No. 1030517

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

FRANK WALTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

Frank Walton is a Black man accused of killing a white man. Before his trial, the court instructed prospective jurors on implicit bias and had them watch a video explaining the concept. During voir dire, prosecutors asked prospective jurors if they were aware of recent "civil unrest" and "issues in the criminal justice system with African Americans."

Jurors 22 and 38 acknowledged systemic racism and promised to keep the possibility of unconscious bias at the forefront of their minds as instructed. The State struck these jurors because of their awareness of systemic racism, later admitting that it probably would not have stricken at least one of them had the defendant been white.

The Court of Appeals properly held the strikes violated GR 37. Both the plain language and purpose of the rule prohibit excusing jurors where the defendant is Black and an objective observer could view the jurors' acknowledgement of anti-Black racism as a factor in the strike. This Court should deny review.

B. ISSUES

1. The State charged a Black man with killing a white man, told the trial judge that GR 37 could never apply to white jurors and that the defendant's race was irrelevant, asked prospective jurors if they were aware of "issues in the criminal justice system with African Americans," and struck two white jurors *because* they acknowledged anti-Black systemic racism. Should this Court deny review because the Court of Appeals properly held these peremptory challenges violated the plain language and purpose of GR 37?

2. Because the Court of Appeals reversed and remanded for a new trial based on the GR 37 violations, the court declined to reach the arguments Mr. Walton raised in his Statement of Additional Grounds for Review ("SAG"). If this Court grants the State's petition for review, should it also grant review of Mr. Walton's SAG issues?

C. STATEMENT OF THE CASE

1. The State accused Frank Walton, a Black man, of killing a white man.

The Snohomish County Prosecutor's Office charged Frank Walton, a Black man, with the murder of a white man. CP 799-800; RP 493-94. Mr. Walton insisted he was not the perpetrator, but the State believed otherwise and the case proceeded to trial. CP 847-55; RP 365.

2. Prospective jurors 22 and 38 expressed awareness of unfair treatment of Black people by police and the justice system, and promised to consider unconscious biases while also evaluating each witness individually.

Prior to jury selection, the court showed prospective jurors a "training" video on "unconscious bias." RP 651.[1] The court also delivered a preliminary instruction explaining the difference between explicit and implicit bias and admonishing

[1] Snohomish County shows the same video on unconscious bias that several counties in Washington show to prospective jurors. The video was produced by the United States District Court for the Western District of Washington, and is available here: https://www.youtube.com/watch?v=XHu-zUet8Tw.

prospective jurors to discharge their duties without permitting racial biases to play any part in decisions they made as jurors. RP 437-38.[2]

The court then divided the group into several separate panels for voir dire, and the court and parties questioned prospective jurors panel by panel. RP 440-790. The participants discussed many topics, and jurors and lawyers alike broached the topic of race. *E.g.* RP 472-73, 492, 493-94, 499, 555, 651, 684, 688.

The prospective jurors had a wide variety of views on the subject. For instance, Juror 58 recognized, "We have a long history of racism in our country and in our criminal justice system." RP 684. Another juror stated, "I happened to vote for Trump, therefore, according to left-wing people, I'm racist,

[2] The instruction also prohibits decision-making based on certain other types of biases: "Bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender, or disability of any party, any witnesses, and the lawyers should play no part in the exercise of your judgment throughout the trial." RP 437-38.

which is ridiculous." RP 493. The juror said, "I've worked with many different nationalities over the years, and I enjoy them all, they're terrific." RP 493.

As for the two jurors at issue in this appeal, the prosecutor asked prospective juror 22, a white woman, "how are you feeling about police?" RP 579. Juror 22 stated it was "difficult" for her "to trust police" after the news in recent years revealing "police brutality" and covering "Black Lives Matter." RP 579; *State v. Walton*, ___ Wn. App. 2d ___, 542 P.3d 1041, 1051 (2024). But she assured the prosecutor she would "try not to have any judgments before hearing from a specific person." RP 580; 542 P.3d at 1051.

The prosecutor said, "So we do have police and we have an African American defendant. How does that make you feel?" *Id*. Juror 22 asked, "In what way?" and the prosecutor said, "Any way. Coming in here and seeing that, did you start on one

side or the other?"[3] *Id*. Juror 22 said, "I actually just try to push that stuff to the back of my mind and almost start afresh." *Id*.

The prosecutor persisted in interrogating Juror 22, mentioning recent "civil unrest" and asking again whether the juror would listen to police witnesses or "have this preconceived bias against them." RP 580-81; 542 P.3d at 1051. Juror 22 responded, "I would not have any issue listening to everything they have to say." RP 581-82; 542 P.3d at 1051.

During voir dire of a subsequent panel, the prosecutor asked similar questions of the other juror at issue on appeal, Juror 38. The prosecutor asked Juror 38, who is white and nonbinary, if they were "aware of the civil unrest" and "the pervasive issue in the criminal justice system with African Americans."[4] RP 688; 542 P.3d at 1053. Juror 38 responded

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[3]As a defendant is presumed innocent, it would have been appropriate for the juror to start 100% on the defendant's "side."

[4]As the Court of Appeals noted, the State did not "precisely articulate to which 'pervasive issue' it was referring." *Walton*, 542 P.3d at 1054, n.15. The phrasing of the

affirmatively and stated, "I agree with Juror 58 that people of color have been unjustly treated by the American justice system, and I feel like it's really important for me to acknowledge any bias that I might have as a white person when things come to light." RP 688-89; 542 P.3d at 1053.

The prosecutor asked Juror 38 whether, given that "we have an African American man on trial," the juror had "any concerns based on the pervasive problem that does exist." RP 689; 542 P.3d at 1053. Juror 38 responded, "I think that's going to be something I keep at the forefront of my mind, make sure that I'm not dealing with any unconscious biases here that might make me feel one way or the other." *Id*. Juror 38's assurance that they would monitor themselves for unconscious bias was consistent with the court's initial instruction and training video. *See* RP 437-38, 651.

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question implies "African Americans" are causing problems. RP 688.

The prosecutor then asked whether police witnesses would have to "earn" the juror's trust, and Juror 38 assured the prosecutor that they would treat all witnesses equally and that "everyone comes to me with a blank slate." RP 690; 542 P.3d at 1053.

3. The trial court originally recognized GR 37 applied to white jurors who acknowledged anti-Black systemic racism, but the State repeatedly insisted the court was wrong, and the trial court ultimately acquiesced.

After voir dire, the parties began exercising peremptory challenges. RP 790. The State exercised a peremptory against Juror 3 (not at issue in this appeal), and the defense objected under GR 37. RP 798. The court said, "It looks to me like she may be a person of color, and so I will have counsel indicate the reasons under GR 37 as is required." RP 798. After the parties argued the issue, the court sustained the GR 37 challenge and disallowed the peremptory strike. RP 798-802. The court and parties then broke for lunch. RP 804.

After lunch, the court clarified that while "Juror No. 3 was a person of color, … nothing in the actual language of the rule indicates that the GR 37 objection has to be made only for a peremptory challenge of a juror of color." RP 805. The court continued:

> In reading it carefully, the rule says if the Court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge then it shall be denied. That sentence does not say view race or ethnicity of the juror. The objective observer -- the nature of the observer under Paragraph F says that the objective observer is aware that implicit institutional and [un]conscious biases in addition to purposeful discrimination have resulted in the unfair exclusion of potential jurors in Washington State. That sentence does not say have resulted in the unfair exclusion of potential jurors of color in Washington State. Seemingly, a GR 37 objection may be sustained without reference to the juror's ethnicity at all . . . .

RP 805.

The prosecutor disagreed, arguing the rule's stated purpose "is to eliminate the unfair exclusion of potential jurors based on race or ethnicity." RP 806. The court pointed out that

the rule does *not* say "based on *their* race or ethnicity" and does not say "based on the *juror's* race or ethnicity." RP 806. But the prosecutor claimed, "I am not quite sure where the State would be found to be excluding someone based on race other than their own, other than the juror's race." RP 807. The court said, "How about the defendant's race, for example?" RP 807. The court said:

> [T]he reason for the rule is that the Supreme Court has told us that we are to assume as judges and as lawyers that there is implicit institutional and unconscious biases in addition to purposeful discrimination which has resulted in unfair exclusion of potential jurors, and that doesn't say jurors of color, just unfair exclusion of jurors, and so it seems to me that in our case where Mr. Walton is a person of color, a GR 37 objection may be made.

RP 812-813.

But the prosecutor claimed that the drafters of the rule were concerned only with the race of the prospective jurors—not their understanding of racism or the race of the defendant—and that this was evident in their citation to *State v. Saintcalle*,

178 Wn.2d 34, 309 P.3d 326 (2013).[5] RP 823. The defense countered that "had the Supreme Court wanted to say striking a juror based on their race or ethnicity they could have," but they did not. RP 826. Instead, the rule "is broad" and "doesn't just apply to jurors of color, particularly when you have a black defendant like we do." RP 826-27.

But the State convinced the court to change its mind. The court cited a sentence from a Division Three opinion quoting *Batson*,[6] and the opinion of a GR 37 workgoup member who *opposed* the adoption of GR 37.[7] RP 829-31. The court concluded, "the Supreme Court intended the rule to apply only when the objection was made to a peremptory challenge of a juror who appears to be a racial or ethnic minority." RP 831.

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[5] Undersigned counsel was a member of the ACLU's drafting group and was one of the primary authors of GR 37. Undersigned counsel was also the petitioner's attorney on *Saintcalle*.

[6] *Batson v. Kentucky,* 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

[7] Undersigned counsel was a member of the workgroup.

4. The Court of Appeals reversed because the State's use of peremptory challenges to remove jurors 22 and 38 violated General Rule 37.

The Court of Appeals reversed. It recognized that the plain language of GR 37 applies to jurors of any race, and that it "rationally and clearly aims to broadly remove dismissal based on race and ethnicity, including views about the same, from the use of peremptory challenges." *Walton*, 542 P.3d at 1049. The court also recognized that to interpret the rule to apply only to jurors of certain racial or ethnic groups would violate the Equal Protection Clause. *Id.* at 1049-50. The court held the State's peremptories violated GR 37 because, in this case with a Black defendant, the prosecutor excused prospective jurors *because* they acknowledged anti-Black systemic racism. *Id.* at 1049-55.

The State filed a motion to reconsider. Contrary to its position in the trial court and its primary argument on appeal, the State allowed that GR 37 applied to white jurors. But it argued GR 37 only bars excusing jurors based on the *juror's*

race, with no allowance for consideration of the *defendant's* race. The State claimed its new position was supported by the rule's plain language and the drafters' intent, but Mr. Walton filed an answer explaining the State was wrong on both counts. The Court of Appeals denied the State's motion.

D. ARGUMENT

1. This Court should deny review because the Court of Appeals correctly applied the plain language of GR 37 consistent with its history and purpose.

This Court should deny review. The Court of Appeals correctly interpreted the plain language of GR 37 consistent with its broad remedial purpose. It meticulously analyzed each subsection of the rule and recognized the prosecution's conduct for what it was: a naked attempt to remove jurors who acknowledged anti-Black systemic racism from a case with a Black defendant.

a. *The plain language of GR 37 prohibits the State's peremptory strikes of Jurors 22 and 38 because an objective observer could view race as a factor, and awareness of systemic racism is a presumptively invalid basis for a strike.*

The State complained that the Court of Appeals "held GR 37 broadly relates to whether race or ethnicity could have been related to a strike." Mot. Reconsider at 2. But this is exactly what the rule says. GR 37(e).

The State nevertheless argues that the rule is ambiguous and could be read to refer only to the juror's race, with no consideration of the *defendant*'s race. Mot. Reconsider at 3-8; Pet. for Review at 10. The State is wrong, and the Court of Appeals properly applied the plain language.

The core provision of the rule states:

> The court shall then evaluate the reasons given to justify the peremptory challenge *in light of the totality of circumstances.* If 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) (emphases added). As the Court of Appeals recognized, "[n]owhere in the text of the rule is its application restricted to the race or ethnicity of the challenged juror." *Walton*, 542 P.3d at 1049. The rule says "race or ethnicity," not "the juror's race or ethnicity." GR 37(e). Moreover, the rule requires consideration of "the totality of circumstances," *id*., and the race of the defendant is a highly relevant circumstance. *See State v. Harrison*, 26 Wn. App.2d 575, 585, 528 P.3d 849 (2023) (Lee, J., concurring) ("The totality of the circumstances includes the defendant's race or ethnicity, not just the prospective juror's race or ethnicity."). Contrary to the State's claim, subsection (e) is not ambiguous; it plainly forbids the peremptories at issue here.

The plain language of subsection (h) also applies, because it is presumptively invalid to excuse a juror because the juror "express[ed] a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling." GR 37(h)(ii). *See Walton*, 542 P.3d at 1051-52; (citing *id*; *State v.*

Tesfasilasye, 200 Wn.2d 345, 359, 518 P.3d 193 (2022); *Harrison*, 26 Wn. App. 2d at 583). Here, in response to prosecutors' questions, Jurors 22 and 38 expressed a distrust of law enforcement officers in light of police brutality against African Americans and anti-Black systemic racism. The prosecutor cited these responses as a basis for its peremptories. RP 838-40, 850; *Walton*, 542 P.3d at 1051, 1054. This is a presumptively invalid basis for excusal under subsection (h), and an objective observer could view race as a factor in the exercise of the peremptory, rendering the peremptory invalid under subsection (e).[8]

[8] Notably, the State views jurors as "biased" when they *treat police witnesses like everyone else*. Juror 22 said despite her concerns regarding police brutality against African Americans, she would "start afresh" and would "not have any issue listening to everything [police witnesses] have to say." RP 581-82; 542 P.3d at 1051. Yet the State characterizes this juror as having a "bias against the police." Pet. for Review at 4.

Juror 38 assured the prosecutor that "[e]veryone is at a neutral station when they come to me." 542 P.3d at 1053. The juror continued, "It's not a matter of [officers] being less trustworthy than the average person; everyone comes to me with a blank slate." *Id.* Yet, as with juror 22, the prosecution

The State is also wrong to claim subsection (g) cannot apply in this context. Mot. Reconsider at 4; Pet. for Review at 7. GR 37(g)(iii) directs courts to perform a comparative juror analysis and consider "whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party." Defense counsel invoked this subsection *in this very case* in response to the State's peremptory challenge of Juror 22. RP 837-40. After defense counsel argued GR 37(h)(ii) prohibited the State from excusing this juror who acknowledged "the criminal justice system was unfair to African Americans," the State responded:

> [W]hen asked about her biases towards and her feelings towards things that occurred previously in

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claimed juror 38 "would present with a bias against the police in this matter." *Id.* at 1054; Pet. for Review at 5 (again describing juror as "biased against police").

The State's position is remarkable in light of the juror's literal assurance that they would be neutral and treat all witnesses the same. In other words, the State seems to genuinely believe that unless a juror trusts police *more* than the average witness by default, that juror is biased. The State's view demonstrates how far our system still has to go to be truly neutral and fair.

> the last year with the riots and other unrest and her feeling towards police, [Juror 22] literally sunk into herself when commenting and indicated that she does have some concerns based on a year's watching the news.

RP 838-39. Defense counsel then invoked GR 37(g)(iii):

> The last thing, the State indicated that she sunk into her person, something to that effect. Numerous people sunk into their person when discussing their ability to look at gruesome photographs, so I guess we'll see if those people get removed.

RP 840. This is precisely the type of comparative juror analysis contemplated by this subsection. Moreover, the prosecutor's reliance on an allegation that the juror "sunk into herself" when discussing racial justice is an invalid basis for exclusion under GR 37(i) ("Reliance on Conduct"). *See* Pet. for Review at 4 (admitting State relied on a demeanor-based justification for excluding Juror 22).

The State's characterization of Juror 38 as "hostile" is also problematic under GR 37(i). Pet. for Review at 5; RP 849. Not only is this type of demeanor-based justification for excusal

invalid under this subsection, but "hostile" is a common racist and sexist dog whistle. *See State v. Hawkins*, 200 Wn.2d 477, 500, n.17, 519 P.3d 182 (2022); *Henderson v. Thompson*, 200 Wn.2d 417, 424–25, 518 P.3d 1011 (2022). While this juror was white and nonbinary, the topic of discussion was systemic racism. In this context, a knowledgeable objective observer could view the prosecutor's use of the word "hostile" as further evidence of implicit racial bias in the use of the peremptory.

Finally, without a hint of irony, the State claimed the plain language of GR 37(f) would not make sense if applied here. Mot. Reconsider at 6. That subsection defines an "objective observer" as a person who "is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington State." GR 37(f); *Walton*, 542 P.3d at 1048. As the Court of Appeals pointed out, the State essentially excluded these jurors *because* they met the definition of

Washington's objective observer—i.e., a person who understands that systemic racism is real:

> [J]uror 38 never expressly stated a bias against police, but rather acknowledged their awareness of what the State phrased as "the pervasive issue in the criminal justice system with African Americans" and followed up the State's question by explicitly stating that "people of color have been unjustly treated by the American justice system." The "American justice system" could certainly include law enforcement officers, but may have been limited to courts in particular; it is not entirely clear from the record how juror 38 would define the "American justice system." More critically, *this is simply an acknowledgement of the same history expressly noted in the plain language of GR 37*.

Walton, 542 P.3d at 1054 (emphasis added).

Indeed, although GR 37(f) describes an objective observer as one who understands that racial bias has resulted in the unfair exclusion of jurors, this Court has since expanded the definition of Washington's objective observer to mean a person who is aware that racial bias has resulted in unfair outcomes more broadly. *E.g. State v. Zamora*, 199 Wn.2d 698, 718, 512 P.3d 512 (2022) ("The objective observer is a person who is

aware of the history of race and ethnic discrimination in the United States and aware of implicit, institutional, and unconscious biases, in addition to purposeful discrimination."). As particularly relevant here, "an objective observer is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in *disproportionate police contacts, investigative seizures, and uses of force* against Black, Indigenous, and other People of Color (BIPOC) in Washington." *State v. Sum*, 199 Wn.2d 627, 631, 511 P.3d 92 (2022) (emphasis added).

Jurors 22 and 38 met the definition of an objective observer, and the State excluded them for this reason. *See* Pet. for Review at 4 (admitting State struck Juror 38 because they "expressed support for the Black Lives Matter movement, 'said [they] had issues with trusting the police, and talked about the injustices in the court system with minorities.'") (citing RP

848-49). The plain language of the rule prohibits these peremptories.[9]

b. *The plain language is consistent with the broad remedial purpose of the rule, and the State misunderstands the history of the rule and the drafters' intent.*

Even if the rule were ambiguous, the Court of Appeals' reading of the rule is consistent with its broad remedial purpose. The State's briefing to date evinces a misunderstanding of the history of the rule and the drafters' intent.

As the State notes, this Court called for development of a more protective rule in *Saintcalle*, 178 Wn.2d at 35. Mot Reconsider at 8. But the State is wrong in claiming that

[9] It is also noteworthy that the State essentially exercised peremptories against these jurors *because they followed the court's anti-bias preliminary instruction* and complied with the video instructing them to be aware of their own implicit biases. The trial deputy prosecutor admitted the State sought to excuse Juror 38 for this reason, noting that this juror "did specifically say that [they would] have to keep race at the forefront of [their] mind though [they] would try to push it down." RP 850; *Walton*, 542 P.3d at 1054. It should go without saying that it is improper to strike a juror because the juror is complying with the court's own instruction to be mindful of implicit racial bias.

Saintcalle was concerned only with discrimination based on the juror's race. Pet. for Review at 11. The *Saintcalle* court also stressed the need to prevent racial bias in the exercise of peremptory challenges based on the *defendant*'s race. *Saintcalle*, 178 Wn.2d at 53-54.

The Court suggested:

> As a first step, we should abandon and replace *Batson*'s "purposeful discrimination" requirement with a requirement that necessarily accounts for and alerts trial courts to the problem of unconscious bias, without ambiguity or confusion. For example, it might make sense to require a *Batson* challenge to be sustained if there is a reasonable probability that race was a factor in the exercise of the peremptory or where the judge finds it is more likely than not that, but for *the defendant's race*, the peremptory would not have been exercised.

Saintcalle, 178 Wn.2d at 53-54 (emphasis added). In other words, this Court in *Saintcalle* recognized that the juror's race and the defendant's race were each independently relevant, and that Washington needed stronger measures to protect against

bias based on either the juror's race or the defendant's race. *See id*. The broad language of GR 37 achieves this goal.

The facts of *Saintcalle* are also highly relevant to the analysis. As the Court of Appeals noted, the State in Mr. Walton's case claimed that GR 37(h)(ii) did not apply to Juror 22 because "that idea of bias was not from her personal experience but was from the news that she received." *Walton*, 542 P.3d at 1052, n.11 (citing oral argument). But the same was true in *Saintcalle*, and this Court was intimately familiar with the facts of *Saintcalle* when it called for a broader rule and when it adopted GR 37.

The defendant in *Saintcalle* was a young, Black male, but the juror at issue was an older Black female who discussed not her own direct experiences, but her observations about how young, Black males are treated in the news:

> And especially with this person being a person of color and being a male, I am concerned about, you know, the different stereotypes. Even if we haven't heard anything about this case, we watch the news

> every night. We see how people of color, especially young men, are portrayed in the news.

Saintcalle, 178 Wn.2d at 37-38. The juror at issue in *Saintcalle* was concerned about systemic racism in a case with a Black, male defendant. The jurors at issue in Mr. Walton's case were concerned about systemic racism in a case with a Black, male defendant. The *Saintcalle* Court had no rule available to address the problem of excluding such jurors, but this Court later remedied the problem by adopting GR 37. The history of the rule's origins demonstrates the Court of Appeals properly applied the plain language consistent with the broad remedial purpose.

It is certainly true that a paramount concern of GR 37's drafters was prevention of bias and discrimination based on the race of the prospective jurors. But the cases that inspired subsection (h) involved not just jurors of color, but *defendants* of color. *See City of Seattle v. Erickson*, 188 Wn.2d 721, 723, 398 P.3d 1124 (2017) (noting defendant was a Black man); *id.*

at 738 (Stephens, J., concurring) (noting presumptively invalid exclusions in proposed GR 37 would apply); *State v. Bardwell*, 192 Wn. App. 1033, 2016 WL 513259 (2016) (unpublished); *State v. Brown*, 184 Wn. App. 1008, 2014 WL 5338504 (2014) (unpublished); Washington State Supreme Court/Minority & Justice Commission Symposium (May 24, 2017), at 2 hrs., 8 min., *video recording by* TVW, Washington State's Public Affairs Network, https://www.tvw.org/watch/?clientID=9375922947&eventID=2017051090&startStreamAt=7680 (testimony of excluded juror in support of proposed GR 37(h), noting defendant was a Black man). Like the State in Mr. Walton's case, the State in these other cases may well *not* have excluded the jurors had the defendants been white. *See Walton*, 542 P.3d at 1052, n.13 (State acknowledges it may not have stricken Juror 22 had the defendant been white). GR 37 protects the rights of Black defendants to be free from this bias in jury selection.

Ultimately, the State must recognize that its removal of Jurors 22 and 38 flies in the face of GR 37's intent to eradicate racism in jury selection. In a case in which the State accused a Black man of killing a white man, the State repeatedly elicited discussions of racism in policing and "intentionally focused on this particular dynamic" in its questioning of jurors when it highlighted Mr. Walton's race and its implications for police witnesses. *Walton*, 542 P.3d at 1052, n.13. The State struck Jurors 22 and 38 because they spoke truthfully about systemic racism and promised to be mindful of implicit bias as the court instructed.

The Court of Appeals correctly held that the plain language and intent of GR 37 prohibited these peremptories. This Court should deny review.

2. If this Court grants review of the State's petition, it should also review the issues raised in Mr. Walton's Statement of Additional Grounds for Review.

In his Statement of Additional Grounds for Review, Mr. Walton argued that the State violated his rights under the Due Process Clause, failed to comply with discovery obligations under CrR 4.7, and committed vindictive prosecutorial misconduct. SAG at 8, 11. He also argued that the trial court violated his Sixth Amendment right to a speedy trial and that jurors committed misconduct by reading news articles about the case. SAG at 9-11. He emphasized he had never before been convicted of a crime, and that he was innocent of the current allegation. SAG at 1, 17; *see* CP 7 (showing Mr. Walton was 40 years old at the time of the alleged crime); CP 9 (showing offender score of zero).

The Court of Appeals did not reach these issues because it reversed for the GR 37 violations. *Walton*, 542 P.3d at 1057-58. If this Court grants the State's petition for review, Mr.

Walton respectfully requests that this Court grant review of the issues raised in his Statement of Additional Grounds. RAP 13.4(d).

E. CONCLUSION

The Court of Appeals correctly concluded that the State's peremptory strikes of Jurors 22 and 38 violated the plain language and purpose of GR 37. The petition for review should be denied.

This Answer is proportionately spaced using 14-point font equivalent to Times New Roman and contains 5000 words (word count by Microsoft Word).

Respectfully submitted this 7th day of June, 2024.

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