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Court of Appeals  
Division II  
State of Washington  
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No. 54135-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

PITA DALLAS ILI,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

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APPELLANT'S REPLY BRIEF

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## A. ARGUMENT IN REPLY

### **The trial court deprived Mr. Ili of his right to a fair trial with impartial jurors.**

The court deprived Pita Ili of his right to a fair and impartial jury when it refused to strike Juror 29 for cause. This is because Juror 29 had implied and actual bias, as he was employed as a chaplain at the Lacey Police Department—the very police department who investigated this case, which led the State to file the charge against Mr. Ili. *See* Op. Br. at 6-14. Additionally, Juror 29 was personally familiar with the officer from the Lacey Police Department who conducted the investigation for the State and testified on behalf of the State at trial. However, the State argues Juror 29 did not have a personal or financial interest in the outcome of the case, and therefore he had no bias in favor of the State. Resp. Br. at 13-14.

The State is mistaken because the very nature of a chaplain's role within a police department—even if unpaid—vests the chaplain with a strong personal interest in the outcome of a criminal case instituted by the police department he or she serves. The legislature authorized chaplains to provide “emotional support...including counseling, stress management, and family life counseling.” RCW 41.22.010; RCW 41.22.040. The chaplain therefore has a personal interest in cultivating the wellbeing of each of the police officers in his department.

However, a chaplain's rejection of the testimony of the officers he is charged with serving is contrary to his personal interests. It instead breeds suspicion and distrust in the chaplain, who is supposed to reduce stress and promote harmony within the police department. The chaplain of a police department therefore has a personal interest in the outcome of a case where the case hinges on the investigation and the testimony of the officers he serves.

*Johnson* bars a government employee from serving on a jury when a substantial relationship exists “between the interests the prospective juror has in his employment and the interest the government is advancing as a litigant.” 42 Wn. App. 425, 429, 712 P.3d 301 (1985). Nevertheless, the State seemingly ignores the interest the government was advancing as the litigant in the present case. While *Johnson* noted it is “unlikely that jurors would be influenced by their employment relationship with an arm of the state that is not prosecuting the criminal action,” the State prosecuted Mr. Ili based on the evidence it collected from the Lacey Police Department. *Id.*, see Op. Br. at 5. Indeed, “an investigating officer is a substantial arm of the prosecution.” *State v. MacDonald*, 183 Wn.2d 1, 14, 346 P.3d 748 (2018). And a “prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute.” RCW

9.94A.411(b). The prosecution and the Lacey Police Department's interests were inextricably intertwined at Mr. Ili's trial.

The policy reasons articulated in *Kebble* illustrate why it was improper for the court to impanel Juror 29 in light of his employment with the Lacey Police Department. 353 P.3d 1175, 1182 (Mont. 2015); *see* Op. Br. at 11-14. But the State argues this case is inapposite because in *Kebble*, the employee at issue was a criminal investigator and Juror 29 was a chaplain "with no knowledge of the facts of the case at issue." Resp. Br. at 16. But the State does not explain why an employee's role as a criminal investigator rather than a chaplain makes a qualitative difference. Moreover, nothing in *Kebble* suggests that the juror at issue had any knowledge about the facts of the case. Consequently, these distinctions are immaterial.

The State intimates that because Mr. Ili did not repeatedly challenge Juror 29 for cause after the court rejected his challenge for cause, this demonstrates Juror 29 was not biased. Resp. Br. at 17-19. But whether a juror has actual or implied bias does not turn on whether the defendant challenged the juror for cause. Where a potential juror was biased, that does not change based on the number of times an attorney points that out to the court.

**B. CONCLUSION**

For the reasons stated in this brief and in his opening brief, Mr. Ili respectfully requests that this Court reverse and remand for a new trial.

DATED this 17th day of September, 2020.

Respectfully submitted,

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Attorney for Appellant

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# WASHINGTON APPELLATE PROJECT

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