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NO. 91940-2
COA NO. 45607-9-II
Cowlitz Co. Cause NO. 13-1-00651-8

**SUPREME COURT OF STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

GEORGE THOMAS STRANGE,

Appellant/Petitioner.

RESPONSE TO PETITION FOR REVIEW

RYAN JURVAKAINEN
Prosecuting Attorney
AILA WALLACE/WSBA 46898
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I. IDENTITY OF RESPONDENT

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the July 14, 2015, published opinion of the Court of Appeals in *State v. Strange*, COA No. 45607-9-II. This decision upheld the Petitioner's convictions for Child Molestation in the second degree and Voyeurism.

II. ANSWER TO ISSUES PRESENTED FOR REVIEW

The Court of Appeals properly held that the defendant received a fair trial by an impartial jury as the statements of potential jurors did not taint the entire panel.

III. STATEMENT OF THE CASE

The State charged the Petitioner with one count of second degree child molestation and one count of voyeurism in May 2013. The case proceeded to trial on October 15, 2013. RP 1. The jury panel consisted of 56 people. CP 12-16. When asked by the judge if any of the potential jurors had a personal experience with the charged crimes, either as a victim, witness, accused, or had family members as such, seventeen people raised their hands. RP 27-29. Most of these individuals did not have personal experience with the charges, but knew someone who was either a victim or had been charged with child molestation. For example, Juror #5 indicated

his father was convicted of a similar crime against a family member when #5 was around ten years old. RP 28–29, CP 12.¹ He did not believe it would influence his consideration of the case. RP 29.

Juror #13 then told the court her ex-husband was convicted of child molestation against a neighbor. RP 30, CP 12. While #13 thought it might be a factor in the case, she indicated she could apply the law to the facts. RP 31. Juror #15 stated that, although her uncle and husband’s cousin were convicted of such charges, they would not influence her. RR 31–32, CP 13. Juror #16 knew his neighbor was convicted of similar charges, but state this would not pose a problem for him in sitting as a juror. RP 32–33, CP 13. Juror #21 had an ex-son-in-law charged with molesting his granddaughter a couple month prior to the trial. PR 33–34, CP 13. He said the result was “a slap on the hand,” and that he could not be fair. RP 34. This juror was ultimately excused. RP 74, CP 13.

Juror #25 indicated her granddaughter was molested four years prior and the suspect was let go because of a lack of investigation. RP 35, CP 13. She initially expressed negative feelings about the result, but ultimately stated she could separate her own experience and be fair and impartial. RP 138–39.

¹ The State means no disrespect by referring to the jurors as a number, but does so to protect the juror’s identities given the subject matter at issue.

Juror #27 stated that even though his brother-in-law and cousin's ex-husband and multiple neighbors were convicted, he would not be influenced. RP 36–37. Juror #30 stated she had a family member involved, but wanted to speak in private. RP 37–38, CP 14. She was eventually excused. Juror #37 indicated he was close to multiple victims of abuse. RP 39, CP 14. He did not believe these relationships would cause a problem in reaching a verdict. RP 39–40. Juror #43 stated his wife was molested as a child, but could be fair and impartial. RP 38, CP 15. Juror #45 stated he was on a previous jury involving the prosecutor that was later overturned, but he did not state what the charges were. RP 39, CP 15.

Juror #47 expressed her difficulty in being present because of the personal history and family history and began to cry. RP 40, CP 15. No questions were asked of her, and she was later excused. RP 40. Juror #49 then stated she had an adopted sibling with a history that had a significant impact on their life. RP 40–41, CP 15. Additionally, because she is an elementary school principal, she sees the results of abuse on victims. RP 41. She thought she might be impaired. RP 41.

Juror #52 indicated her son was a victim and she would not be able to listen to the evidence. RP 41–42, CP 16. Number 54 then stated two of his really close friends were victims and that he was not sure if this would affect his ability to sit as a juror. RP 42. He was later excused. Juror #32

stated she was currently mentoring a victim who was in the middle of a case. RP 43, CP 14. She was unsure if this would affect her ability to be impartial. RP 44.

Juror #1, in response to a general question of impartiality, stated he had a natural bias against the accusations because he had two friends that were accused of similar crimes. RP 69–70, CP 12. Another juror concurred, explaining two family members were molested and the suspects got off “scot-free,” and her daughter had to live with the repercussions. RP 70–71.

Juror #54 then reiterated his earlier conversation with the court. RP 72, CP 16. He stated, “...it’s not an easy accusation to make. Like, it is hard for people (inaudible). It’s like if accusation were made there’s something behind that.” RP 72. When the court reviewed the presumption of innocence and asked Juror #54 if he could follow it, he answered, “I don’t – like, I don’t have a ton of experience but it has just been my experience people don’t make that accusation, you know, for no reason. Like, I feel like if an accusation was made there had to be something that had happened.” RP 72.

During the State’s voir dire, three jurors indicated they felt uncomfortable listening to the facts of such cases and worried they could not be fair. RP 119–125. The defendant also covered the topic of who did not feel comfortable listening to the evidence and deciding the case. RP

178 – 80. A couple potential jurors commented, but the majority did not indicate they would have a problem. RP 178 – 81. Defense counsel specifically asked the entire panel if they would base their decision on anything other than the testimony, exhibits, and the law. RP 181. Upon hearing they would only base their decision on the law and evidence, the defense attorney ended his voir dire. RP 182.

On appeal, the defendant argued that he had been denied a fair and impartial jury because of prospective jurors' statements concerning their own prior experiences with child molestation, either in their families or among friends and acquaintances. His argument was that this case is factually similar to *Mach v. Stewart*, 137 P.3d 630 (9th Cir. 1997). The Court of Appeals disagreed and affirmed the convictions.

IV. ARGUMENT

A. THE COURT OF APPEALS PROPERLY HELD THAT THE DEFENDANT RECEIVED A FAIR TRIAL BY AN IMPARTIAL JURY AS THE STATEMENTS OF POTENTIAL JURORS DID NOT TAINT THE ENTIRE PANEL; THEREFORE, THE CONVICTIONS SHOULD BE UPHeld AND THE PETITION FOR REVIEW SHOULD NOT BE GRANTED.

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court only if one of four conditions are met: (1) If the decision of the Court of Appeals is in conflict with a decision of the

Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Neither in the petition for review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b). The Division II Court of Appeals holding in this case is not in conflict with any decisions either the Washington Supreme Court or another division of the Court Appeals. The holding also does not raise a significant question of law or involve an issue of substantial public interest.

1. A significant question of law is not involved in this case.

As the Court of Appeals mentioned, the Petitioner's sole argument on this issue on appeal was that this case is factually similar to *Mach v. Stewart*, 137 F.3d 630 (9th Cir. 1997). In fact, this case is distinguishable from *Mach* in a number of ways discussed in the opinion of the Court of Appeals. Because the only issue is whether the set of facts presented in this case match up with the facts of another case, there is no significant question of law.

That there is little or no Washington case law on this issue does not create a significant question of law under the United State Constitution or the Washington Constitution. This Court should not grant review simply because there are not many cases on an issue; rather the case must raise a significant question under the Constitution. This case does not raise such a question.

2. *There is no question of substantial public interest in this case.*

That there is little or no Washington case law on this issue also does not create an issue of substantial public interest. Similarly, the fact that the Court of Appeals did not create a bright-line rule about which statements would taint a jury and which would not does not create an issue of substantial public interest. This is especially true given the fact that the issue before the Court of Appeals involved the factual similarities between this case and *Mach v. Stewart*. It was a narrow issue that the Court of Appeals ruled on correctly, not a pressing issue of substantial public interest.

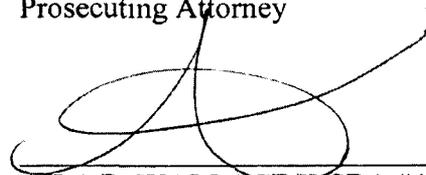
V. CONCLUSION

For the reasons stated above, Petitioner's petition for discretionary review should be denied.

Respectfully submitted this 11th day of August, 2015.

RYAN JURVAKAINEN
Prosecuting Attorney

By:



AILA R. WALLACE/WSBA #46898
Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that the Response to Petition for Review was served electronically via e-mail to the following:

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and,

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on August 11th, 2015.


Michelle Sasser
Michelle Sasser

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, August 11, 2015 4:16 PM
To: 'Sasser, Michelle'; 'donnabaker@qwestoffice.net'; jahayslaw@comcast.net
Subject: RE: PAs Office Scanned Item George Thomas Strange, 91940-2, Response to Petition for Review

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Attached, please see that Response to Petition for Review for the above-named Petitioner.

Thanks, Michelle Sasser

From: pacopier_donotreply@co.cowlitz.wa.us [mailto:pacopier_donotreply@co.cowlitz.wa.us]
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