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State of Washington  
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NO. 36971-4-III

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

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STATE OF WASHINGTON,

Respondent,

v.

GARY SARGENT, JR.,

Appellant.

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

The Honorable Lesley A. Allan, Judge

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

JUROR 27 NEVER SAID SHE WOULD NOT BE FOCUSED ON THE EVIDENCE PRESENTED AT TRIAL.

In its response brief, the prosecution relies on an exchange between the trial deputy and Juror 27 to argue the trial court correctly dismissed Juror 27 because she would not be attentive to the evidence presented at trial. Brief of Respondent (BOR) at 3-5. The prosecution's reliance is misplaced and does not support a finding Juror 27 would not be an attentive juror at Sargent's trial.

The exchange at issue arose following the court's questioning of Juror 27. The trial deputy offered, "it sounds like you'd just be focused on the judge rather than maybe the evidence that's coming in." Juror 27 responded, "Yes. Because the bias that I saw in dealing with attorneys, I would be wondering if she was giving you benefit that she wasn't giving to the other counsel." RP 166-67 (emphasis added).

The prosecution highlights Juror 27's initial response of "Yes," and then argues it "confirmed" Juror 27's "lack of attentiveness." BOR at 5. This argument only works if the comment is viewed in isolation.

It is well established that alleged concerning remarks by a juror must be viewed in the context in which they are made, not in isolation. State v. Jefferson, 192 Wn.2d 225, 236, 429 P.3d 467 (2018); Turner v. Stime, 153

Wn. App. 581, 593, 222 P.3d 1243 (2009); State v. Jackson, 75 Wn. App. 537, 540, 879 P.2d 307 (1994).

The context of the relevant colloquy with Juror 27 involved her anger and distrust of Judge Allan stemming from an unrelated civil matter in which the judge apparently revealed a “bias that all women are correct.” RP 163-66. Juror 27 also noted, however, that the prosecution of Sargent involved “all men” and therefore Judge Allan could not “possibly have a bias.” RP 164-65.

When viewed in this context, Juror 27’s entire response to the trial deputy’s comment about whether she would “be focused on the judge rather than the evidence that is coming in[.]” shows Juror 27 was agreeing that “Yes[.]” she would be focused on the judge to make sure no favoritism of the prosecution occurred. RP 166-67. But it cannot reasonably be interpreted to imply she was agreeing she would not pay attention to the evidence introduced at trial. Logically, to be able to assess Judge Allan fairness during trial, Juror 27 would need to be attentive to the evidence admitted and any associated rulings on that evidence.

And as discussed in Sargent’s opening brief, the evidentiary portion of trial had not yet begun,<sup>1</sup> so there was no basis to measure the actual trial

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<sup>1</sup> In deciding to dismiss Juror 27, Judge Allan notes there has yet to be any evidence presented. RP 168.

attentiveness, or lack thereof, of any impaneled juror. Brief of Appellant (BOA) at 10-11. And as to what evidence there was of Juror 27's general attentiveness, the record shows she was active and attentive during voir dire and participated and responded appropriately at various times during the process. See BOA at 2-3 (setting forth Juror 27's voir dire participation).

The prosecution and Judge Allan's interpretation that Juror 27 said "she would not be focusing on the presentation of the evidence" misconstrues her remarks because they fail to view them in context, as required. Jefferson, 192 Wn.2d at 236. Therefore, the prosecution's reliance on Juror 27's reply of "Yes," to the trial deputy's comment to conclude she would not pay attention to the evidence at trial is misplaced.

B. CONCLUSION

For the reasons set forth here and in the Brief of Appellant, this Court should reverse Sargent's judgment and sentence and remand for a new trial.

DATED this 7<sup>th</sup> day of May, 2020.

Respectfully submitted,

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