NO. 100764-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TINA MARIE EVESKCIGE,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

It is well-settled in Washington that a trial court will sua sponte dismiss a potential juror for actual bias where it is unequivocally clear that the juror is unable to try the case impartially. That is not the case here. Tina Marie Eveskcige resorts to a conclusory allegation that a potential juror was biased, despite the juror's express confirmation that she would follow the law and could be impartial.

Eveskcige's assertion that the juror expressed actual bias fails where the juror merely indicated self-awareness of a potential source of unease based on her daughter being involved in an incident where she was a victim of assault, and also indicated that she did not wish to serve on the jury. These statements are at most equivocal and the Court of Appeals properly concluded that they do not create a *probability* that the juror was unable to try the issue impartially. A different picture emerges when viewing the entirety of the juror's statements, rather than the two statements in isolation. Evekscige made the

strategic choice to keep juror 24 after considering the juror's statements, including statements that could be viewed as helpful to the defense, against the two statements highlighted by Eveskcige. This prescient strategy was later vindicated as the jury was unable to reach a verdict on the only felony charge, and she obtained the benefit of a reduced misdemeanor charge.

The Court of Appeals tightly adhered to this Court's well-settled test in concluding that there was no probability that the juror was actually biased. Eveskcige's petition merely amounts to a disagreement with the application of long settled rules to the particular facts here, which in no way justifies review under RAP 13.4(b){ TA \l "RAP 13.4(b)" \s "RAP 13.4(b)" \c 5 }. There is no conflict of authority for this Court to review. Nor does the petition involve an issue of substantial public interest. This Court should decline to revisit this well-plowed ground and deny review.

II. RESTATEMENT OF THE ISSUES

A. Should this Court deny review where the Court of Appeals applied well-established precedent and the juror expressly indicated that she could try the case fairly?

B. Is there any public policy reason to require trial judges to sua sponte interfere with defense strategy during the jury selection process?

III. STATEMENT OF THE CASE

A. Evekscige Repeatedly Punched Her Ex-Husband in Front of Their Children

In July 2021, Tina Marie Eveskcige showed up at her ex-husband, Brian Eveskcige's [1] home while intoxicated. RP at 191, 288.[2] She walked past Brian and his girlfriend, Victoria Bazan, and went upstairs to Brian's bedroom. *Id*. at 288. Brian smelled alcohol on Tina's[3] breath and asked her to leave. *Id*. She became

[1] The State will refer to Mr. Eveskcige by his first name for clarity. No disrespect is intended.

[2] When citing to the transcripts from October 29, 2019, through December 13, 2019, the State has not included the date of each proceeding because they are paginated sequentially and citations to other proceedings are not required.

[3] The State will refer to Ms. Eveskcige by her first name in this section for clarity. No disrespect is intended.

"very angry" and started repeatedly hitting Brian "[w]ith closed fists … in the ribs and then the shoulder." *Id*. at 289. Tina and Brian's children were in the room sleeping and woke up during the assault. *Id*. at 293-94. When Brian's girlfriend told her to stop, Tina next attacked her. *Id*. at 267.

Law enforcement arrived and discovered Tina screaming at Brian as he hid behind an overturned table with three crying and frightened children nearby. *Id*. at 218. As one of the officers placed Tina under arrest, she turned and spat in his eye. *Id*. at 253.

B. Juror 24 Indicated that She Could Be Impartial and Follow the Court's Instructions

The State charged Eveskcige with one count of third-degree assault and two counts of fourth-degree assault. CP 3-4. During voir dire, the trial court asked a series of questions to the panel. RP at 30-32. Juror 24 raised her placard in the affirmative to the court's question: "Do any of you have a close friend or relative who has had an experience with a similar or related type of case or incident as a victim?" RP at 31. To another question,

juror 24 did not raise her placard, indicating a negative response, when the court asked: "Would any of you be unable to assure the Court that you will follow the instructions on the law regardless of what you think the law is or ought to be?" *Id*. at 32. Juror 24 likewise did not raise her placard when the court asked: "Do you know any reason why you might not be able to try this case impartially?" *Id*.

The court later asked the panel if anybody had a "close friend or relative who has had an experience with a similar or related type of case or incident as a victim." RP at 38. Juror 24 raised her placard, and stated "[m]y daughter, two years ago." *Id*. The court inquired, "[a]nything about the experience that she shared with you that you think might affect your ability to sit on this case?" to which juror 24 replied "[y]es." *Id*. at 39.

Following the court's questions, the State and defense counsel also questioned the potential jurors. The State asked the panel to indicate if anybody would not be able to follow the law if they thought it was "ridiculous or stupid." And juror 24 did not

respond. *Id*. at 75. Defense counsel asked juror 24 if she had a reason to think that a police officer would ever lie. *Id*. at 82. Juror 24 indicated that she believes that an officer could lie based on a "[c]onnection to the person or that victim, either one" and that law enforcement could lie to "protect that person." *Id*. Juror 24 also admitted to defense counsel that she had been accused of lying as a child, but as an adult and teacher, "[i]t's not something that I consider that as a teacher I would do." *Id*. at 91.

Defense counsel asked each juror, one by one: "If you were Tina Eveskcige and you were charged with Assault 3 and two counts of Domestic Violence Assault 4, would you want somebody like you on this jury?" RP at 114. Juror responded, "[n]o." *Id*. at 116. Defense counsel did not follow up with the juror on this response and declined to bring a motion to excuse juror 24 for cause. *See id* at 116-23. There was no other significant interaction with juror 24 during the jury selection process. *See id* at 1-126.

The State used all six of its peremptory challenges. RP at 120-23. Eveskcige opted to exercise only four of her peremptory challenges. *Id*. Eveskcige also twice declared that "[t]he defense accepts the jury as it sits," including juror 24.[4] *Id*. at 123. Juror 24 was ultimately seated on the empaneled jury, with no objection from Evesckige as to the jury's ultimate composition. *Id*. at 124.

C. Eveskcige Pled Guilty to a Reduced Charge of Fourth-Degree Assault, Was Acquitted of Fourth-Degree Assault, and the Jury Convicted On One Count of Fourth-Degree Assault

Following trial, a jury acquitted Eveskcige of the fourth-degree assault count with respect to Victoria Bazan, failed to reach a verdict on the felony third-degree assault count, and found Eveskcige guilty of fourth-degree assault against Brian Eveskcige. CP 37-39. Eveskcige later pled guilty to a reduced

[4] Defense counsel declared, "[t]he defense accepts the jury as it sits." RP at 123. Moments later, after the State exercised an additional peremptory challenge, defense counsel declared, with slightly different language that "[t]he defense would accept the jury as it sits, Your Honor." *Id*.

charge of fourth-degree assault against the law enforcement officer. CP 42-47. The trial court sentenced Eveskcige to 364 days in jail, suspended on the conditions that she commit no criminal law violations and obtain an anger management evaluation. CP 53-57.

On direct appeal, the Court of Appeals affirmed, holding that "[i]n viewing the circumstances as a whole, there was not a probability that juror 24 was actually biased. The trial court, therefore, did not err by failing to remove her for cause, especially when Eveskcige did not challenge juror 24 for cause or strike her with an available peremptory challenge." *State v. Eveskcige*, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished){ TA \l "*State v. Eveskcige*, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished)" \s "State v. Eveskcige, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished)" \c 1 }.

IV. ARGUMENT

A. Washington Courts Have Consistently Held that a Juror Must Be Dismissed if the Juror Cannot Try the Case Impartially

It is well-settled in Washington that when faced with the prospect of an actually biased juror, the trial court is required to sua sponte dismiss the juror only where it is indisputably clear that the juror cannot try the case impartially. *E.g.*, *State v. Sassen Van Elsloo*, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018){ TA \l "*State v. Sassen Van Elsloo*, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" \c 1 }; RCW 4.44.170{ TA \l "RCW 4.44.170" \s "RCW 4.44.170" \c 4 }; RCW 4.44.190{ TA \l "RCW 4.44.190" \s "RCW 4.44.190" \c 4 }. Dismissal of a potentially biased juror requires proof that the juror cannot try the case impartially. *Sassen Van Elsloo{* TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 808-09. An equivocal answer indicating "a mere possibility of bias is not sufficient to prove actual bias; rather, the record must demonstrate 'that there was a probability of actual

bias.'" *Sassen Van Elsloo*, 191 Wn.2d at 809 (citing *State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991){ TA \l "*State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991)" \s "State v. Noltie, 116 Wn.2d 831, 839, 809 P.2d 190 (1991)" \c 1 }). Both the trial court and Court of Appeals tightly adhered to this principle in reaching their decisions. There is no statutory or constitutional basis for revisiting this long settled point.

Applying the test developed by this Court to the *totality* of the juror's statements confirms that it would have been improper to strike her for cause. The trial court is not required to remove a juror for cause based on equivocal answers alone. *Sassen Van Elsloo*, 191 Wn.2d at 809; *see also State v. Peña Salvador*, 17 Wn. App. 2d 769, 785, 487 P.3d 923 (2021){ TA \l "*State v. Peña Salvador*, 17 Wn. App. 2d 769, 785, 487 P.3d 923 (2021)" \s "State v. Peña Salvador, 17 Wn. App. 2d 769, 785, 487 P.3d 923 (2021)" \c 1 }. Moreover, even if a juror has formed or expressed an opinion, "such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the

circumstances, that the juror cannot disregard such opinion and try the issue impartially." RCW 4.44.190{ TA \s "RCW 4.44.190" }. Rather, "the question is whether a juror with preconceived ideas can set them aside" and the court must be satisfied that the potential juror is unable to "try the issue impartially and without prejudice to the substantial rights of the party challenging" before dismissing the juror for actual bias. *Sassen Van Elsloo{* TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 809 (internal citations omitted).

Unable to meet this standard, Eveskcige resorts to the conclusory allegation that juror 24's "bias was clear." Pet. for Rev. at 5. Not so. In response to the court's questions, Eveskcige affirmatively indicated that she would be able to follow the court's instructions "regardless of what [she] think[s] the law is or ought to be." RP at 32. Likewise, she could not think of "any reason" why she "might not be able to try this case impartially." *Id*. Stated otherwise, juror 24 could both follow the court's

instructions on the law and try the case fairly. *Id*. Since juror 24 expressly indicated her ability to try the case impartially, it would have been improper for the court to strike her for cause based merely on her self-awareness of potential sources of bias.

In conflict with this case law, Eveskcige mistakenly focuses on two of juror 24's responses rather than the complete picture. First, she claims that juror 24's awareness that her daughter's experience "made clear" that the experience "would affect [her] ability to be fair." Pet. for Rev. at 5. In reality, the court inquired, "[a]nything about the experience that she shared with you that you think might affect your ability to sit on this case?" to which juror 24 replied "[y]es." RP at 39. She did not state that she could not "be fair" as Eveskcige claims. *See id* at 39; *see also* Pet. for Rev. at 5. As the Court of Appeals astutely observed, "this statement alone was vague and did not show actual bias." *Eveskcige{* TA \s "State v. Eveskcige, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished)" *}*, 2022 WL 538400, at *3. Stated otherwise, juror

24's statements did not amount to a "state of mind" which indicated that juror 24 "cannot try the issue impartially and without prejudice to the substantial rights" of Eveskcige. RCW 4.44.170(2);{ TA \l "RCW 4.44.170(2)" \s "RCW 4.44.170(2)" \c 4 } *see also Sassen Van Elsloo{* TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 809.

Second, Eveskcige claims that juror 24 "candidly admitted if the roles were reversed she would not want herself on the jury." Pet. for Rev. at 5. But juror 24 simply stated "no" in response to defense counsel's question, which was asked to every single juror individually, of whether they would want somebody such as themselves on the jury if they were charged with the same crimes as Eveskcige. RP at 114-16. As the Court of Appeals observed, "this statement was also vague and the reasoning behind it was not explored by defense counsel." *Eveskcige*,{ TA \s "State v. Eveskcige, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished)" } 2022 WL

538400, at *3. Defense counsel, as per her strategic decision, declined to follow up with juror 24 and any attempt to discern why she may not have wanted to serve on the jury amounts to nothing more than pure speculation.

A different picture emerges when juror 24's statements are viewed in full. The State asked the panel members to indicate if they would not be able to follow the law if they thought it was "ridiculous or stupid." Juror 24 did not respond. RP at 75. The defense asked juror 24 if she had a reason to think that a police officer would ever lie. *Id*. at 82. The juror stated that she believed that an officer could lie based on a "[c]onnection to the person or that victim, either one" and that law enforcement could lie to "protect that person." *Id*.

Considered in full, the juror's answers do not demonstrate actual bias. She did not express an inability to follow the law. And while she thought her daughter's experience "might" affect her ability to sit on the jury, her statement that she believes police officers are capable of lying was arguably quite helpful to the

defense. As such, it would have been inappropriate for the trial court to sua sponte dismiss juror 24 for cause. *Sassen Van Elsloo*{ TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 809; *see also State v. Davis*, 175 Wn.2d 287, 312, 290 P.3d 43 (2012), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018){ TA \l "*State v. Davis*, 175 Wn.2d 287, 312,. 290 P.3d 43 (2012), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018)" \s "State v. Davis, 175 Wn.2d 287, 312,. 290 P.3d 43 (2012), abrogated on other grounds by State v. Gregory, 192 Wn.2d 1, 427 P.3d 621 (2018)" \c 1 } (trial court is in the best position to evaluate whether a juror must be dismissed).

Eveskcige's reliance on *State v. Irby*, 187 Wn. App. 183, 347 P.3d 1103 (2015){ TA \l "*State v. Irby*, 187 Wn. App. 183, 347 P.3d 1103 (2015)" \s "State v. Irby, 187 Wn. App. 183, 347 P.3d 1103 (2015)" \c 1 } is misplaced. As she notes, there, "a prospective juror said she was 'more inclined towards the

prosecution'" and that she "'would like to say he's guilty.'" Pet. for Rev. at 4 (citing *Irby*, 187 Wn. App. at 190). These statements amount to an unequivocal expression that the prospective juror was biased in favor of convicting the defendant. Stated otherwise, they amount to an unmistakable and clear expression that the juror is unable to try the case impartially. In sharp contrast here, juror 24 made no such statements indicating an unequivocal bias in favor of the prosecution or a desire to find the defendant guilty. *See* RP at 1-124. Rather, as the Court of Appeals observed, juror 24's statements were at most "vague" or "equivocal," 2022 WL 538400, at *3, and by themselves, do not lead to an inference of a prejudicial bias against Eveskcige. Moreover, *Irby* involved an unusual situation in which the defendant was both pro se and waived his presence during voir dire, creating a heightened duty for the judge and prosecutor to ensure that the panel was unbiased. *Irby*, 187 Wn. App. at 196-97. Subsequent cases citing to *Irby{* TA \s "State v. Irby, 187 Wn. App. 183, 347 P.3d 1103 (2015)" *}* have distinguished it on that

basis. *See State v. Lawler*, 194 Wn. App. 275, 284-85, 374 P.3d 278 (2016){ TA \l "*State v. Lawler*, 194 Wn. App. 275, 284-85, 374 P.3d 278 (2016)" \s "State v. Lawler, 194 Wn. App. 275, 284-85, 374 P.3d 278 (2016)" \c 1 }; *see also State v. Phillips*, 6 Wn. App. 2d 651, 661-67, 431 P.3d 1056 (2018){ TA \l "*State v. Phillips*, 6 Wn. App. 2d 651, 661-67, 431 P.3d 1056 (2018)" \s "State v. Phillips, 6 Wn. App. 2d 651, 661-67, 431 P.3d 1056 (2018)" \c 1 }.

This Court has clearly held that courts will dismiss a juror for cause where it is clear that the juror is unable to try the case impartially and without prejudice. Here, the trial court actively participated in the voir dire process and properly declined to interject itself in the sua sponte dismissal of jurors. And the Court of Appeals properly applied this Court's well-settled standard in concluding that "there was not a probability that juror 24 was actually biased." *Eveskcige{* TA \s "State v. Eveskcige, No. 54132-7-II, 2022 WL 538400, at *4 (Wash. Ct. App. Feb. 23, 2022) (unpublished)" *}*, 2022 WL 538400, at *4; *see also Sassen*

Van Elsloo{ TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 809. This Court should decline to revisit this well plowed ground.

Eveskcige concludes by stating that the Court of Appeals opinion "is contrary to settled case law from the United States Supreme Court … [and also] contrary to opinions from other divisions of the court of appeals," without explaining how or why. Pet. for Rev. at 7. Quite the opposite—the Court of Appeals tightly adhered to long-standing precedent from this Court and there is no conflict of authority for this Court to review. This Court has clearly held that trial courts will sua sponte dismiss a juror for actual bias if there is an unequivocal statement that the juror cannot try the case impartially. *Sassen Van Elsloo{* TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" *}*, 191 Wn.2d at 808-09. The trial court complied with this Court's directive in declining to sua sponte dismiss juror 24.

Eveskcige's contention that the Court of Appeals decision is "contrary" to *United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774, 145 L.Ed.2d 792 (2000){ TA \l "*United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774, 145 L.Ed.2d 792 (2000)" \s "United States v. Martinez-Salazar, 528 U.S. 304, 120 S. Ct. 774, 145 L.Ed.2d 792 (2000)" \c 2 } is also incorrect. Pet. for Rev. at 7. There, the Court held that a federal criminal defendant's use of peremptory challenges pursuant to Federal Rule of Criminal Procedure 24(b) is "not denied or impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been excused for cause." *Martinez-Salazar*, 528 U.S. at 317. Thus, if a criminal defendant elects to cure a trial court's erroneous denial of a for-cause challenge by exercising a peremptory challenge on that juror, "he has not been deprived of any rule-based or constitutional right." *Id*. at 307. Here, Eveskcige declined to both challenge juror 24 for cause or use a peremptory challenge on the juror. RP 116-23. Thus, *Martinez-Salazar{* TA \s "United States v. Martinez-

Salazar, 528 U.S. 304, 120 S. Ct. 774, 145 L.Ed.2d 792 (2000)" *}* is inapposite where the trial court did not deny Eveskcige's (non-existent) challenge for cause on juror 24 and where she opted not to use a peremptory challenge on the juror, as per her strategic choice.

In dictum, the Court noted that the trial court's ruling did not "result in the seating of any juror who should have been discussed for cause … that circumstance would require reversal." *Id*. at 316 (citing *Ross v. Oklahoma*, 487 U.S. 81, 91 n.5, 108 S. Ct. 2273, 101 L.Ed.2d 80 (1998) ("Had [the biased juror] sat on the jury that ultimately sentenced petitioner to death, and had petitioner *properly preserved his right* to challenge the trial court's failure to remove [the juror] for cause, the sentence would have to be overturned.") (emphasis added)). But Eveskcige did not move to dismiss juror 24 for cause. In any case, it is neither here nor there—where Eveskcige declined to both challenge juror 24 for cause and exercise a peremptory challenge on her, *Martinez-Salazar{* TA \s "United States v. Martinez-Salazar, 528

U.S. 304, 120 S. Ct. 774, 145 L.Ed.2d 792 (2000)" } is simply not on point. Moreover, the Court of Appeals decision here did not turn on whether Eveskcige either objected to juror 24's inclusion, or exercise a peremptory challenge on her. Rather, the Court specifically held that "there was not a probability that juror 24 was actually biased." *Eveskcige*, 2022 WL 538400, at *4. Thus, *Martinez-Salazar* has no bearing on Eveskcige's case, and the Court of Appeals opinion cannot plausibly be said to be "contrary" to it.

This Court should deny review as the Court of Appeals properly applied well-settled law to conclude that the trial court did not err in declining to sua sponte dismiss juror 24. The two statements highlighted by Eveskcige are insufficient to establish actual bias. It is well-settled that a juror's equivocal statements alone do not require for that juror to be dismissed. *Sassen Van Elsloo{* TA \s "State v. Sassen Van Elsloo, 191 Wn.2d 798, 808-09, 425 P.3d 807 (2018)" }, 191 Wn.2d at 809. Moreover, juror 24's statements are of no moment where she expressly indicated

that she could fairly try the case and would follow the court's instructions. *See Peña Salvador*,{ TA \s "State v. Peña Salvador, 17 Wn. App. 2d 769, 785, 487 P.3d 923 (2021)" } 17 Wn. App. at 785 (even if a juror indicates bias, it can be cured with an assurance of impartiality).

B. The Longstanding Rule Avoids Interference with Defense Strategy

There is no public policy reason for this Court to accept review and overturn the existing rule. To the contrary, this Court's rule that trial courts should only dismiss a juror for actual bias is buttressed by the Sixth Amendment's{ TA \l "Sixth Amendment's" \s "Sixth Amendment's" \c 3 } right of the accused to control important strategic decisions. *See State v. Coristine*, 177 Wn.2d 370, 374, 300 P.3d 400 (2013){ TA \l "*State v. Coristine*, 177 Wn.2d 370, 374, 300 P.3d 400 (2013)" \s "State v. Coristine, 177 Wn.2d 370, 374, 300 P.3d 400 (2013)" \c 1 } (recognizing that because the Sixth Amendment grants a defendant the right to present a defense, trial courts defer to "the defendant's right to control important strategic decisions.").

Here, defense counsel declined to follow up with juror 24's responses, as per her prerogative and strategic choice. *See Lawler*{ TA \s "State v. Lawler, 194 Wn. App. 275, 284-85, 374 P.3d 278 (2016)" }, 194 Wn. App. at 284-85 (defense counsel may have many reasons for declining to question or challenge particular jurors).

There are a wide variety of strategic reasons for defense counsel wanting to keep particular jurors. *Lawler*, 194 Wn. App. at 284-85. As explained by the United States Supreme Court, "[d]ifferent attorneys will pursue different strategies with regard to … selection of the jury." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150, 126 S. Ct. 2557, 165 L.Ed. 2d 409 (2006){ TA \l "*United States v. Gonzalez-Lopez*, 548 U.S. 140, 150, 126 S. Ct. 2557, 165 L.Ed. 2d 409 (2006)" \s "United States v. Gonzalez-Lopez, 548 U.S. 140, 150, 126 S. Ct. 2557, 165 L.Ed. 2d 409 (2006)" \c 2 }. A trial court's sua sponte interference with the jury selection process may have implications on a defendant's Sixth Amendment{ TA \s "Sixth Amendment's" } right to

"'control important strategic decisions.'" *Lawler{* TA \s "State v. Lawler, 194 Wn. App. 275, 284-85, 374 P.3d 278 (2016)" *}*, 177 Wn.2d at 285 (citing *Coristine*,{ TA \s "State v. Coristine, 177 Wn.2d 370, 374, 300 P.3d 400 (2013)" } 117 Wn.2d at 374).

In this case, juror 24 made statements which the defense may well have viewed as helpful. She indicated that police officers could sometimes lie. RP at 82. The State's case turned, in large part, on the jury's acceptance of police officer testimony. This favorable response may well have been why defense counsel opted not to exercise a peremptory challenge to juror 24 or bring a motion to excuse her for cause. Instead, Eveskcige twice declared that "[t]he defense accepts the jury as it sits," including juror 24. *Id*. at 123. This strategic choice may have borne fruit when the jury was unable to reach a verdict as to the most serious charge, and Eveskcige later obtained the benefit of a reduction to misdemeanor assault. CP 42-47.

This Court should deny Eveskcige's unwise invitation to overturn well settled law and open up the jury selection process to unwarranted sua sponte interference from trial judges.

V. CONCLUSION

For the foregoing reasons, the State respectfully asks that this Court deny Evekscige's petition for review.

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RESPECTFULLY SUBMITTED this 15th day of April, 2022.

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PIERCE COUNTY PROSECUTING ATTORNEY

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