were dismissed and read in for sentencing: three counts of hit and run involving death, one count of hit and run involving great bodily harm, three counts of knowingly operating while revoked causing death, and one count of knowingly operating while revoked causing great bodily harm.[1] On May 19, 2017, the court sentenced the defendant to 11 years of initial confinement followed by four years

[1] The dismissal and read in of these counts reduced the defendant's total prison exposure from 199 years of imprisonment to 87 and one half years.

of extended supervision on each of the three homicide counts and six years of initial confinement followed by four years of extended supervision on the reckless injury, for a total of 39 years of initial confinement and 16 years of extended supervision. The court ordered a briefing schedule to which the parties have responded. The court has reviewed the motion, briefs, and sentencing record, and agrees with the State that resentencing is not warranted.

The facts were set forth in great detail at the defendant's sentencing hearing and are not in dispute. In short, the victims in this case included three young women from Chicago who came to Milwaukee for a night out. Rather than drink and drive, they called an Uber, the driver of which is the fourth victim. The defendant was also drinking that evening but decided to drive. The defendant ran two red lights and struck the driver side of the victims' vehicle at a high rate of speed. Data from the defendant's vehicle showed that seconds before striking the victims, he was going more than 60 miles per hour in a 40 mile per hour zone with the accelerator at 100%. The three young women from Chicago died as a result of injuries sustained in the accident. The Uber driver survived but suffered injuries that included aortic dissection, injuries to his spleen and liver, multiple back fractures, and bilateral lung bruising.

The defendant and his passenger both fled from the scene of the accident. The defendant's license was revoked at the time due to a prior OWI, and he had been arrested for operating after revocation once before this incident. From the accident scene, he ran (on foot) to a cab. He told the driver that he had "been carjacked" and asked the driver to back up his story. He then returned to the scene of the accident with two different friends in order to remove the vehicle, which had been towed. The defendant then came up with a plan to report the vehicle as stolen but decided to wait until he was no longer drunk. However, the defendant ultimately decided to turn himself in the next day.

The defendant first argues that the court relied on inaccurate information when it indicated it was considering "general deterrence" as a factor in sentencing the defendant:

> [THE COURT:] The only way I can protect the public fully is by crafting a sentence in this case that is sufficient to cause other people to be aware of the consequences of drunk driving more fully so that they know and that they may think when they're at a bar with some friends, you know, I'm just going to drive home, the hope is that there – that it will go through their heads, well, damn, that Randhawa – that Randhawa guy, he killed some pokes – some folks, that was terrible and then he went to prison for a long time, I'm not gonna do that. That's how public protection can be achieved. The hope is that there will be fewer crime victims in the future.

(Tr. 5/19/2017, pp. 159-160). The defendant argues that it "is now widely accepted in social science that individual severe sentences do not deter crime." (Defendant's motion, p. 6). In support of his motion, the defendant has included an affidavit from Dr. Ashley Nellis, who opines that not only are severe sentences ineffective as a form of general deterrence, but that this is especially so for persons under the influence of alcohol because there is an absence of rational thought. Therefore, the defendant argues, the court relied on inaccurate information when it considered the impact the defendant's sentence would have on deterring others from engaging in similar conduct and furthering the sentencing goal of protecting the public.

A defendant who requests resentencing based on inaccurate information has the burden of demonstrating by clear and convincing evidence that the information was inaccurate and that the court actually relied on it. ***State v. Lechner***, 217 Wis. 2d 392, 419 (1998) (quoting ***State v. Johnson***, 158 Wis. 2d 458, 468 (Ct. App. 1990)). Once actual reliance on inaccurate information is shown, the burden then shifts to the State to prove the error was harmless. ***State v. Tiepelman***, 291 Wis. 2d 179 (2006).

The court finds that the defendant has failed to demonstrate by clear and convincing evidence that the court relied on inaccurate information. The defendant has not identified a

single *factual* assertion that the court stated or relied on that is false. The court's comments about the length of the sentence needing to be sufficient to "cause other people to be aware of the consequences of drunk driving..." constitute a fundamentally subjective judgment on one of the sentencing factors delineated in ***Gallion***; it is not an objective fact that is capable of being true or untrue. *See* ***State v. Saunders***, 196 Wis. 2d 45, 51 (Ct. App. 1995) ("Factual objectivity refers to facts in the sense of what is really true, while opinion subjectivity refers to mere `opinion' or personal taste." (citation omitted)). That general deterrence is an appropriate sentencing factor for courts to consider, *including in cases of drunk driving*, is a matter of *settled law*. *See* ***State v. Gallion***, 270 Wis.2d 535, ¶¶ 40, 61 (2004). Dr. Nellis's opinions on the effectiveness of general deterrence in drunk driving cases are just that – her *opinions*.[2] The defendant cannot demonstrate that the court relied on inaccurate information merely by offering a differing perspective from an "expert" related to one or more of the court's sentencing objectives.

The Court of Appeals addressed a similar claim from a defendant seeking sentencing relief based on a differing expert opinion as to the court's objectives of sentencing in ***State v. Sobonya***, 365 Wis.2d 559 (Ct. App. 2015). Sobonya requested expungement of her criminal record at sentencing for possession of heroin. The circuit court denied that request, reasoning that expungement would undermine the deterrent effect of the court's sentence. Postconviction, Sobonya retained an expert who opined that granting expungement would not undermine the deterrent effect of the court's sentence and offered his report as a "new factor." The Court of Appeals rejected Sobonya's claim, reasoning that "an expert's opinion based on previously

[2] While the court need not address the strength of Dr. Nellis's opinions because the defendant has not met his burden of showing that the court relied on inaccurate information, the court notes that even the self-contained facts of this case reject Dr. Nellis's fatalist view that drunk driving cannot be deterred. The three homicide victims were also out drinking that evening. However, they did not drive drunk – they made the sensible choice (perhaps by following a predetermined plan) to call an Uber (the driver of which was the defendant's fourth victim). The victims' responsible decision-making on that evening stands counter to Dr. Nellis's view that people under the influence of alcohol cannot be deterred from driving in an intoxicated state.

known or knowable facts" is not a new factor because such an opinion is "not a 'fact or set of facts' that [was] not in existence or unknowingly overlooked by the parties at the time of sentencing." ***Id.*** at ¶ 7. The Court of Appeals emphasized that this was particularly so when the opinion centers on the objectives of sentencing (protection, punishment, rehabilitation, and deterrence). ***Id.*** at ¶¶ 1, 9.

Here, as in ***Sobonya***, the defendant has retained an expert who takes issue with the court's reliance on a well-established sentencing factor: general deterrence. Unlike the new factor analysis, the defendant need not establish under ***Tiepelman*** that the fact or information in this case was unknown or unknowable at the time of sentencing; however he does need to establish that *information or facts* presented and relied upon at sentencing were inaccurate. The court finds ***Sobonya*** highly persuasive on this point. The retained expert's differing opinion about the court's sentencing objective of general deterrence is not the sort of inaccurate information claim that allows for resentencing under ***Tiepelman***, as it is not an objective fact.[3] Therefore, the defendant's motion for resentencing on these grounds is denied.

The defendant next argues that the court gave undue weight to "improper factors." The only comments from the sentencing record that the defendant points to in support of this argument are the previously discussed comments about general deterrence, which are not improper. Rather, the defendant invites the court to infer that it relied on improper factors not apparent from the record by comparing this case to the defendant in a completely unrelated case (State v. Lontrell L. Lee, Milwaukee County Circuit Court Case No. 17CF426). The defendant

[3] In the defendant's reply, he asks the State to "cite to one case, one study or the opinion of anyone that a sentence of 39 years initial confinement, rather than, for instance a 20 year sentence, would deter anyone from committing an aggravated OWI and thereby create 'fewer crime victims.'" (Defendant's reply, page 4). This is a more nuanced version of his argument that appears to concede that some punishment indeed has a deterrent effect but still contends that there is a point of diminishing returns for more *severe* sentences. However, this arguments suffers from the same flaw. The minimum amount of confinement necessary to achieve the court's sentencing objectives is not a numerical fact; it's a subjective determination reserved to the discretion of the sentencing court. *See* ***Gallion***, *supra.* The differing view of an expert does not render the court's determination inaccurate.

claims that "[t]he failure of Judge Sanders to recognize the limitations of general deterrence that he recognized in Mr. Lee's case, and his failure to acknowledge that Mr. Randhawa did not intend that anyone be harmed or killed as a result of his conduct, as he acknowledged in Mr. Lee's sentencing, can only be explained by the charged emotional environment of the sentencing hearing in Mr. Randhawa's case." (Defendant's motion, p. 17).

At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 289 Wis. 2d 594, ¶23 (Ct. App. 2006), and determine which objective or objectives are of greatest importance. *See* ***State v. Gallion***, 270 Wis. 2d 535, ¶41 (2004). In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several additional factors. *See* ***State v. Odom***, 294 Wis. 2d 844, ¶7 Ct. App. 2006). The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Id.***

The court rejects the defendant's claim that the court relied on improper factors. The court conducted a complete and thorough sentencing analysis, which included discussion of the defendant's character, the seriousness of the offenses, and the need for punishment, public protection, and both general and specific deterrence. (Tr. 5/19/2017, pp. 138-165). The court did not consider any factors other than those that were discussed on the record at the defendant's sentencing hearing. The weight given to each of those factors, including general deterrence, is committed solely to the discretion of the sentencing court. *See* ***Odom***, *supra*. The court also rejects the defendant's invitation to engage in a comparative sentencing analysis of the

defendant's case and that of an unrelated defendant in an unrelated case.[4] The defendant is not entitled to cherry-pick data points from unrelated cases and demand the court distinguish the two as the court might in a disparate sentencing claim involving co-defendants to the same case. *See, e.g.,* ***State v. Toliver***, 187 Wis. 2d 346, 362 (Ct. App. 1994). The court has no obligation to comment on its sentencing analysis in an unrelated matter and will not do so here. To the extent that the court can liberally construe the defendant's claim as an unduly harsh claim, the court agrees with the State that the sentence was not unduly harsh for the reasons set forth on the record and at pages 9-10 of the State's response brief.

Finally, the defendant argues the trial court improperly exercised its discretion when it imposed consecutive rather than concurrent sentences. The court disagrees. The court set forth a complete sentencing analysis, explaining why it was imposing the total length of the defendant's consecutive sentence (i.e. 39 years of initial confinement and 16 years of extended supervision). ***State v. Hamm***, 146 Wis.2d 130, 157 (Ct. App. 1988) *citing* ***Cunningham v. State***, 76 Wis.2d 277, 284-85 (1977) (the "same factors concerning trial court discretion as to the length of a sentence apply to a determination whether sentences should be served concurrently or consecutively"). Additionally, the court structured the consecutive sentence to account for the separate harms to each of the separate victims. *See, e.g.,* ***State v. Stenzel***, 276 Wis.2d 224, 241 (Ct. App. 2004). To impose anything less than consecutive sentences in this case would unduly depreciate the profound, life-long and life-*ending* impact the defendant's conduct had on the four separate victims and their families. The court finds no erroneous exercise of discretion in its decision to impose consecutive sentences.

[4] However, the court notes that the cases are distinguishable for the reasons set forth on pages 10-14 of the State's response brief.

In sum, for the reasons set forth herein, in the sentencing hearing transcripts, and in the State's response brief, the defendant's motion for resentencing is denied.

THERERORE, IT IS HEREBY ORDERED that the defendant's motion for resentencing is **DENIED**.

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 28

STATE OF WISCONSIN,

Plaintiff,

vs. Case No. 2016CF004787

JASEN RANDHAWA,

Defendant.

MAY 19, 2017 SENTENCING

HONORABLE MARK A. SANDERS

CHARGE: 3 Counts 2nd-Degree Reckless Homicide
2nd-Degee Reckless Injury

DISPOSITION: COUNT 1: 11 yrs. initial confinement, 4 yrs. ES; COUNT 2: 11 yrs. initial confinement, 4 yrs. ES: COUNT 3: 11 yrs. initial confinement, 4 yrs. ES; COUNT 4: 6 yrs. initial confinement, 4 years ES consecutive to each other and any other sentence.

APPEARANCES:

GRANT HUEBNER, Assistant District Attorney, appeared on behalf of the State.

JOHN SCHIRO, Attorney at Law, appeared on behalf of the Defendant.

The Defendant appeared in person.

KELLY L. PIERCE, Official Reporter

ATTORNEY SCHIRO: It was August 5. That's a typo.

THE COURT: Okay. And it was August 15 that the OAR --

ATTORNEY SCHIRO: OAR 10 days later.

THE COURT: It's not a particularly more than detail.

ATTORNEY SCHIRO: No.

THE COURT: I just wanted to make sure I had that detail correct.

ATTORNEY SCHIRO: I appreciate that.

THE COURT: Okay. So, Mr. Randhawa, anytime I give anybody a sentence there are three different things, primary things, that I have to think about.

I have to think about the nature of the offense, basically what somebody did. I have to think about that person's character, so who they are or what their background is like, things like that. The third thing I have to think about are needs of the public.

Before I get into that detail as to each of those things, there's a couple of things that are worth saying. The first is that what happened back on October 23rd of 2016 can really

only be described as catastrophic for most of the people in this room. There will be a demarcation line in the lives of the Cohens, in the lives of the Sawatzkes and the lives of the Taylor family, in the lives of Mr. Synder and in the lives of your family and your community and that line will be before October 23rd and after October 23rd.

The second thing that needs to be said is an interesting perspective that I get sitting here, and I mean that physically not being the judge but I mean physically sitting in this seat.

I'm higher than everybody else in the room and I can see things in the audience that nobody else in the courtroom can see because they're not sitting as high as I am.

I can see the members of -- of the Cohen family smile when the pictures of Lindsey are on the screen. I can see how significant the impact of all of these events are having on your friends and family.

Traditionally, because of the way the courtroom is set up members of victim's families tend to sit on my right and members of defendant's family tend to sit on my left, but that's just purely by accident. That's where the aisle is, and

so sitting here I also get to see just a sea of people who are suffering, in different ways but just a genuinely an ocean of suffering. I can't tell when someone is crying on this side or even on that side of the room whether they're crying out of loss that they have suffered because their daughter has died or because they're crying because they're so sad about being here in connection with a defendant.

All I see is grief, and that grief ties them together in a -- sort of macabre way. If nothing else, it is a similarity that I think all the people in the audience share.

I don't know why those observations are important for me to make about this being a demarcation line and about how grief is shared by everyone in the audience, but I think it is worth saying out loud so that all can hear.

It is also worth saying out loud that this really moves into the nature of the offense that Lindsey Cohen, Ashley Sawatzke and Amy Taylor died because of you.

It is worth saying that Mr. Synder whose aorta was dissected nearly died because of you. The nature of these offenses is but for perhaps that circumstance that Mr. Schiro outlined

where there are three separate incidents of second-degree reckless homicide, these incidents are at the top end of the aggravated range. On October 23rd you and some friends go out and are having some drinks at some point.

At the same time entirely unbeknownst to you there's another group of people: Lindsey Cohen, Ashley Sawatzke and Amy Taylor that are out. They're friends too, and they're out having drinks and some night on the town.

They've come to Milwaukee to visit, they're staying at a hotel and they've gone to do what friends do, have something to eat and just spend some time together and an evening out.

They take an Uber from their hotel to the -- I gather Brady Street where they were going to spend some time together. At around two in the morning or so or a little bit after they're going to back to the hotel, so they call an Uber again, and they take that Uber, of course, because they don't want to drive because they've been drinking and they don't want to drive because they know that it places other people at risk. They don't want to drive because they know that it puts themselves at risk. They don't want to drive because they know that

there is a potential penalty for driving when you've been drinking too much. That's when they -- that group of people meets Mr. Synder. He's just a guy doing a job.

His described motive for that is that he wants to help people, and certainly there is no question that being a driver of people at around two in the morning after they've been out having a -- a drink or two does help people.

So he's driving back to the south side and is going south on Second Street, and he gets to the intersection of South Second and Clybourn. He enters that intersection slightly over the speed limit but not outside of the realm of reasonable behavior -- around 33 miles an hour or so.

You're coming the other direction. You're going west on Clybourn. You've run at this point, according to your passenger, through one yellow light, through one red light, and according to the computer from the Lexus you were driving, you were now accelerating to try to, well, run another red light.

Five seconds or so before the accident happens -- the crash happens you go from in the 40s to in the 60s by flooring the accelerator on the

Lexus. Your Lexus enters the intersection just in time and at such a high rate of speed that Mr. Synder has time only to get a glimpse out of the corner of his eye of headlights coming and then there's impact. The images of the accident scene, it appears that the impact occurs just behind Mr. Synder, driving into the passenger side door on the driver's side of his Ford Focus I believe.

The impact is sufficient to crumple the door on the rear driver's side of his vehicle into the passenger compartment of the vehicle to such a degree that the rear driver's side passenger seat is almost eliminated.

You can see in the pictures the rear passenger side seat, you can see the rear sort of center seat. There really isn't a sort of a center seat, but you can see where a person would sit in the center but you really can't see much of the rear driver's side seat because the driver's -- the rear driver's side door has been driven in so in so far.

The passenger tells us that before he runs he's able to look up and he sees Mr. Synder, sees that he's stuck in the car because the air bag has gone off. I don't know if you can see that or not. From where the cars appear to come to rest you

would be able I think to see into the car driven by Mr. Synder. Whether you did or not I don't know. The passenger's impulse -- his first impulse is to run. That apparently is motivated by fear because he's on probation.

Your first impulse is to run. That's motivated by fear, fear of getting caught, fear of another OWI, but neither you nor your passenger's fear is tempered by that desire to just check on whoever happens to be in that car, and you knew, of course, that there was at least one other person at that car.

There had to be at least one other person -- had to be somebody driving that car. And so you run. The -- As you're running away there are other people that are at or near that intersection, so people coming from the south side that are coming from a -- a bar. I don't know if they were driving, but they're coming from a bar or club and they're driving apparently in the area and they stop.

It's one of those people that makes a call to 911. That caller is close enough to the vehicle that -- that is to the -- the car that Miss Cohen, Ms. Sawatzke and Ms. Taylor were in that she

could see inside the car. Now, I don't know anything about that person, but I know that when you hear their voice describing to the dispatcher what they're seeing inside that car that there's a moment when their voice just sort of halts because they can't actually describe what they're seeing because the impact on them of what they're seeing is so great that they just aren't able to describe it. Turns out one of the other people has some medical training, I don't know what it was, but is able to check.

In one way or another it's discovered that at least one of those three people in the back seat of that car, I don't know who, I don't know whether it was Ms. Cohen, Ms. Sawatzke or Ms. Taylor.

Two of them I gather were not responsive and of them still has a pulse. Now, of course, while that's going on you're running, and it's no doubt about this same time that a call that's being made to 911 that you're getting into a cab near the Amtrak station.

That's one of the cabs that has this audio recording inside, and I know that you've had a chance to see that recording -- audio and visual

recording. He asks to go to I think it's 6th and Arthur and they're -- the cab driver, just like Mr. Synder, is driving there. The -- Within a few minutes of being in that cab is when you begin to develop this story of how, gee, the car has been stolen, and you begin to enlist I think his name was Pat, the driver of the cab, to be supportive of you in this story that your car -- that, gee, your car had just gotten stolen.

Ultimately you find yourself in another cab and that's where you're discussing with some friends and I gather your brother on the phone what it is that happened.

It's there that, as Mr. Huebner indicates, that somebody says -- I think it's your brother on the phone -- if you can't do the time, don't do the crime, something like that.

It's also tragically ironic there that at least somebody in the car says, well, at least you didn't kill anybody. I think -- In fact, I think the phrase is, "At least nobody died. Then you'd be fucked."

Of course, while that's happening, while you're in that cab -- one of those cabs, Lindsey Cohen is being transported someplace too;

she's being taken to Froedtert Hospital. Now, I don't know how long after the accident those other people came upon the scene. I don't know whether they were standing across the street or were driving by immediately and just got out of their car and were there instantly. I don't know whether there was a three- or four- or five-minute lapse of time.

I -- I don't know, but I know that there was some gap in time between the accident and when these other people arrive, and one of the tragic parts of this is a tiny, little question that results from that gap in time, a question that no doubt gnaws at the back of the minds of each of the Cohens -- Cohens: What if somebody had called 911 right away? What if Lindsey had gotten medical treatment 30 seconds, 60 seconds, five minutes or earlier?

It probably wouldn't have made any difference, but the question is -- the gnawing part of the question is there is no way to know.

As I mentioned already and as you know and as we all know, as you're chatting with the first cab driver and as you're chatting with the others in the second cab trying to plan and consider when or how you should call the police to report the

car stolen, something that's worth noting that you never did, that's when Ashley and Amy are being removed from the car. That's when Mr. Synder is being taken to the hospital. That's when Lindsey is being taken to the hospital.

It's at that moment that the ripples begin to move out from just Lindsey and Ashley and Amy and Mr. Synder and yourself. The ripples of this incident begin to expand at that point. Others begin to get involved.

First, there's the cab driver. Then there's your other friends in the other car. Then there's the people that are -- happen to be at the scene helping them.

The ripples expand further from there. They extend over the next few hours to Ashley's family and Amy's family, a few hours later to the Cohen family in Ohio.

They ripple from there further to Jessica who Mr. Cohen has to call and tell that -- that Lindsey has died. They extend further the next day when your family begins to discover that you were involved in this, and -- and those ripples continue to be the exact thing that is catastrophic in the lives of all of the people that are in this

room and all of the people that are touched by you or Lindsey or Ashley or Amy or Mr. Synder. Just in terms of the nature of the offense, the -- causing their deaths, running two red lights and a yellow light, accelerating your car by flooring the gas pedal moments before the accident, running away, plotting within minutes how to get out of it, all of that put this squarely in aggravated category for this kind of offense.

In terms of your character. The way to describe your character I think is complex. There are some good parts to your character and there are some things that are not as good.

First, you're now 24 years, two months and 27 days old. You would have been 23 years, eight months and one day old last October 23rd. That's young. Both of those things are young.

It's not incredibly young. That is to say, it's not a 17-year-old or an 18-year-old. You're in your 20s. You're in that point in your life where you're more capable of being able to think clearly and make clear, adult decisions.

You're better educated than most people that sit in that chair. You've got a high school diploma and you've got some college. You studied

between 2011 and 2014 at UWM and at MATC having graduated from Homestead High School in 2011.

You were studying IT management. You were I gather, at least according to the sentencing memo, about two semesters away from graduating with your degree. I'm told -- At least I gather from the comments of others that you had actually gone to school for a period of time, dropped out and then returned to school for a period of time.

That's good, both the ambition to get an education, the returning to school and the education that you did receive. You've got an employment history. That's good.

You had worked for many years at one level or another at your family business. Family businesses are hard work. You had other jobs. You worked at Metro Market for a period of time.

You've had an internship in IT earlier in 2016. That's a good, solid employment history. You've had a lot of family support, the -- both from your parents and an intact family who are clearly devastated.

One of the letters describes -- this is one of the letters supporting you -- describes what your family is going through as being a parent's

worst nightmare. That's true, but I would put an asterisk next to it because really a parent's worst nightmare is their child being killed. I suppose the next in line, close but second is learning that your child had killed someone. Family support is valuable. It tells me something about your family, that they continue to be very supportive of you.

You have community support. I've, as I mentioned, reviewed a couple of different letters, one from the Sikh community that speaks very strongly of forgiveness, and I know that the Sikh community is both resilient and focused on forgiveness. Admirable qualities.

Your physical health is generally fine. You have no formal mental health diagnoses. I'm told in the sentencing memorandum of some anxieties, maybe some social anxiety when you were younger.

I don't see much of that in the video recordings. I -- I see much more gregarious behavior in video recordings that I saw on your part. Maybe that's a result of the alcohol, maybe it's a result of the accident, but it -- it's a little bit difficult to -- I just don't see anxieties there.

You've got some alcohol and drug

history, some experimentation with marijuana, some -- Your alcohol usage is a little unclear to me, but certainly I think alcohol is a problem, it -- at least to the degree that you've been sanctioned for drinking and driving in the past and that wasn't enough to deter you from drinking and driving again. We'll talk more about that shortly.

I want to get back to family support for a second. Your family is described -- describes you in very positive terms, and I accept that that's certainly part of your character.

Interestingly, they describe you as -- where did I write that down? Ah -- reliable and sensitive to the needs of others and the back bone of your family.

Of course that's different than the behavior that you showed on the night of October 23rd where you weren't being sensitive to the needs of others, you were putting people at risk, where you weren't being sensitive to the needs of others when you were running from the scene to preserve your own skin out of fear rather than checking on whoever may have been in that other car. So I don't doubt their description of your character from where they sit and the experiences that they've had with

you, but I think like most of us there are various aspects of your character. This begins to move away from the positive aspects of your character, age, education, employment history, family support, community support into some of the more negative aspects of your character.

The first negative aspect of your character that I noticed was something on those video recordings and it was how quickly and how easily you began to develop this deception to get yourself out of trouble.

You begin to enlist the help of others, Pat, the cab driver. Even later discussing with your friends, calling the police, waiting until the alcohol was out of your system to have contact with the police, describing to them how you hit and run when you were sober. That's the story that you want to create.

It's not a good aspect of your character when your initial impulse is not just to flee but to create a deception to get yourself out of trouble.

There were also in there an attempt to avoid capture. That's when you get -- go back to your house, discover that the police are waiting and

keep going. That's not a strong and that doesn't display your character as much as some things but it is a display of your character. Your record is also concerning.

It is true that you do not have any prior criminal convictions. That's good. It's unusual for people who sit in that chair in this courtroom to have no prior adult criminal record.

You have no juvenile adjudications. It is rare for people that sit in that chair to have no prior juvenile adjudications. You do have, though, this prior OWI offense.

Now, I don't know much about it. I wish I had more information about it because I think that information could be useful to me, but you do have this prior OWI offense, and here's why I wanted to clarify the date with Mr. Schiro earlier.

You got convicted on August 5th of 2015. That's 14 months and 18 days before you're driving under the influence again and getting in this accident on October 23rd. That's pretty close in time.

During that period of time you would have undergone an alcohol and drug assessment, you would have had to complete a victim impact panel,

you would have had to take other steps relative to that drunk driving that are designed to help inform people about the potential consequences of drunk driving, and Mr. Schiro is absolutely right -- at least I think it was Mr. Schiro that mentioned this.

The reason that OWI first offenses in Wisconsin are civil rather than criminal is the hope that by making it civil that it gives people the opportunity to reform their behavior.

It's -- also, I think recognizes that people that tend to commit drunk driving offenses are in many respects different than those people that may commit other types of crimes.

It is not at all uncommon for people that are arrested for -- commit the offense of operating under the influence to be employed, without otherwise dangerous criminal record, to be educated, to be in many respects very similar to you, to be hard-working but for drinking too much and driving.

So that's what that first civil offense is designed to do, to give people the opportunity to reform their behavior, to send to them a clear message of the consequences of driving under the

influence and to recognize that some of the time those people are different than people that commit other crimes.

So that prior OWI offense was very close in time to when this happens, and in the interim since then there was the operating after revocation arrest. Mr. Huebner's right, it is by itself something that is not of great consequence. It's just a reminder of the way being arrested for that would have been a reminder to you of how best to behave.

There's another incident where you're in front of the county board again or the -- the -- not county board -- the Milwaukee Common Council trying to get -- I gather get the hours or a license for the family business extended when again you're reminded by Commissioner Stamper, who's very direct by nature, of the consequences of drunk driving, and those instances by themselves are unremarkable.

The only reason I mention them is because they are instances after your OWI conviction where you would have been reminded of the consequence, would have been reminded of the need to not drive, would have been reminded of the significance of driving under the influence. Those

reminders and the original conviction were not sufficient to deter you from getting involved in this kind of offense 14 months and 18 days later. That's concerning. That is not a positive aspect of your character.

You did turn yourself in a couple of days later. That's good. You did enter a guilty plea in this case. That is good. I am willing to accept as genuine your expression of remorse today.

I think you are willing to acknowledge that you did not express remorse at the time of this incident. Instead you expressed self-preservation and selfishness by fleeing and trying to concoct this story.

So the positive aspects of your character, education, employment history, family support, community support, no prior criminal record, no juvenile record.

The negative aspects of your character, recent OWI, a suspended or revoked at the time of the offense, the deception that you tried to create, the overall recklessness that you displayed that night, those are not good aspects of your character.

Let's talk for a moment about the needs of the public. Mr. Schiro is right that one of the

principle needs of the public is public protection, and I think that his cast on public protection is accurate but not complete.

One way to protect the public is -- would be protection of the public from the defendant that is in front of the Court at any particular time.

In this circumstance protection of the public from you, and there is some need to protect the public from you, because of the recent OWI in the past, because of the overall reckless conduct that you had showed, because of the selfishness that you've displayed by running from the scene and the deception that you tried to create.

There is a need to protect the public from you, but that is not the only aspect of public protection that I have to consider when I formulate any sentence. I have to consider -- So let me take a step back.

Protecting the public from you and getting you to stop committing crimes is specific deterence. That's accomplished in some senses by incarceration because it's a lot more difficult to commit crimes while you're locked up. It's accomplished in another respect by the -- whatever

sentence I come up with being sufficient to demonstrate to you that you don't want to commit crimes anymore. So that's specific deterence works, but another aspect of protection of the public, in fact, a significant aspect of protection of the public is general deterence, and that's a particularly important aspect in cases like this and it's particularly important aspect in cases like this because many times these people that commit drunk driving offenses are more like you than they are like the other people that sit in that chair sometimes.

They tend to be better educated, they may not have prior criminal histories. They may just drive drunk. The only way that I can protect the public fully is by crafting a sentence in this case that is sufficient to cause other people to be aware of the consequences of drunk driving more fully so that they know and that they may think when they're at a bar with some friends, you know, I'm just going to drive home, the hope is that there -- that it will go through their heads, well, damn, that Randhawa -- that Randhawa guy, he killed some pokes -- some folks, that was terrible and then he went to prison for a long time, I'm not gonna do

that. That's how public protection can be achieved. The hope is that there will be fewer crime victims in the future, fewer people like Mr. Cohen and Jessica Cohen that have to come to court and outline for me the specific ways that this has impacted them, fewer people like Ms. Sawatzke who now feels so alone, fewer people like the Taylor family who so deeply miss their daughter that they can't even have regular family holidays anymore, fewer people like your mother who has to come to court and beg for a judge not to sentence her son to a long period of time.

That's how the public can be protected, by making fewer crime victims. The public also has a need to make sure that your rehabilitative needs are met. That will happen with this sentence.

Mr. Randhawa, I need to tell you that the nature of this offense, the aggravated nature of this offense, the deaths of Lindsey, Ashley and Amy, the near death of Mr. Synder, the recklessness that you displayed that night by driving drunk, the recklessness that you displayed that night by running yellow and red lights, the recklessness that you displayed by accelerating your car to try to get through that intersection, by flooring the

accelerator, the recklessness that you -- to their safety that you displayed by running away and not checking on them, all of that has to be recognized by my sentence.

The needs of the public for public protection, those two things together, the aggravated nature of the offense and the needs of the public for public protection almost completely overcome the good aspects of your character -- not entirely but almost. They are clearly the most significant aspects of this case that I have to take into consideration.

As I think you recognize and the State recognizes and everybody in the room recognizes, this is going to be a prison sentence. Anything short of that would clearly unduly depreciate the aggravated nature of the offense and would not meet the end of public protection.

Every prison sentence is composed of two parts: Initial confinement and extended supervision. Extended supervision has conditions. These are the conditions of your extended supervision: First, you have to maintain absolute sobriety. Second, you need to undergo an alcohol and drug assessment and you need to comply with any

recommended treatment. Third, you need to get -- you need to get employment. You need to get employment so that you'll be able to support yourself, you need to get employment so that you'll be able to pay back whatever level of restitution remains at that point.

Fourth, you have to pay restitution. We don't know what that figure is going to be yet. We're going to set this for a restitution hearing later.

What will happen at that restitution hearing is before then Mr. Schiro will be able to discuss with you the restitution figures, well be in court that day and we'll be able to resolve what those numbers are going to be.

You have to pay the costs and surcharges associated with this case and you have to provide a DNA sample and pay the costs and surcharges as well.

Restitution will be paid first, then the costs and surcharges. Restitution will be paid out of a percentage of your prison assets, income and wages. The Department of Correction will set that percentage. I don't know what it's going to be. That amount of restitution that isn't paid

during initial confinement will be paid during extended supervision. That amount of restitution or costs and surcharges that haven't been paid by the end of extended supervision will become a civil judgment.

There are a couple of other things that I need to mention. You will not be eligible on these sentences for the Earned Release Program or for the Challenge Incarceration Program.

It's my intent that in order to meet the end of public protection that there be a very clear and a very strong message sent about these kinds of cases and your eligibility for that programming would undermine that goal and would reduce public protection.

So you're not eligible for either of those programs. I'm not sure you would be statutorily eligible regardless but --

Second, you can appeal anything that happens in connection with this case. To do that you have to file a notice of intent to pursue post-conviction relief. It's a piece of paper.

You have to file that piece of paper in court within 20 days. If you don't file it or you don't file it within 20 days, it becomes awful

difficult to appeal. Third, I'm going to give you credit for the time that you've spent in custody already. Mr. Schiro, you had mentioned earlier that you were going to calculate that. What's credit come out to?

ATTORNEY SCHIRO: 202 days.

THE COURT: I'll give you 202 days of pretrial incarceration credit. That will apply with respect to Count 1. Mr. Randhawa, this crime is so aggravated -- these crimes are so aggravated, the damage that you have done to so many people is so great, the need to protect the public from you and from other people that might engage in this conduct is so high that a substantial sentence is absolutely required.

Mr. Schiro makes a very skillful argument, as he always does, suggesting that concurrent sentences would be appropriate or suggesting that 15 years of confinement would be sufficient.

I don't believe either of those things is accurate. I understand where his arguments come from, but I'm not going to follow his recommendations. Mr. Randhawa, with respect to Count 1, it will be my sentence that you serve 11

years of initial confinement followed by four years of extended supervision.

With respect to Count 2, it will be my sentence that you serve 11 years of initial confinement followed by four years of extended supervision.

With respect to Count 3, it is my sentence that you serve 11 years of initial confinement followed by four years of extended supervision.

With respect to Count 4, it is my sentence that you will serve six years of initial confinement followed by four years of extended supervision.

Those sentences will be consecutive to each other. They will be consecutive to any other sentence that you are serving for a total period of initial confinement of 39 years followed by 16 years of extended supervision.

I hope that at some point all of the people in this room, including you, will be able to find some level of peace surrounding what's taken place. I wish you all good luck.

(The proceedings were concluded.)

STATE OF WISCONSIN)
)
MILWAUKEE COUNTY)

I, KELLY L. PIERCE, an Official Court Reporter, in and for the Circuit Court of Milwaukee County, do hereby certify that the foregoing is a true and correct transcript of all the proceedings had and testimony taken in the above-entitled matter as the same are contained in my original machine shorthand notes on the said trial or proceeding.

Dated at Milwaukee, Wisconsin, this _____day of _____, 2017.

_____
KELLY L. PIERCE
Official Reporter

STATE OF WISCONSIN
CIRCUIT COURT OF APPEALS
DISTRICT 1

Appellate Case No. 2017XX001234-CR
Milwaukee County Circuit Court
Case No. 2016 CF 4787

STATE OF WISCONSIN,

Plaintiff,

Vs.

JASEN RANDHAWA,

Defendant.

AFFIDAVIT OF DR. ASHLEY NELLIS

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

I, Dr. Ashley Nellis, being first duly sworn, on oath deposes and assert the following on behalf of the defendant, Jasen Randhawa:

1. I have reviewed the sentencing transcript in this case. Judge Sanders clearly stated that one of his primary purposes for imposing the 55-year sentence was to deter other persons like Mr. Randhawa from drinking and driving and thereby save lives.

> The only way I can protect the public fully is by crafting a sentence in this case that is sufficient to cause other people to be aware of the consequences of drunk driving more fully so that they know and that

> they may think when they're at a bar with some friends, you know, I'm just going to drive home, the hope is that there – that it will go through their heads, well, damn, that Randhawa – that Randhawa guy, he killed some pokes – some folks, that was terrible and then he went to prison for a long time, I'm not gonna do that. That's how public protection can be achieved. The hope is that there will be fewer crime victims in the future...

I have been asked to submit my expert opinion on whether Judge Sanders' assumption that imposing a severe sentence in this case will effectively deter others from drinking and driving and reduce the number of victims of alcohol related crashes.

2. I received my Ph.D. in 2007 from American University in Washington, DC in the School of Public Affairs with a specialization in Justice, Law, and Policy. I have been employed at The Sentencing Project in Washington D.C. since 2008. The Sentencing Project organization is known internationally for producing groundbreaking research on sentencing-related issues. The Sentencing Project has produced a series of national reports (several of which I authored) on the expansion of life and long-term imprisonment in the U.S.

3. I am a nationally recognized expert in the study of life imprisonment and my research is cited widely for its unique contribution to the field of criminology. I have co-authored a book on the topic of life sentences in the United States[1] and I have written four national reports on the topic.[2] I have also published a book on the history of youth justice in America.[3] My work has appeared in scholarly journals and law reviews,[4] and I have frequently presented my work before professional and academic audiences.

4. My research has been recognized in international circles as well. In 2016 I co-authored a chapter in a volume on the use of lengthy imprisonment internationally, showing U.S. trends in in the context of international practices and norms.[5] My research

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[1] Mauer, M. and Nellis, A. (2018). *The Meaning of Life: The Case for Abolishing Life Sentences.* New York: The New Press.

[2] Nellis, A.& King, R. (2009). *No Exit: The Expanding Use of Life Sentences in America.* Washington, DC: The Sentencing Project; Nellis 2012; Nellis, A. (2012). *The Lives of Juvenile Lifers: Findings from a National Survey.* Washington, DC: The Sentencing Project; Nellis, A. (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences.* Washington, DC: The Sentencing Project.

[3] Nellis, A. (2015). *A Return to Justice: Rethinking our Approach to Juveniles in the System.* Lanham: Rowman & Littlefield.

[4] Nellis, A. (October 2010). Throwing Away the Key: The Expansion of Life without Parole Sentences in the United States. *Federal Sentencing Reporter 23*(1) 27-32; Nellis, A. (2013). Tinkering with Life: A Look at the Inappropriateness of Life without Parole as an Alternative to the Death Penalty. *University of Miami Law Review 67*(2): 439-458.

[5] Mauer, M. and Nellis, A. (2016). The Impact of Life Imprisonment on Prospects for Criminal Justice Reform in the U.S. In (Dirk Van Zyl Smit and Catherin Appleton, (Eds.) *Life Imprisonment and Human Rights*. London: Hart Publishing.

is used extensively in a 2018 volume on international rates of life sentences, *Life Imprisonment: A Global Human Rights Analysis*, published by Harvard University Press.[6]

5. My long-term research on lengthy sentences and their effect on public safety qualifies me to provide my expert opinion on long-term imprisonment as a general deterrent.

Definition of General and Specific Deterrence

6. One lens through which courts judge criminal behavior views potential offenders as rational actors who weigh the risks and benefits of their actions and choose the action in which the benefits outweigh the risks. The principal criminological theory that organizes this perspective is called deterrence theory and it has both general and specific components.[7] Tests of deterrence theory have been "a staple of criminological studies"[8] for more than 50 years.

7. General deterrence focuses on using the factors of certainty of apprehension, swiftness of punishment, and severity of sanction to convince nonoffenders to refrain from prohibited behaviors. Specific deterrence applies to reducing repeat offending by persons who have already been apprehended.[9]

Lengthy Punishments Fail to Meet General Deterrence Goals

8. The sentencing judge in Mr. Randhawa's case rests the justification for imposing a lengthy sentence on its purported value as a general deterrent.[10] That is, by imposing a fifty-five-year sentence, others like Mr. Randhawa would make the rational choice not to drive after drinking because the risk of killing multiple people in a fatal car crash and then being sentenced to decades behind bars would surely outweigh the benefit of drinking and driving.

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[6] Van Zyl Smit, D. and Appleton, C. (2018). *Life Imprisonment: A Global Human Rights Analysis.* Boston: Harvard University Press.

[7] Becker, G. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economics.* Vol 76.

[8] Nagin, D. S., & Pogarsky, G. (2001). Integrating celerity, impulsivity, and extralegal sanction threats into a model of general deterrence: Theory and evidence. Criminology, 39(4), 865–892.

[9] Wieczorek, W. (2013). Criminal Justice and Public Health Policies to Reduce the Negative Impacts of DUI. *Criminology and Public Policy* Vol 12(2): 195-201.

[10] It is clear that the sentence length was not imposed as a specific deterrent because the judge remarks that he wants people "more like" Mr. Randhawa to be dissuaded from taking the same actions, remarking further that "the only way I can protect the public fully is by crafting a sentence in this case that is sufficient to cause *other people* to be aware of the consequences of drunk driving more fully…" (emphasis added). If sentencing length were to be used as a specific deterrent, a large body of research agrees that the length of the sentence has little effect after approximately 10 years. See Clear, ALI, Tonry, citations.

9. The deterrent effect of the criminal justice system has been studied for hundreds of years, with increasing sophistication in recent decades. Its roots lie in the philosophy of Cesare Beccaria, who argued that punishments should always be proportionate to the crime and never more severe than what is required to achieve specific and general deterrent effects.[11] Criminological studies over the past 50 years measure the role of situational and personality traits that might influence the relationships between certainty, severity, and celerity of the justice system response on deterrence. A key finding across nearly all studies is that general deterrence is primarily a function of the *certainty* of punishment, not its *severity*.

10. Daniel Nagin, a leading deterrence scholar in the United States, has extensively studied the use of punishment as a deterrent and summarizes his findings in a recent publication, "Deterrence in the 21st Century." He concludes that "[t]he evidence in support of the deterrent effect of the certainty of punishment is far more consistent and convincing than for the severity of punishment" and that "the effect of certainty rather than severity of punishment reflect[s] a response to the certainty of apprehension."[12] The limited impact of extending sentence length becomes even more attenuated for long-term incarceration.

11. Certainty of apprehension is a strong predictor of behavior modification. Common sense suggests that a rationally thinking individual who does not believe he will be apprehended in the first place would have no reason to consider the punishment. Furthermore, even if the subject *was* considering the likelihood of the punishment, he/she would not be able to calculate the sentence beforehand. If the penalty for killing each additional person in a driving fatality is 15 years as Judge Sanders imposed here, one must assume that an impaired driver knew the number of people he was going to kill in advance. And if a sentence of 15 years is not a deterrent, a sentence of 30 or 45 years would not be either.

12. Depending on the nature of a crime, a period of incarceration might be warranted to satisfy reasons such as incapacitation or to allow for rehabilitation. But judges should be cognizant of the empirical evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, the rationale of "sending a message" to others does not have any effect.[13] The social science research conducted over the last two hundred plus years does not support *any* probability that the 55-year sentence imposed in this case would deter others from committing an intoxicated driving homicide and therefore save lives.

Judgment Impaired by Alcohol Further Diminishes Capacity for

[11] Beccaria, C. (1764). *On Crimes and Punishments.*
[12] Nagin, D.S., (2013). Deterrence in the Twenty-First Century: A Review of the Evidence. Crime & Justice; Nagin, D. S., & Pogarsky, G. (2001). Integrating celerity, impulsivity, and extralegal sanction threats into a model of general deterrence: Theory and evidence. Criminology, 39(4), 865–892.
[13] Time to Rethink (Mauer) https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/

Rational Calculation of Risk

13. Rational thought is required for deterrence to be effective, but this is notably absent in the case of someone who is under the influence of alcohol. In fact, when we account for the fact that many defendants are under the influence of alcohol or drugs at the time of the crime, the logic of the rational actor fails completely.

14. Criminological scholars who have studied the association between individual perceptions of the likelihood of punishment and the intention to drink find decreased intentions to drink and drive when the likelihood of punishment is greater.[14] This finding is not surprising given the role that impulsivity plays in the functioning of deterrence. In their seminal writing on the factors that explain engagement in crime, criminologists Denise Gottfredson and Travis Hirshi introduced the predictive role of delayed gratification and impulsivity on deterrence.[15] Impulsivity—which is, of course, amplified by the consumption of alcohol—diminishes the ability to fully contemplate the outcomes of one's actions.[16]

15. A research study conducted at University of Florida's College of Medicine examined the general deterrence effects of mandatory jail sentences and fines on alcohol related fatal accidents. The researchers examined monthly data on fatal crashes between 1976 to 2002, during which time mandatory jail times were imposed across 18 states and mandatory minimum fine policies were imposed in 26 states.[17] They test general deterrence by examining whether changes in the law affect arrest rates. Their results find no significant effects emerged on the relationship between jail time and drunk driving fatalities, meaning that a general deterrent effect was not found.

16. Criminologist Henry Fradella of Arizona State University studied the impact of increases in mandatory minimum sentences between 1975 and 1995 on DUI-related arrests to determine the influence of policy change as a general deterrent.[18] His results showed little to no effect of "ever increasing criminal sanctions, including the imposition of mandatory minimums," on first time offenders.

17. As a final example, a research study was published in the flagship journal for the study of criminal justice system in 2001 by Dan Nagin and Greg Pogarsky. They had

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[14] Nagin and Pogarsky, 2001; Piquero and Paternoster; Piquero and Pogarsky, 2002; Pogarsky and Piquero, 2003; Yao et al., 2016.
[15] Gottfredson, D. and Hirshi, T. (1990). *A General Theory of Crime.*
[16] Nagin and Pogarsky; Piquero, A., and Pogarksy, G. (2002). Beyond Stafford and Warr's Reconceptualization of Deterrence: Personal and Vicarious Experiences, Impulsivity, and Offending Behavior. *Journal of Research in Crime and Delinquency* Vol 39(2): 153-186.
[17] Wagenaar AC, Maldonado-Molina MM, Erickson DJ, Ma L, Tobler AL, Komro KA. General deterrence effects of U.S. statutory DUI fine and jail penalties: long-term follow-up in 32 states. Accid Anal Prev. 2007 Sep;39(5):982-94.
[18] Fradella, H. F. (2000). Minimum mandatory sentences: Arizona's ineffective tool for the social control of DUI. Criminal Justice Policy Review, 11(2), 113–135.

measured the impact of punishment severity and certainty on intention to drink and drive among a sample of young adults with a mean age of 23. The research found a small, positive effect of punishment severity on deterrence but this disappeared when the measure of certainty was entered into to the model, leading them to conclude that the "…certainty main effect is far more robust than is the severity main effect."[19]

Conclusion: The Lengthy Sentence Imposed in This Case Will Not Deter Others

18. The deterrent effect of severe sentences has been studied extensively for centuries and the empirical evidence has established that it is the *certainty* of getting caught, not the *severity* of the punishment, that is effective in deterring others from committing crimes. Researchers have consistently found that lengthy sentences do not deter others from committing crimes, especially when the offense involves reckless or impaired judgment due to alcohol or controlled substances. It is my expert opinion that Judge Sanders' belief that the 55-year sentence he imposed in this case would deter others and thereby create fewer crime victims was erroneous.

Dated this 9th day of April, 2021.

Ashley Nellis

Ashley Nellis, Ph.D.

Subscribed and sworn to before me
this 9th day of April, 2021 Ashley Nellis produced drivers license

State of Florida County of Miami Dade

Notary Public, State of Florida
My Commission: is permanent
Edgy Slandel Eliacin HH 61094

EDGY SLANDEL ELIACIN
Notary Public - State of Florida
Commission # HH 61094
Expires on November 5, 2024

Notarized online using audio-video communication

[19] Nagin and Pogarsky, 2001: 884.