

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

JEFFREY CHARLES EATON,

Appellant.

No. 83024-4-I

DIVISION ONE

UNPUBLISHED OPINION

PER CURIAM — Jeffrey Eaton challenges his conviction for theft in the third degree. He contends that the trial court erred by allowing the State to exercise a peremptory challenge to excuse Juror 26, a member of the venire who self-identified as Asian, over Eaton’s GR 37 objection. Under GR 37, “[i]f the court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied.” GR 37(e). “The court need not find purposeful discrimination to deny the peremptory challenge.” Id.

The State concedes error, acknowledging that the trial court “misconstrued GR 37 in several key respects.” The State acknowledges that the trial court allowed the peremptory challenge despite stating on the record that an objective observer “could” have viewed race as a factor in the State’s use of the peremptory. And, the State observes that even though distrust of law enforcement is a presumptively invalid reason for a peremptory challenge under GR 37(h)(ii), the trial court was not willing to apply that subsection here because during voir dire, Juror 26 expressed skepticism only of the criminal justice

system generally and not of “law enforcement” specifically. The State also acknowledges that the trial court’s comments reflect an apparent belief that it could not sustain a GR 37 objection without concluding that the prosecutor was deceiving the court about the reasons for the peremptory challenge.

We accept the State’s concession of error, reverse Eaton’s conviction, and remand for a new trial. See State v. Lahman, 17 Wn. App. 2d 925, 938, 488 P.3d 881 (2021) (reversing and remanding for a new trial after determining that the trial court should have sustained the defendant’s GR 37 objection).

Smith, A.C.J.

H.S.J.

Cappelwick, J.P.J.