NO. 104403-8

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RICARDO MEJIA,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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A. ISSUES PRESENTED

1. Has Mejia failed to show that the Court of Appeals' opinion conflicts with this Court's GR 37 precedent?

2. Should this Court decline to review Mejia's claim of prosecutorial error when it relies on a misinterpretation of the record?

B. STATEMENT OF THE CASE

The State relies on the facts previously discussed in the Brief of Respondent and the Court of Appeals' unpublished opinion affirming Mejia's convictions in *State v. Mejia*, No. 86244-8-I.

C. ARGUMENT

"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 a published 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). Mejia cites all four prongs of RAP 13.4(b) but primarily argues that the Court of Appeals' opinion was inconsistent with other cases addressing GR 37.

1. THE COURT OF APPEALS' OPINION IS NOT IN CONFLICT WITH THIS COURT'S INTERPRETATION OF GR 37.

Mejia asks this Court to review the peremptory challenge of Juror 51, which he claims was improperly based on racial stereotypes and Juror 51's relationship with a prior criminal defendant. Pet. for Rev. at 4. Review is not warranted because Mejia's underlying premise is mistaken. The trial court allowed the State to excuse Juror 51 based on the undisputed fact that she was a witness in a recent unrelated trial involving the same prosecutor where she had refused her subpoena, been arrested on the State's motion for a material witness warrant, and then testified falsely at trial. *Mejia*, No. 86244-8 at 10; RP 455, 458.

This was appropriate under both this Court's precedent and the plain language of GR 37.

GR 37 was designed to prevent the improper use of peremptory challenges based on racial stereotypes. *State v. Tesfasilasye*, 200 Wn.2d 345, 356, 518 P.3d 193 (2022). A "stereotype" is "a trait imposed on a group of people based on a shared characteristic such as race or ethnicity." *State v. Lahman*, 17 Wn. App. 2d 925, 936-37, 488 P.3d 881 (2021). But as the Court of Appeals observed, the challenge of Juror 51 was based on the prosecutor's personal experience with Juror 51, "not…on racial stereotypes or generalizations." *Mejia*, No. 86244-8 at 10. The prosecution of Juror 51's ex-boyfriend, in which she was a witness, was simply the circumstance within which her misconduct occurred.

This Court has never held, nor does the plain language or drafting history of the rule suggest, that GR 37 was intended to govern antagonistic personal relationships. *See State v. Orozco*, 19 Wn. App. 2d 367, 376, 496 P.3d 1215 (2021) ("Personally

prosecuting a prospective juror…supports a prosecutor's decision to remove that person from the jury"). Likewise, this Court has never held that GR 37 was intended to prevent peremptory challenges based on a juror's *actual misconduct*.

Mejia repeatedly refers to the prosecutor's concern that Juror 51 might sabotage the trial if empaneled, which he claims invoked the racist stereotype of Black women as "deceptive" and "untrustworthy." Pet. for Rev. at 22, 28. Whether that was actually Juror 51's plan is unknown and unknowable. What matters here is that the prosecutor's belief was based on Juror 51's attempt to sabotage his *last* trial, not on the sort of racial stereotypes with which GR 37 is primarily concerned. Because this justification was predicated on Juror 51's individual conduct, an objective observer could not have determined that race played a factor in the prosecutor's challenge.

Mejia also claims the decision below conflicts with this Court's statement in *State v. Bell*, __ Wn.3d __, 571 P.3d 272, 278 (2025), that "a party's intent when exercising a peremptory

challenge is not part of a court's analysis…because the court must consider the optics of the challenge from an objective observer's position." *Mejia* does not violate the principles discussed in *Bell*.

As an initial matter, the facts in *Bell* are highly distinguishable. The peremptory challenge in *Bell* was based on a juror's admission that they were not paying attention during voir dire. 571 P.3d at 275. This was problematic because: (1) "[s]everal jurors…struggled to answer some questions" but were not challenged; (2) the record lacked "concrete evidence regarding [the juror's] attentiveness"; and (3) "inattentiveness" has historically been used as a basis for discriminatory challenges. *Id.* at 273-78. Unlike in *Bell*, the rationale for excusing Juror 51 was unique in the venire, amply supported by the record, and not historically associated with bias.

Furthermore, the Court of Appeals did not simply rely on the prosecutor's subjective intent but instead properly applied the "objective observer" standard and considered the relevant

factors from GR 37(h). *Mejia*, No. 86244-8 at 10. The optics of excusing a juror who disobeys court orders, lies under oath, and whom the trial prosecutor had jailed, would not be concerning even to someone "aware that implicit, institutional, and unconscious biases…have resulted in the unfair exclusion of potential jurors." GR 37(f).

While the facts in *Mejia* are unusual, the trial court's application of GR 37 was consistent with this Court's precedent and the plain language of the rule. Review is not warranted.

2. THE BARE FACT THAT THE PROSECUTOR REFERRED TO JUROR 51 AS "HOSTILE" DOES NOT CREATE A CONFLICT WITH *HENDERSON V. THOMPSON*, *INFRA*.

Mejia accused the prosecutor of using "racially charged language" implicating the "angry Black woman" stereotype because he referred to Juror 51 as "hostile." Br. of Appellant at 3, 16-17, 32. The prosecutor initially referred to Juror 51 as "a hostile witness in our trial" while explaining his experience with her to the court. RP 261. Juror 51 had also been unhappy

at even being asked to testify, with the prosecutor recalling their conversation as "very hostile" in his declaration. CP 43. Mejia claims that the Court of Appeals' refusal to find error on this basis conflicts with *Henderson v. Thompson*, 200 Wn.2d 417, 424-25, 518 P.3d 1011 (2022). Pet. for Rev. at 24.

Henderson is readily distinguishable because that case involved an argument before a jury, whereas this case involved a conversation with a judge without any jurors present. The problem described in *Henderson*—that the defendant's lawyer "primed the jurors with appeals to racial bias"—is not at issue here. *Id.* at 436. Furthermore, describing the plaintiff in *Henderson* as "combative" was just one part of a broader pattern of misconduct, including the use of "us-versus-them descriptions," that "invited the jury to make decisions on improper bases like prejudice or biases about race, aggression, and victimhood." *Id.* Nothing of the sort occurred in this case.

Henderson did not redefine common descriptors like "angry" or "hostile" as racist in every case involving women of

color. Br. of Appellant at 32. While Mejia suggests prosecutors should recount conversations verbatim rather than describe them in such general terms, that might be either impractical or inconsistent with courtroom decorum. Pet. for Rev. at 26. The record also shows that Juror 51 was a classic "hostile witness" as the technical legal term is used—she was called by the State but was adverse to its interests. *Black's Law Dictionary*, 1633 (8th Ed. 2004). Nothing about the term's etymology or practical use is founded on racist generalizations, and Mejia's contrary argument relies on a reductive reading of *Henderson*. Review is not warranted.

3. MEJIA'S PROSECUTORIAL MISCONDUCT CLAIM RELIES ON A MISINTERPRETATION OF THE RECORD.

Mejia argued that the prosecutor committed misconduct in summation by commenting on his right to remain silent in the face of police questioning. *Mejia*, No. 86244-8 at 20. The Court of Appeals passed on whether error occurred and simply found the issue unpreserved because Mejia failed to object.

Mejia asks this Court to accept review and apply RAP 2.5(a)(3) instead of the normal prosecutorial error standard. Pet. for Rev. at 31-32.

Review is not warranted in this case. First, the Court of Appeals did not, as Mejia suggests, make an implied finding of error. It simply elected to address waiver first because that issue was dispositive. In any event, Mejia's underlying complaint relies on a misinterpretation of the facts. As explained below, the prosecutor was discussing Mejia's refusal to speak with civilian victims, where the right to silence does not apply.

a. The Court of Appeals Did Not Find Misconduct.

Mejia claims the Court of Appeals "implicitly agreed" that the prosecutor committed misconduct below. Pet. for Rev. at 5. This is incorrect. Rather, the court stated that Mejia's claim failed "even if he could show the prosecutor's statements were improper." *Mejia*, No. 86244-1. The court in effect skipped any discussion of the merits because another aspect of

the analysis was dispositive. This is not uncommon and does not imply an unspoken ruling on issues that were not addressed. *See*, *e.g.*, *State v. Crow*, 8 Wn. App. 2d 480, 507, 438 P.3d 541 (2019) (in ineffective assistance of counsel context: "[i]f one prong of the test fails, we need not address the remaining prong").

b. Mejia's Argument Relies on a Misinterpretation of the Prosecutor's Argument.

Although a prosecutor generally cannot comment on a defendant's decision to remain silent, this rule does not apply to interactions between the accused and non-State actors. *State v. Valpredo*, 75 Wn.2d 368, 370, 450 P.2d 979 (1969); *State v. Heritage*, 152 Wn.2d 210, 216, 95 P.3d 345 (2004). Considered in context, the prosecutor was referencing Mejia's failure to speak candidly with the civilian victims.

Although the statement about Mejia declining to explain himself "[a]fter he was arrested" sounds problematic in isolation, the State's theory was that the California arrest *never happened*, nor was there any evidence Mejia was arrested in Washington. The State argued that the "arrest" was part of the fraud, designed to explain Mejia's failure to provide the immigration documents the victims had paid for. RP 1231-32. The prosecutor's point was that if Mejia had actually been an unwitting accomplice as he claimed, he would have eventually explained himself to the victims. This argument was methodically supported by the trial testimony, with the prosecutor asking almost every civilian victim whether Mejia had ever spoken to them about being misled or offered to go to the police. RP 792, 887-90, 981, 1093.

The prosecutor's argument was not improper. This Court should deny review.

D. CONCLUSION

For all the foregoing reasons, this Court should deny Mejia's petition for review.

I certify this document contains 1,774 words, excluding those portions exempt under RAP 18.17.

DATED this 14th day of August, 2025.

Respectfully submitted,

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KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

August 14, 2025 - 10:10 AM

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Appellate Court Case Title:	State of Washington v. Ricardo Mejia

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