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SUPREME COURT OF THE UNITED STATES

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PENA-RODRIGUEZ *v.* COLORADO

CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 15–606. Argued October 11, 2016—Decided March 6, 2017

A Colorado jury convicted petitioner Peña-Rodriguez of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H. C. had expressed anti-Hispanic bias toward petitioner and petitioner’s alibi witness. Counsel, with the trial court’s supervision, obtained affidavits from the two jurors describing a number of biased statements by H. C. The court acknowledged H. C.’s apparent bias but denied petitioner’s motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Court of Appeals affirmed, agreeing that H. C.’s alleged statements did not fall within an exception to Rule 606(b). The Colorado Supreme Court also affirmed, relying on *Tanner v. United States*, 483 U. S. 107, and *Warger v. Shauers*, 574 U. S. ___, both of which rejected constitutional challenges to the federal no-impeachment rule as applied to evidence of juror misconduct or bias.

Held: Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror’s statement and any resulting denial of the jury trial guarantee. Pp. 6–21.

(a) At common law jurors were forbidden to impeach their verdict, either by affidavit or live testimony. Some American jurisdictions adopted a more flexible version of the no-impeachment bar, known as the “Iowa rule,” which prevented jurors from testifying only about their own subjective beliefs, thoughts, or motives during deliberations. An alternative approach, later referred to as the federal ap-

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proach, permitted an exception only for events extraneous to the deliberative process. This Court's early decisions did not establish a clear preference for a particular version of the no-impeachment rule, appearing open to the Iowa rule in *United States v. Reid*, 12 How. 361, and *Mattox v. United States*, 146 U. S. 140, but rejecting that approach in *McDonald v. Pless*, 238 U. S. 264.

The common-law development of the rule reached a milestone in 1975 when Congress adopted Federal Rule of Evidence 606(b), which sets out a broad no-impeachment rule, with only limited exceptions. This version of the no-impeachment rule has substantial merit, promoting full and vigorous discussion by jurors and providing considerable assurance that after being discharged they will not be summoned to recount their deliberations or otherwise harassed. The rule gives stability and finality to verdicts. Pp. 6–9.

(b) Some version of the no-impeachment rule is followed in every State and the District of Columbia, most of which follow the Federal Rule. At least 16 jurisdictions have recognized an exception for juror testimony about racial bias in deliberations. Three Federal Courts of Appeals have also held or suggested there is a constitutional exception for evidence of racial bias.

In addressing the common-law no-impeachment rule, this Court noted the possibility of an exception in the “gravest and most important cases.” *United States v. Reid*, *supra*, at 366; *McDonald v. Pless*, *supra*, at 269. The Court has addressed the question whether the Constitution mandates an exception to Rule 606(b) just twice, rejecting an exception each time. In *Tanner*, where the evidence showed that some jurors were under the influence of drugs and alcohol during the trial, the Court identified “long-recognized and very substantial concerns” supporting the no-impeachment rule. 483 U. S., at 127. The Court also outlined existing, significant safeguards for the defendant’s right to an impartial and competent jury beyond post-trial juror testimony: members of the venire can be examined for impartiality during *voir dire*; juror misconduct may be observed the court, counsel, and court personnel during the trial; and jurors themselves can report misconduct to the court before a verdict is rendered. In *Warger*, a civil case where the evidence indicated that the jury forewoman failed to disclose a prodefendant bias during *voir dire*, the Court again put substantial reliance on existing safeguards for a fair trial. But the Court also warned, as in *Reid* and *McDonald*, that the no-impeachment rule may admit of exceptions for “juror bias so extreme that, almost by definition, the jury trial right has been abridged.” 574 U. S., at ___–___, n. 3. *Reid*, *McDonald*, and *Warger* left open the question here: whether the Constitution requires an exception to the no-impeachment rule when a juror’s statements indi-

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cate that racial animus was a significant motivating factor in his or her finding of guilt. Pp. 9–13.

(c) The imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments. “[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States.” *McLaughlin v. Florida*, 379 U. S. 184, 192. Time and again, this Court has enforced the Constitution’s guarantee against state-sponsored racial discrimination in the jury system. The Court has interpreted the Fourteenth Amendment to prohibit the exclusion of jurors based on race, *Strauder v. West Virginia*, 100 U. S. 303, 305–309; struck down laws and practices that systematically exclude racial minorities from juries, see, e.g., *Neal v. Delaware*, 103 U. S. 370; ruled that no litigant may exclude a prospective juror based on race, see, e.g., *Batson v. Kentucky*, 476 U. S. 79; and held that defendants may at times be entitled to ask about racial bias during *voir dire*, see, e.g., *Ham v. South Carolina*, 409 U. S. 524. The unmistakable principle of these precedents is that discrimination on the basis of race, “odious in all aspects, is especially pernicious in the administration of justice,” *Rose v. Mitchell*, 443 U. S. 545, 555, damaging “both the fact and the perception” of the jury’s role as “a vital check against the wrongful exercise of power by the State,” *Powers v. Ohio*, 499 U. S. 400, 411. Pp. 13–15.

(d) This case lies at the intersection of the Court’s decisions endorsing the no-impeachment rule and those seeking to eliminate racial bias in the jury system. Those lines of precedent need not conflict. Racial bias, unlike the behavior in *McDonald*, *Tanner*, or *Warger*, implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice. It is also distinct in a pragmatic sense, for the *Tanner* safeguards may be less effective in rooting out racial bias. But while all forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right. Pp. 15–17.

(e) Before the no-impeachment bar can be set aside to allow further judicial inquiry, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury’s deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror’s vote

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to convict. Whether the threshold showing has been satisfied is committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

The practical mechanics of acquiring and presenting such evidence will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel's post-trial contact with jurors. The experience of those jurisdictions that have already recognized a racial-bias exception to the no-impeachment rule, and the experience of courts going forward, will inform the proper exercise of trial judge discretion. The Court need not address what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias or the appropriate standard for determining when such evidence is sufficient to require that the verdict be set aside and a new trial be granted. Standard and existing safeguards may also help prevent racial bias in jury deliberations, including careful *voir dire* and a trial court's instructions to jurors about their duty to review the evidence, deliberate together, and reach a verdict in a fair and impartial way, free from bias of any kind. Pp. 17–21.

350 P. 3d 287, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 15–606

MIGUEL ANGEL PENA-RODRIGUEZ, PETITIONER *v.*
COLORADO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
COLORADO

[March 6, 2017]

JUSTICE KENNEDY delivered the opinion of the Court.

The jury is a central foundation of our justice system and our democracy. Whatever its imperfections in a particular case, the jury is a necessary check on governmental power. The jury, over the centuries, has been an inspired, trusted, and effective instrument for resolving factual disputes and determining ultimate questions of guilt or innocence in criminal cases. Over the long course its judgments find acceptance in the community, an acceptance essential to respect for the rule of law. The jury is a tangible implementation of the principle that the law comes from the people.

In the era of our Nation’s founding, the right to a jury trial already had existed and evolved for centuries, through and alongside the common law. The jury was considered a fundamental safeguard of individual liberty. See *The Federalist* No. 83, p. 451 (B. Warner ed. 1818) (A. Hamilton). The right to a jury trial in criminal cases was part of the Constitution as first drawn, and it was restated in the Sixth Amendment. Art. III, §2, cl. 3; Amdt. 6. By operation of the Fourteenth Amendment, it is applicable to

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