NO. 102906-3

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

GUSTAVO TAPIA RODRIGUEZ,

Defendant/Appellant.

PETITION FOR DISCRETIONARY REVIEW,

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1. IDENTITY OF PETITIONER

Gustavo Tapia Rodriguez requests the relief designated in Part 2 of this Petition.

2. STATEMENT OF RELIEF SOUGHT

Mr. Tapia Rodriguez seeks review of an Unpublished Opinion of Division III of the Court of Appeals dated February 29, 2024. (Appendix "A" 1-27)

3. ISSUE PRESENTED FOR REVIEW

A. Does the Court of Appeals decision, differentiating between prosecutorial misconduct and ineffective assistance of counsel as pertains to the potential for racial bias, conflict with the decision in *State v. Zamora*, 199 Wn.2d 698, 512 P.3d 512 (2022) in contravention of RAP 13.4 (b)(1); and/or, conflict with the decision in *State v. Gutierrez III*, 22 Wn. App.2d 815, 513 P.3d 812 (2022) in contravention of RAP 13.4 (b)(2); and/or raise a significant question of law under the provisions of the Sixth and Fourteenth Amendments to the United States Constitution and Const. art I, §§ 3 and 22 in contravention of RAP 13.4 (b)(3);

and/or rise to the level of an issue of substantial public interest that needs to be determined by the Supreme Court under RAP 13.4 (b)(4)?

B. If so, as to any provision of RAP 13.4 (b), was defense counsel ineffective?

4. STATEMENT OF THE CASE

A jury determined that Mr. Tapia Rodriguez was guilty of all five counts of a consolidated Information, including all of the alternatives, enhancements and aggravators. Judgment and Sentence was entered on April 20, 2020. (CP 448; CP 449; CP 450; CP 451; CP 452; CP 453; CP 455; CP 456; CP 458; CP 460; CP 461; CP 502)

Mr. Tapia Rodriguez is currently serving a life sentence without possibility of parole (LWOP).

Mr. Tapia Rodriguez filed a Notice of Appeal on April 20, 2020.

The Court of Appeals issued its initial decision on February 8, 2022. The State then filed a Motion to Stay

proceedings pending the decision in *State v. Westwood*, 2 Wn.3d 157 (2022). (Appendix "B")

After the Court of Appeals lifted the stay Mr. Tapia Rodriguez and the State each filed a Motion for Reconsideration of the February 8, 2022 decision.

On February 29, 2024 the Court of Appeals denied both reconsideration motions. (Appendix "C")

The Court of Appeals, in that decision, determined that defense counsel was not ineffective with regard to evident bias of juror No. 16. The Court's decision states:

> The record supports the State's position that defense counsel's decision not to challenge or remove venire juror 16 was a reasonable strategic decision; that is, defense counsel thought he could establish to juror 16's satisfaction that Tapia Rodriguez was born in Texas and thus a United States citizen, while establishing that the surviving victim was in the United States illegally. We conclude that defense counsel was not ineffective.

The Court of Appeals then notes in fn 4 its determination that there is a distinguishable difference between prosecutorial misconduct and ineffective assistance of counsel.

The Court of Appeals went on to determine that the trial court did not have a duty to *sua sponte* to remove juror No. 16.

Mr. Tapia Rodriguez asserts that the foregoing aspects of the Court of Appeals decision constitute the crux of why he is entitled to have his convictions reversed and a new trial ordered.

Mr. Tapia Rodriguez filed a pro se letter with the Court of Appeals on March 18, 2024 requesting an extension of time to file his Petition for Discretionary Review. (Appendix "D")

Appellate counsel's motion to withdraw was granted on March 19, 2024 (Appendix "E")

Division I of the Court of Appeals issued an email dated April 3, 2024 granting an extension of time to April 3, 2024 (Appendix "F")

The Clerk of the Supreme Court issued a letter dated April 1, 2024 granting Mr. Tapia Rodriguez's extension request. A due date of May 16, 2024 was set. (Appendix "G")

5. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

> Our constitutions separate power into many hands. Among those hands are the hands of the jury. CONST . art. I, § 22 ; U.S. CONST . amend. VI. Juries are just as vital a check on government power as the separation of powers between the legislative, executive, and judicial branches. *See Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009). To perform their vital function, juries must be fairly selected. *State v. Lanciloti*, 165 Wn.2d 661, 667-68, 201 P.3d 323 (2009). Jury selection must be done in a fair way that does not exclude qualified jurors on inappropriate grounds, including race. *See City of Seattle v. Erickson*, 188 Wn.2d 721, 723, 398 P.3d 1124 (2017) (citing *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986)); GR 37. As part of their constitutional role, courts ultimately have the obligation of ensuring those before them receive due process of law. *See, e.g.*, *State v. Oppelt*, 172 Wn.2d 285, 288,

257 P.3d 653 (2011) ; *City of Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004).

State v. Pierce, 195 Wn.2d 230, 455 P.3d 647 (2020).

Under no circumstances can defense counsel's exchange with juror No. 16 be considered reasonable. Juror No. 16 did not hide his bias. Juror No.16 could not unequivocally state that he could be impartial. The bias was an actual bias.

Mr. Tapia Rodriguez's claim that juror no. 16 was biased is based upon the following exchange that occurred during voir dire between the juror and defense counsel:

> MR. KENTNER: Well, *the state had talked to all of you about immigration, the policies*, ([*See*: RP 444, l. 17 to RP 459, l. 15]; Appendix "H") is it going to disappoint you that that's not even relevant in this case?
>
> JUROR [ ]: No, not at all.

MR. KENTNER: Okay. Is everybody going to feel comfortable not delving into that? We all know he's of Mexican dissent (*sic*), we all know. Number 16, I'm sorry.

JUROR 16: Given that I came into this country legally, I think it will bother me.

MR. KENTNER: Illegally or legally?

JUROR 16: Legally.

MR. KENTNER: So it would bother you?

JUROR 16: *It would influence my decision, I would think.*

MR. KENTNER: Thank you. Thank you for sharing that. Let me ask you a question. If the state doesn't have to prove that and you're never going to hear about that, would it still make a difference?

JUROR 16: So that's not going to be brought up is what you're saying?

MR. KENTNER: It's not going to be brought up. It doesn't matter because that's not the charge. He's not in immigration court, we're not trying to prove whether or not we're going to deport him or if he's a citizen. He may be a citizen, he may not. It's irrelevant. Because he's not charged with something that violates a federal law which says, hey, listen, we have the right to deport you if you don't have the necessary paperwork, whatever.

JUROR 16: *Sure, I think that thought would still linger in the back of my mind.*

MR. KENTNER: *Would you hold that against him?*

JUROR 16: *Yes.*

MR. KENTNER: *Okay. If the judge asked you, hey, 16, I'm instructing you, you know, you're going to have to ignore that, set that aside. Would that be problematic for you?*

JUROR 16: *It might be.*

MR. KENTNER: Okay. Okay. So what is it about an illegal, let's say in your mind you're thinking about this, what is it about someone illegally coming into the county which is offensive to you or you would have a problem getting past that? Can you share that with us, please? And I'm not judging you, so go ahead.

JUROR 16: Sure. Because this large part, myself and my family came here legally, and it was very hard to do so. We followed the proper channels to get to this

country legally. And so when you see somebody do it illegally, it doesn't matter what skin color they are, they're coming from Canada, it doesn't matter. If they're doing something illegally, they're breaking the law, they're breaking the law in this country.

MR. KENTNER: Thank you.

Do you think there's ever a justification, say for instance there's genocide in the country or there's a gang infested country or they're killing innocent people in various countries, is that ever going to be a legitimate reason to flee that dangerous country?

JUROR 16: *Yes.*

MR. KENTNER: *Okay. Would that change your mind?*

JUROR 16: *Possibly, yes.*

MR. KENTNER: *Possibly.* Unfortunately, we'll never be able to tell you about that. Because the judge, if I tried to introduce that, he would say, hold on a second, the state would probably say, irrelevant, and the judge would probably rule against me. *So knowing that that's a possibility would you still hold that against my client?*

JUROR 16: *Yes.*

MR. KENTNER: Okay. So is there anything we could convince you or say to you, even with the judge's instruction, say, you shouldn't hold that, that shouldn't be a factor?

JUROR 16: *I'm ready to listen.*

MR. KENTNER: *You're ready to listen. Have you judged him already, though?*

JUROR 16: *To some degree, yes.*

MR. KENTNER: *To some degree*. Even though you don't know his status?

JUROR 16: *Like I said, I'm willing to listen.*

MR. KENTNER: Thank you very much, number 16. I appreciate it.

(RP 507, l. 2 to RP 510, l. 15) (Emphasis supplied.)

JUROR 16: Yeah, it would bother me too.

MR. KENTNER: Similar to ten?

JUROR 16: Just like she said, you know, if you see it on TV, it's one thing, but if you're seeing it in real -- you know, real photographs, it would bother me, you

know. I don't believe in violence in that manner, so…

…

(RP 521, ll. 2-8)

A. RAP 13.4 (b)(1)

The following excerpt from *State v. Zamora*, *supra*, 710-11 supports that the Court of Appeals erroneously determined that juror bias was not present:

> "The unmistakable principle underlying these precedents is that discrimination on the basis of race, 'odious in all aspects, is especially pernicious in the administration of justice.'" *Peña-Rodriguez* [*Peña-Rodriguez v. Colorado*, 580 U.S. ___, 137 S. Ct. 855, 197 L. Ed.2d 107 (2017)],137 S. Ct. at 868 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555, 99 S. Ct. 2993, 61 L. Ed. 2d 739 (1979)). Consistent with our cases, the United States Supreme Court has emphasized that courts have made efforts to "address the most grave and serious statements of racial bias[,] . . . not [in] an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." *Peña-*

> *Rodriguez*, 137 S. Ct. at 868. Accordingly, courts have been "called upon to enforce the Constitution's guarantee against state-sponsored racial discrimination in the jury system" and to safeguard "'a criminal defendant's fundamental "protection of life and liberty against race or color prejudice."'" *Peña-Rodriguez*, 137 S. Ct. at 867, 868 (quoting *McCleskey v. Kemp*, 481 U.S. 279, 310, 107 S. Ct. 1756, 95 L. Ed. 2d 262 (1987) (quoting *Strauder v. West Virginia*, 100 U.S. (10 Otto) 303, 309, 25 L. Ed. 664 (1880))); *State v. Berhe*, 193 Wn.2d 647, 658, 444 P.3d 1172 (2019) (same).

The *Zamora* case stands for the proposition that inquiries into immigration status during voir dire are no more constitutionally authorized than those involving race, gender, age, sexual preference or nationality.

B. RAP 13.4 (b)(2)

State v. Gutierrez, *supra*, is clear in its analysis that the seating of a biased juror precludes a trial from being constitutionally fair and impartial.

The *Gutierrez* Court noted at 819-20:

> A defendant has a constitutional right to an unbiased jury trial. *City of Cheney v. Grunewald*, 55 Wn. App. 807, 810, 780 P.2d 1332 (1989). "When a juror makes an unqualified statement expressing actual bias, seating a juror is a manifest constitutional error." *State v. Irby*, 187 Wn. App. 183, 188, 347 P.3d 1103 (2015). It is well established that seating a biased juror is never harmless and requires a new trial regardless of actual prejudice. *State v. Guevara-Diaz*, 11 Wn. App. 2d 843, 851, 456 P.3d 869, *review denied*, 195 Wn.2d 1025, 466 P.3d 772 (2020).

The *Gutierrez* case went on to further address the issue of a defendant's immigration status at 821:

> ... [Q]uestions about a person's immigration status may appear to be ethnically neutral because a person can immigrate from Canada or Mexico. But "[e]ven though the concern regarding immigration status does not explicitly implicate race, our country has made Latin ethnicity a proxy for undocumented immigration status." Micah K. Thompson, *Bias On Trial: Toward An Open Discussion of Racial Stereotypes in the Courtroom, 2018* Mich. St. L. Rev. 1243, 1305.

The discussion between defense counsel and juror No. 16 falls directly within the prohibitions as to juror bias. In addition, GR 37 (a) and (g) further support the fact that the presence of juror No. 16 on the jury denied Mr. Tapia Rodriguez of his constitutional right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the United States Constitution and Const. art. I §§ 3 and 22.

Finally, as far as the *Gutierrez* decision is concerned, the trial court also failed to take the appropriate steps to remove juror No. 16 or independently determine impartiality. The *Gutierrez* Court stated at 825-26:

> Despite the highly strategic nature of voir dire, a trial court has an obligation to oversee the jury selection process. *Guevera-Diaz*, 11 Wn. App.2d 846. When a juror expresses actual bias and the attorneys do not move to excuse the juror, the court has an obligation to conduct an independent inquiry and excuse the juror if the court is satisfied that the juror cannot try the issues impartially and without prejudice to the substantial rights of parties. *Id.* at 855; RCW 4.44.170 (2). The failure to remove a biased juror requires a new trial without

the showing of prejudice. *Guevera-Diaz*, 11 Wn. App.2d at 855.

C. RAP 13.4 (b)(3)

The Court of Appeals decision seems to hinge on its belief that defense counsel's failure to either challenge juror No. 16 for cause, or to exercise a preemptory challenge against that juror was strategic and/or tactical. Inquires in connection with immigration status, racial background, prior experiences with individuals of minority races and similar facets of implied bias cannot be condoned as strategy or tactics.

Other cases have addressed the issue of trial strategy/tactics in connection with jury voir dire.

In *State v. Castro*, 141 Wn. App. 485, 493, 170 P.3d 78 (2007) the Court found that "when considering a juror's prior experiences, bias is presumed only where the juror fails to indicate that he or she can be impartial."

Juror No. 16 never stated that he could be impartial.

More in point is *State v. Grier*, 171 Wn.2d 17, 33-34, 246 P.3d 1260 (2011) where the Court held:

> ...[A] criminal defendant can rebut the presumption of reasonable performance by demonstrating that "there is no conceivable legitimate tactic explaining counsel's performance." *State v. Reichenbach*, 153 Wn.2d at 130, 101 P.3d 80); *State v. Aho*, 137 Wn.2d 736, 745-46, 975 P.2d 512 (1999). Not all strategies or tactics on the part of defense counsel are immune from attack. "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)....

D. RAP 13.4 (b)(4)

In *State v. Bell*, 26 Wn. App.2d 821, 529 P.3d 448 (2023) the Court reminded courts and counsel that the conduct of voir dire is inclusive of a many-faceted approach. The juror's demeanor, the context of his/her answers, body language, and similar aspects of individual perception and analysis come into play.

The *Bell* Court noted at 829:

> Voir dire, the part of jury selection wherein the parties ask questions and engage in discussion with potential jurors to draw out potential bias, is central to securing the right to an impartial jury. *State v. Momah*, 167 Wn.2d 140, 152, 217 P.3d 321 (2009). But voir dire is more than just a question and answer session; and the interactions that inform whether the parties request a potential juror's disqualification for cause—and whether the court grants that request—are more than purely verbal. Instead, the parties and the court rely on all the modes by which one person may assess another's credibility, including their demeanor. *Uttecht v. Brown*, 551 U.S. 1, 2, 127 S. Ct. 2218, 167 L. Ed. 2d 1014 (2007); *see also Reynolds v. United States*, 98 U.S. 145, 156-57, 25 L. Ed. 244 (1878) ("[T]he manner of a juror while testifying is oftentimes more indicative of the real character of [their] opinion than [their] words.").

Mr. Tapia Rodriguez urges the Court to consider the significant impact that occurs when trial counsel, whether the prosecution or defense, crosses that barrier when questioning

evokes an aura of discrimination, however slight, that taints constitutional due process.

6. CONCLUSION

Public confidence in the judicial system is already at a low point and does not need to be further eroded.

Since defense counsel never used a preemptory challenge, nor a challenge for cause, the question of ineffective assistance of counsel comes into play.

> To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel's representation was deficient, *i.e.,* it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.,* there is a reasonable probability that, except for counsel's unprofessional errors, the result pf the proceeding would have been different.

State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

Mr. Tapia Rodriguez submits that the policy of GR 37 should be considered in connection with the defense counsel's questioning of juror No. 16. Defense counsel pursued a matter that is prohibited by GR 37, constitutional law, and caselaw.

GR 37 (a) provides: "The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race or ethnicity."

The flipside of the rule would read as follows: "The purpose of this rule is to eliminate the unfair inclusion of potential jurors who are biased due to race or ethnicity."

There must be no differentiation between prosecutorial misconduct and ineffective assistance of counsel when it comes to the jury selection process. Both the State and defense must strictly comply with GR 37 and the cautions set out by *Zamora*, *Gutierrez* and similar cases.

Mr. Tapia Rodriguez has met the criteria of RAP 13.4 (b)(1), (2), (3) and (4) and should be granted a new trial.

CERTIFICATE of COMPLIANCE: *I certify under penalty of perjury that this document contains 3122 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

DATED this 16th day of May, 2024.

Respectfully submitted,

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APPENDIX "A"

FILED
FEBRUARY 29, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. GUSTAVO TAPIA RODRIGUEZ, Appellant.	)))))))))	No. 37522-6-III UNPUBLISHED OPINION

LAWRENCE-BERREY, A.C.J. — Gustavo Tapia Rodriguez appeals after a jury found him guilty of the aggravated first degree murder of Arturo Sosa and the first degree kidnapping and the first degree assault of Jose Cano Barrientos. We affirm Tapia Rodriguez's convictions, but remand for the trial court to apply the correct same criminal conduct test to the kidnapping and assault convictions, to strike the victim penalty assessment, to reconsider restitution interest, and to correct a scrivener's error.

FACTS

Eustolia Campuzano had been in a relationship with Arturo Sosa for almost three years before breaking up with him in November 2016. Campuzano moved out of the home they shared together and into Paula Rodriguez's home.

Ms. Rodriguez informed Campuzano that she knew some people who could scare Sosa. Ms. Rodriguez took Campuzano to see these people: Fernando Marcos Gutierrez and Gustavo Tapia Rodriguez. Campuzano told these men about Sosa and how she wanted to scare him.

Gutierrez and others developed a plan. Gutierrez told Julio Albarran Varona that he, Albarran Varona, Tapia Rodriguez, and Ambrosio Villanueva were going to beat up Sosa for hitting Campuzano and causing two screws to be placed into her jaw. On the evening of December 8, 2016, these four men and Salvador Gomez armed themselves with guns and went to Ms. Rodriguez's home. Gutierrez had a .40 caliber handgun. Tapia Rodriguez had a .45 caliber handgun.

Tapia Rodriguez told Campuzano they were going to scare Sosa. Most of them drank alcohol and consumed crystal methamphetamine throughout the night.

In the early morning hours of December 9, 2016, Tapia Rodriguez, Gutierrez, Villanueva, Albarran Varona, and Campuzano got into Tapia Rodriguez's GMC Yukon and drove to Sosa's house. They parked on the side of the road near the house until Sosa and a second person, Jose Cano Barrientos, left the house in the Cano Barrientos's Ford Explorer. Tapia Rodriguez and his crew followed in the Yukon.

After they reached the highway, Tapia Rodriguez began flashing his lights on and off until Cano Barrientos pulled over to see if something was wrong. Tapia Rodriguez parked his Yukon behind Cano Barrientos's Explorer.

Three or four men exited the Yukon, all armed with firearms equipped with silencers. Tapia Rodriguez and Gutierrez approached Cano Barrientos's vehicle with guns drawn; Tapia Rodriguez went to the driver's side and Gutierrez went to the front passenger side. They ordered Cano Barrientos and Sosa out of the Explorer at gunpoint. Deoxyribonucleic acid (DNA) taken from the outside front passenger door handle of Cano Barrientos's vehicle matched Gutierrez's DNA.

Tapia Rodriguez and Gutierrez ordered Cano Barrientos and Sosa to kneel between the two vehicles. They told Cano Barrientos and Sosa, "*Te voy matar*," which means, "I'm going to kill you." Rep. of Proc. (RP)[1] at 1198. They cocked their guns and pointed them at the heads of Cano Barrientos and Sosa.

By this time, the plan to beat up Sosa had changed to killing both men. Tapia Rodriguez later remarked to Albarran Varona, "[S]ometimes when things don't work out the right way, people have to die." RP at 926.

[1] "RP" references are to the verbatim report of proceedings of the trial unless otherwise indicated.

Realizing that both men were about to be killed, Albarran Varona warned Tapia Rodriguez that there was traffic on the highway. The armed men then loaded Cano Barrientos and Sosa into the back seat of Cano Barrientos's Explorer.

Cano Barrientos sat in the back driver's-side seat, Sosa sat in the back center seat, and Tapia Rodriguez sat in the back passenger-side seat next to Sosa, pointing a gun at him and Cano Barrientos. Albarran Varona was in the driver's seat, holding a pistol with a chambered round. Gutierrez, Villanueva, and Campuzano were in Tapia Rodriguez's Yukon, the lead vehicle, while Albarran Varona followed in Cano Barrientos's Explorer.

About one mile down the road, Sosa and Cano Barrientos tried to wrestle the gun from Tapia Rodriguez. While driving, Albarran Varona pointed his pistol at Sosa. Cano Barrientos then began choking Albarran Varona so he would not shoot Sosa. Albarran Varona fired his gun and the bullet hit Cano Barrientos in his upper chest, near his collarbone, causing him to collapse between the two front seats. Once Albarran Varona regained control of the car, he looked back, and saw Tapia Rodriguez put his gun to Sosa's head and shoot three times.

With Gutierrez's help, the men got their guns, some shell casings, and a magazine and left in Tapia Rodriguez's Yukon. Before leaving, Gutierrez made Campuzano look at Sosa's body and threatened to kill her if she said anything.

Cano Barrientos survived. Sosa died.

Charges

The State charged Tapia Rodriguez and Gutierrez with first degree murder (by all alternative means), second degree murder (with intentional murder and felony murder alternatives), first degree assault, and first degree kidnapping. In addition, the State alleged multiple aggravators and enhancements, and provided notice to Tapia Rodriguez that it would seek an aggravated murder sentence.

Albarran Varona was not charged but agreed to testify against Tapia Rodriguez and Gutierrez in exchange for a plea deal in a different murder case.

Jury Voir Dire

During voir dire, venire juror 16 expressed his opinion, that, as an immigrant from Russia, he experienced prejudice and hostility from others. He admitted he had racist thoughts when he was younger but his feelings changed because he kept an open mind and became more educated and aware. When jurors were asked whether anyone was going to hold Tapia Rodriguez's Mexican name or heritage against him, no one, including juror 16, answered affirmatively. However, when asked if everyone felt comfortable not delving into immigration issues because they lacked relevance to the case, juror 16 said, "Given that I came to this country legally, I think it will bother me." RP at 507. "It would influence my decision, I would think." *Id.* Following up on juror 16's comments, defense counsel clarified that Tapia Rodriguez's immigration status is

irrelevant to both the facts and the charges the State would be trying to prove. Juror 16 responded, "Sure, I think that thought would still linger in the back of my mind." *Id.* at 508. Defense counsel then asked, "Would you hold that against him?" And juror 16 answered, "Yes." *Id.* Juror 16 then said it might be problematic for him to ignore the immigration issue even if the judge instructed him to ignore it. He explained why it would be difficult for him to set aside his opinion on illegal immigration:

> JUROR [16]: Sure. Because this large part, myself and my family came here legally, and it was very hard to do so. We followed the proper channels to get to this country legally. And so when you see somebody do it illegally, it doesn't matter what skin color they are, they're coming from Canada, it doesn't matter. If they're doing something illegally, they're breaking the law, they're breaking the law in this country.

Id. at 508-09. He acknowledged that there are justifications—such as genocide or gang infestation—for fleeing a dangerous country and such justifications would possibly change his mind. Yet, even knowing there is a possibility that the defendant might have fled a dangerous country, juror 16 would hold it against Tapia Rodriguez. Finally, when defense counsel asked, "[I]s there anything we could convince you or say to you, even with the judge's instruction, say, you shouldn't hold that, that shouldn't be a factor," juror 16 said, "I'm ready to listen." *Id.* at 510. He admitted he had already judged Tapia Rodriguez "[t]o some degree," but repeated, "Like I said, I'm willing to listen." *Id.*

Counsel for the State and the codefendants challenged several jurors for cause, but none challenged juror 16 for cause. Counsel also exercised their peremptory challenges, but none exercised a peremptory challenge to remove juror 16. Each attorney confirmed that the jury ultimately empaneled, which included juror 16, was the jury he selected.

Pretrial Motions in Limine

In pretrial proceedings, Tapia Rodriguez moved to prohibit Albarran Varona's former defense attorney, Smitty Hagopian, from testifying. The State intended, through Hagopian, to show that Albarran Varona's testimony was credible because the story he told during his free talk was consistent with the State's investigation, even though the State had not made its investigatory records available to Hagopian or Albarran Varona. The court identified Albarran Varona's credibility as the central issue and found the expected testimony was factual and not improper bolstering or vouching. Based on its findings, the court denied the defense's motion in limine.

During trial, defense counsel elicited testimony from Albarran Varona that Hagopian had prepared him for a free talk with law enforcement and went through the facts of this case.

Hagopian testified he had previously represented Albarran Varona in a murder case and worked out a plea agreement with the State. Part of the agreement required Albarran Varona to tell the State everything he knew about any crimes of which he was

aware. Hagopian had no discovery from the State related to the present case, so he had no evidence to share with his client before the free talk with law enforcement. Hagopian sat in on the free talk and heard Albarran Varona reiterate what he had previously heard from his client. As explained in the State's closing argument, the information provided by Albarran Varona in the free talk was consistent with its evidence.

State's Closing Argument

During closing arguments, the State argued that the jury could evaluate Albarran Varona's credibility by comparing it to other evidence:

> Let's talk about what incentives he had, whether we can evaluate whether he's telling the truth. Look at the other evidence. Does his testimony match the evidence? He told us where Zapato went up to the car. Oh, guess what, his DNA is there. He told us where Tapia—actually I made a mistake, you recall in the jury instructions, listen to what the evidence is, not what we said. I made a mistake in opening when I said Tapia's fingerprint was on the driver's side, when it was on the passenger side. But it's right where it would be if he was getting into the back seat of the car, like everybody testified to, and quote, reaching up to close that door. It was his right middle finger, right where it would be.
>
> You know, if [Albarran Varona] really wanted to, could he have made up a better lie for us? Absolutely. You know what's better for our case? [Had Gutierrez been] the driver. That would have been so easy for him to make up. He could have just said [the defendants] told me what happened in the car and told us the exact same story. He didn't. It would have been better for him, it would have been better for us. He didn't.
>
> He said, I was the driver in the car, I shot [Cano Barrientos]. Why would he say that if it wasn't true?
>
> We also held back details. We held back about the fight in the car. We held back about biting and choking. That was on purpose. To test his credibility, to test whether he was going to tell us the truth.

RP at 2703-04. During rebuttal, the State argued that Albarran Varona was afraid that he would be killed if he testified for the State:

> You know, and we put [Albarran Varona]—we put a lot of people, the state does, we put them between a rock and a hard place. We say, cooperate with us or get this, or don't cooperate with us and you get another—and you get a longer sentence. So he has a hard choice to make. He can cooperate with us and get 18 years, but he takes a risk when he does that, he's going to get a shiv in the back. And that's what he's really scared of.
>
> The difference between 18 years and life doesn't mean a whole hell of a lot if you're dead, if you've been stabbed in the back in prison. That's a decision he's got to make. And that's not an easy decision at all. It takes a long time to sort that out. It's probably a harder decision that any of us will have to make in our lives. He put himself there. You shouldn't feel sympathy for him. But it's a tough decision.

RP at 2844-45.

Jury Verdict

The jury found Tapia Rodriguez and Gutierrez guilty on all counts. With respect to Tapia Rodriguez's first degree murder verdict, the jury also found all aggravating factors present, it found unanimously that he acted with premeditated intent, that he caused Sosa's death in the course or furtherance of first degree kidnapping, and that he engaged in conduct manifesting extreme indifference to human life, resulting in Sosa's death. Further, it returned special verdict findings that Tapia Rodriguez was armed with a firearm when he committed murder, assault, and kidnapping and that he committed murder in the course of, in furtherance of, or in immediate flight from first degree

kidnapping. All aggravating factors and special verdict findings were found unanimously with regard to Gutierrez as well.

Answering special verdict form 5, the jury found Tapia Rodriguez abducted Cano Barrientos with intent to facilitate a second degree assault, inflict bodily injury, and inflict extreme mental distress. The jury found the same for Gutierrez. Answering special verdict form 11, it found Tapia Rodriguez committed kidnapping with intent to facilitate second degree assault, inflict bodily injury, and inflict extreme mental distress on the person. It found the same with respect to Gutierrez.

Sentencing

Tapia Rodriguez argued that his crimes of first degree assault and first degree kidnapping against Cano Barrientos should be considered the same criminal conduct for purposes of calculating his offender score and running the convictions concurrently. The trial court, however, applied the statutory intent analysis in *State v. Chenoweth*[2] to conclude that the crimes were not the same criminal conduct, consistent with the most recently published Court of Appeals opinion in *State v. Johnson*.[3] Concluding that "the most recent published caselaw appears to apply this statutory element analysis versus the objective factual analysis that was done previously," the trial court found that the assault

[2] *State v. Chenoweth*, 185 Wn.2d 218, 370 P.3d 6 (2016).

[3] *State v. Johnson*, 12 Wn. App. 2d 201, 460 P.3d 1091 (2020), *aff'd*, 197 Wn.2d 740, 487 P.3d 893 (2021).

and kidnapping offenses did not "match statutorily." RP (Apr. 20, 2020) at 245-46. The trial court reasoned:

> So, the—the element that is different here is the intent to inflict great bodily harm, which is an element that is separate and apart from the other charge. And when you do that objective statutory element review then, because there is a difference, it does not appear that they can be considered the same conduct, same criminal conduct.
>
> So, at this point I am going to make a decision in favor of the State on this issue and we'll count those separately.

Id. at 246.

The trial court sentenced Tapia Rodriguez to life without the possibility of parole on the aggravated first degree murder conviction, 183 months on the first degree assault conviction, 128 months on the first degree kidnapping conviction, and 15 years for the firearm enhancements, all to run consecutively. The trial court dismissed the second degree murder conviction.

ANALYSIS

A. SUFFICIENT EVIDENCE SUPPORTS THE AGGRAVATED MURDER CONVICTION

Tapia Rodriguez contends the State failed to produce sufficient evidence of premeditation to support his aggravated first degree murder conviction. Only a premediated murder can qualify for an aggravated sentence. *State v. Irizarry*, 111 Wn.2d 591, 593-94, 793 P.2d 432 (1988).

When a defendant challenges the sufficiency of the evidence, the proper inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* This court's role is not to reweigh the evidence and substitute its judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (plurality opinion). Instead, because the jurors observed testimony firsthand, this court defers to the jury's decision regarding the persuasiveness and the appropriate weight to be given the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Here, the court instructed the jury on the definition of "premeditated:"

> Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated.
>
> Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

Clerk's Papers (CP) at 418.

At trial, Albarron Varona testified that the initial plan was to beat up Sosa. He also testified that the plan changed by the time Tapia Rodriguez and Gutierrez brought

Sosa and Cano Barrientos out of the Explorer and made them kneel on the ground. When asked if he knew why the plan had changed, he testified he did not know then, but Tapia Rodriguez later told him, "[S]ometimes when things don't work out the right way, people have to die." RP at 926.

The State maintains that Tapia Rodriguez formed the premeditated intent to kill the two men at or before the time he had them kneel between the parked vehicles, but declined to do it there because of traffic. The facts and reasonable inferences construed in the State's favor support this. The men were then forced at gunpoint inside the back of Cano Barrientos's Explorer. One mile down the road, Tapia Rodriguez shot and killed Sosa when Sosa tried to disarm him.

The State argues that simply because the premeditated killing occurred differently than planned does not negate the fact it was premeditated. We agree. There is no requirement that the plan for premeditated killing unfold seamlessly. Most do not. Many, such as the one here, involve a struggle.

We conclude that there is sufficient evidence that Tapia Rodriguez killed Sosa with premeditated intent.

Tapia Rodriguez alternatively argues, if sufficient evidence of premeditated intent exists, then the Grant County Prosecutor's Office abused its discretion in filing the aggravated murder charge because the charged crime was not sufficiently outrageous.

The State makes a threshold argument that this court should decline to review this issue because Tapia Rodriguez did not raise this claim of error in the trial court. Substantively, it argues Tapia Rodriguez identifies no authority by which a court could overrule a prosecutor's charging decision when there is probable cause for the offense and to do so would violate separation of powers. We can resolve his claim of error on the threshold basis that it was not preserved.

Subject to exceptions not argued here, an appellate court may refuse to review any claim of error not raised in the trial court. *State v. O'Hara*, 167 Wn.2d 91, 97-98, 217 P.3d 756 (2009). Had the claim of error been raised below, the State could have argued the charging decision was within its discretion; if the court was unpersuaded, the State could have made a sufficient record to justify its discretionary decision to bring the aggravated murder charge and to the extent the trial court might have been required to enter factual findings, those findings could have been made. For these reasons, we decline to review this claim of error.

B. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO CHALLENGE OR REMOVE VENIRE JUROR 16

Tapia Rodriguez next argues that defense counsel was ineffective for failing to challenge or remove venire juror 16, who admitted he was biased against a person not legally in the United States.

To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness, and counsel's deficient representation prejudiced the defendant. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If a defendant fails to establish one prong of this test, the court need not consider the other prong. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

To establish ineffective assistance of counsel based on trial counsel's performance during voir dire, a defendant generally must demonstrate the absence of a legitimate strategic or tactical reason for counsel's performance. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 709, 101 P.3d 1 (2004). The failure of trial counsel to challenge a juror is not deficient performance if there is a legitimate tactical or strategic decision not to do so. *State v. Alires*, 92 Wn. App. 931, 939, 966 P.2d 935 (1998). We strongly presume defense counsel's performance was reasonable. *State v. Grier*, 171 Wn.2d 17, 33-34, 246 P.3d 1260 (2011).

The State maintains that defense counsel decided to not challenge juror 16 for cause or remove him with a peremptory challenge because counsel sought to persuade the jury that a State's witness—the surviving victim—was not legally in the United States and that Tapia Rodriguez was born in Texas and thus was a United States citizen.

During motions in limine, Mr. Gutierrez's trial counsel indicated he would be asking about the surviving victim's immigration status and U Visa request. During cross-examination, defense counsel in fact asked Cano Barrientos if he was an illegal immigrant and asked about his U Visa request. All of the State's civilian witnesses were Spanish speaking.

Late in the trial, the State sought to admit Tapia Rodriguez's fingerprint card. Tapia Rodriguez sought to redact an alias listed on the card, and the State sought to redact the listed place of birth, Texas. It was only after the State presented evidence that Tapia Rodriguez was not born in Texas that the court excluded the place of birth listed on the card.

The record supports the State's position that defense counsel's decision not to challenge or remove venire juror 16 was a reasonable strategic decision; that is, defense counsel thought he could establish to juror 16's satisfaction that Tapia Rodriguez was born in Texas and thus a United States citizen, while establishing that the surviving victim was in the United States illegally. We conclude that defense counsel was not ineffective.[4]

[4] In his motion for reconsideration, Tapia Rodriguez relies on *State v. Zamora*, 199 Wn.2d 698, 512 P.3d 512 (2022). There, the Supreme Court reversed a defendant's convictions because the prosecutor's voir dire flagrantly or apparently intentionally appealed to racial bias in a way that undermined the defendant's credibility and

Relatedly, Tapia Rodriguez argues the trial court should have sua sponte removed venire juror 16. He quotes one aspect of *State v. Lawler*, 194 Wn. App. 275, 374 P.3d 278 (2016). We quote both aspects:

> Both RCW 2.36.110 and CrR 6.4(c)(1) create a mandatory duty to dismiss an unfit juror even in the absence of a challenge. . . .
>
> . . . .
>
> On the other hand, a trial court should exercise caution before injecting itself into the jury selection process . . .
>
> lest it interfere with a defendant's right to control his defense.
>
> . . . Whether to keep a prospective juror on the jury panel or whether to dismiss a juror often is based on . . . trial counsel's experience, intuition, strategy, and discretion. Trial counsel may have legitimate, tactical reasons not to challenge a juror who may have given responses that suggest some bias. A trial court that sua sponte excuses a juror runs the risk of disrupting trial counsel's jury selection strategy.

Id. at 284-85 (citation omitted). At trial, as is true in all aggravated first degree murder trials, both defendants were represented by highly experienced defense counsel. We conclude that the trial court acted prudently by not injecting itself into the jury selection process.

---

presumption of innocence. *Id.* at 708, 722. Tapia Rodriguez relies on an excerpt from *Zamora* that affirms the call on courts to enforce the Constitution's guarantee against state-sponsored race discrimination in the jury system and to protect a defendant from race or ethnic prejudice. He maintains this excerpt is inconsistent with our decision. We disagree. Unlike *Zamora*, Tapia Rodriguez does not raise a claim of prosecutorial misconduct. He claims his trial counsel was ineffective for not removing juror 16. State-sponsored race discrimination is not at issue.

C. SENTENCING ISSUES

Tapia Rodriguez next argues the trial court abused its discretion at sentencing by concluding that his convictions for first degree kidnapping and first degree assault of Cano Barrientos were not the same criminal conduct. He also contends the trial court erroneously failed to apply the merger doctrine to the various alternative means of first degree murder found by the jury.

Same Criminal Conduct: Whenever a person is convicted of two or more serious violent offenses[5] arising out of separate and distinct criminal conduct, the sentences must be served consecutively to each other. RCW 9.94A.589(1)(b). Conversely, it stands to reason, whenever a person is convicted of two or more serious violent offenses arising out of the same criminal conduct, the sentences must be served concurrently.

"Same criminal conduct" means "two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.589(1)(a). Often, the "same criminal conduct" analysis turns on the first component, "same criminal intent."

In *State v. Westwood*, 2 Wn.3d 157, 534 P.3d 1162 (2023), the court clarified the analysis of the same criminal intent component. To properly analyze this component, a

[5] First degree assault and first degree kidnapping are serious violent offenses. *See* RCW 9.94A.030(46)(a)(v), (vi).

court first looks at the statutory definitions of the crimes to determine objective intent. *Id.* at 167. If the objective intent for the crimes are "the same or similar," courts then look at "whether the crimes furthered each other and were part of the same scheme or plan." *Id.* at 168. "If the actions occurred in close proximity, and the nature of the crime did not change significantly throughout, the offenses may be considered the same criminal conduct for sentencing purposes." *Id.*

The close question is whether to affirm the trial court outright, or to remand for it to apply the clarified *Westwood* test. Because the clarified test applies a "same or similar" objective statutory intent standard, and this standard is different than that applied by the trial court, we believe remand for resentencing is appropriate.

Merger: Tapia Rodriguez argues that the merger doctrine prohibited him from being sentenced for aggravated first degree murder because the aggravating element—first degree kidnapping—was also an element of the alternative means of first degree murder, i.e., felony murder. He argues, "The first degree felony murder, as an alternative, merged with the finding of premeditated first degree murder." Br. of Appellant at 44. We disagree.

> The Fifth Amendment [to the United States Constitution] protection from double jeopardy protects against multiple convictions for the same offense and *multiple punishments* for the *same offense*. *Whalen v. United States*, 445 U.S. 684, 688, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980). "The double jeopardy clause does not prohibit the imposition of *separate punishments*

> for *different offenses*." *State v. Noltie*, 116 Wn.2d 831, 848, 809 P.2d 190 (1991) (emphasis added).

State v. Arndt, 194 Wn.2d 784, 817, 453 P.3d 696 (2019).

Tapia Rodriguez's briefing focuses on his aggravated first degree murder conviction and the alternative means charged and special allegations alleged to elevate first degree murder to aggravated first degree murder, primarily the kidnapping special allegation. Tapia Rodriguez, however, fails to identify multiple punishments imposed for the aggravated first degree murder conviction. He was sentenced to life without parole under count 1 and was not *separately* charged with, convicted of, or punished for kidnapping Sosa or for any of the alternative means of committing first degree murder. "'Under the merger doctrine, when the degree of one offense [(e.g., first degree murder)] is raised by conduct separately criminalized by the legislature [(e.g., first degree kidnapping)], we presume the legislature intended to punish both offenses through a greater sentence for the greater crime.'" *Id.* at 819 (quoting *State v. Freeman*, 153 Wn.2d 765, 772-73, 108 P.3d 753 (2005)). That is what occurred here. There is no merger doctrine or double jeopardy error.

Parties' Agreements:

The parties agree the judgment and sentence should be remanded to correct paragraph 4.1(a) by removing and replacing an erroneous reference to count 2, which was

dismissed, with a proper reference to count 4. They also agree that recent legislative amendments require the trial court to vacate the victim penalty assessment, and that the trial court may reconsider restitution interest. *See* RCW 7.68.030; RCW 10.82.090(2).

D. PROSECUTORIAL MISCONDUCT CLAIM

With very little analysis, Tapia Rodriguez contends the prosecutor engaged in misconduct by making statements during closing argument that (1) argued facts not in evidence in violation of an order in limine, (2) vouched for a State's witness, and (3) misled the jury about the facts and special verdict forms.

To establish prosecutorial misconduct, Tapia Rodriguez must demonstrate that the prosecutor's conduct was improper and prejudiced his right to a fair trial. *State v. Jackson*, 150 Wn. App. 877, 882, 209 P.3d 553 (2009). Prejudice is established only where a substantial likelihood exists that the misconduct affected the jury's verdict. *Id.* at 883. Where defense counsel fails to object to the prosecutor's statement, reversal is required only where the misconduct is so flagrant and ill intentioned that no instruction could have cured the resulting prejudice. *Id.* The court reviews a prosecutor's allegedly improper statements made during closing argument in the context of the entire argument, the issues in the case, the evidence addressed, and the jury instructions. *Id.*

An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the

record." RAP 10.3(a)(6). Here, Tapia Rodriguez cites legal authority and relevant parts of the record but makes only conclusory statements that the prosecutor committed misconduct based on the law and the record cited. He offers no argument on how the prosecutor's allegedly improper conduct prejudiced his right to a fair trial. Issues presented without meaningful analysis need not be considered. *State v. Rafay*, 168 Wn. App. 734, 843, 285 P.3d 83 (2012); *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011). Nevertheless, because Tapia Rodriguez received a sentence of life without the possibility of parole, we use our discretion to consider the inadequately argued issues.

Facts Not in Evidence: First, Tapia Rodriguez argues that an order in limine barred the prosecutor from eliciting testimony about Albarran Varona's fear of reprisal for testifying against Tapia Rodriguez and Gutierrez, that the prosecutor was prohibited from asking a question during trial that elicited such testimony, and that the prosecutor, nevertheless, argued Albarran Varona's fear during closing argument. This is not an accurate representation of the record.

The record shows the trial court *denied* Tapia Rodriguez's motion in limine to bar Albarran Varona's former defense attorney, Smitty Hagopian, from testifying that he contacted the Washington Department of Corrections on his client's behalf to allay his client's concerns about testifying. Moreover, the record shows defense counsel, not the

prosecutor, elicited testimony from Hagopian that formed the basis for the State's closing argument. During cross-examination, Tapia Rodriguez's counsel asked Hagopian how he prepared Albarran Varona for his free talk and, in relevant part, elicited the following response:

> Secondly, with respect to these—your specific question, how do you prep your client for a free talk, in [Albarran Varona's] case, *we had to get over the hurdle of him knowing that he was going to be killed if he talked*, and get him to the point where he would understand that it is better for him, legally better for him, to take the risk of telling on his co-defendants, than it was for him to just do down with the ship, as it were.

RP at 1042 (emphasis added). Based on this testimony, the prosecutor argued in closing that Albarran Varona was risking "a shiv in the back" by becoming a State's witness and was scared to testify:

> So he has a hard choice to make. He can cooperate with us and get 18 years, but he takes a risk when he does that, he's going to get a shiv in the back. And that's what he's really scared of.
>
> The difference between 18 years and life doesn't mean a whole hell of a lot if you're dead, if you've been stabbed in the back in prison. That's a decision he's got to make. And that's not an easy decision at all. It takes a long time to sort that out. It's probably a harder decision than any of us will have to make in our lives. He put himself there.

RP at 2844. A prosecutor should not comment on matters outside the evidence. *State v. Schlichtmann*, 114 Wn. App. 162, 58 P.3d 901 (2002). However, the State argued the facts in evidence—facts the prosecutor did not elicit in violation of an order in limine. Tapia Rodriguez cannot establish misconduct.

Vouching: Tapia Rodriguez insists the prosecutor vouched for Albarran Varona's veracity during closing argument:

> He said, I was the driver in the car, I shot Rafa. Why would he say that if it wasn't true?
>
> We also held back details. We held back about the fight in the car. We held back about biting and choking. That was on purpose. To test his credibility, to test whether he was going to tell us the truth.

RP at 2704. He argues that it is improper for the State to vouch for a government witness's credibility, such as when it places the prestige of the government behind the witness or suggests that information not presented to the jury supports the witness's testimony. *See State v. Smith*, 162 Wn. App. 833, 849, 262 P.3d 72 (2011).

Tapia Rodriguez does not explain how this closing argument shows the State vouched for Albarran Varona or identify what information mentioned in the challenged closing argument was not presented to the jury. Albarran Varona testified that he shot Cano Barrientos. And extensive questioning of Hagopian elicited detailed testimony about what State information Albarran Varona did and did not have at the time of his free talk with law enforcement. While it is misconduct for a prosecutor to state a personal belief as to a witness's credibility, the prosecutor has wide latitude to argue inferences from the facts concerning witness credibility. *State v. Allen*, 176 Wn.2d 611, 631, 294 P.3d 679 (2013).

When viewed in context, the prosecutor did not express a personal opinion about Albarran Varona's credibility. The prosecutor's closing argument was made in the context of the State's encouragement that the jury should "[c]ross-check your evidence"—that is, compare the evidence and testimonies of various witnesses when determining credibility. RP at 2698. This was appropriate argument, not misconduct.

Misleading Argument: Finally, Tapia Rodriguez argues that the prosecutor misstated the evidence by claiming that .45-caliber casings recovered by law enforcement were from Tapia Rodriguez's gun. The prosecutor misstated what constitutes premeditation versus extreme indifference. And the prosecutor conflated Cano Barrientos's kidnapping with Sosa's kidnapping when discussing special verdict forms 5 and 11. He contends in conclusory fashion that conflating these matters prejudiced the jury's understanding of which form applied to which offense and which victim.

Again, the State has wide latitude to argue reasonable inferences from the evidence. *State v. Thorgerson*, 172 Wn.2d 438, 448, 258 P.3d 43 (2011). Here, the State produced evidence at trial that Tapia Rodriguez was armed with a .45-caliber handgun during the crimes against Sosa and Cano Barrientos, Sosa was shot with .45-caliber bullets, Tapia Rodriguez picked up shell casings from Cano Barrientos's vehicle, and a .45-caliber shell casing was recovered from Tapia Rodriguez's vehicle. The State's

argument that the .45-caliber shell casings were from Tapia Rodriguez's gun was a reasonable inference based on the evidence.

A prosecutor should not misstate the law. *Schlichtmann*, 114 Wn. App. 162; *State v. Huckins*, 66 Wn. App. 213, 836 P.2d 230 (1992); *State v. Browning*, 38 Wn. App. 772, 689 P.2d 1108 (1984). However, Tapia Rodriguez does not argue how the State misstated the differences between premeditation and extreme indifference. The court's instructions to the jury defined these legal terms and instructed the jury to disregard any statement by the lawyers that was not consistent with its instructions. Tapia Rodriguez fails to establish misconduct or resulting prejudice.

Likewise, the court's instructions to the jury were clear about the crimes to which they applied, ameliorating any confusion that may have been caused by the prosecutor's closing argument. Special verdict form 5 concerned the first degree kidnapping charge. The court instructed the jury about how to use it. The to-convict instruction for first degree kidnapping expressly mentioned Cano Barrientos, alleviating any confusion that special verdict form 5 also applied to the kidnapping charge concerning Cano Barrientos. Similarly, special verdict form 11 concerned the aggravated first degree murder charge. The evidence identified only one murder victim—Sosa. Tapia Rodriguez fails to show the prosecutor committed misconduct and specifically fails to establish flagrant and ill-intentioned misconduct.

Affirm, but remand for resentencing and correction of scrivener's error.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, A.C.J.

Lawrence-Berrey, A.C.J.

WE CONCUR:

Siddoway, J.P.T.

Siddoway, J.P.T.[6]

Staab, J.

Staab, J.

[6] Judge Laurel Siddoway was a member of the Court of Appeals at the time oral argument was heard on this matter. She is now serving as a judge pro tempore of the court pursuant to RCW 2.06.150.

APPENDIX "B"

Tristen L. Worthen
Clerk/Administrator

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TDD #1-800-833-6388

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February 24, 2022

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CASE # 375226
State of Washington v. Gustavo Rodriguez Tapia
GRANT COUNTY SUPERIOR COURT No. 181003256

Counsel and Mr. Tapia:

Pursuant to the Motion to Stay to File Motions for Reconsideration, the following notation ruling was entered:

February 24, 2022
At the direction of the assignment judge, Respondent's Motion to Stay is Granted. The time to file a motion for reconsideration in this case is stayed until the final Supreme Court decision in Case #1005709, State v. Westwood. A Stay Status Report is due May 2, 2022.

Tristen Worthen
Clerk

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:bls

APPENDIX "C"

FILED
FEBRUARY 29, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 37522-6-III**
	)	
Respondent,	)	
	)	**ORDER DENYING**
v.	)	**MOTIONS FOR**
	)	**RECONSIDERATION**
GUSTAVO TAPIA RODRIGUEZ,	)	**AND WITHDRAWING**
	)	**OPINION FILED**
Appellant.	)	**FEBRUARY 8, 2022**

The court has considered the parties' motions for reconsideration of this court's opinion dated February 8, 2022, and is of the opinion the motions should be denied for the reasons discussed in the opinion filed this day. Therefore,

IT IS ORDERED that the motions for reconsideration are denied.

IT IS FURTHER ORDERED that the court's opinion filed on February 8, 2022, is hereby withdrawn and a new opinion will be filed this day.

PANEL: Judges Lawrence-Berrey, Staab, Siddoway

FOR THE COURT:

George Fearing

GEORGE FEARING
CHIEF JUDGE

APPENDIX "D"

To whom it may concern

I Gustavo Tapia Rodriguez have recently received a letter that my appeal has been denied and that my lawyer has decided to stop being my lawyer. I would like to ask the court to please consider giving me a chance to continue with my appeal and also to see if the court will appoint me a new lawyer that could take my case that could speak Spanish or at least send me my paper work in Spanish there for I do not read or write in English and have a hard time understanding. The reason I would like a chance to apple my case is for the reason I saw lots of mistake in my case and would like to show that to the court.

Court of Appeals No. 37522-6-111 Grant County No 19-1-01041-3 CaseNo.18-1-00325 -6

Sincerely

Gustavo Tapia Rodriguez

APPENDIX "E"

Tristen L. Worthen
Clerk/Administrator

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March 19, 2024

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CASE # 375226
State of Washington v. Gustavo Rodriguez Tapia
GRANT COUNTY SUPERIOR COURT No. 181003256

Counsel and Mr. Tapia::

Pursuant to the "Motion to Withdraw as Appointed Counsel", the following notation ruling is entered:

The Motion to Withdraw as Appointed Counsel is granted.

Mr. Tapia is now considered a pro se appellant. A Petition for Review to the Washington Supreme Court is due on April 1, 2024.

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:bls

APPENDIX "F"

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
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April 3, 2024

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Case #: 375226
State of Washington v. Gustavo Rodriguez Tapia
Grant County No. 18-1-00325-6

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on April 3, 2024, regarding Appellant's Motion for Extension of Time to File until April 3, 2024.

Sincerely,

Lea Ennis
Court Administrator/Clerk

APPENDIX "G"

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

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April 1, 2024

LETTER SENT BY E-MAIL ONLY

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Hon. Tristen Worthen, Clerk
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Re: Supreme Court No. 1029063 – State of Washington v. Gustavo Tapia Rodriguez
Court of Appeals No. 375226 – Division III
Grant County Superior Court No. 18-1-00325-6

Clerk, Counsel and Gustavo Tapia Rodriguez:

The Court of Appeals forwarded a letter from the Petitioner Mr. Tapia Rodriguez to the Supreme Court on March 27, 2024. In the letter he asks how to appeal the Court of Appeals decision entered on February 29, 2024. The letter also states that he has limited English proficiency and asks that communications from this Court be sent to him in Spanish. Therefore, this letter has been translated into Spanish for the Petitioner. The Petitioner also requests appointment of counsel. A copy of the letter from the Petitioner is enclosed for the Respondent.

To appeal a Court of Appeals opinion to the Supreme Court, a person must file a petition for review that complies with the content and formatting requirements of RAP 13.4(c). I have included a copy of Forms 9, 5, 6, and part F. of Form 3 from the appendix to the rules, as well as a copy of RAP 13.4. Because the Petitioner appears to need more time to file a petition for review, the letter will be treated as a motion for extension of time to file a petition for review.

The following ruling is entered on the motion:

In light of the Petitioner's limited English proficiency and the extraordinary circumstances faced by the Petitioner as an incarcerated individual, the motion for extension of time to file a petition for review is granted. Any petition for review should be

served on the Respondent and filed with this Court by May 16, 2024.

Once a petition for review is filed, a due date will be established for the answer to the petition for review.

RCW 10.73.150 does not provide for the appointment of an attorney for a petition for review until and unless a petition for review is granted by the Court. Because of this statute, the Court does not consider motions for appointment of counsel until and unless a petition for review has been granted.

The parties are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

The parties are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. For attorneys, this office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory. For the Petitioner, communications will be sent via the institution e-filing system.

Sincerely,

Sarah R. Pendleton
Supreme Court Deputy Clerk

SRP:jm

Separate enclosures as stated

APPENDIX "H"

that I especially don't trust, and I don't trust them with the information that they have on me. If I want to go someplace, it's none of their business. And as time goes on, I trust, like I say, especially the federal government less and less all the time. So it does bother me.

MR. DANO: Right. Just following up with that, are you familiar with -- and anybody in here may be or may be not, are you familiar with something that's happened in the not too distant past where the NSA was actually tracking everybody?

JUROR THORSON: You know, I'm not familiar with that.

MR. DANO: You've not heard that. Has anybody heard about that? I'm the only one? Okay.

Thank you, sir.

Another kind of generalized topic that occurs to me, I hear a lot -- I hear a lot of talk about this -- and I don't mean to turn my back to you folks, excuse me. Did I hear -- some people say that we're in an inherently racist society and some people say we're not, you know, it's an individualized thing. So who -- which group, which one are you closer to, the feeling that the country we live in, the United States of America, is not a racist society? How many people

feel that way?

Okay. About half. That means about half of the people we have feel that it is; is that right? Okay. Let's talk about that. Let's get in a little discussion about that.

What I'd like to do is hear from some different people. Raise your paddle on that last group that thinks we're inherently racist. Juror number nine, yes, ma'am. I want to hear from somebody we haven't heard from. Is it Turchik?

JUROR TURCHIK: Turchik, yeah.

MR. DANO: Yes, ma'am, go ahead.

JUROR TURCHIK: So I wasn't born here. I was actually born in Ukraine and I moved here when I was ten. When I was younger, you would hear more of it, you know, like people would hate on different races. But I don't feel like it is the racist country that people make it seem to be.

MR. DANO: So you think it's -- there's not -- excuse me. Make sure we're communicating, I'm saying the same thing back to you. You don't think that this country is inherently racist?

JUROR TURCHIK: No. I mean there are some people.

MR. DANO: That's a big word. Let me start over.

That's a terrible question.

Do you feel that -- is it your understanding, your feeling generally, that you hear people say what a racist country we are, but do you feel that yourself?

JUROR TURCHIK: No, I do not.

MR. DANO: Okay. Have you come from a circumstance where you came from where there was racism that you could feel yourself?

JUROR TURCHIK: No.

MR. DANO: Okay. Okay. All right. Thank you. Anything else about that?

JUROR TURCHIK: No.

MR. DANO: All right. Does anybody disagree, on the other side of the coin, that thinks that we have a society that's inherently racist? Yes, ma'am? I've heard from you. Yes, ma'am. Where are we, number 25, juror 25. Yes, ma'am?

JUROR STOLTMAN: Well, I wouldn't say that the society is inherently racist. I would say that whenever a crime has been committed and the media brings attention to it, the question of ethnicity gets raised, usually one of the first topics. So that it brings racism to the forefront, when the crime should be at the forefront.

MR. DANO: Okay. I want to make sure I understand you. Thank you, Mrs. Stoltman. Let me make sure I understand you. So you're saying that -- you're saying that the media presentation of what happens in a particular instance, a particular crime, a criminal act we hear about on TV, that, that you know, they'll say the suspect or the defendant was, you know, Guatemalan, you know, was black.

JUROR STOLTMAN: Correct. Usually before their name.

MR. DANO: Usually before their name. Okay. Which channels do you watch, ma'am?

JUROR STOLTMAN: I watch the local news, I watch social media, iFIBER.

MR. DANO: Okay.

JUROR STOLTMAN: Columbia Basin Herald.

MR. DANO: Gotcha. So as I'm hearing you say that, do you think that that reporting of the -- whether the person is Caucasian, black, Hispanic, whatever, you think -- you find that to be racist that shouldn't even be -- they shouldn't even mention the ethnicity of the defendant or the victims.

JUROR STOLTMAN: It seems to bring more ire to it. More than just the crime that was committed. The fact that the nationality has to be at the forefront.

That I think creates racism where there is none.

MR. DANO: Okay. Do you think it is a fair understanding of mine that if they didn't raise that, that you think society is -- let's do it this way. Poor question.

What I hear people say, some people express that our founding fathers were all racist because they owned slaves, they're racist, this country was founded on racism, therefore -- and society, you know, white people have oppressed blacks, Hispanics, and blacks don't like whites, Hispanics don't like blacks, and I hear a lot of that -- I hear a lot of that.

So I'm asking you that question just personally. Is that something that you've experienced in your life that you said to yourself, you know, I'm feeling real judgmental and racist about other individuals and other ethnicities.

JUROR STOLTMAN: I have to stop myself when I'm reading the news to try to step back and see how do I personally feel about it without being influenced by what other people have brought up because of their nationalities.

MR. DANO: Can you be specific, give me a specific example?

JUROR STOLTMAN: Well, for example, in second

grade, we teach Martin Luther King, and I feel bad doing that, because my second graders look at each other and they all don't see skin color. But the minute I start teaching it, they start noticing if someone else's arm is darker than theirs.

MR. DANO: Right.

JUROR STOLTMAN: And it brings racism back rearing its ugly head. And it is ever prevalent the more we talk about it.

MR. DANO: Right.

JUROR STOLTMAN: That's my own personal belief.

MR. DANO: I appreciate that. Thank you.

Does anybody else have any thoughts or comments they'd like to share about that? Please? I've heard from number 98. Just one second. Anybody else in the middle row?

Okay. Go ahead. Yes, sir, number 98. Yes, sir.

JUROR BRADLEY: I think the fact that you're actually asking this question indicates there's a problem. If there were no problem, you wouldn't have to ask the question.

MR. DANO: Fair.

JUROR BRADLEY: So it's not a broad brush of society that is racist or racially insensitive, but we've seen in the media over the last three years,

apparently, that there's a real problem with racial insensitivity at the minimum.

MR. DANO: Do you feel that yourself?

JUROR BRADLEY: You know, I'm --

MR. DANO: If you turned the TV off, you didn't listen to all that --

JUROR BRADLEY: I'm not sure. I have my own failings.

MR. DANO: Right.

JUROR BRADLEY: But I've seen and heard firsthand of situations that are not fair to people of different colors.

MR. DANO: Okay. I think -- thank you. Thank you. I think everybody, everybody probably has a little bit of -- based on our culture, whether I was born Hispanic or whether I was born white or whether I was born black, I've got my own cultural identity, and what I've experienced in my life in Grant County, I've observed that. And I'm not afraid to admit that when I was younger, I didn't like -- I didn't like --

MR. MORGAN: Objection, Mr. Dano is now testifying to his own personal experiences.

THE COURT: Sustained. Mr. Dano, questions, please.

MR. DANO: Well, your Honor, with all due

respect, the only way that people will be honest and say things --

THE COURT: Mr. Dano, question, please. Thank you.

MR. DANO: Thank you, your Honor.

Does anybody catch themselves feeling like they have in their life, they've experienced some racial thoughts that they're willing to share or talk about?

It's a tough subject. Nobody wants to say anything.

JUROR HALL: Oh.

MR. DANO: Yes, sir. Juror number 17?

JUROR HALL: You know, it's a hard thing to admit, but yeah, I've, you know, experienced that, I've been around a long time, you know, and you know I've listened to and I've told racially inappropriate jokes, used racial slurs, you know. I think part of the problem with society now is when it comes to the terms of this whole deal with race is people are just too sensitive, you know. It's like cell phones. It's got an off switch. Turn it off.

THE COURT: And I apologize, Mr. Dano, and I apologize sir. I just want to say sometimes some topics are very difficult to discuss, but at the same time sometimes they're worth exploring during this

process. So please, if you have something that's going on in your head that you would like to comment on, feel free to do that, even though it may be difficult, because it allows the parties to consider whether or not you're somebody that should be on this jury or not, quite frankly. So don't feel -- don't feel too much pressure that, oh, somebody is going to think badly of me. We're not here to judge anyone. So if you're able to answer something, please do. If not, of course, don't. But just I want you to know that.

Thank you, Mr. Dano.

MR. DANO: Thank you, your Honor.

Yes, sir, juror number 40 again. Yes, sir.

JUROR THORSON: I think that we get confused on differences, because we like to be with people that are like us. And when we're thrust into situations where people are different, we put up the caution sign and perhaps close off and act in a way not out of prejudice, but out of fear that we're afraid that that person is going to do something or we're not going to trust them because of you're not familiar with certain situations. And many people that now have not been in the military, I think that's one of the big benefits, you are put into a situation with all kinds of people,

you know, and you realize the similarities are so much greater than the differences. So I think we get a little bit confused and I think that the political climate foments differences, bringing up differences.

MR. DANO: Thank you, sir.

Just a general question which was what juror number 40 just told us, how many people think he gave a fair assessment of how you feel about this whole topic? Okay. Does anybody disagree? Besides 84, does anybody disagree? A lot of people didn't raise their paddle. A lot of people just thinking?

JUROR ELKINS: I didn't totally understand what he was saying.

MR. DANO: Okay. I think what he was trying to say was that as a society, this is a "melting pot," we have people from every country of the world, every ethnicity in the world --

MR. MORGAN: Objection. It's not a question. It's a speech.

THE COURT: All right. Thank you, Mr. Morgan.

I'm just going to allow you to summarize as best as you can. I know juror number six was asking what his answer was, and I believe Mr. Dano was trying to explain it. Do you want to be brief on that, Mr. Dano?

MR. DANO: I will.

Do you want to stand up, ma'am, for just a second. I think he was trying to express people tend to stay within their own groups. They step out, sometimes they get exposed to a broad range of people, and I think I heard him say basically that he felt that we don't have the racism that's projected by media ultimately. Do you disagree with that?

JUROR ELKINS: Yes.

MR. DANO: Okay. Tell me why. Tell me why.

JUROR ELKINS: I don't know how to express myself very well, I know how I feel about things. I've never been a prejudiced person. I don't feel like I've ever been so in my life. And I know that like Moses Lake, different groups -- I'm saying groups, because I can't pronounce ethnicities -- although I think I did it.

MR. DANO: Let's say groups. Let's say groups.

JUROR ELKINS: Have come in over time and I associate with different groups, whether it be at work, when I was working, whether it be at school, whether it be at the grocery store, I don't feel like I'm segregated in a group from anybody, almost at any time, except when I'm with my family. And a lot of times family is not segregated either. But I just don't feel like it's a group.

My response that I would like to say as far as prejudice is, and I'm scared to death to say it, because I've never been prejudiced, is that when I read the reports in the newspaper of the crimes that have been committed, it just seems like -- and this is where I don't know if I even should say this -- it just seems like maybe not all of them, but the majority are Hispanic names, and so that gives the fear in to me. But I also work with just as many wonderful, wonderful Hispanic people and deal with them all the time. But it just seems like it has kind of turned my head a little bit because of the crime rate increasing so highly and the names that are in the papers, when I notice that. I don't know how else to say it. I am not prejudiced.

MR. DANO: Thank you. It took some courage to say that.

JUROR ELKINS: I'm scared.

MR. DANO: Thank you. Thank you.

Does anybody disagree with juror number six or have a different comment they'd like to share? Number 47, yes, sir.

JUROR LANG: Yeah, I'd like to comment. I spent a lot of years in manufacturing and also in office repair. Oh, I spent a lot of years in manufacturing

and also in office repair. Large amounts of people in both that I interacted with. And it was my experience that this is inherently not a racial society.

In the manufacturing, there were people of all races that would come in, maybe with no experience at all, and everybody would help them, and pretty soon they were successful and doing well and years later they had wonderful careers, and it did not matter what race they were.

And when I was in office repair and going to offices all over metropolitan areas, hundreds, probably thousands, I had encountered a lot of different ethnic groups in different offices and different things. And it was the same thing. There did not seem to be any observable difference between people discriminating against one race or another.

And sure, there's individuals in all groups that were bad and there was individuals in all groups that were good. And it did not have to do with their race. It was just whether the person was a good person or not a good person.

MR. DANO: Thank you, sir.

JUROR LANG: That's my comment.

MR. DANO: Thank you, sir.

Probably individually-wise, I need to speak with

a couple people in the front row. Is it Mr. Staffan; is that right? Am I pronouncing that right?

JUROR STATSURA: Statsura.

MR. DANO: Correct, juror number 18. Where am I?

JUROR STAFFAN: Staffan.

MR. DANO: That's you. I apologize. Forgive me. My numbers are off here.

Statsura, is that right, juror number 16?

JUROR STATSURA: Yes, sir.

MR. DANO: Will you hand him the mike, please?

Sorry, I need to talk to people individually. Anything about the topics that we've kind of explored that you have an opinion or thought about?

JUROR STATSURA: Yeah, I do have an opinion on it actually. So I actually immigrated here when I was six years old from Russia, so to some extent I've experienced prejudice against me, and that's from both white and other ethnicities. So, you know, growing up in a kind of lower socioeconomic level, you experience, people around you experience that, and there's some hostility that comes out of that. Currently, I don't think we have a society that's racist. I think there's more awareness now than there ever was before. Growing up, I saw a lot of racism and I've been prejudiced against other people, but as

the current situation stands, I think there's more awareness with media presence and everything --

MR. DANO: Can everybody hear him?

JUROR STATSURA: There's less prejudice and racism I think now.

MR. DANO: Just a curious question about that. You say you came here from Russia. Do you think if any of us went to Russia, we Americans, we might be a little -- maybe not racism, but a little -- people would look a little askance at us?

JUROR STATSURA: I think they'd love you.

MR. DANO: Really. Why is that? Tell me that.

JUROR STATSURA: Because Russians love American media, movies and so forth, so they're more curious than prejudiced.

MR. DANO: I see. I'll have to talk to my brother-in-law about that, get a different take.

Okay. Thank you for that. Thank you for that. I appreciate that very much.

JUROR STATSURA: You're welcome.

MR. DANO: And ma'am, is it Melin?

JUROR MELIN: Melin.

MR. DANO: Yes, ma'am, juror number 15. The same question I just asked.

JUROR MELIN: I haven't had anything in my life

other than --

MR. DANO: Hold the microphone a little closer to your mouth, please.

JUROR MELIN: -- we've adopted interracial children and I haven't seen any, you know, problems with racism. So maybe I've just been overly protected, but I hear it on the news, but I'm not -- not rubbing shoulders with anybody.

MR. DANO: Yes, the question is anything anybody said, have you had a thought like I strongly agree with that or I strongly disagree.

JUROR MELIN: Oh, I agree with the gentleman back there that kind of spoke for a lot of us, I think, that you know, it's a lot in the news more than myself being involved.

THE COURT: All right.

MR. DANO: Did I get my two minutes, though?

THE COURT: We're done for today, though, because looking at the time. Take that microphone.

So we're going to quit for today. And I'm going to have you recess here in just a second. But I want to go over a couple of things. Even though I've told you this before, nonetheless, I want to read this a little bit more thoroughly.

Do not read, view or listen to any reports from

NO. 102906-3

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	GRANT COUNTY
Plaintiff,	)	NO. 19 1 01041 3
Respondent,	)	
	)	**CERTIFICATE OF**
v.	)	**SERVICE**
	)	
GUSTAVO TAPIA RODRI-GUEZ,	)	COURT OF APPEALS
	)	NO. 37522-6-III
Defendant,	)	
Appellant.	)	
	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 16th day of May, 2024, I caused a true and correct copy of the *PETITION FOR DISCRETIONARY REVIEW* to be served on:

WASHINGTON STATE SUPREME COURT E-FILE
Attn: Erin Lennon, Court Clerk
supreme@courts.wa.gov

Grant County Prosecutor's Office E-FILE
Attn: Kevin J. McCrae
PO Box 37
Ephrata, Washington 98823

Gustavo Tapia Rodríguez #423235 U.S. MAIL
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CERTIFICATE OF SERVICE

May 16, 2024 - 11:29 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,906-3
Appellate Court Case Title:	State of Washington v. Gustavo Tapia Rodriguez
Superior Court Case Number:	18-1-00325-6

The following documents have been uploaded:

- 1029063_Other_20240516112630SC374453_0552.pdf
  This File Contains:
  Other - Petition for Discretionary Review
  The Original File Name was Tapia Rpdriguez PDR.pdf

A copy of the uploaded files will be sent to:

- kjmccrae@grantcountywa.gov

Comments:

Petition for Discretionary Review filed per April 1, 2024 letter from Sarah R. Pendelton, deputy clerk.

Sender Name: Dennis Morgan - Email: nodblspk@outlook.com
Address:
PO BOX 1019
REPUBLIC, WA, 99166-1019
Phone: 509-775-0777

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