

**IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA**  
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**APPEAL NO. 30404**

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**STATE OF SOUTH DAKOTA,  
Plaintiff/Appellee,**

**vs.**

**JAMES JOSEPH LANPHER, JR.,  
Defendant/Appellant.**

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**APPEAL FROM THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
LAKE COUNTY, SOUTH DAKOTA**

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**HONORABLE PATRICK T. PARDY  
Circuit Court Judge**

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**BRIEF OF APPELLANT**

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**Notice of Appeal filed July 17, 2023**

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## **PRELIMINARY STATEMENT**

References to the Appendix to this brief are designated as "Appx."  
References to the transcript of the Arraignment Hearing are designated as "AH."  
References to the transcript of the Change of Plea Hearing are designated as  
"CHOP." References to the transcript of the June 14, 2023, Sentencing Hearing  
are designated as "SH". References to the settled record are designated as "SR,"  
followed by the page number.

James Joseph Lanpher, Jr., Defendant/Appellant, shall be referred to  
throughout this brief as "Lanpher" or "Defendant." The Appellee, State of South  
Dakota, shall be referred to throughout this brief as "State" or "Appellee."

## **JURISDICTIONAL STATEMENT**

This appeal is taken as a matter of right, pursuant to SDCL § 15-26A-3,  
from a Judgment of Conviction rendered on June 14, 2023. and filed with the  
Lake County Clerk of Court on June 23, 2023. Appellant's Notice of Appeal was  
filed with the Lake County Clerk of Court on July 17, 2023.

## **STATEMENT OF THE ISSUES**

- I. WHETHER THE CIRCUIT COURT ERRED IN ENTERING  
A SENTENCE FOR TWO CONCURRENT LIFE  
SENTENCES IN PRISON IN BOTH COUNTS 1A AND 2A,  
AGAINST THE DEFENDANT, IN VIOLATION OF THE  
DEFENDANT'S EIGHTH AMENDMENT RIGHT AGAINST  
CRUEL AND UNUSUAL PUNISHMENT.**

Appellant seeks review of the sentence levied against him by the Trial  
Court wherein the Defendant had previously pled guilty to two counts of  
aggravated assault on law enforcement officer (Counts 1A and 2A of the  
Indictment) and admitted the allegations in the Part II Information for habitual

offender (SDCL 22-7-8), making both counts punishable as Class C felonies. Appellant argues that the Trial Court, entering a sentence for the maximum allowable statutory time in this matter, violates his Eighth Amendment Right against cruel and unusual punishment ensured by the United States Constitution. In particular, the Appellant argues that the sentence is grossly disproportionate to its corresponding offenses when considering the relatively mild amount of injury, damage or harm done by the Defendant or as a result of Defendant's actions. Additionally, the Appellant argues that this sentence is grossly disproportionate to sentences imposed on similarly situated offenses against other criminals who were sentenced in the same jurisdiction.

The most relevant cases related to this issue are as follows:

- a. *State v. Ceplecha*, 2020 S.D. 11, 940 N.W.2d 682
- b. *State v. Seidel*, 2020 S.D. 73, 953 N.W.2d 301
- c. *State v. Chipps*, 2016 S.D. 8, 874 N.W.2d 475

The most relevant statutes related to this issue are as follows:

- a. U.S. Const. Amend. VIII
- b. SDCL § 22-18-1.05
- c. SDCL § 22-18-1.1(5)
- d. SDCL § 22-6-1(3) and (5)
- e. SDCL § 22-7-8

**II. WHETHER THE CIRCUIT COURT ERRED IN ENTERING A SENTENCE FOR TWO CONCURRENT LIFE SENTENCES IN PRISON AGAINST THE DEFENDANT AS A MATTER OF AN ABUSE OF ITS DISCRETION.**

Appellant seeks review of the sentence levied against him by the Trial Court wherein the Defendant had previously pleaded guilty to two counts of aggravated assault against law enforcement officer and admitted to the Part II Information for habitual offender in front of the Trial Court. Appellant argues that although the maximum possible punishment proscribed to the offense of aggravated assault against law enforcement officer with an admission to the Part II Information for habitual offender in this case was up to life in prison, that said sentence evidences an abuse of discretion by the Trial Court. Appellant believes the Trial Court failed to consider his lessened culpability due to a disadvantaged background; the relatively minor damages, harm or injury caused by the Defendant's actions, which would be mitigating factors; the sentences of other similarly situated Defendants which were presented to the Trial Court as mitigating factors; and other relevant proscribed factors.

The most relevant cases related to this issue are as follows:

- a. *State v. Seidel*, 2020 S.D. 73, 953 N.W.2d 301
- b. *State v. Cepelcha*, 2020 S.D. 11, 940 N.W.2d 682
- c. *State v. Holler*, 2020 S.D. 28, 944 N.W.2d 349

The most relevant statutes related to this issue are as follows:

- a. U.S. Const. Amend. VIII
- b. SDCL § 22-18-1.05
- c. SDCL § 22-18-1.1(5)
- d. SDCL § 22-6-1(3) and (5)
- e. SDCL § 22-7-8

## **STATEMENT OF THE CASE**

This appeal stems from the Judgment of Conviction and sentence rendered upon the Appellant after his admission of guilt to the allegations in Counts 1A and 2A of the Indictment and an admission to the allegations in the Part II Information for habitual offender, filed in Lake County, South Dakota. The Part II Information for habitual offender in this file alleged that the Defendant had been convicted of five prior felonies, all in Minnehaha County, South Dakota, consisting of three convictions for possession of a controlled substance, one conviction for pimping, and one conviction for aggravated assault against law enforcement officer.

The Appellant avers that under either an Eighth Amendment Constitutional Standard of Review concerning cruel and unusual punishment or an abuse of discretion standard, as set forth in South Dakota case law, the Trial Court erred in sentencing the Defendant to the maximum allowable prison sentence for the offense to which he plead guilty to and was sentenced. The Trial Court ordered that he was to serve one life sentence in prison, with credit for 332 days previously served, for each count, (Counts 1A and 2A of the Indictment), the sentences to run concurrent to each other but consecutive to his prior sentences. The Appellant avers that under the Eighth Amendment Constitutional analysis, the length and severity of the punishment does not match the weight and seriousness of the infractions that are alleged in the Indictment to which the Appellant had plead guilty to. With respect to abuse of discretion, the Appellant argues to the Supreme Court that maximizing the amount of prison time allowable by South Dakota law was outside the range of permissible choices for which a

reasonable sentencing court could reach, especially in light of the Court's failure to make himself familiar with Defendant's characteristics; the level of harm, injury or damage caused by the Defendant's actions; and sentences similarly situated Defendants charged with the same crimes by the same presiding judge of this Trial Court with more severe results of those Defendants' actions, as evidenced by the lack of record thereof.

For the reasons stated above and explained more fully below, Appellant brings this appeal such that the Trial Court's decision can be reviewed, and asks for remand back to the Trial Court for a more lenient and appropriate sentence.

### **STATEMENT OF THE FACTS**

James Joseph Lanpher, Jr. was charged in file 39CRI22-000113 by Indictment on July 20, 2022 (in relevant part) of two counts (Counts 1A and 2A) of aggravated assault against law enforcement officer, in violation of SDCL § 22-18-1.1(2) and 22-18-1.05, based on reports that on or about July 14, 2022, he did attempt to cause, or knowingly caused, bodily injury to another with a dangerous weapon, Officer 1 and Officer 2, one supporting each count, at a time when both officers were law enforcement officers engaged in the performance of their law enforcement duties. Appx. 1 (Indictment).

The State also filed a Part II Information for habitual offender, claiming that Lanpher is a habitual offender as that term is defined by SDCL § 22-7-8, in that Lanpher has on three or more prior occasions been convicted of a felony, including one or more crimes of violence, and alleging that his prior felony convictions were as follows:

1. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, on February 23, 2015, in Cri 14-6170.
2. Pimping, in Minnehaha County, South Dakota, on February 23, 2015, in Cri. 14-5609.
3. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-4406.
4. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-4417.
5. Aggravated Assault Against Law Enforcement Officer, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-6505.

Appx. 2 (Part II Information).

The allegations contained in the Probable Cause Affidavit were that South Dakota Highway Patrol Troopers attempted to stop Lanpher in connection with an ongoing investigation, not related to the charges contained in the Indictment nor subject to this appeal, to which Lanpher responded by leading law enforcement on a high-speed chase. SR 1-4 (Probable Cause Affidavit). During the high-speed pursuit, the Affidavit states that Lanpher had fired a rifle out his driver's window, and it was indicated that Lanpher was shooting at Troopers while driving. *Id.* The Affidavit further stated the pursuit eventually ended at Ramm Heights in Madison, South Dakota, where there was an exchange of gunfire, including Lanpher shooting additional rounds in the direction of Troopers and other law enforcement from a rifle. *Id.* The Affidavit further continues stating Lanpher fled on foot through the neighborhood and was later taken into custody without incident at a nearby bowling alley.

On August 3, 2022, Lanpher appeared with his attorney and entered a not guilty plea to all counts, denied the allegations made in the Part II Information, and requested a jury trial. AH 11.

After a few motion hearings, which are not relevant to this appeal, Lanpher's matter was scheduled for a change of plea to take place on April 18, 2023. At the change of plea hearing, Lanpher was advised of his rights. CHOP 4, SR 693. Lanpher was asked if he was satisfied with the representation of his counsel, and later appointed co-counsel, to which he responded that he was. *Id.*, SR 694. At this hearing, there was a written plea agreement that was presented to the Court prior to the commencement of Court, and Lanpher was asked if he had reviewed the written plea agreement and if he had signed the same, which he responded in the affirmative to both of those questions. *Id.* 5, SR 694-695. The Court asked if prior to signing it he had discussed the matter with his attorneys, which Lanpher confirmed he did. *Id.* 5-6, SR 694-695. The Court asked Lanpher if the attorneys had explained the plea agreement to him and what the terms meant, to which his response was in the affirmative. *Id.* 6, SR 695. Lanpher was further asked if he understood the plea agreement and that the Court had not agreed to any specific sentence, which Lanpher confirmed that he did understand both of those concepts. *Id.*, SR 695. Lanpher further confirmed that he understood that all the conditions of the sentence were up to the Court's discretion, and that he waived his right to an appeal to the Judgment of Conviction, leaving only an appeal of the Court's sentence. *Id.* 7, SR 696. He further stated that he did understand what the right to an appeal is and what is



meant to give that right up and that he discussed the same with his counsel. *Id.*, SR 696. He further confirmed that nobody forced him to give up his right to appeal, and that he was doing so voluntarily. *Id.*, SR 696. The Court confirmed on the record that the plea agreement stated Lanpher would be pleading to two counts of aggravated assault against law enforcement and admitting the Part II Information in Lake County File CRI22-113, and that all other counts in that file and two other files in Lake County and one file in Moody County would all be dismissed. *Id.*, SR 696. Lanpher confirmed that this was his understanding of the agreement, and additionally, that he was also agreeing to pay for restitution for any damages or costs arising out of the incident. *Id.*, SR 696. The Court further confirmed on the record that the State had capped its request for penitentiary time at 75 years actual in the penitentiary, and confirmed with Lanpher that that was his understanding as well. *Id.* 7-8, SR 696-697. Lanpher, having no additional questions and stating that he understood his rights and the pleas that were available, the Court proceeded to take Lanpher's plea. *Id.*, SR 697.

The Court read Counts 1A and 2A to the Defendant, advised him of the nature of the charges, the maximum penalty allowable by law, and advised Lanpher of the allegations and effect of the allegations if admitted in the Part II Information. *Id.* 9-11, SR 698-700. Following Lanpher confirming that he understood the allegations contained in the Part II Information, the Court advised Lanpher that the maximum sentence he could receive was up to a life sentence and/or a \$50,000 fine on each of the counts. *Id.* 11, SR 700. Lanpher confirmed that he understood this and further confirmed, following further explanation from

the Court, that the maximum sentence he could receive, if convicted of both counts and the habitual offender Information, would be two consecutive life sentences and fines up to \$100,000, plus restitution. *Id.* 11-12, SR 700-701.

The Court, again, confirmed with the Defendant that he had no further questions about his rights, pleas, charges, or the sentence that could be imposed; that he had had enough time to discuss the matter with his attorneys; that he was not under the influence of any alcoholic beverages, controlled drug, or substance. *Id.* 12, SR 701. The Court then confirmed with counsel that Lanpher was explained the nature of the charges, his constitutional and statutory rights, the maximum punishment involved, the effect of waiver of those rights, that counsel was satisfied Lanpher understood them, that counsel had reviewed the plea agreement with Lanpher, and that counsel was convinced Lanpher understood the plea agreement. *Id.* 12-13, SR 701-702. After further confirmation by the Court from Lanpher that he was here to enter a plea of his own free will, and that no promises other than the plea agreement had been made to make him enter his plea, and that any sentence recommended is not binding upon the Court and that the Court had not agreed to any specific sentence, the Court did find that Lanpher had been regularly held to answer; he was represented by competent counsel; he was informed, and the Court believing that he understood the nature of the charge, his constitutional and statutory rights, the maximum possible punishment; that he was acting of his own free will and accord, without duress, and was competent to enter a plea. *Id.* 13, SR 702. Following the Court's finding, the Court took

Lanpher's "guilty" pleas to Counts 1A and 2A of the Indictment. *Id.* 13-14, SR 702-703.

Following the guilty pleas by Lanpher, the State provided the following factual basis:

"On July 14, 2022, law enforcement was conducting a precision interdiction stop on a vehicle with a potential drug-dealing suspect. At the time that this precision interdiction stop took place, there was a 300 Chrysler vehicle that was the subject of the stop. The vehicle was driven by James Joseph Lanpher. Ultimately, there was a passenger that was identified inside of the vehicle as well.

"Law enforcement had been following this vehicle; and when it did enter into South Dakota, close to Moody County, law enforcement did attempt to conduct a precision interdiction stop. When law enforcement did turn on their sirens -- or their lights and sirens, the vehicle sped off, did not stop; did continue on a high-speed chase through Moody County, did take an additional loop through Moody County before entering into Lake County for the final chase.

"While in Moody County, there were multiple Troopers that were following the vehicle. Placement of the Troopers changed throughout the chase. The first Trooper in line that was following behind James Joseph Lanpher did notice that James Joseph Lanpher did extend his arm from the driver's side window; did begin firing shots with a dangerous weapon, a gun; from the vehicle; did initially point the gun out of the window after those initial shots. James Lanpher did point the gun straight back at the Highway Patrol Trooper who was following behind. There was also additional Troopers following behind at that point.

"But at that point, when the gun was pointed directly back at Highway Patrol (Officer 1), James Joseph Lanpher did fire shots at the Trooper directly, located behind the vehicle.

"And as the chase continued, the placement of the Highway Patrol as they were trying to stop James Joseph Lanpher, did shift throughout the chase. The Defendant did continue to flee law enforcement at high speeds, including going the wrong way down an exit at high rates of speed, where there was oncoming traffic; also, during broad daylight where it was busy interstate.

“As the chase ended in Lake County, the Defendant continued to fire shots in the City of Madison. Shell casings were recovered. When the vehicle runs out of gas, what the State believes, that the vehicle ran out of gas, close to the location of Ramm Heights in Madison, Lake County, the passenger did surrender at that point; did fall to the ground.

“The Defendant, James Joseph Lanpher, did exit the vehicle; and while holding a rifle, did aim at two separate Troopers. And that would be – as far as in the Indictment, would be Trooper 1 – or Officer 1 and Officer 2, two separate Highway Patrol officers.

“And, Your Honor, I should clarify that for the purposes of counts, those two are different than the Moody County Trooper that was directly behind James Joseph Lanpher.

“So when the chase ends in Lake County, the Defendant fires a weapon in the direction of two separate Highway Patrol officers and then flees the scene, and is ultimately apprehended and identified by multiple law enforcement officers in Lake County.

“The shooting at the two separate Highway Patrol did occur in Lake County.”

CHOP 14-17, SR 703-706.

The Court asked both of Lanpher’s counsel separately if they agreed with the factual basis, to which both confirmed that they did, and the Court found that a factual basis existed for the plea. *Id.* 17-18, SR 706-707. The Court further ordered a presentence investigation to be completed prior to sentencing and scheduled that to take place on the morning of June 12, 2023, at 9:00 a.m. *Id.* 18-19, SR 707-708. At reminder of the State, the Court did take an admission to the Part II Information, to which Lanpher admitted and the State provided a factual basis supporting the same, with counsel for Lanpher, and Defendant, all separately agreeing to the factual basis provided. *Id.* 19-20, SR 708-709.

At the sentencing hearing which was held on June 14, 2023, the State argued that this was “an incredibly egregious case,” involving a defendant who would do anything to save himself, including kill anybody in his path. SH 6, SR 789. The State further described Lanpher as cold, heartless, thinking only of himself, and acting like a monster. *Id.* 6-7, SR 789-790.

The State continued sentencing argument by recounting to the Court much of the factual basis that was provided at the previous hearing and praising law enforcement’s efforts and actions in this case. *Id.* 7-10, SR 790-793. The State further discussed the various risks to society that Lanpher created due to his actions, and argued that Lanpher’s actions showed that he didn’t care and that all he cared about was himself that day. *Id.* 10, SR 793. The State continued in their argument by recounting the State’s understanding of Lanpher’s actions following the vehicle running out of gas as he fled law enforcement. SH 10-11, SR 793-794. The State additionally pointed out the multiple law enforcement agencies that were involved and the various actions of said law enforcement agencies, including the different items that were found including guns located in the vehicle used by Lanpher. SH 12-13, SR 795-796.

The State discussed a prior acts event of Lanpher’s in which, in another attempt to escape law enforcement, when trapped in a garage, he attempted to flee resulting in an aggravated assault against law enforcement charge. His actions also caused significant damage to a garage and apartment complex, due to a fire ignited by the heated rubber from Lanpher peeling his tires in an attempt to escape. SH 13, SR 796.

Following these recounts by the State, the State then argued that Lanpher, in this case, does not care about people; does not have any remorse; and that his actions show he will not be successful out of the walls, supported by Lanpher's actions following his prior aggravated assault sentence in 2019 and that this crime occurred in 2022; that he had failed his chance miserably. *Id.*, SR 796.

The State proceeded with reading selected quotes from victim's statements following Lanpher's high-speed pursuit. SH 14-15, SR 797-798. The State praised law enforcement, indicating that their actions of heroism had all passed and that Lanpher had failed to show that he could comply with the law; that he could be a law-abiding citizen; and that he deserved any more chances. SH 15, SR 798. The State further addressed Lanpher's statements made in the presentence investigation, indicating that the State found them not believable and in an effort trying to minimize the facts. SH 15-16, SR 798-799. After again praising law enforcement, the State concluded asking the Court to not reward Lanpher because he missed when firing his weapons and asked for the full 75 years under the plea agreement and an additional significant time suspended over his head. SH 17, SR 800.

Following the State's argument, counsel for Lanpher provided argument from Lanpher's perspective for sentencing. Lanpher's counsel discussed preconceived notions and biases that would be attached to a defendant from anybody looking at any case from the outside, and provided his perspective from working with Lanpher. *Id.*, SR 800. Lanpher's counsel discussed the many good qualities of Lanpher, including him being a man of a family whom he speaks of

often including his fiancé, a 14-year-old, a 4-year-old, and a 3-year-old. SH 17-18, SR 800-801. Counsel for Lanpher advised the Court that Lanpher was terrified of the consequences of his actions, terrified of his choices and misjudgments that have put him before the Court, and that have significantly changed the trajectory of his life. SH 18, SR 801. Counsel further discussed how Lanpher is afflicted with mental health and substance abuse or addiction issues, and how those played a role in the activities on the day in question, bringing him before the Court. *Id.*, SR 801. Counsel for Lanpher advised the Court that Lanpher had been incarcerated for 332 days as of the date of sentencing and discussed the very clear differences between Lanpher initially being taken into custody while under the influence of mood-altering substances, and that demeanor of Lanpher whom he represented over the last year. SH 18-19, SR 801-802.

Lanpher's counsel addressed the other more egregious charges of attempted murder which were dropped as part of the plea agreement, indicating that there was no evidence to support those charges, including that no bullet holes were in any officers, their vehicles, or even located in the immediate vicinity of any law enforcement or the backdrops behind where the officers were which could be attributed to being fired by Lanpher. SH 19, SR 802. Counsel for Lanpher again provided to the Court that Lanpher had no intention to hurt anybody, and that his only intention was to scare the officers to cause them to pull back or even call off the pursuit so that he could escape and evade arrest. *Id.*, SR 802. In discussing the recommendation for a sentence to the Court, counsel for Lanpher asked for leniency of the Court and asked that the Court provide some



chance for Lanpher to live some of his life not behind bars and to give him a light at the end of the tunnel to spend time with his family, be a law-abiding citizen and a productive member of society. SH 20, SR 803. Counsel for Lanpher requested the Court to sentence him to 25 to 35 years with a majority of that sentence being suspended. SH 20, SR 803. Counsel for Lanpher addressed how Lanpher understands the ramifications of his actions and how that affects the various parties at play, from law enforcement to society. SH 20-21, SR 803-804.

Following argument by counsel, Lanpher made his own statements which he read from his own written out thoughts. SH 21, SR 804. Lanpher apologized for everything that happened that day and gave his apologies to the officers involved, as well as the victims. *Id.*, SR 804. Lanpher apologized for any mental health issues he may have caused and acknowledged that a lot of people could have been hurt by his actions. *Id.*, SR 804. Lanpher confirmed the arguments of his counsel indicating that his firing of the weapon was to scare officers back so he could run and that in no way did he intend to hurt anyone. SH 21-22, SR 804-805. Lanpher described his actions that day, and again continually apologized for his actions. SH 22, SR 805. Lanpher told the Court he was a good person when he was not using and that even good people could make mistakes. *Id.*, SR 805. He advised the Court that since he has been in jail, he has been working with a mental health counselor that has been helping him with his issues and that he hopes to continue that treatment to address mental health and addiction problems. *Id.*, SR 805. He informed the Court of a prior time from 2007 to 2015, after completing a meth program, that he was able to maintain sobriety and pleaded the



Court to not give up on him. *Id.*, SR 805. He indicated to the Court that he wanted to change for himself, for his family, for his kids, and for everyone else, and indicated that he did not want to spend the rest of his life in prison. *Id.*, SR 805.

Lanpher concluded his statement, taking full responsibility for what had happened and asking the Court to show mercy on him. *Id.*, SR 805. Lanpher requested that the Court give him a sentence that the Court feels is appropriate for his actions and that the majority of the sentence be suspended. *Id.*, SR 805. He again requested the Court to give him an opportunity to prove that he could fit back in society with a lengthy sentence over his head and the knowledge that if he were to mess up, he would be put away for life. SH 22-23, SR 805-806.

Following argument from counsel on both sides and the statement by Lanpher, the Court began its ruling for a sentence. The Court indicated that it had studied the PSI, all documents contained in it, watched the videos submitted, and taken all of that into consideration as he considered the *Hinger-Bonner* factors. SH 23, SR 806. The Court indicated that, without discarding any of the factors, the factors that the Court weighed most heavily are Lanpher's moral character, mentality, tendencies, and his inclination to commit crime, previous criminal record, and his poor rehabilitation prospects. *Id.*, SR 806. Prior to going into those factors, the Court wanted to address the sentencing brief submitted by counsel for Lanpher, arguing that they were similar cases and arguing for a similar sentence. *Id.* Appx. 4 (Sentencing Brief).

The Court acknowledged that in that brief, three cases that were before this same Court were cited and the Court proceeded to go through them, distinguishing them from the instant case, beginning with *State v. Rumbolz*. *Id.* In addressing that case, the Court indicated the defendant had plead to one count of aggravated assault and that that defendant's record contained a single felony escape that occurred 19 years earlier, and a possession of a controlled substance charge, not any felony convictions for a crime of violence and no habitual offender convictions. SH 23-24, SR 806-807. (See also Appx. 4, Sentencing Brief). The Court then addressed *State v. Smith*, summarizing that the defendant was 25 years old, did not have a weapon, and his only prior conviction was a misdemeanor alcohol offense. SH 24, SR 807. (See also Appx. 4, Sentencing Brief).

For the final case, *State v. Hanneman*, the Court summarized that the defendant's only prior was a non-violent misdemeanor offense; that he was suffering from severe mental health issues that were being successfully treated; and the Sheriff and victim both wrote favorable victim impact statements based on his progress with his mental health. SH 24, SR 807. (See also Appx. 4, Sentencing Brief).

Addressing Lanpher and distinguishing from the previous three cases, the Court indicated that Lanpher's criminal record is long, violent, and clearly distinguishable from the cases cited in the brief. SH 24, SR 807. The Court indicated that since 2001, the only years Lanpher had gone without convictions are 2003, 2007-2011, and 2016-2018. *Id.* The Court also found it interesting and

notable that Lanpher was supervised from 2016 to 2018 during that time frame with no additional convictions. *Id.* The Court detailed Lanpher's criminal record to include theft, DUI, obstruction of an officer, seven habitual offender convictions, possession of a controlled substance, pimping and promoting prostitution, aggravated eluding, and aggravated assault against law enforcement officer four times. *Id.*

The Court then proceeded to address the charges in addition to the long list of convictions, listing multiple times of pimping, five times of aggravated assault charges, two times of threatening law enforcement, domestic assault no less than six times and as many as ten times, simple assault no less than five times and maybe as high as eight times. SH 24-25, SR 807-808. The Court concluded that Lanpher's case is nothing like the cases cited to this Court, and that if anything, the cases that were cited set the floor and are nowhere near the ceiling. SH 25, SR 808.

The Court then proceeded to distinguish Lanpher from his co-defendant, Bonner, and the disparity that was addressed between the two plea agreements in which Bonner got significantly less time than Lanpher. The Court indicated that Lanpher's co-defendant had given himself up to law enforcement at what was perceived to be his first opportunity to do so, that he did not have the same history of violence as Lanpher, and that he did not fire a gun nor was he driving the car. SH 25, SR 808.

The Court stated that this case proved beyond any doubt to the Court that Lanpher is a dangerous person with a flawed moral character; that his mentality

and attitude toward the rights and safeties of others is that he is willing to hurt anybody for his own gain; that his violent and long record shows an inclination to commit crime with no limits; a history that shows a complete lack of moral character and value for human life. *Id.* In further support of the Court's position, the Court addressed the prior aggravated assault conviction which resulted in a fire burning a garage and apartment complex. SH 25-26, SR 808-809. In further support, the Court addressed Lanpher's actions and the risk of injury placed upon various parties and citizens throughout his high-speed chase and his actions that day. SH 26-27, SR 809-810.

In conclusion, the Court indicated that watching the videos, reading the reports, and studying Lanpher's history has left this Court with the opinion that there is nobody Lanpher was not willing to hurt or sacrifice for his immediate needs, and based upon his moral character, mentality, age, tendencies, inclination to commit crime, previous criminal record, the Court found that Lanpher cannot be rehabilitated. SH 27, SR 810. The Court further indicated that a finding that he could be rehabilitated would be death sentence to any officer who might encounter him in the future along with citizens of the state that may get in his way. SH 27-28, SR 810-811. The Court sentenced Lanpher to life in prison on each count, and that he must pay restitution in the amount of \$11,646.15, reimburse the county the cost of his court appointed attorney's fees, and indicated that the two life sentences were to run concurrent to one another and consecutive to his previous current number, giving credit for the 332 days served. SH 28, SR 811.

A Judgment of Conviction was filed with the Lake County Clerk of Courts on June 23, 2023, incorporating the Circuit Court's ruling. Appx. 5 (Judgment of Conviction). The State then filed a Notice of Entry of Judgment of Conviction and Sentence on June 26, 2023. Appx. 6 (Notice of Entry of Judgment of Conviction and Sentence). Lanpher now appeals the sentence imposed by the Circuit Court.

## **STANDARD OF REVIEW**

### **I. The Eighth Amendment claims of cruel and unusual punishment.**

Assessing “whether a noncapital sentence violates the Eighth Amendment requires [the Court] to determine de novo whether the sentence imposed is grossly disproportionate to its corresponding offense.” *State v. Cepelcha*, 2020 S.D. 11, 940 N.W.2d 682 (quoting *State v. Rice*, 2016 S.D. 18, 877 N.W.2d 75). The Supreme Court must weigh the “gravity of the offense,” meaning the offense’s relative position on the spectrum of all criminality against the harshness of the penalty. *Id.* The Court has noted that “This comparison rarely ‘leads to an inference of gross disproportionality’ and typically marks the end of [the Court’s] review.” *State v. Seidel*, 2020 S.D. 73, 953 N.W.2d 301 (quoting *State v. Chipps*, 2016 S.D. 8, 874 N.W.2d 475, 487). “However, ‘[i]f the penalty imposed appears to be grossly disproportionate to the gravity of the offense, then we will compare the sentence to those ‘imposed on other criminals in the same jurisdiction’ as well as those ‘imposed for the commission of the same crime in other jurisdictions.’” *Id.*

## **II. Abuse of Discretion – Impermissible Choice**

Generally, upon appellate review, a circuit court's decision is reviewed under an abuse of discretion standard. *State v. Holler*, 2020 S.D. 28, 944 N.W.2d 349 (quoting *State v. Chipps*, 2016 S.D. 8, 874 N.W. 2d 475). Under this analysis, "To arrive at an appropriate sentence[,] the sentencing court should acquire a thorough acquaintance with the character and history of the man before it." *Ceplecha*, 2020 S.D. 11, 940 N.W.2d 682 (quoting *State v. Larsen-Smith*, 2011 S.D. 93, 807 N.W.2d 817). This requires a Court to study "a defendant's general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record. *Id.* (quoting *State v. Bonner*, 1998 S.D. 30, ¶ 19, 577 N.W.2d 575). For the Court to overturn the Circuit Court's imposed sentence, there must be "a fundamental error of judgment, a choice outside of the range of permissible choices, a decision, which, on full consideration is arbitrary or unreasonable." *State v. Seidel*, 2020 S.D. 73, 953 N.W.2d 301 (quoting *Holler*, 2020 S.D. 28, ¶ 18, 944 N.W. 2d 349).

## **ARGUMENT**

### **I. WHETHER THE CIRCUIT COURT ERRED IN ENTERING A SENTENCE FOR TWO CONCURRENT LIFE SENTENCES IN PRISON IN BOTH COUNTS 1A AND 2A, AGAINST THE DEFENDANT, IN VIOLATION OF THE DEFENDANT'S EIGHTH AMENDMENT RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT.**

The Defendant believes that the sentence imposed by the Trial Court was cruel and unusual under the Eighth Amendment due to the sentence being grossly disproportionate from the corresponding offense; the Court considered

impermissible criminal history, in violation of Defendant's Fifth, Sixth and Fourteenth Amendment protections; and the penalty imposed was grossly disproportionate to the sentence imposed on other criminals in the same jurisdiction.

The Defendant's position is that the Court violated the Defendant's Eighth Amendment protections against cruel and unusual punishment when the Court entered a sentence which included one life sentence in prison for Count 1A and another life sentence in prison for Count 2A, to run concurrent, which was a sentence imposed which was grossly disproportionate to its corresponding offense. The Defendant also avers that, in addition to being grossly disproportionate to the corresponding offense, the sentence was grossly disproportionate when compared to the sentences imposed upon other criminals in the same jurisdiction for the same crime.

Under South Dakota Codified Law § 22-18-1.05 and 22-6-1(5), a person convicted of aggravated assault against a law enforcement officer can be sentenced to a maximum of 25 years in prison at the state correctional facility. By statute, the South Dakota Legislature has determined that the sentence that shall be imposed for the corresponding offense should be somewhere between zero and 25 years in the state penitentiary. Although Defendant acknowledges that the State Legislature also provided for SDCL § 22-7-8, which would allow for an individual convicted of three or more felonies, one of which would include a crime of violence, to be sentenced up to the level of a Class C felony, including a life sentence, the Defendant contends that this statute allows a sentencing court a



much broader scale with which to sentence a defendant, but it does not proscribe the sentence to be that maximum allowable by law. A maximum life sentence, let alone two life sentences, should be reserved for instances in which there are significantly egregious and aggravating factors which would place a particular case into a realm in which that sentence would be appropriate rather than cruel and unusual. The Defendant contends that this is clear because SDCL § 22-7-8, based solely on prior convictions, allows for the availability for the Court to impose a harsher sentence. Nothing about the principal charge changes from the same charge which the South Dakota Legislature has determined that a maximum of 25 years was appropriate.

Pursuant to SDCL § 22-7-8, an individual who is convicted of an aggravated assault against law enforcement on the very lowest and mildest of factors could be sentenced to a maximum of 25 years for their first offense, and then on the second offense (and two additional prior felonies), with the exact same facts, the Defendant could then be punished up to life in prison. The two additional prior non-violent felonies could have been felony poaching violations or theft in an amount satisfactory for a felony level crime. Would this result in a life sentence for the most mild of facts supporting a second aggravated assault? It is unlikely that that is the case because the primary difference would be a significant amount of aggravating factors considered by the Court. That would be the only explanation, as the Defendant believes it would clearly be a cruel and unusual punishment for an individual sentenced to a second aggravated assault



against law enforcement officer with the history stated above to get a life sentence.

The Defendant understands that the Court attempted to address what the Court felt were aggravating circumstances to support the cruel and unusual sentence imposed by the Trial Court, but Defendant argues there was not substantial aggravating factors considered by the Court with which to support the sentence imposed. In support of the Court's cruel and unusual punishment, the Court addressed the Defendant's lengthy criminal history. The Defendant does not deny he has a lengthy history, but he does contend that the unrelated convictions addressed by the Court were grossly exaggerated. The Court addressed his priors to include theft, DUI, obstruction of an officer, pimping and promoting prostitution, and possession of a controlled substance; none of which would result in life imprisonment. Additionally, the Court also stated that the Defendant had seven habitual offender convictions in support of the Court's sentence. Habitual offender convictions would have began on every felony charge after the first one, regardless of the degree of felony, the facts supporting the principal offense, or the level of harm or injury caused to any victim or society.

Defendant also believes the Court violated the Defendant's rights protected under the Fifth, Sixth and Fourteenth Amendments when the Court considered the Defendant's previous charges in addition to the list of convictions. It is well settled under the Fifth, Sixth and Fourteenth Amendments that every defendant is afforded certain rights and protections of due process, including that

they be innocent until proven guilty. Here, by the Court mentioning the charges in addition to the list of convictions was a violation of the Defendant's rights to be innocent until proven guilty. The charges that were mentioned and considered by the Court were never brought to a conviction, and therefore, cannot be considered by the Court in creating a sentence to impose upon the Defendant. To allow otherwise would be a clear violation of the Defendant's protections under the Fifth, Sixth and Fourteenth Amendments as it relates to due process and being innocent until proven guilty.

Lastly, the Defendant argues that the second prong to the Supreme Court's review is met as the Trial Court imposed a sentence which is grossly disproportionate when compared to those imposed on other criminals in the same jurisdiction and, in fact, some by the same Trial Court. Although the Trial Court did distinguish certain facts from the cases provided by the Defendant in the sentencing brief, it is rare that you are going to find a case that is exactly the same in all aspects. The first case the Court sought to distinguish from Lanpher's case was *State v. Rumbolz*. The Court indicated that Rumbolz had a single felony escape charge from 19 years prior, no felony convictions for a crime of violence, and no habitual offender convictions. Although Rumbolz had a lesser criminal history, the Rumbolz case was very similar to Lanpher's case in that it began as a high-speed chase, traveling through multiple counties, eventually ending in Lake County, which also resulted in the Defendant firing at officers. However, in Rumbolz, he struck an officer in the arm, fled the area, and was arrested after a stand-off when he finally surrendered. Like Lanpher, Rumbolz was charged with

murder, in addition to aggravated assault charges. In that case, where an officer was actually hit and wounded, the same Trial Court sentenced Rumbolz to 25 years in the state penitentiary with 10 years suspended, giving credit for time served.

The Court then attempted to distinguish *State v. Smith* from the instant case. The Court indicated that he was 25 years old, did not have a weapon, and his only prior conviction was a misdemeanor alcohol offense. Although those facts may be true and distinguishable from Lanpher who did have a weapon, had prior offenses, and is older than 25 years, the actions of Smith could arguably be more egregious than, if not equal to, Lanpher. In *Smith*, the Defendant started a fire in his apartment and proceeded to walk down the street in Madison, Lake County, South Dakota, to the One Stop gas station. Once at the gas station, Smith broke the front door in and used a lighter and cans of bug spray to start the gas station on fire. He then proceeded to attempt to light the gas pumps on fire. When unsuccessful, he left the area and was confronted by law enforcement down the road, at which time he viciously attacked the officer, causing severe injury to the officer. The beating of the initial officer was only stopped once a Sheriff's Deputy arrived on scene and tackled Smith off of the initial officer. The initial injured officer spent a significant amount of time in the hospital due to the injuries inflicted by Smith. Smith was also sentenced by the same Trial Court and was given 10 years in the state penitentiary with three years suspended for each count of reckless burning. With respect to the aggravated assault, he was sentenced to 20 years in the state penitentiary with credit for 66 days served.

Lastly, the Court attempted to distinguish the instant case from that of *State v. Hanneman*. The Court indicated that Hanneman's only prior was a non-violent misdemeanor offense; that he was suffering from severe mental health issues that were being successfully treated; and that the victim and Sheriff gave favorable impact statements due to his progress on his mental health. In *Hanneman*, similar to Lanpher, there was a high-speed pursuit through multiple counties at speeds at which the law enforcement officers were unable to keep up with him and had to GPS ping Hanneman's location. When law enforcement officers were able to catch up and attempt a traffic stop, Hanneman again fled and led law enforcement officers on a high-speed pursuit. In the *Hanneman* case, similar to Lanpher, the Defendant put many people on the roadways in danger and directed actions directly at law enforcement officers, resulting in aggravated assault. In the *Hanneman* case, it was driving his vehicle directly at the Sheriff. Although Lanpher did not have any letters of support from any particular victims or law enforcement officer, Lanpher was also suffering from mental health issues and substance abuse issues, which were actively being treated as well, as supported by the Defendant's and the Defendant's counsel's statements at closing. Hanneman was charged with aggravated assault against law enforcement officer and was sentenced to eight years in the state penitentiary, all of which was suspended with 180 days to serve in the Lake County Jail with work and treatment release, all by the same Trial Court as the instant case.

In another similar case presented in the Defendant's sentencing brief, *State v. Trent Wagner*, a case sentenced by a different Trial Court, provides yet another

example of how this Court's sentence is a grossly disproportionate sentence imposed in comparison to other individuals for similar offenses. Wagner, like Lanpher, had fired a weapon at law enforcement officers during a pursuit, and continued to point a gun at officers. Similar to Lanpher, Wagner was charged with two counts of aggravated assault against law enforcement officer, as well as additional charges related to the items he was in possession of. Wagner had a history that was comparable to Lanpher in that he was also convicted of a habitual for four prior felony convictions. In *Wagner*, a 2019 case, SDCL § 22-7-8.1, which hasn't been changed since 2006, would have allowed the Trial Court to sentence Wagner to a life sentence as well. The Trial Court, however, did not sentence Wagner to a life sentence, and rather, sentenced him on one count of aggravated assault against law enforcement to 25 years in the state penitentiary, with credit for 362 days served.

Certainly, there are differences between Lanpher and all of the above listed cases or those listed in the sentencing brief. However, where there may be aggravated circumstances such as Lanpher's criminal history or the fact that there is a felony conviction for a violent crime in that history, there are also mitigating factors when comparing to those cases in Lanpher, such as, like in *Hanneman*, Lanpher was suffering from mental health and addiction issues as he was under the influence of mood-altering substances during the pursuit. Unlike in *Rumbolz* and *Smith*, Lanpher did not cause any harm, physical damage, or serious bodily injury to law enforcement or anybody else.

The sentence imposed of a life sentence for each count of aggravated assault against law enforcement is grossly disproportionate to the corresponding offense of an aggravated assault against law enforcement in an attempt by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm. Not only is the penalty imposed grossly disproportionate to the gravity of the offense, it is grossly disproportionate to the sentences imposed on other criminals in the same jurisdiction for the same offenses.

Therefore, the sentence imposed by the Trial Court is in violation of the Defendant's Eighth Amendment protections against cruel and unusual punishment.

**II. WHETHER THE CIRCUIT COURT ERRED IN ENTERING A SENTENCE FOR TWO CONCURRENT LIFE SENTENCES IN PRISON AGAINST THE DEFENDANT AS A MATTER OF AN ABUSE OF ITS DISCRETION.**

In imposing a term of a life sentence on each count of aggravated assault against law enforcement, the Trial Court abused its discretion and made an impermissible choice with regard to sentencing the Defendant. The Trial Court failed to take a thorough acquaintance of the character and history of the man before it, and failed to adequately consider all the *Hinger-Bonner* factors in favor of an arbitrary or unreasonable sentence which was simply the maximum allowable by law.

Not to belabor the point which was previously made, the Court impermissively considered Defendant's prior charges, in violation of his Fifth, Sixth and Fourteenth Amendment rights of being innocent until proven guilty, and used those prior charges against him. The Court went against its own statements

and understanding of the Defendant to impose an arbitrary maximum allowable sentence. The Court had stated various periods in which there was no crime committed and no convictions in Lanpher's history, and even indicated that a couple of those years when there were no convictions was when he was being supervised. Clearly, this shows that the Defendant can be rehabilitated and supervised, contrary to the findings of the Court.

Additionally, the Trial Court's statements regarding *State v. Hanneman*, in this case, and how this same Trial Court sentenced Hanneman, points to this Trial Court acting arbitrarily or unreasonably. In this case, the Trial Court had stated differences in *Hanneman*, in that Mr. Hanneman was suffering from severe mental health issues and was being successfully treated. However, in this instant case, defense counsel and the Defendant advised the Trial Court that Lanpher was also suffering from severe mental health issues, and that those mental health and addiction issues were being treated while he was in custody over the period of a year between his arrest and sentencing. The Court had indicated that it had reviewed the videos and read the reports, and obviously heard arguments of counsel and the Defendant. This would include the clear indication that the Defendant was under the influence of mood-altering substances during the pursuit and shooting. Like in *Hanneman*, Lanpher, while maintaining his mental health and sobriety, is a completely different person who can be law-abiding and not a danger to society.

The Trial Court also failed to consider the Defendant's statements regarding his moral character, mentality, inclination to commit crime, and habits.



The Defendant advised the Court that he clearly had intended to cause no harm to law enforcement officers, and only intended to make them back off so he could escape. The facts and evidence show that there was no damage to any police or patrol vehicle, no injury to any officer, no damage in the immediate vicinity of the officers, nor in the backdrop immediately behind the officers. This would all indicate that the Defendant did not shoot directly at the officers or even within a dangerous proximity to the officers; but rather, in their general direction so as not to hit them and only to scare them off. This obviously goes to his mentality; his habits; moral character; and if not an aversion to commit crime, an aversion to cause harm to people.

In addition to the statements made above, the Trial Court seems to have created an arbitrary or unreasonable maximum sentence for this Defendant after being provided a sentencing brief, including nine cases from this jurisdiction for the same offense by similarly situated defendants; three of which were by this same Trial Court. Although the Trial Court did address differences in these cases, and the defense does not deny that there are differences, both in aggravation and in mitigation, from the instant case and those cited in the sentencing brief, the fact that this Defendant is nowhere near those other sentences leaves the appearance of an unreasonable or arbitrary sentence at the maximum allowable by law. The sentence in the instant case is not just on the high end of the group of nine others listed in the sentencing brief, but rather, is the maximum and significantly longer than all nine others. In *Smith*, an individual attempted to start multiple fires, one of which was essentially a bomb since it was a gas station, and then proceeded to



savagely beat an officer until he was stopped by another responding officer, resulting in significant injuries and medical expenses, who proceeded to then get a sentence from this Trial Court of only 34 years to serve with an additional six suspended, does not seem to support the same Trial Court's sentence in the instant case, given the facts.

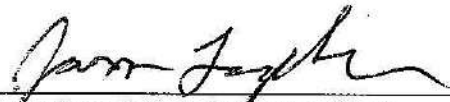
When comparing the facts of the nine cases provided in Defendant's sentencing brief; the three cases in that brief that this Trial Court sentenced; statements and history of the Defendant which clearly show that he can be law-abiding when his mental health and sobriety is under control; and the Defendant's statements of a clear intent to not actually harm anybody, but rather, to avoid arrest; and comparing the instant case to the cases provided in the sentencing brief in the same jurisdiction, the sentence imposed by the Trial Court in the instant case is arbitrary or unreasonable. The facts of the instant case are too closely associated with the other cases cited, with minimal aggravating circumstances differentiating them, and seemingly no credit given to mitigating circumstances applicable to Lanpher. Therefore, the Trial Court has made a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.

### **CONCLUSION**

Appellant asks this court to find error on the part of the circuit court and order remand to the circuit court for sentencing on this matter on two grounds. First, that the circuit court erred and violated the Appellant's Eighth Amendment rights under the United States Constitution by ordering a grossly disproportionate sentence when considering the severity of the crime to the gravity of the sentence.

Second, that the circuit court erred by abusing its discretion by reaching an impermissible result or decision where it had failed to make appropriate acquaintance with the defendant before it, amongst other considerations. Appellant thus asks for remand for a sentence that does not violate his Eighth Amendment rights and is not an impermissible result in this matter.

**Received and Reviewed:**

  
James Joseph Lanpher, Appellant

Dated this 5<sup>th</sup> day of October, 2023.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Appellant's Brief was served via email upon the following:

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Dated this 5<sup>th</sup> day of October, 2023.

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## CERTIFICATE OF COMPLIANCE

In accordance with SDCL 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Times New Roman font, and contains 8834 words from the Statement of the Issues through the Conclusion. I have relied on the word count of a word processing program to prepare this certificate.

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APPENDIX  
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STATE OF SOUTH DAKOTA )  
 )SS.  
COUNTY OF LAKE )

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )

CRI. 22-113

Plaintiff, )

INDICTMENT FOR: )

vs. )

COUNT 1: ATTEMPTED FIRST DEGREE  
MURDER  
(SDCL 22-16-4, 22-4-1, 22-16-12)  
½ of Class A Felony (25 years max)

JAMES JOSEPH LANPHER, JR,  
DOB: 2/11/1982 )

OR IN THE ALTERNATIVE )

Defendant. )

COUNT 1A: AGGRAVATED ASSAULT ON  
LAW ENFORCEMENT OFFICER  
(SDCL 22-18-1.1(2), 22-18-1.05)  
Class 2 Felony )

COUNT 2: ATTEMPTED FIRST DEGREE  
MURDER  
(SDCL 22-16-4, 22-4-1, 22-16-12)  
½ of Class A Felony (25 years max)

OR IN THE ALTERNATIVE )

COUNT 2A: AGGRAVATED ASSAULT ON  
LAW ENFORCEMENT OFFICER  
(SDCL 22-18-1.1(2), 22-18-1.05)  
Class 2 Felony )

COUNT 3: COMMISSION OF FELONY  
WHILE ARMED WITH A  
FIREARM  
(SDCL 22-14-12)  
Class 2 Felony  
**Mand. Min. 5 years pen consecutive**

COUNT 4: COMMISSION OF FELONY  
WHILE ARMED WITH A  
FIREARM  
(SDCL 22-14-12)  
Class 2 Felony  
**Mand. Min. 5 years pen consecutive**

THE LAKE COUNTY GRAND JURY CHARGES:

COUNT 1:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **ATTEMPTED FIRST DEGREE MURDER**, in that Defendant did attempt to kill another human being, to wit: Officer 1, without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, in violation of SDCL 22-16-4(1), SDCL 22-4-1 and SDCL 22-16-12, ½ of a Class A felony;  
**OR IN THE ALTERNATIVE;**

COUNT 1A:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **AGGRAVATED ASSAULT ON LAW ENFORCEMENT OFFICER**, in that Defendant did attempt to cause, or knowingly caused, bodily injury to another with a dangerous weapon; to wit: Officer 1, at a time when Officer 1 was a law enforcement officer engaged in the performance of Officer 1's law enforcement duties, a violation of SDCL 22-18-1.1(2) and 22-18-1.05, a Class 2 Felony; and contrary to the statute in such case made and provided for against the peace and dignity of the State of South Dakota.

COUNT 2:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **ATTEMPTED FIRST DEGREE MURDER**, in that Defendant did attempt to kill another human being, to wit: Officer 2, without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, in violation of SDCL 22-16-4(1), SDCL 22-4-1 and SDCL 22-16-12, ½ of a Class A felony;  
**OR IN THE ALTERNATIVE;**

COUNT 2A:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **AGGRAVATED ASSAULT ON LAW ENFORCEMENT OFFICER**, in that Defendant did attempt to cause, or knowingly caused, bodily injury to another with a dangerous weapon; to wit: Officer 2, at a time when Officer 2 was a law enforcement officer engaged in the performance of Officer 2's law enforcement duties, a violation of SDCL 22-18-1.1(2) and 22-18-1.05, a Class 2 Felony; and contrary to the statute in such case made and provided for against the peace and dignity of the State of South Dakota.

COUNT 3:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **COMMISSION OF A FELONY WHILE ARMED WITH A FIREARM**, as to Count 1 only of the Indictment, that Defendant did commit or attempt to commit any felony while armed with a firearm, including a machine gun or short shotgun, a violation of SDCL 22-14-12, a Class 2 Felony; and contrary to the statute in such case made and provided for against the peace and dignity of the State of South Dakota.

COUNT 4:

That on or about July 14, 2022, in Lake County, South Dakota, JAMES JOSEPH LANPHER, JR. did commit the public offense of **COMMISSION OF A FELONY WHILE ARMED WITH A FIREARM**, as to Count 2 only of the Indictment, that Defendant did commit or attempt to commit any felony while armed with a firearm, including a machine gun or short shotgun, a violation of SDCL 22-14-12, a Class 2 Felony; and contrary to the statute in such case made and provided for against the peace and dignity of the State of South Dakota.

Dated, this 20th day of July, 2022, in Madison, Lake County, South Dakota.

A True Bill  
"A True Bill"

THIS INDICTMENT IS MADE WITH CONCURRENCE OF AT LEAST SIX GRAND JURORS.

Brenda Johnson  
Grand Jury Foreperson

WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY: Scot Hawks



STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF LAKE )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )

Plaintiff, )

vs. )

JAMES JOSEPH LANPHER,  
DOB: 02/11/1982 )

Defendant. )

PART II INFORMATION FOR HABITUAL  
OFFENDER

(SDCL 22-7-8)

(Three or more felony convictions including one  
or more crimes of violence – enhancement to  
Class C Felony)

Cri. 22-64

Wendy Kloepfner, as prosecuting attorney in the name of and by the authority of the State of South Dakota, upon oath informs this Court, that Defendant is a Habitual Offender, as that term is defined by SDCL 22-7-8 in that Defendant has three or more prior occasions been convicted of a felony including one or more crimes of violence, said felony(ies) being as follows:

1. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, on February 23, 2015, in Cri. 14-6170.
2. Pimping, in Minnehaha County, South Dakota, on February 23, 2015, in Cri. 14-5609.
3. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-4406.
4. Possession of Controlled Substance – Schedule I or II, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-4417.
5. Aggravated Assault Against Law Enforcement Officer, in Minnehaha County, South Dakota, on February 26, 2019, in Cri. 18-6405.

contrary to the statute in such case made and provided against the peace and dignity of the State of South Dakota.

Dated this 19<sup>th</sup> day of July, 2022, in Madison, Lake County, South Dakota.

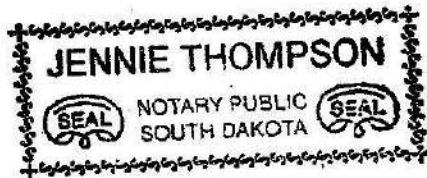
Wendy Kloepfner  
Prosecuting Attorney

STATE OF SOUTH DAKOTA     )  
  ) SS.  
COUNTY OF LAKE                     )

I, Wendy Kloeppner, prosecuting attorney in the above case, being duly sworn upon oath depose and state that I have read the foregoing Information and the same is true to the best of my knowledge, information, and belief.

Wendy Kloeppner  
Prosecuting Attorney

Subscribed and sworn to before me, a notary public, this 19<sup>th</sup> day of July, 2022.



Jennie Thompson  
Notary Public, South Dakota  
My commission expires: 2/2/2024

WITNESSES KNOWN TO THE STATE AT THE TIME AND FILING OF THIS INFORMATION: Minnehaha County Sheriff; Minnehaha County Clerk of Courts; Minnehaha County State's Attorney

STATE OF SOUTH DAKOTA )  
                                  )SS  
COUNTY OF LAKE          )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

STATE OF SOUTH DAKOTA,          \*

Plaintiff,                      \*

CR. 22-113

V.                              \*

SENTENCING BRIEF

JAMES JOSEPH LANPHER,          \*

Defendant.                      \*

\*\*\*\*\*

COMES NOW, James Lanpher, by and through his attorneys, Cody Miller and Manuel J. de Castro, Jr., and hereby submits the following Sentencing Brief for the Court's consideration.

Since July 14, 2022, James Lanpher (hereinafter "James") has been housed in the Lake County Jail, some 346 days at the time of the Sentencing Hearing. James has had significant time to reflect on his actions of July 14, 2022 and his life in general.

James turned forty-one years of age this year and has three children that he cares deeply for - Nathan Lanpher (age 14), Jassamae Cargill (age 4) and Rikki Allen (age 3). He is currently engaged to their mother, Jessica Allen. James also has a very good relationship with his father, who is 73 years old;

his mother passed away from cancer at 65 years old. James has two half-brothers that he is also close with.

The plea agreement in James' case calls for a "cap" of seventy-five years with more time suspended. The co-defendant who was equally as involved received a plea agreement calling for twenty-five years in the State Penitentiary in his Lake County file, with ten years suspended. In the Moody County file, his plea agreement calls for five years in prison with all time suspended. This Court can consider the disparity between the agreements when imposing a sentence that would be sufficient but not greater than necessary.

James does not deny his past. Many of the problems that have brought James to this point have been because of his addiction to drugs. However, in the past months he has come to finally acknowledge where he is in life, what is most important and where he wants to be.

James is a soft spoken, kind and talented and generous. When he puts his mind to it, James is responsible, diligent and reliable. Unfortunately when James is using methamphetamine he acts much different than he does when not using illegal drugs.

It is important for this Court to consider James' personal circumstances in evaluating and considering a fair sentence.

As Justice O'Connor recognized in her concurring opinion in California v. Brown, 479 U.S. 538, 545 (1987), "evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." See also, Porter v. McCollum, 130 S. Ct. 447, 454 (2009).

James has had physical and emotional challenges during his life. James has been diagnosed with anxiety and depression. He has been prescribed medications and has been participating in counseling since his arrest. However, he makes no excuses and has accepted full responsibility.

The empirical evidence is unanimous that there is no relationship between sentence length and general or specific deterrence, regardless of the type of crime. See Andrew von Hirsch et al., Criminal Deterrence and Sentence Severity: An Analysis of Recent Research (1999) (concluding that "correlations between sentence severity and crime rates . . . were not sufficient to achieve statistical significance," and that "the studies reviewed do not provide a basis for inferring that increasing the severity of sentences generally is capable

of enhancing deterrent effects"); Michael Tonry, Purposes and Functions of Sentencing, 34 Crime and Justice: A Review of Research 2829 (2006) ("[I]ncreases in severity of punishments do not yield significant (if any) marginal deterrent effects. . . . Three National Academy of Science panels, all appointed by Republican presidents, reached that conclusion, as has every major survey of the evidence."); David Weisburd et al

This Court must consider the "need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Whether any difference among sentences is warranted or unwarranted depends on the individual circumstances of each case and their relationship to the purposes of sentencing. "Unwarranted disparity is defined as different treatment of individual offenders who are similar in relevant ways, or similar treatment of individual offenders who differ in characteristics that are relevant to the purposes of sentencing." U.S. Sent'g Comm'n, Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform 113 (2004). Some other Aggravated Assault cases from South Dakota courts in recent years are as follows:

1. *State v. Decimas Laurelez, 49Cri20-4234.*

Mr. Laurelez was charged for an incident that occurred on May 31, 2020 where he was at the Sioux Empire Mall in Sioux Falls, South Dakota during the George Floyd protest. Laurelez was seventeen years old at the time and was on video pulling a handgun from his waistband and shooting approximately 5-6 times at the law enforcement officers who were lined up in front of the mall. Laurelez was originally charged with Attempted Murder 1<sup>st</sup> Degree, Aggravated Assault Against a Law Enforcement Officer, and Riot. Laurelez entered a Guilty plea to Aggravated Assault Against a Law Enforcement Officer on May 13, 2021 after waiving his right to conduct a transfer hearing back to juvenile court. The plea agreement called for a cap of ten (10) actual years in the penitentiary with more time suspended. Laurelez was sentenced on June 29, 2021 by the Honorable Camela Theeler to fifteen (15) years in the South Dakota State Penitentiary with ten (10) years suspended and credit for 375 days served. Laurelez had no adult record at the time of his sentencing.

2. *State v. Trent Wagner, 49Cri19-8131.*

On October 6, 2019, Trent Wagner was involved in a domestic dispute involving bringing a gun to his ex-girlfriend's house. Officers were called and during a foot pursuit of Wagner he pulled out a gun and fired a round towards the officers. The pursuit continued and Wagner pointed the gun again at officers. Wagner was shot by law enforcement and taken to the hospital and arrested after he was medically cleared. Wagner was charged with two counts of Aggravated Assault Against a Law Enforcement Officer, Possession of a Controlled Substance, Possession of a Firearm by an Individual with a Prior Felony Drug Conviction and Possession of Paraphernalia. Wagner was also charged with Being a Habitual Offender as he had four (4) prior felony convictions - Possession of a Controlled Substance, Ingestion of a Controlled Substance, Grand Theft, and Aggravated Eluding. Wagner plead Guilty to one (1) count of Aggravated Assault Against Law Enforcement Officer on August 26, 2020 and was sentenced by the Honorable Robin J. Houwman on October 2, 2020 to twenty-five (25) years in the South Dakota State Penitentiary with credit for 362 days served.

3. *State v. George Rinzy, Jr. 49Cri19-3756.*



Rinzy was charged with an incident that occurred on May 21, 2019 out back of the Minnehaha County Administration Building and by the entrance to the jail. Officers from the Minnehaha County Courthouse were notified that Rinzy was attempting to break the front door of the jail with a bottle. When officers arrived, Rinzy charged at them brandishing a knife. Rinzy was shot by Officer Craig Olson.

Rinzy ultimately plead Guilty But Mentally Ill to three (3) counts of Aggravated Assault Against a Law Enforcement Officer. He also admitted to being a Habitual Offender as he had eight (8) prior felonies on his record - Assault with Intent to Commit Sexual Abuse, Escape, Possession of a Controlled Substance (x4), Failure to Register, and Felony Failure to Appear. Rinzy was sentenced by the Honorable Tim D. Tucker on December 17, 2019 to thirty (30) years on each count to run concurrent to each other with credit for 207 days served.

4. *State v. Christopher Sanftleben, 49Cr. 17-7730.*

On September 23, 2017, officers responded to Sanftleben's residence after his wife had called law enforcement reporting that he was being drunk and abusive. Sanftleben was shot by a deputy after pointing what turned out to be an unloaded pellet gun at the deputy. He was charged with Aggravated Assault, Simple Assault Against a Law Enforcement Officer, Simple Assault (Domestic), Interference with Emergency Communications, and being a Habitual offender as he had two (2) prior felonies on his record - Sell, Transport, or Possess a Destructive Device and DWI 3<sup>rd</sup>.

He entered a Guilty plea to Aggravated Assault - Deadly Weapon on July 17, 2018 and was sentenced by the Honorable Joseph Neiles on September 17, 2018 to fifteen (15) years in the South Dakota State Penitentiary with eleven (11) years suspended.

5. *State v. Connor Hoy, 17Cri20-812.*

On December 20, 2020 Mitchell Police Officers responded to a disturbance involving a male firing a shotgun. The male was identified as Connor Hoy. When the first officer arrived on scene, and prior to exiting his patrol vehicle, Hoy fired the gun striking the patrol vehicle multiple times. Hoy fled the

area and was pursued by law enforcement. Hoy stopped his vehicle and exited once again and again fired striking patrol vehicles that officers were in. Hoy again fled in his vehicle. In an attempt to evade law enforcement Hoy, drove into a field. He then drove out of the field where officers had a road-block set up. Hoy rammed a police vehicle and was able to escape. Hoy was taken into custody after crashing his vehicle.

Hoy ultimately pled Guilty to Domestic Aggravated Assault - Bodily Injury with Dangerous Weapon and Aggravated Assault Against a Law Enforcement Officer. He was sentenced on June 8, 2021 by the Honorable Chris Giles to fifteen (15) years with five (5) suspended on the Domestic Aggravated Assault and twenty (20) years with ten (10) years suspended on the Aggravated Assault Against Law Enforcement Office. The Sentences were to run consecutively.

6. *State v. Curt Wayne Adams, 66Cr116-864.*

On December 3, 2016, a South Dakota Highway Patrolman attempted to stop Adams' vehicle for an illegal U-turn. Adams started a twenty (20) mile pursuit. Adams showed a weapon at various times during the chase and once his vehicle was stopped shot multiple times at the Trooper. The Trooper shot Adams, who was arrested after being cleared from the hospital.

Adams was charged with Attempted Murder - 1<sup>st</sup> Degree, Aggravated Assault Against a Law Enforcement Officer (x2), Aggravated Eluding, Manufacture, Distribute, Possess a Controlled Drug, Possession of a Controlled Substance (x2), and being a Habitual Offender as he had previous convictions for Possession of a Controlled Substance and Distribution of a Controlled Substance.

Adams entered a No Contest Plea to Aggravated Assault Against a Law Enforcement Officer on November 6, 2018 and was sentenced on January 14, 2019 by the Honorable Cheryle Gering to eighteen (18) years in the South Dakota State Penitentiary with three (3) years suspended and credit for 748 days served.

7. *State v. Matthew Rumbolz, 39Cr117-126.*

Rumbolz was involved in a high-speed chase that traveled from McCook County, South Dakota into southern Lake County,

South Dakota. After driving his vehicle into a ditch, Rumbolz fired at an officer striking him in the arm. He then fled the area and was involved in a stand off until he finally surrendered.

Rumbolz was charged with Attempted First Degree Murder, Attempted Second Degree Murder, Aggravated Assault Against a Law Enforcement Officer, Commit Felony While Carrying a Firearm, Aggravated Eluding and Possession of a Controlled Substance. He was also charged with being a Habitual Offender as he had prior convictions for Escape from Custody and Possession of a Controlled Substance.

Rumbolz entered a Guilty plea to Aggravated Assault Against Law Enforcement Officer on September 25, 2018. He was sentenced by the Honorable Patrick T. Pardy on October 26, 2018 to twenty-five (25) years in the South Dakota State Penitentiary with ten (10) years suspended and credit for 541 days previously served.

8. *State v. Travis Lee Smith, 39Cr116-211.*

On August 28, 2016, Smith started a fire in his apartment and then walked down the streets of Madison, South Dakota. Smith ultimately ended up at the One Stop Gas Station. Smith broke the front door in and entered the gas station. He used a lighter and cans of bug spray to start the gas station on fire. Smith then attempted to light the gas pump on fire. After being unsuccessful, Smith walked back towards the downtown area. He was stopped by law enforcement in the Pizza Hut parking lot. Smith attacked an officer causing severe damage to the officer. A Sheriff's Deputy arrived on scene and tackled Smith off the other officer before he could inflict more injuries. Smith was taken to the hospital and ultimately arrested. The officer spent considerable time in the hospital due to the injuries Smith inflicted upon him.

Smith was charged with First Degree Arson, Burglary - 3<sup>rd</sup> Degree, Aggravated Assault Against a Law Enforcement Officer, Simple Assault Against a Law Enforcement Officer, Reckless Burning, and Resisting Arrest.

On October 5, 2016, Smith entered Guilty pleas to Reckless Burning (x2) and Aggravated Assault Against a Law Enforcement Officer. Smith was sentenced on November 2, 2016 by the

Honorable Patrick T. Pardy to ten (10) years in the South Dakota State Penitentiary with three (3) years suspended on each count of Reckless Burning. Smith was sentenced to twenty (20) years in the State Penitentiary with credit for 66 days on the Aggravated Assault Against Law Enforcement Officer. All sentences were to run consecutive. Smith had a prior conviction for Common Nuisance on his record.

9. *State v. Kyle Hanneman, 39Cr19-154.*

On July 3, 2019 Law Enforcement was called by the family of Hanneman as he was making threats to harm himself. Law Enforcement attempted to make contact with him at his residence. He was agitated and throwing things. He eventually got into his pickup and drove away at a high rate of speed. Law Enforcement was unable to catch up to him.

Phone pings were done on his phone showing him throughout Lake and Miner County during the afternoon. Later a call was placed by a relative to Lake County Communications that Hanneman was at their residence to get a different vehicle. Officers drove to that location and attempted a traffic stop of Hanneman's vehicle. Hanneman refused to stop his vehicle and a pursuit started in Lake County and ended in Miner County. During this time, Hanneman drove his vehicle directly at Sheriff Walburg, Sheriff Steve Strande, and Chief Deputy Wade Hoefert as well as numerous citizens who were on the roadway. Speeds ranged from 65-100 mph.

Hanneman was charged with Aggravated Assault Against a Law Enforcement officer and pled Guilty to the same on December 10, 2019. Hanneman was sentenced by the Honorable Patrick T. Pardy on February 4, 2020 to eight (8) years in the South Dakota State Penitentiary suspended and 180 days to serve in the Lake County Jail with work and treatment release.

In conclusion, James certainly regrets his actions of July 14, 2022 (see comments under Attitudes/Orientation regarding how he feels about what he has done - "Horrible it was the biggest mistake I've ever made in my life & I'd do anything to take it

back"). James also understands that his actions "scared ... [law enforcement officers] and affected their mental health." James has remorse and understanding as to the seriousness of the offenses he committed. James time in jail has also given him time to reflect on his life and the changes that he needs to make in order to move forward in life. He is asking the Court to consider all of the information herein as well as the arguments that will be made at the time of the Sentencing Hearing when the Court imposes a sentence in this matter.

Dated this 12<sup>th</sup> day of June, 2023.

  
Cody Miller

/s/ Manuel de Castro  
118 W. Center, Suite 2  
Madison, SD 57042  
Ph: (605) 427-0817  
Fax: (605) 427-0818

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12<sup>th</sup> day of June 2023, a copy of the Sentencing Brief was served upon Wendy Kloeppner, Katie Mallory, and Lydsey Quasney, through Odyssey E-File and Serve.

/s/ Manuel J. de Castro, Jr.  
Manuel J. de Castro, Jr.



STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF LAKE )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )

Plaintiff, )

vs. )

JAMES JOSEPH LANPHER, JR., )  
DOB: 2/11/1982 )

Defendant. )

**JUDGMENTS OF CONVICTION**

C22-113

An Indictment was filed with this Court on July 20, 2022, charging Defendant with the crimes of Aggravated Assault on Law Enforcement Officer, two counts, in violation of SDCL 22-18-1.1(2) and 22-18-1.05, a Class 2 felony. A Part II Information was also filed pursuant to SDCL 22-7-8, alleging that Defendant is a Habitual Offender, enhancing the penalties for the current charges to a Class C felony.

Defendant was arraigned on said Indictment and Part II Information for Habitual Offender and received copies thereof on April 18, 2023. Defendant, Defendant's attorneys, Cody Miller and Manuel de Castro, and prosecuting attorneys Lindsey Quasney, Katie Mallory and Wendy Kloeppner, appeared at Defendant's arraignment. The Court advised Defendant of the constitutional and statutory rights pertaining to the charges that had been filed against Defendant, including but not limited to the right against self-incrimination, the right of confrontation, and the right to a jury trial. Defendant thereafter pleaded guilty to two counts of Aggravated Assault on Law Enforcement Officer (Counts 1A and 2A of the Indictment), violations of SDCL 22-18-1.1(2) and 22-18-1.05, and admitted the allegations in the Part II Information for Habitual Offender (SDCL 22-7-8), making the current offenses punishable as a Class C felony, said offenses having been committed on or about July 14, 2022.

It is the determination of this Court that Defendant has been regularly held to answer for said offenses; that said pleas and admission were voluntary, knowing, and intelligent; that Defendant was represented by competent counsel; that Defendant understood the nature and consequences of the pleas and admission at the time said pleas and admissions were entered; and that a factual basis existed for the pleas and admission.

It is therefore, the JUDGMENT of this Court that Defendant is guilty of Aggravated Assault on Law Enforcement Officer, two counts, a violation of SDCL 22-18-1.1(2), 22-18-1.05, and 22-7-8, a Class C felony.

**SENTENCE**

On June 14, 2023, the Court asked the Defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

**AGGRAVATED ASSAULT ON LAW ENFORCEMENT OFFICER – COUNT 1A**

ORDERED that Defendant, James Joseph Lanpher, Jr., shall be committed to the South Dakota Department of Corrections for placement at an appropriate facility for a term of life, there to be kept, fed, and clothed according to the rules and discipline governing the institution. It is further

ORDERED that Defendant shall receive credit for three hundred thirty-four (334) days previously served. It is further

ORDERED that Defendant pay court-appointed attorney fees. It is further

ORDERED that Defendant pay restitution and costs totaling \$11,646.15 as follows:

Lake County	\$ 9,740.43
200 E. Center St.	
Madison, SD 57042	

South Dakota Highway Patrol	\$ 1,520.43
118 W. Capitol	
Pierre, SD 57501	

South Dakota Drug Control Fund	\$ 300.00
1302 E. Highway 14, Suite 5	
Pierre, SD 57501	

Moody County	\$76.50
101 E. Pipestone Ave.	
Flandreau, SD 57028	

South Dakota Division of Criminal Investigation	\$ 8.79
1302 E. Highway 14, Suite 5	
Pierre, SD 57501	

Defendant shall pay all fees and costs on a payment plan developed by the Department of Corrections. It is further

ORDERED that this sentence shall run concurrently with the sentence announced for Aggravated Assault on Law Enforcement Officer – Count 2A of the Indictment, outlined below. It is further

ORDERED that this sentence shall run consecutively to any sentences Defendant may receive for violating previous sentences in Department of Corrections Transaction Numbers 36460, 36464, and 36465. It is further

ORDERED that Defendant is immediately remanded to the custody of the Lake County Sheriff's Office for delivery to the South Dakota Department of Corrections to begin said sentence.



**AGGRAVATED ASSAULT ON LAW ENFORCEMENT OFFICER – COUNT 2A**

ORDERED that Defendant, James Joseph Lanpher, Jr., shall be committed to the South Dakota Department of Corrections for placement at an appropriate facility for a term of life, there to be kept, fed, and clothed according to the rules and discipline governing the institution. It is further

ORDERED that Defendant shall receive credit for three hundred thirty-four (334) days previously served. It is further

ORDERED that this sentence shall run concurrently with the sentence announced for Aggravated Assault on Law Enforcement Officer – Count 1A of the Indictment, outlined above. It is further

ORDERED that this sentence shall run consecutively to any sentences Defendant may receive for violating previous sentences in Department of Corrections Transaction Numbers 36460, 36464, and 36465. It is further

ORDERED that Defendant is immediately remanded to the custody of the Lake County Sheriff's Office for delivery to the South Dakota Department of Corrections to begin said sentence.

BY THE COURT:

Attest:  
Klosterman, Linda  
Clerk/Deputy



6/20/2023 9:02:37 AM

A handwritten signature in black ink, appearing to read "Patrick Pardy", is written over a horizontal line.

Patrick Pardy  
Circuit Court Judge

**NOTICE OF RIGHT TO APPEAL**

You, JAMES JOSEPH LANPHER, JR., are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of South Dakota and the State's Attorney of Lake County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment is filed with said Clerk.

STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF LAKE )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES JOSEPH LANPHER, JR., )  
 )  
Defendant. )

NOTICE OF ENTRY OF  
JUDGMENT OF CONVICTION

CRL 22-113

NOTICE IS HEREBY GIVEN that a JUDGMENT OF CONVICTION in the above action was signed by the Honorable Patrick T. Pardy and filed with the Lake County Clerk of Court's Office on June 20, 2023, a true and correct copy of which is attached hereto and made a part hereof by reference.

Dated this 26<sup>th</sup> day of June, 2023, at Madison, Lake County, South Dakota.

Ulendy Kloppner  
Prosecuting Attorney

CERTIFICATE OF SERVICE

This will certify that on June 26, 2023, the within and foregoing Notice of Entry of Judgment of Conviction, with a copy of the Judgment being attached thereto, was served upon Cody Miller and Manuel J. de Castro, Jr., Attorneys for the Defendant, through Odyssey E-File and Serve.

Ulendy Kloppner  
Prosecuting Attorney

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 30404

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

JAMES JOSEPH LANPHER, JR.,

*Defendant and Appellant.*

---

APPEAL FROM THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
LAKE COUNTY, SOUTH DAKOTA

---

THE HONORABLE PATRICK T. PARDY  
CIRCUIT COURT JUDGE

---

**APPELLEE'S BRIEF**

---

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ATTORNEY FOR DEFENDANT  
AND APPELLANT

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Notice of Appeal filed July 17, 2023

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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No. 30404

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STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

JAMES JOSEPH LANPHER, JR.

---

**PRELIMINARY STATEMENT**

In this brief, Appellant, James Joseph Lanpher, is referred to as “Lanpher.” Appellee, the State of South Dakota, is referred to as “State.” References to documents are designated as follows:

Settled Record (Lake County Criminal File  
No. 22-113) ..... SR

Change of Plea Hearing Transcript..... CP

Sentencing Hearing Transcript .....ST

Lanpher’s Brief.....DB

All document designations are followed by the appropriate page number(s).

**JURISDICTIONAL STATEMENT**

Lanpher appeals the Judgment of Conviction entered by the Honorable Patrick T. Pardy, Circuit Court Judge, Third Judicial Circuit, on June 20, 2023. SR 754. Lanpher filed his Notice of Appeal on July 17, 2023. SR 754. This Court has jurisdiction under SDCL 23A-32-2.



## **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

### **I**

WHETHER THE CIRCUIT COURT VIOLATED LANPHER'S EIGHTH AMENDMENT RIGHTS BY IMPOSING TWO LIFE SENTENCES?

The circuit court sentenced Lanpher to two life sentences after he pleaded guilty to two counts of aggravated assault against law enforcement.

*State v. Caffee*, 2023 S.D. 51, --N.W.2d--

*State v. Ceplecha*, 2020 S.D. 11, 940 N.W.2d 682

*State v. Deleon*, 2022 S.D. 21, 973 N.W.2d 241

*State v. Holler*, 2020 S.D. 28, 944 N.W.2d 339

### **II**

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT IMPOSED TWO LIFE SENTENCES?

The circuit court sentenced Lanpher to two life sentences after he pleaded guilty to two counts of aggravated assault against law enforcement.

*State v. Chipps*, 2016 S.D. 8, 874 N.W.2d 475

*State v. McKinney*, 2005 S.D. 74, 699 N.W.2d 460

*State v. Mitchell*, 2021 S.D. 46, 963 N.W.2d 326

*State v. Rice*, 2016 S.D. 18, 877 N.W.2d 75

## **STATEMENT OF THE CASE**

The Lake County Grand Jury indicted Lanpher on the following:

- Count 1: Attempted First-Degree Murder, a Class 2 felony, contrary to SDCL 22-16-4, 22-4-1, 22-16-12, or alternatively;

- Count 1A: Aggravated Assault on Law Enforcement, a Class 2 felony, contrary to SDCL 22-18-1.1(2), 22-18-1.05;
- Count 2: Attempted First-Degree Murder, a Class 2 felony, contrary to SDCL 22-16-4, 22-4-1, 22-16-12, or alternatively;
- Count 2A: Aggravated Assault on Law Enforcement, a Class 2 felony, contrary to SDCL 22-18-1.1(2), 22-18-1.05;
- Count 3: Commission of a Felony While Armed with a Firearm, a Class 2 felony, contrary to SDCL 22-14-12; and
- Count 4: Commission of a Felony While Armed with a Firearm, a Class 2 felony, contrary to SDCL 22-14-12.

SR 9-11, 16-18. The State filed a Part II Information alleging five prior felony convictions: three convictions for possession of a controlled substance, one conviction for pimping, and one conviction for aggravated assault against law enforcement. SR 19.

Lanpher pleaded guilty to Counts 1A and 2A, both Aggravated Assault Against Law Enforcement. CP 13-14. He also admitted to the Part II Information. CP 19. The circuit court sentenced Lanpher to life in prison on each count. ST 28.

### **STATEMENT OF FACTS**

On July 14, 2022, the Sioux Falls Drug Task Force (Task Force) had information that Lanpher was transporting about fourteen pounds of methamphetamine from Pipestone, Minnesota, to South Dakota. SR 2, 361 (Sealed Document). The Task Force requested the Highway

Patrol's help to stop Lanpher.<sup>1</sup> SR 2. A Highway Patrol trooper spotted Lanpher's vehicle in Minnehaha County and tried to stop it.<sup>2</sup> SR 2. Lanpher failed to stop and a pursuit began. SR 2. Two minutes into the pursuit, Highway Patrol troopers advised that Lanpher was shooting out of his car window with a rifle, pointing it towards the officers. SR 2.

Lanpher continued to Interstate 29, where he drove on the Interstate going northbound in the southbound lanes. SR 2. He reached speeds of 90-100 miles per hour and nearly struck several vehicles. SR 396 (Sealed Document). Lanpher continued to fire his rifle at the pursuing officers. SR 396 (Sealed Document).

Lanpher exited the Interstate at exit 109 and headed west. SR 2. Lanpher drove through Coleman and continued to Madison. SR 2. Officers reported Lanpher was again shooting his rifle at them. SR 2. Once Lanpher reached Madison, he tried to car jack a citizen at gunpoint. SR 2. He finally came to a stop at the intersection of Ramm Heights and Southwest 1st Street. SR 2. Lanpher then took off running, while continuing to shoot at law enforcement. SR 2. He ran towards a residential area, where he tried to enter a home. SR 2. The

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<sup>1</sup> Lanpher was reported to be driving a gray Chrysler 300 with the license plate number JIM JON. SR 2, 364 (Sealed Document)

<sup>2</sup> The trooper was attempting to stop Lanpher for driving without a valid driver's license. SR 2.

homeowner was able to keep Lanpher from entering, so he continued to run. SR 2. Law enforcement eventually apprehended Lanpher.<sup>3</sup> SR 2.

### **STANDARD OF REVIEW**

“A circuit court's sentencing decision is generally reviewed for an abuse of discretion.” *State v. Holler*, 2020 S.D. 28, ¶ 10, 944 N.W.2d 339, 342 (citing *State v. Chipps*, 2016 S.D. 8, ¶ 31, 874 N.W.2d 475, 486). “An abuse of discretion ‘is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary or unreasonable.’” *State v. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 108. Consequently, “a sentence within the statutory maximum [generally] will not be disturbed on appeal.” *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting *State v. Bruce*, 2011 S.D. 14, ¶ 28, 796 N.W.2d 397, 406). Also, “[a]bsent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence.” *State v. Toavs*, 2017 S.D. 93, ¶ 14, 906 N.W.2d 354, 359 (quoting *State v. Blair*, 2006 S.D. 75, ¶ 20, 721 N.W.2d 55, 61).

But “[w]hen the question presented is whether a challenged sentence is cruel and unusual in violation of the Eighth Amendment, [this Court] conduct[s] a de novo review.” *State v. Manning*, 2023 S.D.

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<sup>3</sup> There was a passenger in the vehicle, Bonner Juel. SR 2. Once the vehicle stopped in Madison, Juel did not run and was apprehended by law enforcement. SR 2.

7, ¶ 47, 985 N.W.2d 743 (quoting *Chipps*, 2016 S.D. 8, ¶ 31, 874 N.W.2d at 486).

## **ARGUMENTS**

### **I**

THE CIRCUIT COURT DID NOT VIOLATE LANPHER'S EIGHTH AMENDMENT RIGHTS BY IMPOSING TWO LIFE SENTENCES.

The circuit court sentenced Lanpher to two life sentences for taking Highway Patrol on a highspeed chase through two counties, driving the wrong way on the interstate, and shooting at law enforcement. Lanpher now argues that by imposing a maximum sentence, the circuit court violated his Eighth Amendment right against cruel and unusual punishment. DB 21-29.

Lanpher cites no authority to support his position and instead makes blanket statements that his Fifth, Sixth, and Fourteenth Amendment rights were violated by the circuit court. *See* DB 21-29. “[T]he failure to cite authority in support of an issue ... is a waiver of the right to present that issue on appeal.” *Stuckey v. Sturgis Pizza Ranch*, 2011 S.D. 1, ¶ 19, 793 N.W.2d 378, 386 n\*3 (quoting *Behrens v. Wedmore*, 2005 S.D. 79, ¶ 55, 698 N.W.2d 555, 577). Should this Court find Lanpher did not waive his right to present his Eighth Amendment claim, the State addresses his argument in full.

The Eighth Amendment of the United States Constitution protects against courts imposing cruel and unusual punishments. U.S. Const.

amend. VIII. But “[f]or a defendant’s sentence to violate the Eighth Amendment, ‘it must be grossly disproportionate to the offense.’” *Holler*, 2020 S.D. 28, ¶ 11, 944 N.W.2d at 342 (quoting *Delehoy*, 2019 S.D. 30, ¶ 36, 929 N.W.2d at 111).

When reviewing the constitutionality of Lanpher’s sentence, this Court compares “the gravity of the offense – i.e., the offense’s relative position on the spectrum of all criminality – to the harshness of the penalty – i.e., the penalty’s relative position on the spectrum of all permitted punishments.” *State v. Cepelcha*, 2020 S.D. 11, ¶ 57, 940 N.W.2d 682, 698 (quoting *Rice*, 2016 S.D. 18, ¶ 13, 877 N.W.2d at 80). Then, only if the penalty imposed appears to be grossly disproportionate to the gravity of the offense, will this Court compare the sentence to those “imposed on other criminals in the same jurisdiction,” as well as those “imposed for the commission of the same crime in other jurisdictions.” *Rice*, 2016 S.D. 18, ¶ 13, 877 N.W.2d at 80 (citing *Chipps*, 2016 S.D. 8, ¶¶ 35-38, 874 N.W.2d at 489). These comparisons “are appropriate only in *the rare case* in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.” *Chipps*, 2016 S.D. 8, ¶ 34, 874 N.W.2d at 487 (emphasis added).

Here, there is no need to go beyond the first inquiry. Lanpher’s crime of aggravated assault against law enforcement is significant on the spectrum of all criminality. “The commission of any felony is a

serious matter.” *State v. Hauge*, 2019 S.D. 45, ¶ 35, 932 N.W.2d 165, 175. The only crimes higher on the spectrum of criminality than aggravated assault are homicide offenses. *See e.g.*, SDCL 22-6-1; SDCL ch. 22-16; SDCL 22-18-1.05; SDCL 22-18-1.1. And while Lanpher tries to minimize the seriousness of his crimes, they were quite severe.

Lanpher not only took Highway Patrol on a highspeed chase, but he drove the wrong way down the interstate, endangering innocent motorists, and fired his rifle multiple times at the officers. He attempted to car jack an individual and tried to break into someone else’s home. Contrary to Lanpher’s description of his crime, it was extremely egregious. He endangered not only the officers’ lives, but also unsuspecting citizens’ lives as well. While fortunately no one was killed or seriously injured because of Lanpher’s actions, he fired his gun at two troopers. Had his bullets hit the intended targets, and killed the officers, he would have been charged with murdered. *See State v. Deleon*, 2022 S.D. 21, ¶ 28, 973 N.W.2d 241, 248. Lanpher’s behavior showed a complete and utter disregard for human life. Thus, Lanpher’s crime is on the higher end of the spectrum of criminality.

Moving to the harshness of Lanpher’s sentence, the circuit court sentenced him to life in prison on each count of aggravated assault against law enforcement. SR 709. Lanpher pleaded guilty to two Class 2 felonies. A Class 2 felony has a maximum punishment of twenty-five years in prison. SDCL 22-6-1. But Lanpher also admitted to the Part II

Information that alleged he had five prior felony convictions, included at least one prior crime of violence. SR 709. Because of that, his penalty was increased to that of a Class C felony, which has a maximum punishment of life in prison. SDCL 22-6-1; SDCL 22-7-8.

“With only a death sentence above it, a life sentence is undoubtedly at the higher end of the spectrum of all permitted punishments.” *State v. Caffee*, 2023 S.D. 51, ¶ 25, --N.W.2d--. But so was the gravity of Lanpher’s crime. As the circuit court noted, Lanpher was “willing to hurt anybody for [his] own gains.” ST 25. And he “did all [he] could to kill a law enforcement officer or innocent citizen.” ST 26. “When ... statutory ranges are established, the legislative intent is that the more serious commissions of the crime deserve sentences at the harsher end of the spectrum.” *State v. Bruce*, 2011 S.D. 14, ¶ 32, 796 N.W.2d 397, 407.

Lanpher pleaded guilty to a crime on the higher end of the criminal spectrum and received a sentence appropriate for his heinous conduct. Consequently, Lanpher’s sentences are not grossly disproportionate to the crimes he committed. Because they are not grossly disproportionate, there is no need to compare his sentences to other sentences imposed on other criminal defendants in both this state and others.<sup>4</sup>

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<sup>4</sup> Lanpher’s argument focuses on whether the “aggravating factors” the court considered were appropriate, but those arguments are not appropriate for an Eighth Amendment analysis and instead should be...



## II

### THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT IMPOSED TWO LIFE SENTENCES.

When sentencing a defendant “circuit courts must look at both the person before them and the nature and impact of the offense.”

*State v. Mitchell*, 2021 S.D. 46, ¶ 29, 963 N.W.2d 326, 333. The court is required to “accurately assess the ‘true nature of the offense.’” *Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d at 333 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 36, 958 N.W.2d 734, 742).

“In fashioning an appropriate sentence, courts look to the character and history of the defendant. This requires an examination of a defendant’s ‘general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record’ . . . .” *Rice*, 2016 S.D. 18, ¶ 27, 877 N.W.2d at 84 (quoting *Bruce*, 2011 S.D. 14, ¶ 29, 796 N.W.2d at 406). The circuit courts also have a broad range of evidence they may consider to familiarize themselves with a defendant. *State v. McKinney*, 2005 S.D. 74, ¶ 17, 699 N.W.2d 460, 466 (citing *State v. Arabie*, 2003 S.D. 57, ¶ 21, 663 N.W.2d 250, 257). This broad range includes *uncharged conduct and crimes for which the defendant was acquitted. Id.*

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looked at when considering if the court abused its discretion in sentencing Lanpher to two life sentences. Those arguments are addressed in Issue II of this brief.

Again, Lanpher cites no authority to support his claim that the circuit court abused its discretion when it sentenced him to two life sentences. *See* DB 29-32. So his claim is waived. *See* Argument I, above. But if this Court determines Lanpher did not waive his claim, the circuit court did not abuse its discretion in sentencing Lanpher.

Prior to imposing its sentences, the circuit court examined Lanpher's background, criminal history, age, and prospects for rehabilitation. The circuit court reviewed Lanpher's presentence investigation report (PSI), which was 356 pages long. SR 330-686 (Sealed Document). The PSI included information about Lanpher's family, life, and criminal record. *Id.* The court also reviewed the law enforcement reports, videos, and victim impact letters.

Lanpher claims the circuit court "failed to take a thorough acquaintance of the character and history of the man before it ...." DB 29. But the court was thoroughly familiar with Lanpher before imposing its sentence. During sentencing the circuit court noted Lanpher's long and violent criminal history. ST 24. It noted that since 2001, Lanpher had only gone eight years without a conviction, three years of which he was under supervision. ST 24. His criminal history included convictions for obstruction of law enforcement, aggravated eluding, and four counts of aggravated assault against law enforcement. ST 24. Plus, he was charged with five counts of aggravated assault, two

counts of threatening law enforcement, at least six domestic assaults, and five simple assaults. ST 24-25.

The court also found Lanpher has a “dangerous and flawed moral character.” ST 25. And that Lanpher saw no value for human life and has a propensity for putting law enforcement officers’ lives at risk.

ST 25. The court summed up Lanpher’s behavior as:

[Lanpher], frankly, did all [he] could to kill a law enforcement officer or innocent citizen. [He] recklessly and intentionally fired [his] weapon at the pursuing officers, both in the country and in town; not only putting the officers’ lives at risk, but the innocent bystanders in their homes, businesses, and on the streets or sidewalks, all at risk with any crossfire from [him] and officers.

[He] drove the wrong way down the highway, the Interstate, through Washington Avenue in Madison and Colman, at speeds up to 100 miles per hour. [He] ran multiple stop signs, each time risking the lives of men, women, and children that might be in [his] way.

The only reason there wasn’t a body count between [his] driving and shooting is unexplainable luck. It is nothing short of a miracle that there was no loss of life. [Lanpher is] very lucky this is not a murder case; but [his] conduct shows this court that [he] is willing to commit whatever offense it took to get away.

ST 26-27. To claim the court failed to consider the man before it, is absurd. To say Lanpher engaged in horrific behavior is an understatement.

Lanpher also argues the court imposed an “arbitrary” maximum sentence. DB 30. But the legislature set the maximum sentence a court can impose. SDCL 22-6-1. And the Legislature allows the circuit court an increased maximum

sentence if the defendant is a habitual offender. SDCL 22-7-8.

The court was not working off a “make believe” sentencing structure; it used the structure provided by the Legislature.

Lanpher’s argument also seems to focus on comparing his sentence to other defendants’ sentences. Prior to sentencing, Lanpher provided the court with a “Sentencing Brief” that outlined what he felt were similarly situated defendants who had committed the same crime as he did. First, this Court only compares Lanpher’s sentence with those similarly situated defendants in an Eighth Amendment analysis. As detailed above, that analysis is not appropriate in this case because the gravity of the sentence did not outweigh the gravity of the crime. Second, by comparing Lanpher to other defendants, it cuts against the very purpose of sentencing, which is for the court to sentence the person before it. By looking at other cases, it detracts from Lanpher’s conduct and history. A circuit court cannot sentence the man before it, if it is too worried about what other defendants have received and if they are “similarly situated” to the person before it.

Lanpher also tries to downplay his atrocious behavior by claiming he “only intended to make [law enforcement] back off so he could escape.” DB 31. He made the same argument at the sentencing hearing by claiming this case was not an attempted murder case as “[t]here were no bullet holes in offices....” ST 19. At best these statements show a complete lack of understanding about the

seriousness of his nefarious conduct. At worst, they show a continuing disregard for the lives of others.

In short, the circuit court did not abuse its discretion when it imposed two life sentences for Lanpher's aggravated assaults against law enforcement. The court was thoroughly familiar with Lanpher and the crimes he committed. Therefore, Lanpher's convictions and sentences should be affirmed.

### **CONCLUSION**

The State respectfully requests that Lanpher's convictions and sentences be affirmed.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 2,863 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 8th day of November 2023.

/s/ Erin E. Handke

Erin E. Handke

Assistant Attorney General

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 8th day of November 2023, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. James Joseph Lanpher, Jr.* was served electronically through Odyssey File and Serve upon Cody J. Miller at [Cody@lkdmlaw.com](mailto:Cody@lkdmlaw.com).

/s/ Erin E. Handke

Erin E. Handke

Assistant Attorney General

**IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA**

**\*\*\*\*\*  
APPEAL NO. 30404  
\*\*\*\*\***

**STATE OF SOUTH DAKOTA,  
Plaintiff/Appellee,**

**vs.**

**JAMES JOSEPH LANPHER, JR.,  
Defendant/Appellant.**

**\*\*\*\*\***

**APPEAL FROM THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
LAKE COUNTY, SOUTH DAKOTA**

**\*\*\*\*\***

**HONORABLE PATRICK T. PARDY  
Circuit Court Judge**

**\*\*\*\*\***

**REPLY BRIEF OF APPELLANT**

**\*\*\*\*\***

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**Notice of Appeal filed July 17, 2023**

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## **PRELIMINARY STATEMENT**

James Joseph Lanpher, Jr., Defendant, shall be referred to throughout this brief as “Lanpher” or “Defendant.” The Appellee, State of South Dakota, shall be referred to throughout this brief as “State” or “Appellee.”

References to Appellee’s Brief are designated as “AB.” All transcription citations shall be followed by the appropriate page and line number(s).

## **JURISDICTIONAL STATEMENT**

Defendant defers to the Appellant’s initial Jurisdictional Statement previously submitted in Appellant’s Brief. Appellant files this Reply Brief pursuant to SDCL § 15-26A-6(2).

## **STATEMENT OF LEGAL ISSUES**

State presented two issue statements regarding issues stated in the Defendant’s Appellant Brief in support of Defendant’s appeal. In responding, the Defendant maintains that the issues raised in Appellee’s Brief are as follows (reframed from Appellee’s Brief):

### **I. WHETHER THE APPELLANT HAS WAIVED HIS RIGHT TO MAKE THE CLAIMS MADE IN APPELLANT’S BRIEF FOR FAILURE TO CITE AN AUTHORITY?**

*U.S. Const. Amendment VIII*

*State v. Holler*, 2020 S.D. 28, 944 N.W.2d 339

*State v. Cepelcha*, 2020 S.D. 11, 940 N.W.2d 682

*State v. Rice*, 2016 S.D. 18, 877 N.W.2d 75

## STATEMENT OF THE CASE

Defendant defers to his initial Statement of the Case previously submitted in Appellant's Brief.

## STATEMENT OF THE FACTS

Defendant defers to his initial Statement of the Facts previously submitted in Appellant's Brief.

## ARGUMENT

Defendant defers to his initial Argument previously submitted in Appellant's Brief and reasserts the same. Defendant will briefly reply to the State's promulgated arguments in this Reply Brief.

**I. Defendant replies to the State's argument that Defendant waived his right to appeal based on arguments under the Fifth, Sixth, and Fourteenth Amendments by failing to cite an authority.**

State, in its brief on this matter, raised the issue that Defendant waived his right to present his Eighth Amendment claim and his claim that a Circuit Court abused its discretion for failing to cite an authority. AB 6, 11. In support of this argument, Appellee uses the case of *Stuckey v. Sturgis Pizza Ranch*, (which is quoting the case of *Behrens v. Wedmore*, 2005 S.D. 79, ¶55, 698 N.W.2d 555, 577 which was citing *State v. Pellegrino*, 1998 S.D. 39, ¶22, 577 N.W.2d 590, 599). *Stuckey* is an appeal from an administrative court, and the context in which the section quoted by the State was used was in a failed argument by *Stuckey*, arguing that the employer had failed to raise the issue before the Department prior to the appeal, but the view of the record proved that the employer properly raised the

alleged procedural errors in the proceeding before the Department and such issues were not waived. *Stuckey v. Sturgis Pizza Ranch*, 2011 S.D. 1, ¶19, 793 N.W.2d 378, 386 N'3. Although in *Behrens* it is stated that the Court has “often held that the failure to cite authority in support of an issue at trial is a waiver of the right to present that issue on appeal,” the issue involved a very specific legal concept, not widely known or accepted; *Behrens* failed to cite support for an order to have a specific jury instruction read and then to later appeal a Court’s error in failing to provide such an instruction. *Behrens*, ¶55 (citing *State v. Pellegrino*, 1998 S.D. 39, ¶22, 577 N.W.2d 590,599).

Defendant claims that the issue raised by the State in Appellee’s Brief that Defendant waived the right to appeal based on the Eighth Amendment argument for failure to cite a supporting authority is not sustainable because the Appellant did in fact cite supporting authority and the cases cited by Appellee in Appellee’s Brief do not apply to the issue at hand. The Appellant provided the authority and support of Appellant’s issues on appeal within the Standard of Review portions of Appellant’s Brief. Appellant’s Brief, p. 20-21. Appellee provides no authority supporting that a criminal defendant must raise an Eighth Amendment violation with regard to sentencing prior to it first being raised on appeal.

In Appellant’s Brief, Appellant provided the supporting citations for the Standard of Review as it relates to the issues the Defendant is appealing. The issue on appeal is whether the Court imposed a cruel and unusual punishment and whether the Court abused its discretion by making an impermissible choice for

sentencing purposes. In Appellant's Brief, the Appellant provided multiple authority citations for the standards of review in which the sentence should have complied with. *Id.* Similarly, for the argument of abuse of discretion, Appellant provided in Appellant's Brief the statutory authority and citations in which the Circuit Court Judge should have complied with the boundaries created by such authorities. Defendant contends that no further authority was necessary than the authority of the Eighth Amendment to the United States Constitution and the authorities cited in the Standard of Review, as they are the most relevant cited authorities on the issue which Defendant contends support the argument that the sentence imposed was in violation of the Defendant's Eighth Amendment right against cruel and unusual punishment, and that the Circuit Court abused its discretion by making an impermissible choice when imposing the sentence which was imposed.

Additionally, Appellee fails to provide any citation to an authority which supports the idea that a criminal defendant must raise Eighth Amendment or abuse of discretion claims prior to first being raised on appeal. No such authority has been provided, and Defendant contends that if such authority did exist, the issue was raised in Appellant's Sentencing Brief provided to the Court prior to sentencing. Sentencing Brief. In the Sentencing Brief, the Defendant, raised the issues which the Circuit Court should have considered for purposes of sentencing. Although such sentencing brief does not specifically address the yet to be imposed sentence by the Circuit Court as an abuse of discretion or a violation of his Eighth

Amendment rights against cruel and unusual punishment, the issues relevant to imposition of a sentence by a Circuit Court Judge with relation to such potential claims on appeal were addressed. To require a Defendant to raise an abuse of discretion or violation of right against cruel and unusual punishment claim prior to having the sentence imposed is absurd. Similarly, to require the Defendant to present those claims to the sentencing judge after a Sentencing Brief had been presented and the judge handed down the sentence would be equally absurd.

Therefore, because the Defendant raised the issues relevant to a potential abuse of discretion claim, as well as a potential claim for Eighth Amendment violation in Defendant's Sentencing Brief prior to the sentence, and, in Appellant's Brief the Defendant did cite to the relevant authority for standard of review of an imposed sentence by a Circuit Court, the Defendant's right to raise these issues on appeal have not been waived. With respect to this issue raised by the State in Appellee's Brief, Defendant contends that it cannot be sustained.

### **CONCLUSION**

Defendant asks this Court to consider arguments made in this Appellant's Reply Brief, as well as the arguments made in Appellant's Brief in support of Appellant's appeal, and asks the Court to find in favor of Appellant in that the Circuit Court did abuse its discretion and/or imposed a sentence which was in violation of Appellant's right against cruel and unusual punishment under the Eighth Amendment of the United State Constitution. Defendant further asks that

the Supreme Court remand this file to the Circuit Court for a sentence which does not constitute an abuse of discretion nor a cruel and unusual punishment.

Dated this 7<sup>th</sup> day of December, 2023.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Appellant's Reply Brief was served via email upon the following:

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## CERTIFICATE OF COMPLIANCE

In accordance with SDCL 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Times New Roman font, and contains 1238 words from the Statement of the Issues through the Conclusion. I have relied on the word count of a word processing program to prepare this certificate.

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