NO. 104101-2

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BERNARD BELLEROUCHE,

Petitioner.

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# STATE'S ANSWER TO PETITION FOR REVIEW

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## A. INTRODUCTION

Bernard Bellerouche shot Terrance Robinson in the face at point-blank range for no apparent reason, then shot Robinson twice more in the back as he ran across a highway and into a roadside casino for help. A jury convicted Bellerouche of first-degree assault with a firearm enhancement for this unexplained shooting, which left Robinson with horrific, life-altering injuries.

For the first time on appeal, Bellerouche claimed that the prosecutor introduced racial bias into the trial by using the word "beef" — or, more accurately, "*no* beef" — to describe the lack of any prior dispute between Bellerouche and Robinson. Although Bellerouche's attorneys made *many* objections throughout the trial, they did not object to the word "beef." And yet, Bellerouche argued on appeal that "beef," coupled with a cellphone video that included a hip-hop song and two photos of Bellerouche taken after his arrest wearing a T-shirt

depicting a woman in a thong, stereotyped Bellerouche as a dangerous young Black man.

Two Court of Appeals judges recognized that Bellerouche's arguments distorted the record and alleged racial bias where it did not exist. One judge disagreed in a 64-page dissent that metaphorized "beef," the song, and the T-shirt as "odious breadcrumbs" of racism.

Bellerouche now asks this Court to grant review and adopt the dissent's view. But ironically, in order to view the record in a manner *evincing* negative racial stereotypes, Bellerouche, like the dissenting judge, *engages* in negative racial stereotyping based on outdated, fear-based views that are no longer the cultural norm. This Court should decline the invitation to distort the record this way, and deny the petition for review.

## B. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). Bellerouche's claims do not meet these criteria.

## C. ISSUES PRESENTED

1. Should this Court deny review of claims raised for the first time on appeal that a common colloquialism, a popular song, and a T-shirt's graphics comprise race-based prosecutorial misconduct meriting a new trial?

2. Should this Court decline to engage in the negative racial stereotyping necessary to find negative racial stereotyping in this case?

## D. STATEMENT OF THE CASE

Terrance Robinson considered Solomon Egger a good friend. 9/29/22RP 934.[1] In July 2020, Egger was staying at Robinson's apartment. 9/29/22RP 934-35. Egger introduced Robinson to Dino Nguyen and Bellerouche, whom Robinson knew by the nickname "Crucial." 9/29/22RP 934-37. As far as Robinson knew, there were no problems — no "beefs" — among any of them. 9/29/22RP 934, 937.

[1] The report of proceedings comprises two sets of three sequentially-paginated volumes, each of which begins with "Volume One" at page 1. The transcripts are referenced here by date and page number in an attempt to avoid confusion.

On July 25, 2020, Robinson dropped Egger off at a gathering in Auburn, a memorial for Bellerouche's best friend, Lloyd Whitney. 9/29/22RP 939-40. Whitney had died in 2019; July 25th was his birthday. 9/29/22RP 939-40; 10/19/22RP 852-53. Egger recorded video at Whitney's memorial with his phone, which would be discovered after his death less than two months later.[2] 10/12/22RP 466-67. Part of the video contains the song "I Miss My Dawgs" by Grammy-award-winning artist Lil Wayne.[3] Ex. 65. The trial court admitted the video with racial slurs and profanity redacted from the song. 9/28/22 794-800.

The gathering in Auburn eventually "migrated" to 102nd and Aurora Avenue North in Seattle, where

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[2] Egger was murdered; this fact was not presented to the jury.

[3] *See* https://en.wikipedia.org/wiki/List_of_awards_and_nominations_received_by_Lil_Wayne (last accessed 7/16/2025).

Whitney had died. 10/19/22RP 861. Approximately 50 people gathered there to visit and reminisce. 10/19/22RP 862-63. Robinson was not at the gathering in Auburn, but he briefly attended the second gathering before leaving to meet a friend for teriyaki. 9/29/22RP 940-43.

Sometime later, Egger suggested leaving the Aurora Avenue location to go to a restaurant in Shoreline. 10/19/22RP 863. Egger drove Bellerouche in Bellerouche's black BMW SUV, Nguyen drove his white Audi SUV, and they both parked in the lot by the restaurant. 9/29/22RP 944; 10/19/22RP 863. Robinson was already there. 9/29/22RP 944. People were socializing and the atmosphere was "cordial." 9/29/22RP 945, 947. Robinson had a gun in his car, but he felt no need to carry it with him. 9/29/22RP 946. Bellerouche, Robinson, and the others drank Remy Martin cognac from a bottle throughout the evening. 10/19/22RP 858. Robinson also used cocaine. 9/29/22RP 947.

At some point, Bellerouche, Robinson, and Nguyen were together in Nguyen's white Audi; Nguyen sat in the driver's seat, Bellerouche in the front passenger's seat, and Robinson in the back seat behind Nguyen. Egger was outside, standing next to Bellerouche's BMW. 9/29/22RP 949-50, 969-70.

Bellerouche suddenly pulled a gun and shot Robinson in the face. 9/29/22RP 959. Robinson jumped out of the car and ran for his life; Bellerouche shot him twice more in the back as he fled. 9/29/22RP 959-60.

Robinson ran across Aurora into Goldie's Casino. 9/29/22RP 970-71. A casino manager held bar towels to Robinson's face to staunch the bleeding until paramedics arrived and took Robinson to Harborview Medical Center. 10/2/22RP 1071-72.

Robinson's face was "shattered." 10/11/22RP 251. Along with external open wounds, Robinson suffered bone loss and displaced fractures in his face and jaw.

10/4/22RP 63. All teeth in his upper left jaw were shot out; some were found embedded in his tongue.[4] 10/4/22RP 64, 67. Additional teeth were removed because the bone they were rooted in was destroyed. 10/4/22RP 72. Robinson also had two gunshot wounds in his back where Bellerouche had shot him as he ran. 10/11/22RP 258-59. Robinson has permanent scars and continuing difficulty eating and speaking. 9/29/22RP 976-79. Attempts to rebuild his jaw for dental implants have failed. 9/29/22RP 978. By the time of trial, Robinson had undergone four surgeries with more scheduled. 10/11/22RP 141-42.

Immediately upon learning of the shooting, Robinson's stepfather, Karlton Daniel, rushed to Harborview; he found Robinson with "blood all over him,

[4] One tooth, with the root still attached, was found at the crime scene with his wallet and one of his earbuds. 10/3/22RP 1156, 1165.

his face, a tube coming out of his mouth" to prevent him from choking on his own blood, and "his teeth on the ground." 10/11/22RP 123. Daniel asked Robinson who shot him; as Robinson struggled to speak "all this blood came spraying out," but Daniel eventually understood him to be saying the name "Crucial." 10/11/22RP 124-25.

Daniel gave that name to lead investigator Detective John Free. 10/17/22RP 596-97. Daniel also drove to the crime scene and found an empty bottle of Remy Martin cognac. 10/11/22RP 135-36. Daniel contacted the police and asked them to collect the bottle as potential evidence. 10/11/22RP 139. Bellerouche's fingerprints were later found on the bottle. 10/12/22RP 382-85, 461-62.

Robinson was extremely reluctant to cooperate with the police. He refused to see Detective Free at Harborview. 10/17/22RP 602. Free arranged with Daniel to visit Robinson at Daniel's home after Robinson was discharged; even so, Robinson was "reticent" and "very

uncomfortable" speaking with Free. 10/17/22RP 602, 605. By this time, Free had determined that "Crucial" was Bellerouche and had prepared a photo montage. 10/17/22RP 603. Robinson refused to look at it; instead, he said, "I'll do you one better." 10/17/22RP 606. He showed Free a photo of Bellerouche on his cell phone and said that he was the person who shot him. 10/17/22RP 606. Robinson refused to give a recorded statement. 10/17/22RP 604.

Robinson's extreme reluctance to cooperate led Free to put the case "on the back burner" for a while. 10/17/22RP 609. In mid-August, Daniel called Free and said Robinson "was coming around." 10/17/22RP 610. Free met with Robinson at Daniel's home a second time; Robinson still refused to be audio-recorded or look at the montage. 10/17/22 611, 619-20. He "either didn't want to or was unwilling to make an identification." 10/17/22RP 19-20. Robinson even wrote "no pick" on the montage

form. 10/17/22RP 620-21. But he repeated that "Crucial" had shot him, and said, "You saw the picture I showed you before." 10/17/22RP 615, 620.

Robinson never returned to his apartment after the shooting because, as he later testified, he "wasn't taking no chances," given Egger's association with Bellerouche. 9/29/22RP 1017-18. He also testified that he refused to pick Bellerouche in the montage Free tried to show him because he mistakenly believed surveillance video would show everything that had happened. 9/29/22RP 975. Robinson positively identified Bellerouche for the first time during his trial testimony because, he told the jury, "now is the moment of truth." 9/29/22RP 1022.

Detective Free tried unsuccessfully to find Nguyen and Egger. 10/17/22RP 637-38. As noted above, Egger was murdered in September 2020. 10/17/22RP 638. Egger's cellphone was collected by Detective Joshua Rurey, who was investigating Egger's murder.

10/12/22RP 466. In late 2020, Free learned that Bellerouche was in Arizona and Rurey traveled there to arrest him. 10/12/22RP 470-71.

One of the vehicles at Bellerouche's Arizona residence was a black BMW SUV, like Robinson had described. 10/12/22RP 471. It "had characteristics that appeared to match" the black SUV captured on surveillance video from a McDonald's drive-thru near the shooting, as well as on video from Egger's phone. 10/12/22RP 473-74. Data from a cellphone found in a backpack at Bellerouche's Arizona residence showed that the phone was near Robinson's shooting when it occurred. 10/12/22RP 308-10, 312, 476.

At the time of his arrest, Bellerouche was wearing a T-shirt advertising Hennessy cognac; the shirt bore an image of a woman in a thong bathing suit or underwear holding a bottle near her hip and the slogan, "Hennything is possible tonight." Ex. 68. The trial court admitted two

photographs of Bellerouche wearing the shirt because a cognac bottle was found at the crime scene. 10/12/22RP 420-25.

Bellerouche testified at trial. He agreed that his nickname was "Crucial," that he went to the memorial in Auburn on July 25, 2020, that he went to 102nd and Aurora, and that he was in the parking lot at the restaurant in Shoreline. 10/19/22RP 848, 853-55, 861, 863-64. He agreed that he was drinking from the Remy Martin bottle throughout the night. 10/19/22RP 858. He agreed that Egger drove him to Shoreline in his black BMW SUV. 10/19/22RP 863, 872. He agreed that Nguyen drove there in his white Audi SUV, although he claimed he never got into that car. 10/19/22RP 867, 892. But he also claimed he did not remember seeing Robinson in the parking lot where the shooting occurred. 10/19/22RP 868. Instead, he claimed he had left the area

when he "heard something that sounded like gunshots." 10/19/22RP 871.

When asked why he did not speak to Nguyen about someone getting shot in the back seat of Nguyen's car, Bellerouche said, "That whole situation was just sketchy. I didn't want to know." 10/19/22RP 881. In fact, he claimed not to know that someone was shot in Nguyen's car at all, although he admitted he was texting and having phone conversations with Nguyen after the shooting. 10/19/22RP 881-82. He also claimed not to remember that Robinson had identified him as the shooter from the witness stand just ten days earlier. 10/19/22RP 894. He agreed he had no "beefs" with Nguyen, Egger, or Robinson. 10/19/22RP 890-91.

At trial, Bellerouche never objected to the prosecutor's use of the word "beef" as a synonym for an argument or dispute. But for the first time on appeal, Bellerouche claimed that the prosecutor using the word

"beef" five times in a nine-day trial constituted prosecutorial misconduct. Bellerouche contended that "beef," coupled with Egger's cellphone video containing a hip-hop song and two photos of Bellerouche wearing a T-shirt depicting a woman wearing a thong, injected negative racial stereotypes into the trial that played upon the unconscious biases of the jury. In a published opinion, Judges Diaz and Dwyer properly rejected these arguments. *State v. Bellerouche*, 33 Wn. App. 2d 877, 886-905, 565 P.3d 604 (2025). Judge Coburn disagreed in a 64-page dissent/concurrence in part,[5] accusing the prosecution of dropping "nefarious" and "odious breadcrumbs" of racial bias to create "an image of a cold-

[5] Judge Coburn concurred that the prosecutor did not commit misconduct when arguing that Robinson did not return to his apartment for fear that Bellerouche might "come back and finish the job," because the argument was based on Robinson's testimony that he was "taking no chances" due to Bellerouche's association with Egger. *See id.* at 905-09, 912. Bellerouche does not petition on this issue.

blooded violent criminal, a thug" who would shoot Robinson for no reason. *Id.* at 953, 956-57 (Coburn, J., dissenting).

Bellerouche now petitions this Court for review.

## E. ARGUMENT

### 1. BELLEROUCHE'S CLAIMS OF PROSECUTORIAL MISCONDUCT ARE NOT SUPPORTED BY AN OBJECTIVELY REASONABLE VIEW OF THE RECORD.

Bellerouche contends, as did the dissent, that the word "beef" has racial overtones that are objectively apparent enough to merit a new trial. Particularly when coupled with video that included a Lil Wayne song and two photos of Bellerouche wearing a T-shirt depicting a woman wearing a thong, Bellerouche asserts (and the dissent agreed) that the trial was imbued with racial bias portraying him as a dangerous young Black man. But, as the majority recognized, Bellerouche's claims rely upon a

distorted view of the record and negative inferences that are not objectively reasonable. This Court should deny review.

Absent an objection at trial, a defendant generally cannot claim prosecutorial misconduct on appeal unless the prosecutor's conduct was so "flagrant and ill-intentioned" that no curative instruction could have ameliorated the resulting prejudice. *State v. Emery*, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012). In other words, a defendant who did not object "must show the improper conduct resulted in *incurable* prejudice." *State v. Zamora*, 199 Wn.2d 698, 709, 512 P.3d 512 (2022) (emphasis in original).

A different test applies when the alleged misconduct involves an appeal to racial or ethnic bias. *State v. McKenzie*, 21 Wn. App. 2d 722, 729, 508 P.3d 205 (2022). If the defendant first proves that a prosecutor improperly implicated racial or ethnic bias, the reviewing

court then considers whether the prosecutor "flagrantly or apparently intentionally" appealed to bias "in a way that undermines the defendant's credibility or the presumption of innocence[.]" *Zamora*, 199 Wn.2d at 709 (quoting *State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011)). This is an objective test; the question is whether the misconduct *appeared* intentional within the context of the trial. *Zamora*, at 716. The relevant inquiry is whether an objective observer could view the prosecutor's conduct as an appeal to racial prejudice, bias, or stereotypes. *Id.* at 718. An objective observer is one who is aware of this country's history of racial discrimination and of implicit, institutional, and unconscious biases, as well as purposeful discrimination. *Id.*

Factors considered in determining whether a prosecutor appealed to racial bias include the apparent purpose of the statements, whether the comments were based on evidence or reasonable inferences in the

record, and the frequency of the remarks. *Id.* at 718-19. If the prosecutor flagrantly or apparently intentionally appealed to racial or ethnic bias, the defendant is entitled to reversal without a specific showing of prejudice. *Id.* at 721.

This Court should deny review of Bellerouche's claims. This record, whether viewed subjectively or objectively, does not establish that the prosecutor used the word "beef" to invoke or inflame racial bias, prejudice, or stereotypes. On the contrary, the record shows nothing more than the occasional use of a common colloquial term for an argument or dispute.

As the Court of Appeals majority reasonably held, this case in no way resembles those in which racially biased misconduct has justified reversal. For instance, in *Zamora* — a case involving a defendant of Latinx heritage and a United States citizen — the prosecutor "began voir dire by introducing the topics of border security, illegal

immigration, and crimes committed by undocumented immigrants," stated that 100,000 people "illegally" crossed the border each month, and asked prospective jurors if they had heard about a "drug bust" in Arizona involving a quantity of fentanyl "that would have killed 65 million Americans." *Zamora*, 199 Wn.2d at 703. These topics were not relevant to any issue in the case. *Id.* at 719.

In *Monday*, the prosecutor mocked the way a Black witness pronounced the word "police" and argued in closing that there was a "code" that "[B]lack folk don't testify against [B]lack folk." *Monday*, 171 Wn.2d at 672-74. And in *McKenzie*, the prosecutor elicited testimony from a detective about the term "gorilla pimp" in a case with a Black defendant. *McKenzie*, 21 Wn. App. at 727-28. As the court correctly held, comparing a Black man to a gorilla "is clearly racist rhetoric." *Id.* at 730.

There is simply no comparison to those cases here. Equating the word "beef," meaning "dispute," with the

word “gorilla” or wholly irrelevant voir dire questions about border security strains credulity.

The prosecutor used the word “beef” five times during a nine-day trial and neither of Bellerouche’s attorneys objected. As explained at length in the State’s Court of Appeals brief, the term “beef” as a colloquialism has been used for over a century. *See* Brief of Respondent (COA No. 84887-9-I) at 21-26. The lack of objections from Bellerouche’s attorneys is telling in this regard. *See State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990) (lack of objection “strongly suggests to a court that the argument or event in question did not appear critically prejudicial to an appellant in the context of the trial”). The majority opinion below probably said it best: “If dehumanizing every [B]lack person in the courtroom had been the apparent intent, the lack of an objection would be perplexing.” Bellerouche, 33 Wn. App. 2d at 901. This lack of objections is particularly significant

in this case, because Bellerouche's attorneys did not shy away from making objections when they thought evidence might be prejudicial.

For instance, Bellerouche's attorneys argued that a cellphone report should be redacted using white blocks instead of black blocks because white redactions would be less obvious to the jury. 10/12/22RP 326-38. Nearly 15 pages of the trial transcript are devoted to arguments about whether briefly explaining Detective Free's speech impediment to the jury would be unfairly prejudicial. 10/13/22RP 541-56. Bellerouche's attorneys also sought to exclude the entire audio portion of the Egger phone video because the Lil Wayne song included the "N word" and profanity.[6] CP 92-94; 9/22/22RP 666-67, 773; 9/28/22RP 789-800.

[6] The State agreed to edit the audio to remove racial slurs and profanity, and the trial court agreed that was appropriate. 9/28/22RP 794-95, 800-02. Bellerouche's

In short, if Bellerouche's attorneys had any concerns about the word "beef," they would have objected. As the majority correctly found, "beef" as a colloquial term for a dispute is widely used, and its purported racial overtones are not apparent to an objective observer. *Bellerouche*, 33 Wn. App. 2d at 898-900. Because "beef" is not a racially biased term that suggests negative stereotypes, Bellerouche cannot show impropriety by the prosecutor. He certainly cannot demonstrate that the prosecutor "flagrantly or apparently intentionally" appealed to bias "in a way that undermines the defendant's credibility or the presumption of innocence[.]" *Zamora*, 199 Wn.2d at 709. This claim does not merit review.

Nonetheless, the dissenting judge went to great lengths to portray "beef" as a negative, racially charged

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attorneys agreed the redactions addressed "a lot of defense's concern." 9/28/22RP 797-98.

term. These efforts distort the record. For example, the dissent emphasized that "beef" was "introduced" into the record by the prosecutor, and that it was "not relevant" or based on the evidence. *Bellerouche*, at 959 (Coburn, J. dissenting). The State tried to address this concern by supplementing the record after oral argument — to which Bellerouche objected — to explain the relevance of the word "beef" in this case. *See* Motion to File Supplemental Designation of Clerk's Papers or Exhibits, attached as Appendix. Specifically, the word "beef" was used by *Robinson* when speaking with police to convey that there was no dispute with Bellerouche or the others prior to the shooting. *See* Appendix. The dissent ignored this entirely, likely because it does not support the notion of "nefarious breadcrumbs."[7]

[7] The majority decided the State's motion was moot because Bellerouche's convictions were affirmed. *Bellerouche*, at 905, n.11.

Indeed, the dissent even stated that the prosecutor improperly used the term "point-blank range," because "other than *the evidence of the shooting of Robinson occurring in Nguyen's Audi and that he was shot in the face*, the record is *devoid of evidence* that Robinson was shot at 'point blank' range." *Bellerouche*, at 945 (Coburn, J., dissenting) (emphasis added). If shooting someone in the face in the close confines of a car is *not* "point-blank range," it is difficult to imagine what would be. And "point-blank," like "beef," has an ordinary, non-inflammatory definition.[8] The dissent unreasonably finds "nefarious breadcrumbs" where there are none.

Bellerouche and the dissent further contend that the hip-hop song and the T-shirt bolstered the prosecutor's portrayal of Bellerouche as a violent, hypersexualized,

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[8] *See* Merriam-Webster online, available at https://www.merriam-webster.com/dictionary/point-blank (last accessed 7/16/2025).

dangerous young Black man. First, as will be discussed further below, Lil Wayne is an extremely popular recording artist,[9] and the song "I Miss My Dawgs" was released more than 20 years ago. As the trial court correctly observed, the song is not "suggestive of a gang culture or gang affiliation." 9/28/22RP 800. Second, as the majority held, Bellerouche's argument that the Hennessy T-shirt "recalls offensive stereotypes of a misogynistic 'gangster' or 'thug'" are "based on questionable leaps of logic." *Bellerouche*, at 890. Instead, the shirt "simply happens to be the lightly embarrassing shirt Bellerouche happened to choose to wear the day he happened to be arrested." *Id.* As the

[9] As the prosecutor noted at trial, Lil Wayne is one of the best-selling hip-hop artists of all time. 9/28/22RP 799-800.

majority held, the shirt was "cheesy," but not unfairly prejudicial.[10] *Id.*

Nonetheless, Bellerouche and the dissent maintain that "beef," the song, and the T-shirt had the effect of "othering" Bellerouche from the jury. *See id.* at 897. As the majority observed, this would also mean "othering" Robinson and the trial judge — an unwise trial strategy, to say the least. *Id.* at 901.

To be clear, race-based prosecutorial misconduct should not be tolerated — when it exists. But the claims in this case do not merit review.

[10] By contrast, the dissent would grant a new trial based solely on the shirt. *Id.* at 960 (Coburn, J., dissenting).

### 2. THE RACIAL STEREOTYPING BELLEROUCHE ALLEGES REQUIRES ENGAGING IN OUTDATED RACIAL STEREOTYPING.

Hip-hop music was born in the Bronx 50 years ago.[11] Hip-hop music and culture are now ubiquitous and immensely popular among millions of people of many ages and races. The venerated Kennedy Center offers comparative-literature lessons for high-school students comparing hip-hop lyrics and Shakespearean sonnets.[12] Hip-hop superstar Kendrick Lamar performed the most recent Super Bowl halftime show, including his multiple-

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[11] *See* Alex Vadakul, *Old-School Fans Celebrate Hip-Hop's 50th*, New York Times, Aug. 18, 2023, available at https://www.nytimes.com/2023/08/13/style/hip-hop-50-concert.html (last accessed 7/11/2025).

[12] The Kennedy Center, *The Poetics of Hip Hop – What is the relationship between Shakespearean sonnets and hip hop music?*, available at https://www.kennedy-center.org/education/resources-for-educators/classroom-resources/lessons-and-activities/lessons/9-12/the-poetics-of-hip-hop/ (last accessed 7/14/2025).

Grammy-winning hit “Not Like Us” — a “diss track” about his well-publicized “beef” with fellow artist Drake.[13] Nudity, too, is virtually everywhere in mainstream popular culture — including imagery far more explicit than women wearing thongs.[14]

And yet, Bellerouche and the dissent maintain that the word “beef,” a popular song by Lil Wayne, and a “cheesy” T-shirt advertising French liquor evoke such objectively negative stereotypes that they could have led the jury to view Bellerouche as threatening, hypersexual,

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[13] Scotty Andrews, *“Not Like Us” started as a diss. Now, it’s a Super Bowl anthem,* CNN Entertainment, Feb. 10, 2025, available at https://www.cnn.com/2025/02/09/entertainment/not-like-us-kendrick-lamar-super-bowl-cec (last accessed 7/11/2025).

[14] Neda Ulaby, *You’re not seeing things – ‘nudity creep’ in streaming TV reveals more of its stars*, NPR, October 20, 2023, available at https://www.cfpublic.org/2023-10-20/youre-not-seeing-things-nudity-creep-in-streaming-tv-reveals-more-of-its-stars (last accessed 7/14/2025).

and violent. These notions are outdated and contrary to current cultural norms.

Both Bellerouche and the dissent invoke the "beef" between 1990s rap artists Tupac Shakur and Biggie Smalls (also known as The Notorious B.I.G.), both of whom were shot and killed in cases that have never been solved, to support the notion that the word "beef" coupled with hip-hop music evokes gang violence and negative stereotypes of young Black men. *See* Petition at 34-35; *Bellerouche*, at 945 (Coburn, J., dissenting). But these events took place nearly 30 years ago, when hip-hop music and culture were far less prevalent and mainstream.[15] Today, as noted above, a "beef" among

[15] Thomas Galindo, *Behind the Beef: The Fatal Feud Between Tupac and Notorious B.I.G.*, American Songwriter, June 23, 2023, available at https://americansongwriter.com/behind-the-beef-the-fatal-feud-between-tupac-and-notorious-b-i-g/ (last accessed 7/15/2025).

hip-hop artists produces a Grammy-winning Song of the Year rather than gun violence.[16]

As another example, Ice-T, a pioneer of "gansta rap"[17] and composer of the controversial 1992 song "Cop Killer," now stars as a police detective in a popular network show in the "Law and Order" franchise.[18] And Lil

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[16] Douglas Markowitz, *Kendrick Lamar Sweeps the 2025 GRAMMYs With Song Of The Year Win*, Grammy Awards, Feb. 3, 2025, available at https://www.grammy.com/news/kendrick-lamar-not-like-us-wins-song-of-the-year-2025-grammys (last accessed 7/15/2025).

[17] Kelly Coffey-Behrens, *Ice-T Reflects On Defining 'OG' And The Birth Of Gangsta Rap*, Yahoo Entertainment, June 10, 2025, available at https://www.yahoo.com/entertainment/articles/ice-t-reflects-defining-og-214519109.html (last accessed 7/14/2025). Ice-T's album "O.G. Original Gangster" was released in 1991.

[18] Alex Ross, *Ice-T on What Makes SVU 'Special' After 25 Seasons: 'People Walk Up in the Street and Say Thank You,'* People Magazine online, Jan. 18, 2024, available at https://people.com/ice-t-on-what-makes-law-and-order-svu-special-after-25-seasons-exclusive-8431106 (last accessed 7/14/2025); *see also* NPR Talk of the Nation, *Ice-T, From 'Cop Killer' to 'Law and Order,'* aired April 27, 2011, available at

Wayne's album "Tha Carter," which includes "I Miss My Dawgs," was released in 2004 — over 20 years ago.[19] In this day and age, the chances that the term "beef," a shirt, and a 20-year-old song by a best-selling artist evoked negative racial stereotypes are, to say the least, remote. Bellerouche's assertions are more akin to the "moral panic" of the 1950s and '60s regarding rock'n'roll[20] than they are reasonable now, after a half-century of hip-hop.[21]

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https://www.npr.org/2011/04/27/135771115/ice-t-from-cop-killer-to-law-order (last accessed 7/15/2025).

[19] Douglas Markowitz, *A Guide To All Of Lil Wayne's 'Tha Carter' Albums: Breaking Down His Journey To 'Tha Carter VI,'* Grammy Awards, June 6, 2025, available at https://www.grammy.com/news/lil-wayne-tha-carter-vi-albums-breakdown (last accessed 7/15/2025).

[20] Steve Williams, Ph.D., *Rock'n'roll and "moral panics" – Part One: 1950s and 1960s*, University of Southern Indiana, Feb. 20, 2017, available at https://www.usi.edu/news/releases/2017/02/rock-n-roll-and-moral-panics-part-one-1950s-and-1960s (last accessed 7/15/2025). Notably, one aspect of moral panic about rock'n'roll included a "fear of race mixing." *Id.*

[21] Another fair comparison is the now-laughable 1938 film "Reefer Madness," a "[c]autionary tale" wherein "drug dealers lead innocent teenagers to become addicted to

Bellerouche's claims also require taking a very dim view of the jury. Jurors "are not leaves swayed by every breath," and they are presumed to follow their instructions. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007) (quoting *United States v. Garsson*, 291 F. 646, 649 (D.N.Y. 1923)). In this case, the jurors were instructed not to let bias or prejudice influence their decision-making, and to bring it to the court's attention if they had concerns. CP 280. And, although the jurors' demographics are not part of the appellate record,[22] their answers to questions during voir dire reveal awareness of systemic bias.

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'reefer' cigarettes by holding wild parties with jazz music." IMBD, "Reefer Madness," available at https://www.imdb.com/title/tt0028346/ (last accessed 7/15/2025). Cannabis is now legal in Washington for adults over 21, even at "wild parties with jazz music." *See* RCW 69.50.325 *et seq*.

[22] Nonetheless, it is certainly fair to assume that at least some of them listen to hip-hop.

For example, prospective Juror 7 (who served on the jury as Juror 1) recognized that police may disregard exculpatory evidence if they become fixated on a suspect. 9/21/22RP 571-72. Prospective Juror 15 (who served as Juror 5) spoke about this country's history of lynchings. 9/21/22RP 557. Prospective Juror 79 (who served as Juror 7) criticized racial profiling by the police. 9/21/22RP 639-40. At Bellerouche's request, all prospective jurors were asked this question in the juror questionnaire: "Do you believe that in our society, black people are more likely to commit crime than other racial groups?" 9/12/22RP 33-34. And notably, when the parties exercised their peremptory challenges — ten challenges per side — not a single objection was raised based on GR 37. 9/22/22RP 759-57. If the State had been planning to scatter "odious breadcrumbs" of racial bias among the jury, it seems at least probable that a GR 37

issue would have arisen at some point in the jury selection process.

None of this is to say that racial bias and stereotyping no longer exists. *Of course it does*. But on *this* record, finding negative racial stereotypes in such innocuous things as "beef," an old popular song, and a shirt bearing a mildly risqué liquor advertisement requires looking backward in time and *engaging in* the very stereotyping and moral panic that Bellerouche and the dissent want to find in the prosecution. Today, even assuming the jury actually *did* associate "beef," the song, and the T-shirt with hip-hop culture, that culture is mainstream, ubiquitous, and *not* viewed negatively by most people — particularly in a metropolitan area like Seattle. These claims do not merit further review.

## F. CONCLUSION

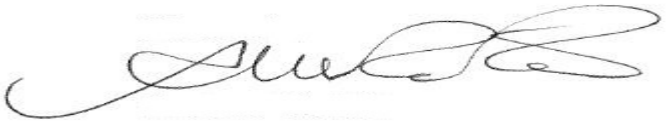
For the foregoing reasons, and for the reasons stated in the Brief of Respondent and majority opinion from the Court of Appeals, the State respectfully asks this Court to deny the petition for review.

*I certify in accordance with the Rules of Appellate Procedure that this document contains 4,993 words.*

DATED this 18th day of July, 2025.

Respectfully submitted,

LEESA MANION (she/her)
King County Prosecuting Attorney



By: _____
ANDREA R. VITALICH, WSBA #25535
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

# APPENDIX

# RESPONDENT'S MOTION TO FILE SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | |
| | ) | |
| Respondent, | ) | No. 84887-9-I |
| | ) | |
| vs. | ) | |
| | ) | RESPONDENT'S MOTION |
| BERNARD BELLEROUCHE, | ) | TO FILE SUPPLEMENTAL |
| | ) | DESIGNATION OF |
| Appellant, | ) | CLERK'S PAPERS OR |
| | ) | EXHIBITS |
| | ) | |
| | ) | |

1. IDENTITY OF MOVING PARTY

Respondent, the State of Washington, seeks the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

In accordance with RAP 9.6, the State requests leave of the Court to file a supplemental designation so

that the Superior Court clerk may transmit Exhibit 14 to this Court.

3. FACTS RELEVANT TO MOTION

At oral argument this morning, which the trial prosecutor attended, the Court repeatedly asked why the trial prosecutor had used the word "beef." After the argument, the prosecutor explained to me that it was a direct quotation from the victim, Terrance Robinson, from when he was interviewed by detectives for the second time in the investigation. *See* Declaration of Christopher Fyall, attached.

As the lead detective's report reflects, Robinson stated that there was no "beef" between him, the defendant, and the others who were present the night of the shooting. The detective's report was not admitted at trial, but it was marked as an exhibit and used to refresh his recollection.

4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 9.6 provides that a party must make a motion and request leave of the Court to file a supplemental designation of clerk's papers or exhibits after the briefs have been filed. The State requests leave of the Court to file a supplemental designation in order to provide the Court with Exhibit 14 and to answer the Court's questions about why the prosecutor used the word "beef."

*I certify in accordance with the Rules of Appellate Procedure that this document contains 240 words.*

Submitted this 13th day of September, 2024.

LEESA MANION (she/her)
Prosecuting Attorney

ANDREA R. VITALICH, WSBA #25535
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | |
| | ) | |
| Respondent, | ) | No. 84887-9-I |
| | ) | |
| vs. | ) | |
| | ) | DECLARATION OF |
| BERNARD BELLEROUCHE, | ) | CHRISTOPHER FYALL |
| | ) | |
| Appellant. | ) | |
| | ) | |
| | ) | |
| | ) | |

I, Christopher Fyall, declare as follows:

1. I am over the age of 18 years and am competent to testify. I have personal knowledge of the matters and files referenced herein.

2. I am the trial attorney for the State in the above-captioned case.

3. I attended the oral argument in this case this morning and heard the Court's questions as to why I used the word "beef" sporadically during the trial.

4. As the record reflects, the victim in this case, Terrance Robinson, was extremely reluctant to cooperate with either the investigation or prosecution of this case. As the record also reflects, he was interviewed twice by detectives, and he refused to give a recorded statement both times. I was also informed that he refused to allow defense counsel to record their pretrial interview of him.

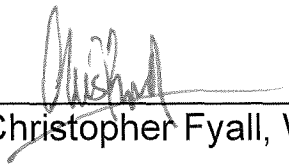
5. One of the few statements in discovery that were directly attributed to Robinson was that there was no "beef" between himself, the defendant, or the others who were present that night. He made the statement to detectives. As the lead detective's report reflects, the word "beef" is in quotation marks, meaning that that was the word Robinson used.

6. When preparing for trial in this case, I used the detective's report as reference material to write my opening statement, and to plan my trial examinations. I told the jury that Robinson and Bellerouche did not have a "beef," because that was how Robinson himself described it. I used the word in my questioning of witnesses for the same reason.

7. The detective's report that contains the word "beef" was used to refresh his recollection; it was marked as Exhibit 14.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 13th day of September, 2024 in Seattle, Washington:



Christopher Fyall, WSBA #48025

**KING COUNTY PROSECUTING ATTORNEYS OFFICE, CRIMINAL/APPELLATE UNIT**

**July 18, 2025 - 3:56 PM**

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