No. 100166-5

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AMANUEL TESFASILASYE,

Petitioner.

STATE'S RESPONSE TO AMICUS CURIAE

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Rules and Regulations

A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is State v. Tesfasilasye, No. 81247-5-I (Unpublished).

C. AMICI'S BRIEF HAS MISCONSTRUED THE RECORD

The State believes that Tesfasilasye's case was both reasoned and decided correctly by the Court of Appeals. The State therefore generally relies on Division One's opinion and the related pleadings in response to Tesfasilasye's petition for review. However, the State writes separately to address certain factual issues in amici's brief.

1. ADDITIONAL FACTS REGARDING JUROR 3.

Amici make the following argument with regard to the prosecutor's peremptory challenge of Juror 3:

> The Court of Appeals also erred when it upheld the peremptory strike of Juror 3, a Latino man, in part on the basis that the potential juror stated that "I know that in many people's eyes **[I'm] already guilty**." Juror 3

> simply stated a belief – rooted in fact – that people of color are often thought of as criminals…
>
> Further, a person of color's belief that they are subject to racialized targeting is a presumptively invalid reason for a peremptory.

Brief of Amici at 6-7 (internal citations omitted) (emphasis added).

But Juror 3's comment leaves a much different impression when read in context:

> …I was going to add that right off the bat I felt sorry for…the accused…because he's going to have a tough time just right off the bat because of the social kind of climate around rape culture and such. So…I've been a manager of a café where workers have come up to me saying that so-and-so raped so-and-so at a party and I instinctually just sided with the female. I don't know why, but I just did. Anyway, it became a police matter, but I have it that it's already loaded in that direction. So I would think that…I would provide a much stronger…factual observation because I already know that the scales are tipped against the accused already, just as in a matter of public opinion, you know. Like the accused's reputation is already tarnished. It doesn't matter if…he's guilty or not, as soon as he steps out of the room, everyone knows, friends know, family knows [that he was accused of rape]…[s]o if anything…I would try and weigh the facts heavier, I don't know…[l]ike she said she had empathy and sympathy for the victim, and I

> have it that it's the other side for me because I know that in many people's eyes **he's already guilty.**

RP 314-15 (emphasis added).

Amici used bracketed text to change Juror 3's statement from a comment on the defendant into a comment about himself.[1] Compare Brief of Amici at 6 with RP 315. More importantly, amici took a statement plainly concerning bias against those accused of sex offenses and turned it into a statement about race.

The cited statement was not claiming "that people of color are often thought of as criminals." Brief of Amici at 6. Rather, Juror 3 was discussing what he saw as society's unfair tendency to believe women and lamenting that someone's reputation can be ruined by the mere accusation of a sex offense. RP 314-15.

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[1] Note that the Court of Appeals' opinion correctly transcribed Juror's 3 statement. State v. Tesfasilasye, No. 81247-5 at 11 ("He went on to say that he has empathy and sympathy for the accused 'because I know that in many people's eyes he's already guilty.'").

While Juror 3 had earlier stated that "I'm a person from an immigrant family. I'm clear that there's institutional racism," this comment was not a basis for the prosecutor's challenge or the Court of Appeals' reasoning.[2] RP 254. The Court of Appeals certainly did not affirm any challenge based on "a person of color's belief that they are subject to racialized targeting," as amici alleges. Brief of Amici at 7.

The prosecutor challenged Juror 3 primarily because he would not convict unless the victim's account of the rape was corroborated by another eyewitness, and the Court of Appeals affirmed on that basis. RP 388; Tesfasilasye, No. 81247-5 at 15-16. There is no reason to believe that Juror 3's racial or ethnic background could have factored into the prosecutor's decision.

[2] Amici's initial brief does not even mention this statement.

2. ADDITIONAL FACTS REGARDING JUROR 25.

Amici's discussion of Juror 25 is also missing important context. Juror 25 was challenged largely due to issues surrounding her son's prosecution for a sex offense. But the Court of Appeals did not, as amici charges, uphold the challenge merely because she expressed "frustration" with the criminal justice system. Brief of Amici at 6. Rather, the court observed:

> Juror 25 admitted that the experience had been traumatic for her family, that she was "not sure" that she could be fair, and that she was unsure what her reaction would be to a case involving sexual assault. Juror 25's comments…created reasonable doubts about her ability to be impartial despite her assurances to the contrary.

Tesfasilasye, No. 81247-5 at 8.

The court further noted that the incident involving Juror 25's son was "factually comparable" to the allegation against Tesfasilasye, with both alleging that "the defendant had forced a vulnerable victim to touch the defendant's genitals." Id. at 6-8, 10.

Amici cite State v. Pierce, 195 Wn.2d 230, 243-44, 455 P.3d 647 (2020), for its statement that jurors having "'strong opinions' that 'the system, or at least parts of the system, did not treat [a relative] fairly'" is an improper basis for a challenge under GR 37(h)(ii) and (iii).[3]

But Juror 25 did not merely express an "opinion" on how the "system" treats people of color. She claimed to have been emotionally traumatized, expressed doubts about her impartiality, minimized her son's offense ("he got curious about sex"), and suggested her son was pressured to plead guilty by the "me too" movement. RP 183-85, 249, 370.

As the Court of Appeals properly recognized, "[t]his situation is easily distinguishable from the more general contact with the criminal justice system referenced in GR 37(h)(iii)." Tesfasilasye, No. 81247-5 at 8.

[3] Pierce was primarily concerned with overruling State v. Townsend, 142 Wn.2d 838, 15 P.3d 145 (2001), which prohibited courts from informing venires whether the death penalty was at issue in a given case. 195 Wn.2d at 240.

D. CONCLUSION

The State respectfully requests that Tesfasilasye's petition for review be denied.

This document contains 1,061 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4 day of November, 2021.

Respectfully submitted,

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