Supreme Court No. _____
Court of Appeals No. 59800-1-II

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,

Respondent,

v.

QUAN CELESTINE,

Petitioner.

PETITION FOR REVIEW

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INTRODUCTION

A juror's negative feelings about their past experiences with police or courts do not make them incapable of being fair. Yet that is exactly what the court ruled when it excluded Juror 23 from service, and this Court must address it.

Juror 23, a person of color, was falsely accused of a crime, his child custody case was mishandled, and his murdered brother was maligned by police as a perpetrator rather than a victim. Though the juror did not like being in court due to those experiences, he did not say he could not be fair. In fact, he said he believed good things could come out of the courtroom.

The trial court found Juror 23 was unable to be impartial solely because he had had those experiences. Past negative experiences with courts and police have historically been used to unfairly exclude jurors from service based on race. General Rule (GR) 37 seeks to address that by forbidding attorneys from relying on these reasons for peremptory strikes. Challenges for cause, no less than peremptory strikes, may not

be based on reasons historically used to discriminate on the basis of race. Negative experiences with police or courts, without more, do not make a juror unable to be fair.

Review is warranted to address this significant constitutional issue of substantial public importance. RAP 13.4(b)(3), (4). This Court should also resolve a conflict in the Court of Appeals: whether the government can prosecute violations of no-contact orders entered at arraignment for since-dismissed cases. RAP 13.4(b)(2)-(4).

IDENTITY OF PETITIONER AND DECISION BELOW

Appellant Quan Celestine asks this Court to review the decision of the Court of Appeals in *State v. Celestine*, No. 59800-1-II, (July 15, 2025), attached as Appendix A.

ISSUES PRESENTED FOR REVIEW

1. One of the few jurors of color in this case said he had had negative experiences with police and courts, including being falsely accused of a crime. The juror never said he could not be fair. GR 37 prohibits attorneys from relying on jurors'

negative experiences with police or courts to justify peremptory strikes, because those reasons have historically been used to unfairly exclude jurors based on race. GR 37(h). Yet the court dismissed this juror for cause at the prosecution's request, concluding his experiences made him incapable of being fair. Should this Court grant review to address the unanswered question whether reasons historically associated with the unfair exclusion of jurors on the basis of race can justify for-cause strikes without other evidence the juror cannot be fair?

2. The Court of Appeals has said the government may not prosecute violations of no-contact orders that are no longer in effect. It also held a no-contact order entered at arraignment automatically expires when the underlying charge is dismissed. The Court of Appeals upheld Mr. Celestine's conviction for violating a no-contact order, concluding the order remained in effect even though the underlying charges were dismissed. Should this Court resolve the conflict regarding whether the prosecution can punish violations of expired no-contact orders?

STATEMENT OF THE CASE

a. The government prosecuted Mr. Celestine for violating a no-contact order entered at arraignment on charges it later dismissed for lack of evidence.

Mr. Celestine, who is a Black man, lived in Oregon and made his living as a truck driver. CP 4; RP 26. In 2020, the State of Washington charged him with two counts of harassment for conduct that allegedly occurred between him and his partner, Braunia McKinney, and another person in Clark County. CP 1.

When Mr. Celestine, who lived out of state, did not appear, a warrant was issued. CP 3; RP 8. Three years passed, and Mr. Celestine and Ms. McKinney had two kids. RP 273.

In March 2023, Mr. Celestine was arrested and a no-contact order was issued at arraignment. CP 8, 109. Ms. McKinney asked the court to rescind the order, but the court refused, citing its policy not to end such orders. RP 492.

Ms. McKinney then reached out to Mr. Celestine through the jail's phone and text message system to discuss their kids.

Ex. 6. Mr. Celestine responded saying he could not talk to her because of the no-contact order, and that she needed to go to "the courthouse" and ask the judge to drop the order if she wanted it dropped. RP 337. He also told her to tell his attorney she would not testify against him. RP 340.

Based on these communications, the prosecution charged Mr. Celestine in August 2023 with tampering with a witness and five counts of violating a no-contact order. CP 12-15. Mr. Celestine was slated to go to trial in November 2023. RP 51.

But, the prosecution dismissed the 2020 harassment charges on the eve of trial. RP 52-53. The prosecution explained the evidence was "stale," so it was not in its "interest" to proceed. *Id.* It offered no explanation how that stale evidence had justified the arrest just months before.

Mr. Celestine did not think it was "necessarily possible to have this trial" after the prosecution dismissed the harassment charges. RP 88-89. Nevertheless, the trial proceeded.

b. During voir dire, the court struck a juror of color for cause solely because he had had negative experiences with police and courts.

At voir dire, the defense asked the jurors to talk about life experiences that shaped their worldview. RP 178. Juror 23, a juror of color, responded he was "not a big fan of coming to court." RP 178, 187. He explained he had been falsely accused of domestic violence in the past. RP 187. He said he tried to get full custody of his son, but did not get it, even after expressing concerns for his son's safety. *See* RP 178, 187. And he stated his brother had been murdered, but that police and media had called his brother an "intruder" instead. RP 178, 187.

Despite these experiences, the juror said he thought "life's fair sometimes," and "sometimes things happen to good people and sometimes life doesn't turn out that way." RP 179. And he said, "I like to think there's still some good things that have come out of the courtroom." *Id.*

Neither the court nor the prosecution asked Juror 23 any follow-up questions. Rather, the prosecution immediately

requested to strike the juror for cause. RP 186. The prosecutor argued the juror "has essentially no faith in the justice system." *Id.* The prosecution emphasized it believed the juror's tone was "borderline angry at the entire system." RP 187.

Mr. Celestine responded that these were impermissible reasons to strike the juror for cause. RP 187-89. He emphasized this was a juror of color who had "experienced firsthand some of these injustices" that Mr. Celestine had. RP 187-88. Citing GR 37, Mr. Celestine argued reasons that cannot justify peremptory strikes under that rule are not valid reasons for for-cause challenges. *See* RP 189.

The court nevertheless struck Juror 23 for cause. RP 192. It stated it did not believe the juror could "impartially try the matter . . . based on everything he said." *Id.* It noted the juror cited to "three or four different events" where he believed the court made "unjust decisions." *Id.* And it emphasized the juror believed "the court system doesn't get it right" and "wrong decisions . . . occur." *Id.* In the court's view, those experiences

meant "he can't try the case impartially." *Id.* It cited no other basis for the ruling.

The court's treatment of Juror 23 contrasted with how it handled Mr. Celestine's objection to Juror 22 for cause. Juror 22 stated she was a past victim of domestic violence, so the case would "trigger" her. RP 196. She went so far as to say it would be "hard for her to be fair and impartial" to Mr. Celestine. *Id.* Yet the court did not strike her, saying she "didn't go as far as saying" she could not be fair. RP 196-97.

Ultimately, Mr. Celestine, a Black man, was convicted of all the charges by a largely white jury. RP 443; CP 57-62.

c. The Court of Appeals affirmed.

Mr. Celestine appealed, arguing the court erred by striking Juror 23 for his negative experiences with police and courts. Brief of Appellant (App. Br.) at 11-28. He explained that negative feelings about police or courts do not make a person unable to be fair. *Id.* at 18. It is presumptively invalid under GR 37(h) to exercise a peremptory strike against a juror

on that basis, as that is a justification historically associated with unfair exclusion of jurors on the basis of race. *Id.* at 14, 24-25. He argued a court cannot strike a juror for cause solely because a juror had those experiences, as that results in the same type of unfair exclusion based on race. *Id.* at 26.

The Court of Appeals rejected his argument, applying a deferential abuse of discretion standard. Opinion 8-13.

The Court of Appeals acknowledged trial courts should be "mindful" of GR 37's presumptively invalid reasons when determining the basis for a for-cause challenge. Opinion 11. But it determined the court did not strike Juror 23 for any reasons that fit "squarely" into GR 37's presumptively invalid reasons. Opinion 12. In regards to Mr. Celestine's argument the juror had negative feelings about police, the Court said there was a lack of "direct evidence" the juror had "his own contact" with law enforcement. *Id.* And it rejected Mr. Celestine's argument that the juror's views about the court system more broadly were historically correlated with race. Opinion 12-13.

Mr. Celestine also argued the government was not authorized to prosecute him for violating the no-contact order. App. Br. 36-42. Under *State v. Anaya*,[1] the Court of Appeals held pretrial no-contact orders entered at arraignment expire immediately when the underlying charges are dismissed. App. Br. 39-40. And it held, in *City of Tacoma v. Cornell*,[2] that the government is not authorized to charge a person with violating a no-contact order that is no longer in effect, even if the order was in effect when the alleged contact occurred. App. Br. 37.

The Court of Appeals rejected this too. It disagreed with *Anaya*, stating the no-contact order "was never *declared* to be invalid," meaning "it remained in effect through trial." Opinion 17 (emphasis added). And it disagreed with *Cornell*, stating Mr. Celestine had allegedly "violated the protection order before the underlying harassment charge was dismissed." *Id.*

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[1] 95 Wn. App. 751, 976 P.2d 1251 (1999).

[2] 116 Wn. App. 165, 64 P.3d 674 (2003).

ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. The intersection of GR 37 and challenges for cause is an important issue warranting review.

A court may not exclude a juror from service based on race. This Court has made great strides in remedying historical discrimination in jury selection by enacting GR 37. Under GR 37, reasons historically associated with discrimination based on race are presumptively invalid bases for peremptory strikes.

Yet in this case, the trial court struck a juror of color for those exact reasons historically associated with discrimination: his past negative experiences with police and the courts. The court identified no independent basis to find the juror could not be fair. Rather, the court believed the juror could not be fair solely *because* he had had those experiences.

Attorneys cannot exercise peremptory strikes against jurors for being people of color in an unfair system. As this Court recognizes and GR 37 effectuates, upholding such strikes condones further discrimination. A for-cause challenge based on those very same reasons is just as wrong. This Court must

express that jurors cannot be excluded solely for reasons historically associated with racial discrimination in jury selection. RAP 13.4(b)(3), (4).

a. GR 37(h) forbids striking jurors based solely on their negative experiences with police or courts, as such justifications were historically used to unfairly exclude jurors on the basis of race.

The long-established purpose of the right to a trial by jury is to provide the accused judgment by "a body truly representative of the community." *Smith v. State of Texas*, 311 U.S. 128, 130, 61 S. Ct. 164, 85 L. Ed. 84 (1940). Diverse juries bring varied perspectives to the deliberation room, promoting more thoughtful verdicts and broader participation in our democratic system. *State v. Saintcalle*, 178 Wn.2d 34, 49-50, 309 P.3d 326 (2013), *abrogated by City of Seattle v. Erickson*, 188 Wn.2d 721, 398 P.3d 1124 (2017).

Racial discrimination in jury selection is thus "at war with our basic concepts of a democratic society and a representative government." *Smith*, 311 U.S. at 130. A person's race "is unrelated to his fitness as a juror." *Batson v. Kentucky*,

476 U.S. 79, 87, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986) (citing *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 227, 66 S.Ct. 984, 90 L.Ed. 1181 (1946) (Frankfurter, J., dissenting)). To uphold racial discrimination in jury selection hurts the "entire community" and "undermine[s] public confidence in the fairness of our system of justice." *Batson*, 476 U.S. at 87.

Batson, which sought to eliminate purposeful discrimination from jury selection, proved insufficient to curb a more subtle, yet more pervasive, form of racism: subconscious bias. Even a well-meaning attorney's "unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically." *Batson*, 476 U.S. at 106 (Marshall, J., concurring).

This Court enacted GR 37 to "eliminate the unfair exclusion of potential jurors based on race or ethnicity" arising from implicit, institutional, and unconscious biases. GR 37(a), (f); *State v. Bell*, ___ Wn.2d ___, 571 P.3d 272, 277 (2025).

GR 37 identifies a number of oft-repeated justifications for peremptory strikes that are "highly correlated with race and [which] have been used historically to exclude people of color from jury service." *State v. Tesfasilasye*, 200 Wn.2d 345, 358, 518 P.3d 193 (2022) (quotation marks omitted) (citing Proposed New GR 37—Jury Selection Workgroup, Final Report at 31 (2018)). These reasons are presumptively invalid because they "are not accurate indicators of a person's fitness to serve[]." *Id*. They include prior contact with police, a distrust of police or a belief that the police engage in racial profiling, and having a close relationship with people who have been stopped, arrested, or convicted of crimes. GR 37(h)(i)-(iii).

b. Jurors who have had negative experiences with police or courts are not categorically incapable of judging cases fairly and cannot be excluded for cause on that basis.

Outside the context of peremptory challenges, jurors may only be excluded for cause. RCW 4.44.170. Excepting medical disqualifications and known conflicts of interest, cause means

actual bias: a state of mind satisfying the court the person "cannot try the issue impartially." RCW 4.44.170(2).

A mere opinion is not actual bias: the court must find "the juror cannot disregard such opinion and try the issue impartially" to exclude them from service. RCW 4.44.190.

Judges deciding for-cause challenges are unfortunately just as susceptible to unconscious bias as attorneys are when deciding peremptory strikes. *See Batson*, 476 U.S. at 106 (Marshall, J., concurring). As one appellate judge reflected, studies show judges "rely extensively on intuition" when making decisions, risking "racially biased distortions in the administration of justice." Michael B. Hyman, *Implicit Bias in the Courts*, 102 Ill. B.J. 40, 44 (2014).

As a result, research shows the "same racial discrepancies that have been documented in the use of peremptory strikes exist in the use of challenges for cause." Thomas Ward Frampton, *For Cause: Rethinking Racial Exclusion and the American Jury*, 118 Mich. L. Rev. 785, 792

(2020). A number of empirical studies show jurors of color are disproportionately excluded for cause. *Id.* at 792 n.36 (discussing Mary Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 Law & Hum. Behav. 695, 697-98 (1999), and Ronald F. Wright et al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, U. Ill. L. Rev. 1407, 1426 (2018)).

This is why this Court cannot let stand the trial court's reliance on reasons historically associated with racial bias to exclude Juror 23 from service. The court here decided this juror "can't try the case impartially" because the juror believed, based on "three or four different events" in his life, that "wrong decisions . . . occur." RP 192. The juror never said he could not try the case impartially, and the court never followed up to ask. In fact, the juror stated he thought life was fair "sometimes" and that "good things . . . have come out of the courtroom." RP 179.

Juror 23 was not wrong: the criminal legal system is not always fair. People of color suffer disproportionately worse

outcomes in this system. "Our Black, Indigenous, and other People of Color communities are arrested, searched, and charged at significantly higher rates than White communities, and therefore are more likely to know someone who has a close relationship with someone who has had contact with the criminal legal system." *Tesfasilasye*, 200 Wn.2d at 358.

And jurors of color are "underrepresented in nearly all Washington jury pools," so juries "do not reflect the racial makeup of the counties in which they live." *Bell*, 571 P.3d at 286 (Mungia, J., concurring) (citing Peter A. Collins & Brooke Miller Gialopsos, *An Exploration of Barriers To Responding to Jury Summons* 7 (June 24, 2021)).[3]

Excluding jurors from serving because they have had unfair experiences in an unfair system greatly exacerbates these inherent inequalities. The converse is, of course, not allowed:

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[3] Available at https://www.courts.wa.gov/subsite/mjc/docs/2021_Jury_Study_Final_Report.pdf.

jurors are not automatically excluded for believing police and courts are largely fair. *See State v. Irby*, 187 Wn. App. 183, 196, 347 P.3d 1103 (2015) (concluding juror who stated she was "predisposed to believe police officers" was not actually biased because she said she would "try" to set that aside); *State v. Griepsma*, 17 Wn. App. 2d 606, 614, 490 P.3d 239 (2021) (finding jurors who expressed "a mere preference in favor of police testimony" were not actually biased).

Juror 23 came to this venire with a different perspective than the vast majority of white jurors. He had "experienced firsthand some of these injustices" that Mr. Celestine had. RP 188. Our system favors juries precisely because they bring to bear a diverse set of life experiences to deliberations. *Saintcalle*, 178 Wn.2d at 49-50. It contravenes the purpose of a jury trial to entirely exclude perspectives that are highly correlated with race and ethnicity and that derive from the jurors' own lived experiences.

Indeed, it is particularly illogical to assume a juror of color who has experienced unfairness in the legal system cannot be fair. Rather, a juror's lived experience in an unfair system may well lead them to be "particularly attentive to making sure that they perform their function impartially." *Mason v. United States*, 170 A.3d 182, 187 (D.C. 2017) (holding that the belief that the criminal legal system is unfair to people of color is "not a basis to disqualify a juror" for cause).

This is why GR 37(h) exists: it expressly states that certain reasons, particularly those associated with a juror's past "contact with the criminal legal system," are not even sufficient to justify a peremptory strike because they are entirely divorced from a juror's fitness to serve. *Tesfasilasye*, 200 Wn.2d at 358.

So the trial court's conclusion that somehow one of those reasons could, on its own, render a juror inherently incapable of being fair subverts all the work this Court has done to eliminate racial bias from jury selection. It allows parties like the prosecution here to avoid the strictures of GR 37 by citing the

same forbidden reasons but asking for a for-cause strike instead. Ultimately, to uphold the exclusion of Juror 23 exacerbates the very inequality GR 37 is meant to correct.

This Court must grant review to express that trial courts may not find a juror inherently incapable of being fair solely because the juror has had negative experiences with police and courts. RAP 13.4(b)(3), (4).

c. As this Court recognized in Bell, appellate courts must not defer to subjective impressions of demeanor and tone, such as the impression that the juror of color at issue here seemed "angry."

In rejecting Mr. Celestine's appeal, the Court of Appeals deferred to the trial court's conclusions using an abuse of discretion standard. Opinion 8-13. This too requires this Court's intervention. RAP 13.4(b)(3), (4).

GR 37's innovation is the "objective observer" standard. GR 37(e). If an objective observer aware of implicit, institutional, and unconscious biases "could view" race or ethnicity as a factor in a peremptory strike, the court must deny the strike. *Id.* Courts must err on the side of allowing jurors to

serve because GR 37 is "overinclusive." *Bell*, 571 P.3d at 277. To effectuate these goals, appellate courts review the legal question whether an objective observer "could view" race or ethnicity as a factor de novo. *Id.* at 276.

The objective observer standard has since been adopted by this Court in a number of contexts. *State v. Berhe*, 193 Wn.2d 647, 665, 444 P.3d 1172 (2019) (racial bias during jury deliberations); *State v. Zamora*, 199 Wn.2d 698, 718, 512 P.3d 512 (2022) (prosecutorial misconduct implicating racial or ethnic bias); *State v. Sum*, 199 Wn.2d 627, 631, 511 P.3d 92 (2022) (seizure inquiry). This widespread adoption reflects this Court's commitment to rooting out racial bias from the courtroom wherever it arises.

An abuse of discretion standard is antithetical to this commitment. As this Court recognized in *Bell*, the Court used to apply a deferential standard to *Batson* challenges, and this "did little to prevent racial discrimination in the exercise of peremptory challenges." 571 P.3d at 276. Under GR 37, a

judge's impressions and interpretations of jurors' responses are not "factual findings" but subjective impressions this Court understands may well reflect internal biases. *Id.* at 276-77.

Similarly, when a judge purports to strike a juror for 'cause' solely due to reasons historically correlated with race, this is not a "factual finding." *Id.* at 276. It is an erroneous legal conclusion that deserves no deference, since as a matter of law those experiences alone do not make a juror actually biased.

It is no answer that the trial court is in the best position to observe the juror's demeanor. Opinion 9, 13. Subjective impressions of juror demeanor have "historically been associated with improper discrimination in jury selection in Washington State." GR 37(i). "[D]emeanor-based justification[s] . . . may effectively disguise racial bias." *Bell*, 571 P.3d at 278 (citing *Saintcalle*, 178 Wn.2d at 93 (González, J., concurring)). For example, historically attorneys alleged jurors of color "exhibited a problematic attitude" to justify peremptory strikes. GR 37(i).

So to defer to a judge's subjective impressions of demeanor is to defer to subconscious racism. For example, while the court here did not explicitly state it was relying on a demeanor-based justification to remove Juror 23, the prosecutor underscored the juror had a "borderline angry" tone. RP 187. The Court of Appeals then emphasized the juror's tone as part of the constellation of facts to which it deferred, even spotlighting it with italics. Opinion 5, 12.

Describing a juror of color as "angry" invokes racial stereotypes and is the type of characterization "that would not have come to [the prosecutor's] mind if a white juror had acted identically." *Batson*, 476 U.S. at 106 (Marshall, J., concurring). *Cf. State v. Hawkins*, 200 Wn.2d 477, 500 & 500 n.17, 519 P.3d 182 (2022) (noting the racial bias inherent in court's description of a Black female defendant as "hostile"); Equal Justice Initiative, *Illegal Race Discrimination in Jury Selection: A*

Continuing Legacy (August 2010) at 23, 30 (noting prosecutors frequently strike jurors of color by saying they are "hostile").[4]

Stripping deference from this case reveals what an objective observer could easily recognize: the prosecutor and court relied on improper race-based justifications for this strike.

Most glaringly, the court repeatedly mischaracterized Juror 23's statements, 'remembering' the juror saying the opposite of what he actually said. "Implicit bias in judges . . . can inhere in unintentional misremembering of facts in racially biased ways." Anna Roberts, *(Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 Conn. L. Rev. 827, 837 (2012) (cleaned up and citation omitted).

For example, the prosecutor characterized Juror 23 as having "essentially no faith" in the system, and the court adopted that characterization by saying the juror believed "the

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[4] Available at https://eji.org/wp-content/uploads/2019/10/illegal-racial-discrimination-in-jury-selection.pdf.

court system doesn't get it right." RP 186, 192. But what the juror actually said was "there's still some good things that have come out of the courtroom." RP 179.

Another time, the court recalled the juror said, "life *isn't* fair sometimes; sometimes bad things happen to good people." RP 191 (emphasis added). But the juror actually said, "*[l]ife's fair* sometimes and sometimes things happen to good people." RP 179 (emphasis added).

The court also treated the challenge to Juror 23 differently from challenges to other jurors who gave similar answers. GR 37(g)(iii) (requiring courts to consider whether "other prospective jurors provided similar answers but were not the subject of a peremptory challenge"). Juror 22 stated it would be "hard" to be fair because she was a domestic violence *victim*. RP 196. The court denied Mr. Celestine's challenge to that juror because she "didn't go so far as saying that she couldn't . . . be fair and impartial." RP 196-97. But Juror 23 also never went so far as saying he could not be fair and

impartial, and yet the court still struck him. That disparity in treatment reflects the trial judge's inadvertent reliance on racial bias to exclude Juror 23, a juror of color, from service.

This important constitutional question of significant public interest warrants review. RAP 13.4(b)(3), (4). It is not acceptable for a court to remove a juror for reasons historically associated with race-based discrimination, whether the exclusion is via peremptory strike or a challenge for cause.

2. The Court should grant review to resolve the conflict in the Court of Appeals regarding whether the government is authorized to prosecute violations of expired no-contact orders.

This Court should also review an issue on which several divisions of the Court of Appeals have diverged: the extent of the governmnent's authority to prosecute people for violating no-contact orders that are no longer in effect at trial. RAP 13.4(b)(2). This is a constitutional issue of significant public interest requiring guidance. RAP 13.4(b)(3), (4).

In *City of Tacoma v. Cornell*, 116 Wn. App. 165, 64 P.3d 674 (2003), Division II addressed the governmnent's ability to

prosecute a violation of a protection order that was no longer in effect. There, a court vacated a temporary protection order, but the govermnent still sought to prosecute the accused for contact that had allegedly occurred before the order was vacated. *Id.* at 166-68. The Court of Appeals found the govermnent had "no underlying basis" to charge a violation of an order "after the order has been vacated, even if the alleged violation occurred while the order was in effect." *Id.* at 170.

Here, no order was in effect when Mr. Celestine was prosecuted because the no-contact order entered at arraignment expired upon the dismissal of the underlying charges. *State v. Anaya*, 95 Wn. App. 751, 976 P.2d 1251. In *Anaya*, Division I held a no-contact order entered at arraignment is not a basis for prosecution once the underlying case has been dismissed. *Id.* at 757. Those no-contact orders are "in fact dependent on that charge proceeding to trial" and "expire[] upon the dismissal" of the underlying charge. *Id.* at 757, 760.

Yet the Court of Appeals concluded this prosecution against Mr. Celestine for violating an expired no-contact order was valid—a conclusion it could only reach by diverging from *Anaya* and *Cornell*. It rejected *Anaya* by finding the no-contact order in Mr. Celestine's case was "never *declared* to be invalid," thus finding the order "remained in effect through trial." Opinion 17 (emphasis added). And it discounted *Cornell*, stating Mr. Celestine allegedly violated the no-contact order "before the underlying harassment charge was dismissed" even though *Cornell* rejected such prosecutions. Opinion 17.

Mr. Celestine's panel is not the only one to diverge from *Anaya* and *Cornell*. Division III also upheld a prosecution for violating a pretrial no-contact order after the original charges were dismissed. *State v. Young*, 31 Wn. App. 2d 1037, 2024 WL 2974186, at *3 (June 13, 2024) (cited under GR 14.1(a)).

Not only are the divisions in conflict, but the extent of the government's power to prosecute is a significant issue of constitutional dimension. RAP 13.4(b)(3)-(4).

Cornell illustrates the sound proposition that although the prosecution has wide latitude to bring criminal charges, there are instances where, on "balance," it ought not wield that power. 116 Wn. App. at 171 n.8. In *Cornell*, the govermnent could not secure a valid restraining order yet sought to punish someone for violating it anyway. *Id.* Here, the govermnent incarcerated Mr. Celestine on charges it deemed "stale" a few months later. RP 52-53. Yet it still sought to punish him for contact with Ms. McKinney, who emphatically opposed the order, from communications it was only privileged to surveil because it was holding Mr. Celestine on the stale charge. RP 52-53, 492. On balance, the govermnent should not have filed the violation charges, and it was not authorized to prosecute for them once the no-contact order expired.

The Court of Appeals has diverged about the significant constitutional question whether the govermnent can prosecute people for violating expired no-contact orders, requiring this Court's intervention to resolve the conflict. RAP 13.4(b)(2)-(4).

CONCLUSION

For the foregoing reasons, this Court should grant this petition for review.

This brief is in 14-point Times New Roman, contains 4957 words, and complies with RAP 18.17.

Respectfully submitted this 7th day of August, 2025.

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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. QUAN HILARIO CELESTINE, Appellant.	No. 59800-1-II UNPUBLISHED OPINION

MAXA, J. – Quan Celestine appeals the trial court's order granting the State's motion to dismiss a juror for cause and his convictions for witness tampering – domestic violence and five counts of protection order violation – domestic violence.

Celestine was charged with harassing BM, his intimate partner. The court entered a no-contact order. Celestine then sent several text messages to BM from jail instructing her to tell his attorney that he did not threaten her and that she should not testify against him in court, among other things. The State charged Celestine with witness tampering under RCW 9A.72.120(1) and with five counts of protection order violation.

During voir dire, juror 23, a person of color, said that he was not a big fan of being in court. He shared the negative experiences that he and his family members had with the legal system, including being accused of domestic violence. The State challenged juror 23 for cause

under RCW 4.44.17●(2), arguing that he demonstrated actual bias. The trial court granted the State's motion.

GR 37(h)(i)-(iii) states that having prior contact with law enforcement officers, expressing distrust of law enforcement, and having a close relationship to people who have been stopped, arrested, or convicted of a crime all are presumptively invalid reasons for a *peremptory* challenge against a juror. Celestine argues that the presumptively invalid reasons in GR 37(h) should be applied to for cause challenges as well.

Celestine also argues that his witness tampering conviction must be dismissed because RCW 9A.72.12●(1) defines an alternative means crime and there was insufficient evidence to prove that Celestine induced BM to absent herself from the proceedings under RCW 9A.72.12●(1)(b), and that his violation of protection order convictions must be reversed because the protection order was dismissed before trial.

We hold that (1) although the trial court should be mindful of GR 37(h) when addressing for cause challenges, based on the plain language of the rule, GR 37(h) does not create a presumption that the circumstances listed in the rule are invalid reasons to support a for cause challenge; (2) the trial court did not abuse its discretion when it granted the State's motion to strike juror 23 for cause; (3) regardless of whether RCW 9A.72.12●(1) defines an alternative means crime, there was sufficient evidence to prove that Celestine induced BM to absent herself from the proceedings under RCW 9A.72.12●(1)(b); (4) Celestine's argument that his protection order violation convictions should be reversed because the protection order no longer was in effect at the time of trial has no merit; (5) there is a scrivener's error in the judgment and sentence regarding the no-contact order that must be corrected; and (6) as the State concedes, community custody supervision fees must be stricken.

Accordingly, we affirm Celestine's convictions, but we remand for the trial court to correct the scrivener's error and to strike the community custody supervision fee in the judgment and sentence.

FACTS

Background

In 2020, the State charged Celestine with harassment against BM and another person named Michael. A bench warrant issued for Celestine's arrest based on the harassment charge.

On March 13, 2023, Celestine appeared in court for a warrant hearing. The trial court entered a pretrial no-contact order. The order prevented Celestine from contacting BM by phone, mail, or electronic means, among other things. The no-contact order remained in place through the time of sentencing.

On March 17, Celestine sent the following text message to BM.

> The State of Washington has a restraining order against me to not talk to or have any contact with you or Michael. They do not know we have kids. These people are trying to mess over me. Only you and Michael can stop this by going to the courthouse and forcing them to remove the restraining order. Talk to the Judge; let them know this charge is three years old and we have had two kids since and that you want them to remove the restraining order and drop the charges.

Report of Proceedings (RP) at 337.

On March 27, Celestine sent BM more text messages, including:

> When you talk to that lady, Ms. Townsend [a defense attorney], don't tell her I threatened you. Tell her you never said that; J.B. Hunt did and then it's me against J.B. Hunt.

RP at 339-40. Less than two minutes later, Celestine texted the following:

> [B]ut don't tell her that because she gonna try and make you testify against me in court. Tell her you're not testifying – you or Michael – and that they need to move [sic] the restraining order for both you and Michael and that we all live together.

RP at 340.

In November, the State filed a second amended information charging Celestine with one count witness tampering – domestic violence and five counts of protection order violation – domestic violence. The State stated that it was not proceeding on the harassment charges. Celestine pleaded not guilty.

Jury Selection

During jury selection, Celestine engaged in the following colloquy with juror 23:

> Celestine: All right. So the question is – single thing or event in your life or lifetime that most shapes the way you view the world, your world, or this case.
>
> Juror: Well, okay, there's some (indiscernible). And I spend most of my days (indiscernible). And but I – *I've been in a courtroom* (indiscernible). (Indiscernible) *I'm not a big fan of it*. And recently – not recently, but a few years back, (indiscernible) he was *hurt really bad by a family member* (indiscernible). (Indiscernible) handle in the correct way, so (indiscernible). *And tried to get custody of my son and didn't* get (indiscernible) did not get involved in the court at all, even though it happened (indiscernible). *So I'm not a big fan of coming to court; not a big fan of thinking that things can go your way* when things go wrong, even though you know that (indiscernible).

RP at 178 (emphasis added).

> I recently lost my brother. His baby mom is (indiscernible) because he broke down the door to get his clothes out of there. He was taking his stuff and he was shot and murdered not too long ago – a few months ago. And she thought it was just because they called him an intruder and that was the way it was put on the news, *so I'm not a big fan of being in here*; I'm not a big fan of (indiscernible).

RP at 178-79 (emphasis added).

> But I like to think there's still some good things that have come out of the courtroom, just it's hard to think – I don't know. Life's fair sometimes and sometimes things happen to good people and sometimes life doesn't turn out that way.
>
> Celestine: So I think I said it to someone over here – you've had some things happen in your life. Obviously I'm standing in a courtroom and I'm part of the system (indiscernible), so I'm sorry that has transpired that way for you.
>
> How old is your son?

> Juror: He's 13 now.
>
> Celestine: If you don't mind me asking – what is the current schedule? How often do you get him?
>
> Juror: It's 50/50, so – but just the way things played out. I wanted full custody of my son, knowing the signs of what could (indiscernible) happen and I told her about it. Nothing happened and what I said was (indiscernible) and she still (indiscernible).

RP at 179. Juror 23 did not say that he could not be an impartial juror. And neither party asked juror 23 if his experience in the court system would affect his ability to be fair.

> The State moved to strike juror 23 for cause.
>
> Your Honor, the State would seek to strike juror No. 23. He didn't speak up, so I was not able to follow through directly on the impartiality question; however, he did indicate that *he has essentially no faith in the justice system* and through several parts of the justice system, I believe both criminal and civil family law matters.

RP at 186 (emphasis added).

> He also indicated that his brother very recently passed away in what appears to have been a – a DV situation – unclear whether he was purely a perpetrator or a victim or if it's more of a grey area, but I think that this – he indicated – *I would call his tone borderline angry at the entire system.* So I think that that would impact his ability to participate as a juror in these proceedings.

RP at 187 (emphasis added).

> Celestine responded:
>
> Well, I would consider that gentleman a person of color, so I would ask the Court to go through that challenge as well.
>
> . . . .
>
> He said he had been accused of domestic violence and it was untrue.[1] He's not a big fan. He hasn't experienced justice in the court system.

[1] The quoted passages from juror 23 do not include a reference to Celestine being accused of domestic violence, but there were several places where the transcript states "Indiscernible." Both Celestine and the trial court referenced this fact, so the statement about being accused of domestic violence must have been indiscernible to the transcriptionist.

> He lost his brother, who was characterized in the media or by police as an intruder. I think he referred to it as media, but I'm sure that that dovetails with police. So if the Court heard it differently, that's fine.
>
> So I think these are some of the grapes of wrath the State harvests when they cast too broad a net in domestic violence cases and I would ask that he remain both for as a person of color in a case with my client being a person of color. And then I would ask that he remain because he's experienced firsthand some of these injustices and that's just the way it is.

RP at 187-88.

> The trial court granted the State's motion to strike juror 23. The court stated,
>
> *[Juror 23] [i]ndicated that he had been falsely accused of domestic violence*; he said it was proven it was false. All right, so there's that sort of feeling.
>
> He said he's not a big fan of coming to court; he said it can go wrong, even if you have all the evidence. *So basically what he appears to be saying here is that even if the evidence is in your favor, you know, you can be found guilty* -- I suppose is basically what he's saying -- or it can go against you.

RP at 189-90 (emphasis added).

> So he made a subsequent comment – brother killed by significant other – it was unclear to me if it was a girlfriend or wife – and she got away with it.
> . . . .
>
> Okay. And then he made another statement – life isn't fair sometimes; sometimes bad things happen to good people.
>
> All right. So when I -- when I think about this, all these comments made together -- I guess the question I have to face is -- can a challenged person try the issue impartially without substantial prejudice to the substantial rights of the party challenging. So party challenging is the State and the question is -- can this person try the issue impartially and without prejudice to the State.

RP at 191-92.

> So taken together -- I mean, *he makes multiple statements saying basically that the court system doesn't get it right.* You know, basically that -- and despite the evidence, that -- that wrong decisions are -- you know, occur. And he cites to multiple experiences where this has happened. So I mean, this is his feeling, it appears to me.

> It doesn't appear to me that he can impartially try the matter, you know, based on everything he said. *I mean, you know, he's cited to, what, three or four different events where -- and he said something along the lines of he doesn't like coming to court for this reason.* You know, so he *cites to multiple events in court where unjust decisions apparently are made*, at least in his opinion.

RP at 192 (emphasis added).

Jury Trial

> The court provided the following jury instructions:
>
> A person commits the crime of tampering with a witness when he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation to testify falsely and/or to withhold any testimony and/or to absent himself or herself from any official proceedings.

Clerk's Papers (CP) at 40.

> To convict the defendant of the crime of tampering with a witness, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about or between March 12, 2023 and April 4, 2023, the defendant attempted to induce a person to testify falsely and/or withhold any testimony and/or absent himself or herself from any official proceeding; and
>
> (2) That the other person was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and
>
> (3) That any of these acts occurred in the State of Washington.

CP at 41.

The jury found Celestine guilty of witness tampering and of five counts of protection order violation. The jury also found that Celestine and BM were intimate partners. The trial court orally stated that it was issuing a no-contact order, but stated that Celestine could have written contact with BM for purposes of child raising. However, the judgment and sentence did not incorporate that limited exception to the no-contact order. And the court imposed monthly community custody supervision fees.

Celestine appeals his convictions and sentence.

ANALYSIS

A. FOR CAUSE DISMISSAL OF POTENTIAL JUROR

Celestine argues that the trial court erred when it granted the State's motion to strike juror 23 for cause. He claims even though GR 37 expressly applies only to peremptory challenges, we should apply GR 37(h) principles to for cause challenges. We disagree.

1. Legal Principles

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution both guarantee a defendant the right to a trial by an impartial jury. *State v. Smith*, 3 Wn.3d 718, 720, 555 P.3d 850 (2024). "To safeguard this right, judges must remove jurors for cause when the jurors cannot fairly decide a case, either on a party's motion to strike the juror or on the court's own motion in clear cases of bias." *Id.*

Actual bias is a basis to challenge a juror for cause. RCW 4.44.170(2). Actual bias exists when there is "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2).

"We afford great deference to the trial court's assessments concerning bias, and the grant or denial of a challenge for cause will be reversed only for manifest abuse of discretion." *Smith*, 3 Wn.3d at 724. When the trial court bases its decision on untenable grounds or if its decision is manifestly unreasonable, it abuses its discretion. *State v. Sassen Van Elsloo*, 191 Wn.2d 798, 807, 425 P.3d 807 (2018).

We give great deference to the trial court because of its ability " 'to observe the juror's demeanor [during voir dire] and, in light of that observation, to interpret and evaluate the juror's answers to determine whether the juror would be fair and impartial.' " *State v. Lawler*, 194 Wn. App. 275, 282, 374 P.3d 278 (2016) (quoting *State v. Davis*, 175 Wn.2d 287, 312, 290 P.3d 43 (2012)). " '[T]he trial court is in the best position to determine a juror's ability to be fair and impartial.' " *State v. Guevara Diaz*, 11 Wn. App. 2d 843, 856, 456 P.3d 869 (2020) (quoting *State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991)).

The court in *Smith* stated,

> What emerges in the fact-specific analysis of our cases is an approach that requires trial judges to carefully assess the juror's statements, and any additional information revealed in juror questionnaires or during voir dire, in order to determine whether the juror is actually biased and therefore unfit to serve. Given the nuanced nature of this exercise, which relies heavily on the trial judge's assessment of the juror's responses, demeanor, and tone in context, appellate review is appropriately restrained. We will not disturb the trial court's decision absent a clear abuse of discretion, i.e., where no reasonable judge would have made the same decision.

3 Wn.3d at 727.

2. GR 37 and Implicit Racial Bias

GR 37 was designed "to eliminate the unfair exclusion of potential jurors based on race or ethnicity." GR 37(a). Under GR 37(c), "[a] party may object to the use of a peremptory challenge to raise the issue of improper bias." GR 37(e) states, "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(g) provides several circumstances for courts to consider in making its determination of whether a peremptory challenge was made on the basis of improper bias. These "include [assessing] the number of questions asked of a juror, how many times that juror was

asked questions, whether the party exercising the peremptory challenge asked more questions of one particular juror, or whether a reason might be disproportionately associated with a race or ethnicity." *State v. Tesfasilasye*, 200 Wn.2d 345, 358, 518 P.3d 193 (2022).

GR 37(h) provides that seven reasons for peremptory challenges that presumptively are invalid, including "(i) having prior contact with a law enforcement officers; (ii) expressing distrust of law enforcement. . . ; [and] (iii) having a close relationship with people who have been stopped, arrested, or convicted of a crime." "These seven presumptively invalid reasons are highly correlated 'with race and have been used historically to exclude people of color from jury service.' These justifications are not accurate indicators of a person's fitness to serve as a juror." *Tesfasilasye*, 200 Wn.2d at 358 (quoting PROPOSED NEW GR 37 – JURY SELECTION WORKGROUP, FINAL REPORT, app. 2 (2018)).

The court in *Tesfasilasye* observed that "[r]acial bias has long infected our jury selection process," and noted that GR 37 was enacted "[a]s part of our efforts to reduce racial bias in the judicial system." 200 Wn.2d at 347.

3. Analysis

Celestine argues that the trial court erred when it granted the State's motion to strike juror 23 because the court relied on impermissible reasons that could be viewed as racially discriminatory. He emphasizes that for example, a person of color's distrust of the court system and the belief that the system does not treat people fairly is a presumptively invalid reason to strike a juror under GR 37(h)(ii), and also should be an invalid reason for granting a for cause challenge.

GR 37 expressly applies only to peremptory challenges. And the adoption of GR 37 occurred after a lengthy process: "Stakeholders worked on it for several years, receiving

comments and providing recommendations for this court to adopt." *Tesfasilasye*, 2[redacted] Wn.2d at 357. We believe that if the Supreme Court had wanted GR 37 to apply to for cause challenges, it would have said so.

In addition, distinguishing between peremptory challenges and for cause challenges is appropriate because there is a fundamental difference between the two. Peremptory challenges are made because the challenging party suspects the potential for prejudice. For cause challenges involve demonstrated actual bias. Moreover, absent GR 37, there is no mechanism for the trial court, as the neutral decisionmaker, to intervene in a peremptory challenge based on perceived bias. In contrast, a for cause dismissal of a juror cannot be made without a neutral judicial decision that for cause dismissal is warranted. Given these fundamental differences, it makes sense for the Supreme Court not to have included for cause challenges in GR 37.

But that does not mean that the presumptively invalid reasons for peremptory challenges listed in GR 37(h) are not something trial court can and should consider when addressing for cause challenges. The Supreme Court has indicated that courts must take steps to eliminate racial bias in jury selection. *Id.* at 347. And as the court noted in *Tesfasilasye*, these presumptively invalid reasons are highly correlated with race. *Id.* at 358. Therefore, trial courts must be mindful of the presumptively invalid reasons in GR 37(h) when considering for cause challenges.

Here, juror 23 had a series of negative experiences with the court system. From juror 23's perspective, his son apparently was hurt by a family member, and the matter did not get handled in the right way. He tried unsuccessfully to get custody of his son. He was falsely accused of domestic violence. His brother was shot and killed in an apparent domestic violence situation and the killer was not charged. As a result, he was not a "big fan" of coming to court or

of thinking that things can go his way in court. RP at 178. And juror 23 made other comments that were labeled "unintelligible" in the record. The prosecutor described juror 23's tone as "borderline angry at the entire system." RP at 187.

The trial court first focused on the fact that juror 23 said he had been falsely accused of domestic violence. The court also noted that his brother had been killed by a significant other. In addition, the court summarized juror 23's various comments about not being a fan of coming to court: "he makes multiple statements saying basically that the court system doesn't get it right." RP at 192. And the court noted that juror 23 cited to "multiple events in court where unjust decisions apparently are made." RP at 192.

Juror 23's negative experiences with domestic violence were concerning in that Celestine's case involved allegations of domestic violence. And the fact that he was not a fan of coming to court was not just a generalized feeling – it was based on several specific experiences where he believed the court system had failed. Neither party made any attempt to explore whether juror 23 could be fair despite these experiences.

Celestine argues that the trial court improperly relied on the preemptively improper reasons for peremptory challenges in GR 37(h)(i), (ii), and (iii). But the facts here do not fit squarely into those categories. GR 37(h)(i) refers to "having prior contact with law enforcement officers." Celestine suggests that because juror 23 had been accused of domestic violence, he must have encountered a law enforcement officer. But there was no direct evidence of that, nor were the juror's comments specifically about his own contact with law enforcement. And the trial court did not rely on the fact that juror had prior contact with law enforcement officers.

GR 37(h)(ii) refers to "expressing a distrust of law enforcement." Celestine argues that the term "law enforcement" necessarily includes the court system. But GR 37(h)(ii) did not use

the term "court system," and for good reason. If selected, jurors become an essential part of the court system and they are entrusted to comply with their oath and the instructions the court provides to them. A prospective juror's sentiment about the court system and their willingness and ability to faithfully play the role of juror is fundamentally different from a distrust of law enforcement officers. Moreover, there was no indication that juror 23 distrusted law enforcement *officers*, the term used in GR 37(h)(i).

GR 37(h)(iii) refers to "having a close relationship with people who have been stopped, arrested, or convicted of a crime." There was no evidence that juror 23 had a close relationship with people involved in the criminal justice system. And the trial court did not rely on that fact.

Apart from GR 37(h), Celestine argues that there was no evidence of actual bias because juror 23 did not state that he could not be fair. But there is no authority for the proposition that a juror's express statement that they could not be fair is a requirement for finding actual bias.

Our standard of review is abuse of discretion. *Smith*, 3 Wn.3d at 724. And as noted above, we give great deference to the trial court, who was in the courtroom and is in the best position to evaluate a juror's responses. *Lawler*, 194 Wn. App. at 282. We see no basis for second-guessing the trial court's decision here.

We hold that the trial court did not abuse its discretion when it granted the State's motion to dismiss juror 23 for cause.

B. WITNESS TAMPERING AND ALTERNATIVE MEANS

Celestine argues that RCW 9A.72.120(1)(a) and (b) lists alternative means of committing witness tampering, and the State failed to produce sufficient evidence to prove the means in (1)(b). We conclude that even if witness tampering is an alternative means crime, the State presented sufficient evidence to prove both means.

1. Legal Principles

Whether a crime involves alternative means relates to jury unanimity, which is required under article I, section 21 of the Washington Constitution. *State v. Roy,* 12 Wn. App. 2d 968, 973, 466 P.3d 1142 (2020). If charged with an alternative means crime, a defendant is entitled to a unanimous jury determination for the specific means by which they committed the crime. *Id.* The State must offer sufficient evidence to support each of the alternative means unless there is an express statement of jury unanimity. *Id.* But if the statute identifies only a single means of committing a crime, jury unanimity is not required even if there is more than one way of establishing that means. *Id.*

The test for sufficiency of the evidence is whether any rational trier of fact could have found guilt beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *In re Pers. Restraint of Arntsen*, 2 Wn.3d 716, 724, 543 P.3d 821 (2024). The remedy for insufficient evidence is dismissal of the conviction. *State v. Brown*, 147 Wn.2d 330, 336, 58 P.3d 889 (2002).

2. Analysis

RCW 9A.72.120(1) states that a person is guilty of witness tampering if they attempt to induce a witness in an official proceeding to "(a) [t]estify falsely or, without right or privilege to do so, to withhold any testimony" or "(b) [a]bsent himself or herself from such proceedings" or "(c) [w]ithhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency." The jury instruction provided in this case included only RCW 9A.72.120(1)(a) and (b). We need not decide whether RCW 9A.72.120(1)(a) and (b) define alternative means of committing witness

tampering if the State presented sufficient evidence to support both (1)(a) and (1)(b). *See Roy*, 12 Wn. App. 2d at 973.

Celestine concedes that sufficient evidence established that he told BM to testify falsely or to withhold testimony under RCW 9A.72.12●(1)(a), but he argues that sufficient evidence did not support that he induced BM to absent herself from court under RCW 9A.72.12●(1)(b).

The evidence the State presented to show that Celestine attempted to induce BM to absent herself from the proceedings were Celestine's text messages.

> The State of Washington has a restraining order against me to not talk to or have any contact with you or Michael. They do not know we have kids. These people are trying to mess over me. Only you and Michael can stop this by going to the courthouse and forcing them to remove the restraining order. *Talk to the Judge*; let them know this charge is three years old and we have had two kids since and that you want them to remove the restraining order and drop the charges.

RP at 337 (emphasis added).

> When you talk to that lady, Ms. Townsend [a defense attorney], don't tell her I threatened you. Tell her you never said that; J.B. Hunt did and then it's me against J.B. Hunt.

RP at 339-4●.

> [B]ut don't tell her that because she gonna try and make you testify against me in court. *Tell her you're not testifying* – you or Michael – and that they need to move [sic] the restraining order for both you and Michael and that we all live together.

RP at 34● (emphasis added).

We conclude that the third text message provides sufficient evidence that Celestine attempted to induce BM to absent herself from the proceedings. When Celestine says "tell her you're not testifying," it is unclear whether "her" refers to the defense attorney or the prosecutor – both were women. Either way Celestine is telling BM that she should say that she will not testify against him. Viewing the evidence in the light most favorable to the State, Celestine telling BM not to testify against him is functionally the same as telling her not to come to court

because she arguably would not have any other reason to engage with the proceedings if not to testify at least in part against him. And it does not make sense to conclude that Celestine would tell BM to inform the attorneys that she will not testify, but she would still would show up in court.

Accordingly, viewing the evidence in the light most favorable to the State, we hold that there was sufficient evidence to convict Celestine of witness tampering under both RCW 9A.72.120(1)(a) and (b).

C. PROTECTION ORDER VIOLATION CONVICTIONS

Celestine argues that his protection order violation convictions must be dismissed because the harassment charge that was the basis for the no-contact order was dismissed before trial. We disagree.

Celestine relies on *City of Tacoma v. Cornell*, 116 Wn. App. 165, 64 P.3d 674 (2003) and *State v. Anaya*, 95 Wn. App. 751, 976 P.2d 1251 (1999). But neither case applies to the facts here.

In *Cornell*, a superior court commissioner entered a restraining order against the defendant, who sought revision of the order by a superior court judge. 116 Wn. App. at 167. The superior court ruled that the evidence did not support issuance of the restraining order and vacated the order. *Id.* After the superior court vacated the order, the State charged the defendant with violating the order during the time the order was in effect. *Id.*

The Court of Appeals held that charge must be dismissed. *Id.* at 171. The court noted that the State had charged the defendant with violating an order that had been declared invalid. *Id.* at 170. The court concluded,

> The City may charge a person for violating an order during the time the order is valid and in effect. But the City may not charge a person for violating an order

> after the order has been vacated, even if the alleged violation occurred while the order was in effect. In other words, the City might have prevailed had it charged Cornell for violating the order before it was vacated.

Id. at 170-71.

Here, the protection order was never declared to be invalid; it remained in effect through trial. In addition, the State charged Celestine while the protection order still was in effect. *Cornell* does not support Celestine's argument.

In *Anaya*, the district court entered a no-contact order at the arraignment for an assault charge. 95 Wn. App. at 753. Two months later, the assault charge was dismissed but the no-contact order was not rescinded. *Id.* Several months after the assault charge was dismissed, the defendant violated the no-contact order and the State charged the defendant with that violation. *Id.* at 753-54. The defendant was convicted of violating the no-contact order. *Id.* at 754. The Court of Appeals held that the no-contact order expired upon the dismissal of the underlying assault charge. *Id.* at 760. Therefore, the court reversed the conviction. *Id.* at 761.

Here, Celestine violated the protection order before the underlying harassment charge was dismissed. Therefore, the protection order still was valid at the time of the violation. *Anaya* does not support Celestine's argument.

We affirm Celestine's protection order violation convictions.

D. OMISSION IN JUDGMENT AND SENTENCE

Celestine argues that there is a scrivener's error in the judgment and sentence regarding his no-contact order regarding BM that must be corrected. We agree.

In its oral ruling, the trial court stated that it would issue a no-contact order preventing Celestine from having contact with BM. But the court stated that some limited contact would be allowed:

> My approach in these cases is to -- when perpetrator and victim have children in common, I allow them to have written contact for the purposes of child raising. And I appreciate that, you know, defendants commit crimes, but that doesn't, you know, exclude them from being involved in -- in their -- the raising of their children. . . . .
>
> So I'll allow [Celestine] and [BM] to have written contact. And that would be email, text -- you know, letters -- you know, anything that's actually documented or can be documented so that we have a clear picture of what they actually said.

RP at 496.

However, the judgment and sentence – which included the no-contact provision – did not mention the permitted written contact for the purpose of child raising.

Celestine argues that the omission of the no-contact order exception is a scrivener's error, and that we should remand for the trial court to correct the error. The State argues that any error in the judgment and sentence can only be corrected under CrR 7.8(a).

We agree with Celestine. It is clear that the trial court intended to allow contact between Celestine and BM for the purpose of child raising, but that intent was not reflected in the judgment and sentence. Under the specific facts of this case, it would make no sense to require Celestine to file a CrR 7.8(a) motion to correct this obvious mistake.

We remand for the trial court to correct the scrivener's error in the judgment and sentence.

E. COMMUNITY CUSTODY SUPERVISION FEES

Celestine argues, and the State concedes, that the provision imposing community supervision fees must be stricken. We agree.

In 2022, the legislature eliminated trial courts' ability to impose supervision fees as a condition of community custody in 2022. LAWS OF 2022, ch. 29, § 7. RCW 9.94A.703, which dictates the conditions of community custody, no longer allows for the imposition of community

custody supervision fees on convicted defendants. Accordingly, we hold that the provision imposing community custody supervision fees must be stricken from the judgment and sentence.

CONCLUSION

We affirm Celestine's convictions, but we remand for the trial court to correct the scrivener's error and to strike the community custody supervision fee in the judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

CRUSER, C.J.

GLASGOW, J.

WASHINGTON APPELLATE PROJECT

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