COA NO. 39509-0-III

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

MARTIN THOMAS STANLEY,

Respondent

APPEAL FROM THE SUPERIOR COURT FOR OKANOGAN COUNTY

PETITION FOR REVIEW

ALBERT LIN
Okanogan County Prosecuting Attorney

THOMAS C. PAYNTER
Deputy Prosecuting Attorney
Attorneys for Respondent

Okanogan County Prosecuting Attorney
237 Fourth Avenue North
Okanogan, Washington 98840-1130
(509) 422-7280 FAX (509) 422-7290

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IDENTITY OF PETITIONER

The petitioner is the State of Washington, by and through the Okanogan County Prosecuting Attorney.

CITATION TO COURT OF APPEALS DECISION

The State seeks review of State of Washington v. Martin Thomas Stanley, 39509-0-III, filed July 3, 2025. The State moved for reconsideration, which the court of appeals denied without comment on August 14, 2025.

INTRODUCTION

While drinking and driving, Mr. Stanley lost control of his vehicle, which rolled. One passenger, Michael Timentwa, suffered a broken leg and the other, Isabel Englert, who was 15 years old, was killed. Stanley's blood alcohol level was over twice the legal limit. Admissions from Stanley and testimony from Timentwa proved that Stanley was the driver. The jury found him guilty of vehicular homicide and vehicular assault.

On appeal, Stanley claimed that the court erred in denying his GR 37 objection to the State's use of a peremptory challenge against juror 29, who identified as half Hispanic and half Caucasian. The court of appeals agreed and vacated the conviction. In so holding, the court misconstrued the record so badly as to put this case in conflict with other cases from the court of appeals and from this Court.

First, the court claimed that four other jurors gave answers similar to juror 29 but were not struck. The record, however, shows that not one of these four jurors gave similar answers to juror 29.

Second, the court faulted the State for saying that the juror had no life experience even though, according to the court, the State never asked the juror about her life experiences. In fact, the State asked the juror about a variety of life experiences, including whether she had had the experience of having children, of having gone to parties as a teenager involving underage drinking, or of getting in trouble as a teenager.

Finally, the court said that the State mischaracterized the juror's answers. The State's characterizations of the juror's answers, however, were reasonable in context or at worst rhetorical overstatements. The State's reasons for striking the juror were grounded in her answers. Unlike other cases

finding GR 37 violations, the court identified no racial or ethnic stereotype that might have been a factor. Furthermore, no Washington case has held that mischaracterization alone is enough to cause a reasonable objective observer to believe that race could have been a factor in the challenge. In the context of oral argument conducted in real time at trial, without the benefit of a transcript, some mischaracterizations of juror's answers are inevitable and do not alone support a GR 37 objection.

Once the record is properly understood, the opinion is so at odds with published cases from the court of appeals and with decisions of this Court as to create a conflict in the case law, justifying review under RAP 13.4(b)(1) and (2). The application of GR 37 is also a new and evolving area of law of substantial public interest. This Court should grant review under RAP

13.4(b)(4) to clarify the standards applicable to GR 37 objections.

ISSUES PRESENTED

1. Did the court of appeals misconstrue the record when it said that four jurors gave similar answers to juror 29?

2. Did the court of appeals misconstrue the record when it said that the State did not ask juror 29 about her life experience?

3. Do the State's characterizations of juror 29's answers support finding a GR 37 violation?

4. Does the opinion here represent a conflict with Washington case law or a matter of public interest worthy of review under RAP 13.4?

STATEMENT OF THE CASE

After a day of drinking, Stanley lost control of his truck, injuring passenger Michael Timentwa and killing

passenger Isabel Englert, 15 years old. Opinion 1-2. The case went to jury trial. Opinion 2.

After voir dire, the State peremptorily challenged juror 29, who was half Puerto Rican and half Caucasian. RP 328, 338. The State justified the challenge this way:

> The reason we struck her was based upon her answers. She was raised by her grandparents. She was not allowed to go anywhere or do anything. She never did anything wrong. She has no life experiences.

RP at 328-29. The defense made a GR 37 objection, but the court denied it. RP 328, 340.

The jury convicted Stanley, but the court of appeals reversed, holding that the court erred in denying the defense's GR 37 objection to the State's challenge to juror 29. Opinion 6, 13-14.

ARGUMENT

I. Contrary to the opinion, no other juror was asked similar questions and gave similar answers to juror 29.

The opinion gives several reasons for finding a GR 37 violation. The opinion claims that along with juror 29, five jurors "were asked about their experience with underage drinking either with their children or their own experience." Opinion 12. It claims that four of the five gave answers like juror 29's, but were not struck, implying that race was a factor in the challenge to juror 29. Opinion 12. In fact, however, none of the four gave similar answers; the State singled out juror 29 not because of her race, but because her answers were unique.

First, recall that the State's stated reason for striking juror 29 was: "She was raised by her grandparents. She was not allowed to go anywhere or do anything. She never did anything wrong. She has no life experiences."

RP 329. (The accuracy of this summary of juror 29's answers is addressed below.) Thus, the State's reason for the strike was not limited to "experience with underage drinking", nor was its questioning so limited, as the court inaccurately said.

This case involved three people under the age of 21, at least two of whom—Stanley and Timentwa—were drinking heavily. In particular, the victim had just turned 15 and was out late at night with two older men on an outing that involved heavy alcohol consumption and dangerous driving. It was reasonable for the State to be concerned that Juror 29 would not be able to relate to the situation and to the victim in particular. "The justification for peremptory strikes is that trial attorneys have instincts about which jurors will be best for their case." *Lahman*, 17 Wash. App. 2d at 932. The record suggests that the State felt that jurors without experience with youthful

misbehavior and risk-taking might tend to blame Ms. Englert for being in the vehicle that night.

The first of the five jurors identified by the court is juror 3. Juror 3 admitted to going to parties as a teenager where drinking was involved. RP 246. However, her testimony did not stop there. She also agreed that drinking can affect people's judgment, leading them to take "Risks that are dangerous[.]" RP 248. This familiarity with underage drinking and resultant risky behavior makes juror 3 dissimilar to juror 29, who did not express any familiarity with these things and denied ever having "fun like Number 3." Opinion 3.

The second juror identified by the court is juror 6. The court is correct that juror 6 did not talk about underage drinking or other serious misbehavior on the part of herself or her children. The Court is incorrect, however, in asserting that the State asked her about such misbehavior. The State asked her if having four

teenagers at home was “challenging,” and juror 6 acknowledged that it was, because “They have a lot of after-school activities.” RP 234. The State then asked how the juror would determine which of her children were telling the truth if she were trying to determine which of them ate a cookie before dinner. RP 235. The State’s first question about underage drinking was posed to the panel after the conclusion of the State’s conversation with juror 6. RP 237. Thus, although the court was correct to say that juror 6, like juror 29, did not mention underage drinking or other serious misbehavior by herself or her children, the court is incorrect that she was ever asked about that topic. The State had limited time for voir dire and did not question every juror about every topic; contrary to the court’s assertion in the opinion, juror 6 was one of many members of the panel who was not asked questions similar to those the State directed at juror 29.

The next juror is juror 13. The court is correct that juror 13 did not mention issues related to underage drinking. The Court is incorrect, however, that the State's questions were limited to underage drinking. The State's question was: "But you still remember what it was Like [when your children were young]? […] Good or bad or... Because we all who are parents have had kids when they get to that teenager thing it's kind of a challenge, right?" RP 241. Again, the court is incorrect that the State's questions were limited to "underage drinking". Opinion 12. The State's questions indicate it was interested in juvenile misbehavior more broadly. In response, juror 13 mentioned her children riding motorcycles in a dangerous way. RP 241. This familiarity with youthful risky behavior makes juror 13's answers dissimilar to juror 29's, who did not mention anything like dangerous motorcycle riding.

The next juror is juror 36. Again, the State's questions to juror 36 were about juvenile misbehavior more broadly, not just underage drinking: "So going back to your kids when they were teens, what was that like? […] Ups and downs? […] You experienced where they got in trouble? […] Did they ever get in trouble at home with your rules, whatever they were?" RP 251-52. Juror 36 said that her children had misbehaved in the form of "just missing the curfew, driving without a license." This familiarity with illegal driving makes juror 36's answers dissimilar to juror 29's. Regarding missing curfew, the juror described that as "she just wouldn't be home when she was expected home… You were supposed to be home at this time, and you weren't. Because so-and-so didn't want to leave the get-together when you did…." These curfew violations are more serious than those described by juror 29, who mentioned being "like a minute

late"—another difference between the answers of jurors 36 and 29.

The final juror is juror 24, whose children, the court recognized, "struggled as teenagers with drinking and law enforcement contacts." Opinion 12. Note that the State did not initially ask this juror about underage drinking either, asking instead, "[T]ell me about your kids…. [Were they] the Brady Bunch?" RP 237. Only when juror 24 mentioned that her children drank did the State ask about that further. RP 238. She also mentioned her children driving four-wheelers and running from the police. RP 238. As the court acknowledged, juror 24's answers were dissimilar to juror 29's.

Together, the record shows that the court's statement that the State asked these five jurors about underage drinking, and four of the five gave similar answers to juror 29, is completely incorrect.

- Juror 3 was asked about underage drinking, admitted that she drank underage, and acknowledged that underage drinking can lead to dangerous behavior.

- Juror 6 was not asked about underage drinking or juvenile misbehavior generally, but only about how she would tell which of her children were telling the truth, using the example of a missing cookie.

- Juror 13 was asked about juvenile misbehavior in general, and mentioned her children riding motorcycles dangerously.

- Juror 36 was asked about juvenile misbehavior in general, and mentioned missing curfew and driving without a license.

- Juror 24 was asked about her children's behavior in general, and mentioned misbehavior including drinking and running from the police.

Contrary to the opinion, not one of these jurors was asked similar questions to juror 29, gave similar answers, and was not struck. The only juror who did not mention

juvenile misbehavior was juror 6, who was not asked about it. Each of the other jurors mentioned juvenile misbehavior more serious than juror 29. Recall that the only misbehavior Juror 29 mentioned was being "like a minute late" and getting "caught smoking one time". Opinion 3. Whereas, leaving juror 6 aside, these jurors mentioned underage drinking, dangerous motorcycle riding, driving without a license, and running from the police (along with underage drinking). And when juror 36 discussed her daughter missing curfew, she talked about her daughter staying at a social event instead of coming home, not merely being a few minutes late, like juror 29.

Among jurors who were asked about their experiences with either their own or their children's youthful misbehavior, only juror 29 indicated that she had very strict parental figures so that she did not engage in any misbehavior more serious than smoking once or being slightly late. No objective observer could conclude

from this that juror 29 gave similar answers to these other jurors, and that the State singled her out to be struck because of her ethnicity.

II. Contrary to the opinion, the State did ask juror 29 about her life experiences.

Regarding the State's statement about juror 29 that "She has no life experiences," the court said, "[L]ike the prosecutor in *Lahman*, the prosecutor here never asked juror 29 about her 'life experiences' either as a minor or as an adult, making the justification about juror 29 having 'no life experiences' unsupported by the record." Opinion 11-12 (referring to *State v. Lahman*, 17 Wash.App.2d 925, 934, 488 P.3d 881 (2021).) The court also criticized the lack of life experience justification as vague and therefore suspect under GR 37. Opinion 13. The State, however, did question juror 29 about a variety of relevant life experiences, making the court's statement to the

contrary frankly inexplicable. And in context, the State's remark was not vague.

It is true that the State never asked a question like "Tell me about your life experiences?" Such a question, however, would be so broad as to be useless in voir dire. Here, the State asked juror 29 questions such as:

- "How many kids do you have[?]"
- "Did you ever have fun like Number 3?"
- "Did you ever get in trouble? […] What for?"
- "Did you ever get in trouble for something you didn't do?"

RP 248-250. At the risk of stating the obvious, these are questions about "life experiences": the life experience of having kids, the life experience of going to parties featuring underage drinking, and the life experience of getting in trouble.

In contrast, in *Lahman* the juror was asked questions about just two subjects: why jury service is important, and whether the juror would "stick to [his] guns"

during deliberations. 17 Wash.App.2d at 930. The juror in *Lahman* was not asked a single question about his life experiences; the juror here was asked several. The court's statement that she was not asked about her life experience is contrary to the record.

The court's description of the "life experiences" justification as vague is also without merit. Opinion 13. The justification is vague only when taken out of context. Remarks at trial must be taken in context. *State v. Austin*, 136 Wash. 499, 505, 240 P. 676 (1925) (instructions); *State v. Fuller*, 169 Wash. App. 797, 812, 282 P.3d 126 (2012) (remarks by prosecutor). In context, an objective observer would have understood the State to be referring to the juror's lack of experience with relevant youthful misbehavior. Indeed, the trial court had no difficulty understanding that the State was referring to her lack of "'worldly experiences' as indicated on the record by her questioning." RP 330. Defense counsel also understood

the State to be saying that the juror was “not worldly”. RP 333. GR 37 objections are reviewed de novo, but the manner in which those present understood the remarks can certainly inform this Court’s understanding of the cold record. In context, the prosecutor’s reference to the juror’s lack of life experiences was directed at a lack of life experiences that might give her understanding and sympathy for the victim’s tragic presence of in the truck with Mr. Stanley on the night she died.

III. The State’s characterizations of the juror’s answers do not support finding a GR 37 violation.

Another factor the court relied upon in finding a GR 37 violation was that the State mischaracterized the juror’s answers by saying that the juror “…was raised by her grandparents. She was not allowed to go anywhere or do anything. She never did anything wrong.” Opinion 4,

11. The supposed mischaracterization is an insufficient basis on which to uphold a GR 37 objection.

First, note that mischaracterization of a juror's responses is not mentioned in GR 37 as a circumstance that could support a challenge. Of course, such mischaracterizations are part of the totality of the circumstances that a court must consider. *Lahman*, 17 Wash.App.2d at 934. But the State has found no Washington case in which mischaracterization alone was enough to support a GR 37 challenge. In *State v. Jefferson*, 192 Wn.2d 225, 250, 429 P.3d 467 (2018) (cited in the opinion at 9), mischaracterization of the juror's answers was only one factor; the State also asked more questions of the minority juror than of other jurors, the juror gave similar answers to other jurors who were not struck, and the State "called out Juror 10 with a sarcastic comment for no apparent reason." *Id.* at 234-

236, 250.[1] And in *State v. Tesfasilasye*, 200 Wash. 2d 345, 361, 518 P.3d 193 (2022), the Court relied not only on the State's misrepresentation of juror 3's answers, but also on the State's failure to strike another juror who gave similar answers. Both cases relied on factors other than the misrepresentation alone.

Second, the opinion does not take into account that the State made its argument without the benefit of reviewing a transcript of the juror's answers. *State v. Bell*, 571 P.3d 272, 277 (Wash. 2025) (de novo review of GR 37 challenges is appropriate because the Court has "the benefit of being able to review the whole record, including the process and transcript of specific dialogues during voir dire—an action that would be impractical for trial court judges to take…."). GR 37 is intended to combat

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[1] *Jefferson* predates GR 37, and was decided under the standard of *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). 192 Wn.2d at 250-51.

racial bias, not to create a minefield in which any mischaracterization of a juror's answers, made by an attorney arguing in real time from memory of the answers of dozens of jurors during multiple rounds of questioning, requires a new trial. A mischaracterization does not support a GR 37 objection unless something about the mischaracterization could cause an objective observer to think that race was a factor in the challenge.

Third, the State's characterizations here were rhetorical hyperbole, not a true misrepresentation of the juror's responses, in contrast with *Jefferson* and *Tesfasilasy.* In *Jefferson,* the State asserted that the juror had admitted bringing "extraneous evidence" into deliberations during prior jury service. 192 Wn.2d at 237-38. In fact the juror had only acknowledged referring to "matters that were not germane" to the case the prior jury was considering. *Id.* at 237. In other words, the State misrepresented an admission to straying off topic during

deliberations as an admission to committing serious juror misconduct by bringing extraneous evidence into deliberations. And in *Tesfasilasye*, the State claimed that the juror had given an "unreasonable" answer "about there needing to be eyewitnesses to a rape case," when in fact the juror had simply mentioned evidence "he would like to see from the State…including eyewitnesses and DNA samples." 200 Wash. 2d at 197, 201.

Here, although the Court is correct that the juror never said in so many words that she was raised by her grandparents, she plainly implied as much:

> MR. LIN: Did you ever have fun like Number 3?[2]
> PROSPECTIVE JUROR: Nope.
> MR. LIN: No?
> PROSPECTIVE JUROR: **I had very strict grandparents.**
> MR. LIN: Oh, okay.
> PROSPECTIVE JUROR: **You had to be home**, and if you were not home you were in trouble --

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[2] Juror 3 admitted having gone to parties where alcohol was involved as a teenager. RP 245-46.

> MR. LIN: Well, let's talk --
> PROSPECTIVE JUROR: -- because you needed to be home. […]
> PROSPECTIVE JUROR: If I was like a minute late I got into trouble.

RP 249 (emphasis added). The logical inference from these answers is that she had very strict grandparents *whom she lived with,* that she had to be home on time *to the home where she lived with her grandparents,* and that if she was a minute late *coming back to her grandparents' home,* she was in trouble *with her grandparents.* If she lived with her grandparents and they were the ones who set the rules for her and enforced them, then in the absence of any mention of her parents or other contrary information, the logical inference is that she was raised by her grandparents. The prosecutor's statement that she was raised by her grandparents was not a mischaracterization.

This Court is correct that the prosecutor's summary of the juror's answers as, "She was not allowed to go

anywhere or do anything. She never did anything wrong," was not literally accurate. This statement, however, should be taken in context. The prosecutor questioned the jurors about youthful misbehavior and elicited responses that included underage drinking, driving without a license, riding motorcycles in a dangerous manner, and running from the police. This case involved underage drinking and dangerous driving. In context, an objective observer would have understood the prosecutor to mean that juror 29, unlike the other jurors questioned on this subject, never did anything wrong that would give her any experience with or understanding of the kind of misbehavior at issue in the case.

After all, the question here is not whether the State mischaracterized the juror's answers. The question is whether an objective observer could think that race or ethnicity was a factor in the decision to strike the juror. In context, an objective observer would have understood

from the thrust of the prosecutor's remarks that the prosecutor was challenging the juror because of her strict upbringing and lack of experience with youthful misbehavior. Without some other reason to suspect that racial bias played a part, an objective observer would not jump to that conclusion.

IV. The circumstances would give an objective observer reason to believe that race was not a factor in the challenge.

On top of there being nothing that might cause an objective observer to think that race was a factor in the challenge, the circumstances here would affirmatively indicate to an objective observer that race was not a factor. First, note that at the time the State challenged the juror, neither the court nor either attorney was sure that the juror belonged to a "cognizable racial or ethnic group." *State v. Hernandez*, 30 Wash. App. 2d 179, 193, 544 P.3d 542 (2024). In the argument about the

challenge, defense counsel conceded that he could not tell whether juror 29 was “Latinx rather than having been married to a man or woman with a Spanish surname[.]” RP 333. The State agreed, commenting “I can't tell. I don't know.” RP 333. The trial court agreed as well, saying “I don't know. I'm just using the last—[…] The last name is Sanchez. […] I don't know. I'm gonna ask her on the record. I'll have her come up here and ask her on the record if she -- what ethnicity she – […] identifies with.” RP 334.

The *Lahman* court emphasized “that GR 37 has to do with appearances, not with whether a juror actually identifies with a racial or ethnic minority group.” *Lahman*, 17 Wash.App.2d at 935 fn. 6. That neither attorney nor the court could tell, based on appearances, whether juror 29 belonged to a cognizable racial or ethnic group when the State made its challenge means that an objective observer would also have been uncertain, and therefore

unlikely to conclude that racial stereotypes could have been a factor in the State's challenge.

Second, juror 50 identified as Hispanic or Latino, yet the State did not challenge him and he was seated as an alternate. RP 337; Juror Panel Information Sheet at 3. The State did use all its peremptory challenges, but this included challenges against jurors 52, 57, and 73, none of whom were likely to be seated due to their high numbers. RP 18 (court allowed seven peremptories). A prosecutor exercising challenges based on stereotypes about Hispanic jurors would be expected to use one of these challenges against juror 50 instead. That the State did not challenge juror 50 would indicate to an objective observer that race was not a factor in the challenge of juror 29.

V. The decision is worth of review under RAP 13.4(b).

A. The decision conflicts with prior case law.

GR 37 was enacted to combat the historical use of peremptory challenges "based largely on racial stereotypes or generalizations." *Tesfasilasye*, 200 Wn.2d at 356. Here, the court found a GR 37 violation despite the absence of anything indicating that race might have been a factor in the challenge. This conflicts with Washington case law both from the court of appeals and this Court.

Washington cases applying the objective-observer standard have consistently required that there be something suggesting racial bias before finding a violation. In *State v. Bell*, 571 P.3d 272, 278 (Wash. 2025), the State struck a minority juror based on his inattention during voir dire, even though other jurors had also asked for questions to be repeated, and justifications

based on inattention and other aspects of a juror's demeanor have historically been associated with improper discrimination.

In *Tesfasilasye*, the State struck a minority juror in part because her son had been convicted of a crime—a rationale that is presumptively invalid under GR 37, being associated with improper discrimination. 200 Wn.2d at 359. She—and another minority juror who was challenged—also gave similar answers to other jurors who were not struck. *Id.* 360-61.

In *Contreras v. City of Yakima*, 34 Wash. App. 2d 1004, 26, (Div. III, 2025, unpublished) the justification for the challenge was that the juror's answers were "unintelligible." At 26. The *Contreras* court linked the challenge to a relevant stereotype, noting that "Stereotypes harmful to Latinx include having a limited education and possessing an inability to speak

intelligently," citing to a publication on Latino stereotypes. *Id.*

In *Lahman*, on which the court relied extensively (Opinion at 8-11, 13), the State's justification for challenging an Asian-American juror was the juror's lack of life experience and experience with domestic violence. *Lahman*, 17 Wash.App.2d at 936. The *Lahman* court reasoned that "Research shows that a common stereotype of Asian Americans is that they are strong in academics, to the detriment of interpersonal skills," citing to several publications on stereotypes applied to Asian Americans. *Id.* at 937 (footnote omitted). Therefore, "The prosecutor's focus on Juror 2's youth and lack of life experiences played into at least some improper stereotypes about Asian Americans[.]" *Id.* at 937-38.

This Court's cases applying the objective-observer standard in other contexts also show what is required to find a violation. In *State v. Berhe*, 193 Wash.2d 647, 444

P.3d 1172 (2019), this Court applied the objective observer standard to an allegation of racial bias in jury deliberations. In *Berhe* the only African-American juror was viewed by other jurors as having insights about hip-hop culture, was accused of injecting issues of police misconduct towards African Americans into the deliberations, being biased because of her own history with the law and because the defendant was African American, and of having stupid and illogical ideas. *Id.* at 668-69. There is obviously a connection between these aspersions and racial stereotypes.

And in *Henderson v. Thompson,* 200 Wash. 2d 417 518 P.3d 1011 (2022), the Court applied the objective observer standard to whether race played a part in a verdict. The Court reasons that by characterizing Henderson as “combative” and “confrontational”, defense counsel evoked the harmful stereotype of an “angry Black

woman." *Id.* at 436 (citing a publication for the existence of this stereotype).

In all of these cases there was something—often a connection to a racial stereotype—that could cause an objective observe to believe that race was a factor in the challenge.

Here, once the record is properly understood, there is no indication that race might have been a factor in the challenge. No other juror gave similar answers but was not struck. Unlike in *Lahman*, the prosecutor's statement that the juror lacked life experience was supported by her answers. The State's characterizations of the juror's answers were reasonable in context, and even if the State did mischaracterize her answers to some degree, nothing about the mischaracterizations suggest that race was a factor. In particular, nothing indicates that the challenge was based on any racial stereotype or reason historically associated with bias.

This case is an outlier, in conflict with precedent from both this Court and the court of appeals. This Court should grant review.

B. The decision is a matter of public interest

GR 37 is a relatively new rule, adopted in 2018 after "[s]takeholders worked on it for several years, receiving comments and providing recommendations[.]" *Tesfasilasye*, 200 Wn.2d at 357. It was adopted to uphold the right to a fair and impartial jury, in light of the history of racial bias in peremptory challenges. *Id.* at 356. This Court's recent history shows that the correct application of GR 37 is a matter of public interest, worthy of review under RAP 13.4(b)(4).

In *Tesfasilasye,* the Court granted review to determine the appropriate standard of review for GR 37 objections. *Id.* at 355. *Tesfasilasye* did not present a conflict in Washington case law, nor did it present a constitutional question, but the Court granted review

nonetheless. The Court's grant of review in *Bell*, 571 P.3d 272, was much the same, with the Court granting review despite there being no conflict in the case law nor any constitutional issue.

As with *Tesfasilasye* and *Bell,* this case presents a question of substantial public interest that should be resolved by this Court.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

This document contains 4995 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 12th day of September, 2025.

Respectfully submitted,

ALBERT LIN
Okanogan County Prosecuting Attorney

By: /s/ Thomas C. Paynter_____
Thomas C. Paynter, WSBA #27761
Deputy Prosecuting Attorney
Attorneys for Respondent

ATTACHMENTS

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

August 14, 2025

Lila Jane Silverstein
Moses Ouma Okeyo
Washington Appellate Project
1511 3rd Ave Ste 610
Seattle, WA 98101-1683

Albert H Lin
Thomas C Paynter
Okanogan County Prosecuting Attorney
PO Box 1130
Okanogan, WA 98840-1130

CASE # 395090
State of Washington v. Martin Thomas Stanley
OKANOGAN COUNTY SUPERIOR COURT No. 2110004124

Counsel:

Enclosed is a copy of the order deciding a motion for reconsideration of this court's July 3, 2025 opinion.

A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a petition for review in this Court within 30 days after the attached order on reconsideration is filed. RAP 13.4(a). Please file the petition electronically through the Court's e-filing portal. The petition for review will then be forwarded to the Supreme Court. The petition must be received in this court on or before the date it is due. RAP 18.5(c).

If the party opposing the petition for review wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service on the party of the petition. RAP 13.4(d). The address of the Washington Supreme Court is Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:ko
Enc.

FILED
AUGUST 14, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MARTIN THOMAS STANLEY, Appellant.	)))))))))	No. 39509-0-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of July 3, 2025 is hereby denied.

PANEL: Judges Staab, Lawrence-Berrey, Cooney

FOR THE COURT:

Lawrence-Berrey, C.J.

ROBERT LAWRENCE-BERREY
Chief Judge

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

July 3, 2025

Email: Lila Jane Silverstein
Moses Ouma Okeyo
Washington Appellate Project
1511 3rd Ave Ste 610
Seattle, WA 98101-1683

Email: Albert H Lin
Thomas C Paynter
Okanogan County Prosecutor's Office
PO Box 1130
Okanogan, WA 98840-1130

CASE # 395090
State of Washington v. Martin Thomas Stanley
OKANOGAN COUNTY SUPERIOR COURT No. 2110004124

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:ko
Attach.
c: **Email:** Hon. Kathryn Burke (J. Rawson's case)
c: **Email:** Martin Thomas Stanley, PO BOX 139, Omak, WA 98841

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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON, Respondent, v. MARTIN THOMAS STANLEY, Appellant.	))))))))))	No. 39509-0-III UNPUBLISHED OPINION

STAAB, J. — During voir dire, the State exercised a peremptory challenge on a potential juror who identified as Puerto Rican. Following defense counsel's GR 37 objection, the State explained that the potential juror was raised by strict grandparents and lacked "life experiences." The trial court concluded that the peremptory challenge was not based on race and overruled the GR 37 objection, excusing the juror.

On de novo review, we reverse. We conclude that an objective observer could view the juror's race or ethnicity as a factor in the use of the peremptory challenge.

BACKGROUND

In February 2021, Martin Stanley spent a day drinking and driving around in his new truck with his friend Michael Timentwa. Both Stanley and Timentwa were under 21 years old. When they ran out of beer, they convinced a friend to buy more. Later that

day, Stanley and Timentwa picked up Isabel Englert, who was 15 years old. Early the next morning, Stanley swerved and lost control of the truck, causing a roll-over accident that resulted in Englert's death and Timentwa's injury.

The State charged Stanley with vehicular homicide and vehicular assault. The case proceeded to a jury trial.

During voir dire, the prosecutor transitioned from general questions to more specific questions about underage drinking and determining truthfulness, asking the potential jurors whether they had children who argued, got into trouble, and whether they had to act as "the investigator, prosecutor and judge all at the same time." Rep. of Proc. (RP) at 234. Several jurors talked about experiences with their children. A few indicated that their children were relatively well-behaved. The prosecutor then turned to juror 3, who explained that she did not have to deal with her children drinking, but acknowledged that as a teenager she had gone to parties where drinking was involved.

The prosecutor next turned to juror 29 and the following exchange took place:

> [THE PROSECUTOR]: 29. Okay. [juror 29], are you nervous?
> PROSPECTIVE JUROR: No.
> [THE PROSECUTOR]: Okay. Good. I am. I don't know about you.
> . . .
> [THE PROSECUTOR]: How many kids do you have . . .?
> PROSPECTIVE JUROR: None.
> [THE PROSECUTOR]: None?
> PROSPECTIVE JUROR: (Shakes head.)

[THE PROSECUTOR]: Okay. But you were a teenager once before like Number 3, right?

PROSPECTIVE JUROR: Yes.

[THE PROSECUTOR]: Did you ever have fun like Number 3?

PROSPECTIVE JUROR: Nope.

[THE PROSECUTOR]: No?

PROSPECTIVE JUROR: I had very strict grandparents.

[THE PROSECUTOR]: Oh, okay.

PROSPECTIVE JUROR: You had to be home, and if you were not home you were in trouble—

[THE PROSECUTOR]: Well, let's talk—

PROSPECTIVE JUROR: —because you needed to be home.

[THE PROSECUTOR]: Let's talk a little bit about that, what that was like. Did you ever get in trouble?

PROSPECTIVE JUROR: Oh, yes.

[THE PROSECUTOR]: What for?

PROSPECTIVE JUROR: If I was like a minute late I got into trouble. I got caught smoking one time as a teenager and got into trouble because my brother told on me.

[THE PROSECUTOR]: Did you ever get in trouble for something you didn't do?

PROSPECTIVE JUROR: No.

[THE PROSECUTOR]: No? Okay. So whenever you got in trouble was it because somebody caught you?

PROSPECTIVE JUROR: Yes.

[THE PROSECUTOR]: Okay. And when you got caught did you just say you did it?

PROSPECTIVE JUROR: Yes, I did.

[THE PROSECUTOR]: Why?

> PROSPECTIVE JUROR: Because my grandpa knew us very well and knew when we were lying and he told me "You need to tell the truth, otherwise you could get into more trouble."
>
> [THE PROSECUTOR]: How can you tell if somebody is telling the truth?
>
> PROSPECTIVE JUROR: Well, for me I try to make eye contact with people, and by the way . . . their eyes will move or body language. That's my personal—that's my experience.
>
> [THE PROSECUTOR]: Because we're human beings, we observe things, right?
>
> PROSPECTIVE JUROR: Yes.

RP at 248-50. The prosecutor then questioned two other jurors who discussed experiences with their own children.

After defense counsel's questioning, the prosecutor resumed, using the remaining time to ask about the jurors' experiences in medicine and law enforcement, and whether they could decide the case based on the evidence presented in the courtroom.

The State used a peremptory strike on Juror 29. Defense counsel objected, citing GR 37. The prosecutor explained the reasons for the challenge: "The reason we struck her was based upon her answers. She was raised by her grandparents. She was not allowed to go anywhere or do anything. She never did anything wrong. She has no life experiences. That was the basis for the challenge." RP at 328-29.

The court then noted its concern with one of Stanley's peremptory challenges, then returned to discussing the State's preemptory strike on Juror 29:

> THE COURT: The court noted that defense struck Juror Number 1, who is of Hispanic ancestry, as well as the court noted it appeared that [juror 29] is also of Hispanic background. The court under Rule—General Rule 37 has to make a determination as to the reasons given to justify the peremptory in terms of the totality of the circumstances.
>
> . . .
>
> Again, the court's observation based on the last name [of juror 29] . . .
>
> I'll overrule the objection in light of the fact that the prosecution asked her questions and they've given a reason, based on her upbringing, background, and basically her I'll call it "worldly experiences" as indicated on the record by her questioning.

RP at 328-30. Defense counsel later added, "I don't—the fact that [juror 29's] not worldly is not a basis for overcoming [GR 37]." RP at 333.

Upon further discussion regarding juror 29's ethnicity, the court asked the entire panel to identify their ethnicity. The inquiry revealed that the panel had three members who identified as Hispanic/Latino, three who identified as Native American, and one who identified as half Philipino and half eastern European. Juror 29 raised her paddle when asked if she identified as Hispanic/Latino and Caucasian/White, and explicitly identified herself as "half American and half Puerto Rican." RP at 338.

The court then reiterated its ruling on the GR 37 objection:

> As to [juror 29], she's Caucasian and Puerto Rican. It does not appear to the court that . . . [the State's] exercise of the peremptory is based on race; that it's based on life experiences and her responses to the questions. I'll overrule the objection based on that.

RP at 340.

The court also addressed Stanley's peremptory strikes of two jurors, one who identified as Hispanic and one who identified as Native American. After some discussion, the court allowed those strikes after defense counsel explained that juror 1 was removed due to his employment with the Department of Licensing—relevant because some of the evidence involved driving records—and juror 49 was struck due to his law enforcement background.

After jurors were excused for cause, 40 jurors remained in the venire. Of those, 7 identified as minorities. Of the 12 jurors sworn in, 2 identified as minorities. The State used 7 peremptories: 6 were white/Caucasian and 1 was the juror who identified as half Puerto Rican at issue (Juror 29). The defense used 5 peremptories: 3 were white/ Caucasian and 2 identified as minorities.

Following trial, the jury found Stanley guilty of both charges. Stanley timely appealed.

ANALYSIS

Stanley argues the trial court violated GR 37 by failing to apply the objective observer standard and permitting the State to strike prospective juror 29, who identified as half Puerto Rican. The State argues that no objective observer could view race or ethnicity as a factor in the striking of juror 29, pointing out that the questions posed to juror 29 were no different than other jurors and the State did not disproportionately use peremptory strikes against a given race or ethnicity.

GR 37 Standards

Both the Washington and federal constitutions protect the right of a criminal defendant to a fair and impartial jury. U.S. CONST. amend. VI; WASH. CONST. art. I, § 22. This right includes the guarantee of a trial free from discrimination, both for the parties and jurors. *Powers v. Ohio*, 499 U.S. 400, 409, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991). GR 37 was implemented not only to forbid purposeful discrimination in jury selection, but to also address the influence of implicit racial bias in jury selection. *State v. Berhe*, 193 Wn.2d 647, 664, 444 P.3d 1172 (2019).

Under GR 37, a party may object to the use of a peremptory challenge by simply citing the rule. Upon objection, the party exercising the peremptory challenge must articulate the reasons for the challenge. GR 37(d). The court must then evaluate these reasons in light of the totality of the circumstances. GR 37(e). "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." *Id*. (emphasis added).

An "objective observer" is one who "is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington State." GR 37(f). In the context of an objective observer, the word "can" has been defined as "'made possible or probable by circumstances.'" *Simbulan v. Nw. Hosp. & Med. Ctr.*, 32 Wn. App. 2d 164, 176, 555

P.3d 455 (2024) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 323 (2002)).

Because the GR 37 analysis is purely objective, we review such a claim de novo. *State v. Lahman*, 17 Wn. App. 2d 925, 935, 488 P.3d 881 (2021).

GR 37(g)[1] lists five nonexclusive circumstances relevant to assessing the nature of a peremptory challenge:

> (i) the number and types of Questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to Question the prospective juror about the alleged concern or the types of Questions asked about it;
>
> (ii) whether the party exercising the peremptory challenge asked significantly more Questions or different Questions of the potential juror against whom the peremptory challenge was used in contrast to other jurors;
>
> (iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;
>
> (iv) whether a reason might be disproportionately associated with a race or ethnicity; and
>
> (v) whether the party has used peremptory challenges disproportionately against a given race or ethnicity, in the present case or in past cases.

[1] The party raising a GR 37 challenge on appeal is responsible for ensuring that the record is sufficient for this court to apply GR 37. This means the record should indicate which jurors were seated on the panel and which jurors were excused on peremptory challenge. Here, following oral argument, Stanley supplemented the record with the jury sheet that contained this information.

The rule also specifies seven presumptively invalid justifications for peremptory challenges.[2] GR 37(h). In addition, if a prosecutor exercising a peremptory strike mischaracterizes the prospective juror's answers it could support an inference of implicit bias. *See State v. Jefferson*, 192 Wn.2d 225, 250-51, 429 P.3d 467 (2018). "[T]he remedy for the erroneous exclusion of a juror from service on the basis of race or ethnicity is reversal and remand." *Lahman*, 17 Wn. App. 2d at 929.

Analysis

In Stanley's case, the first step was met when defense counsel objected to the State's use of a peremptory strike against juror 29 on the basis of GR 37. Juror 29 identified herself as either Hispanic or Caucasian and noted that she was half Puerto Rican. This was "enough to raise the concern that an objective observer could perceive Juror [29] as a racial or ethnic minority." *See Id.* at 935.

Turning to the second step, the party exercising the strike must offer a race-neutral justification. *Id.*; GR 37(d). Here, the prosecutor explained the reason for the

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[2] (i) having prior contact with law enforcement officers;
(ii) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;
(iii) having a close relationship with people who have been stopped, arrested, or convicted of a crime;
(iv) living in a high-crime neighborhood;
(v) having a child outside of marriage;
(vi) receiving state benefits; and
(vii) not being a native English speaker.

peremptory: "She was raised by her grandparents. She was not allowed to go anywhere or do anything. She never did anything wrong. She has no life experiences." RP at 329. Given this information, we must determine whether an objective observer "*could* view race or ethnicity as *a* factor in the use of the peremptory challenge." GR 37(e) (emphasis added).

As an initial matter, we note that despite the trial court's cognizance of GR 37's standard, it appears that the court applied the wrong standard. The trial court overruled Stanley's GR 37 objection after concluding that the State's exercise of the peremptory was not based on race. This was error under GR 37(e). "The court need not find purposeful discrimination to deny the peremptory challenge." GR 37(e). The standard is not whether the peremptory challenge was based on race. Rather, the standard is whether an objective observer "*could* view race or ethnicity as *a* factor in the use of the peremptory challenge." GR 37(e) (emphasis added).

On appeal Stanley contends this standard is met. In support of his argument he contends the State mischaracterized juror 29's answers, noting that juror 29 was never asked about her life experiences, did not state that she was raised by her grandparents, did not say that she was not allowed to go anywhere or do anything, and did not claim that she never did anything wrong. He compares his case to *Lahman*.

In *Lahman*, the prosecutor attempted to use a peremptory challenge against a 23-year-old prospective juror with an Asian surname. 17 Wn. App. 2d at 929. The

prosecutor's justification for the strike was that the juror was young and did not have "life experiences." *Id.* at 931. This court held that the trial court erred in overruling the GR 37 objection, reasoning that the juror was not questioned about his life experiences and was not afforded an opportunity to explain himself and the circumstances due to the limited questions he was asked. *Id.* at 936. In addition, we found that the prosecutor's focus on the juror's youth and life experiences played into some improper stereotypes about Asian-Americans. *Id.* at 937-38.

Applying the correct standard to the record before us, we conclude that an objective observer could conclude that juror 29's race or ethnicity was a factor in the State's peremptory. Our conclusion is based on the application of several factors. First, the prosecutor's justifications for the strike mischaracterized juror 29's responses. GR 37(g)(i). Although the State contends that its characterization of juror 29's comments was reasonable given the limited time for voir dire, juror 29 never said that she was raised by her grandparents, nor did she say that she was not allowed to go anywhere or do anything.

Similarly, juror 29 did not state, as the prosecutor put it, that she "never did anything wrong." RP at 329. In fact, juror 29 gave a specific example of getting in trouble and doing something wrong: she got in trouble for smoking as a teenager. Moreover, like the prosecutor in *Lahman*, the prosecutor here never asked juror 29 about

her "life experiences" either as a minor or as an adult, making the justification about juror 29 having "no life experiences" unsupported by the record. GR 37(g)(i).

In addition, we note that several of the seated jurors failed to indicate that they had life experiences. The prosecutor asked a series of questions to several jurors, including juror 29, to determine how the jurors would judge credibility and whether the jurors had experience with underage drinking. While the State asked juror 29 similar questions as other jurors, and juror 29 denied having experience with underage drinking, her answers were not unique.

Similar to juror 29, five of the seated jurors were asked about their experience with underage drinking either with their children or their own experience. Four of those five jurors indicated that they did not have issues with their children drinking as teenagers. Juror 3 said her children were "pretty easy" and did not have issues with drinking, though she admitted that she drank alcohol when she was a teenager. Juror 6 had raised four children and acknowledged inter-family squabbles but said nothing about drinking issues. Juror 13 said her children did not have drinking issues as teenagers but drove recklessly on motorcycles. And juror 36 raised three children and said it was a roller coaster when they were teenagers, with a few missed curfews and traffic tickets, but no experience with underage drinking. Juror 24 was the only juror who confessed that her children struggled as teenagers with drinking and law enforcement contacts.

Finally, we note that a justification based on lack of "life experience" is vague and similar to the presumptively invalid reasons listed in the rule is subject to scrutiny under GR 37.

Considering the totality of the circumstances, we conclude that an objective observer could have viewed juror 29's race or ethnicity as a factor in the prosecutor's use of the peremptory challenge. As we have said before, our determination does not mean that the prosecutor's peremptory challenge was subjectively based on race or ethnicity. *See Lahman*, 17 Wn. App. 2d at 938. "GR 37 was written in terms of possibilities, not actualities . . . peremptory strikes exercised against prospective jurors who appear to be members of racial or ethnic minority groups must be treated with skepticism and considerable caution." *Id*.

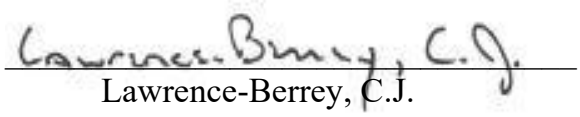
Ultimately, "[b]ecause 'the Constitution forbids striking even a single prospective juror for a discriminatory purpose,' mistakenly allowing a party to dismiss a juror for reasons of race or ethnicity requires reversal and remand for a new trial." *Id*. at 932 (quoting *United States v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994)). "This remedy applies regardless of the strength of the prosecutor's case or the hardship to victims or witnesses." *Id.*

Reversed and remanded for a new trial.

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

Staab, J.

WE CONCUR:



Lawrence-Berrey, C.J.

Cooney, J.

OKANOGAN COUNTY PROSECUTING ATTORNEY'S OFFICE

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