No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2020

MICHAEL ROBBINS,

Petitioner

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent

On Petition for a Writ of Certiorari
to the Court of Appeal of California, Fourth Appellate District,
Division One

PETITION FOR WRIT OF CERTIORARI

MATTHEW A. SIROKA
(California State Bar No. 233050)
101 Lucas Valley Road, Suite 384
San Rafael, CA 94903
Telephone: (415) 522-1105

Attorney for Petitioner

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QUESTIONS PRESENTED

This Petition presents the following related questions under the Sixth Amendment's jury trial guarantee:

1. What constitutes juror bias for purposes of removing a sitting juror during deliberations?

2. Does the Sixth Amendment permit removal of a lone holdout juror who found the government's investigation inadequate, and believes the failure to adequately investigate was due to implicit racial bias by law enforcement?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings were the State of California and petitioner Michael Robbins.

PETITION FOR WRIT OF CERTIORARI

The petitioner, MICHAEL ROBBINS, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the California Court of Appeal, Fourth Appellate District, Division One.

OPINIONS BELOW

The unpublished opinion of the California Court of Appeal (Case Number D075544), which is the subject of this petition is attached as Appendix (App.) A. *People v. Robbins*, 2020 Cal. App. Unpub. LEXIS 469 (Cal. App. 4th Dist. Jan. 23, 2020).

The California Supreme Court's one page order denying review (Case Number #S260949), is attached as Appendix B. *People v. Robbins*, 2020 Cal. LEXIS 4017 (Cal., June 17, 2020).

The relevant trial court proceedings are unpublished.

JURISDICTION

The decision of the California Court of Appeal to be reviewed was filed on January 23, 2020. The California Supreme Court denied discretionary review on June 19, 2020. This petition is filed within 150 days of that date. Order of March 19, 2020; Rule 13.1. Mr. Robbins invokes this Court's jurisdiction under Title 28 United States Code, section 1257, subdivision (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides, in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right a speedy and public trial, by an impartial jury..." U.S. Const. Amend. VI.

STATEMENT OF THE CASE

Michael Robbins was charged with murder (Cal. Pen. Code, § 187(a)), unlawful possession of a firearm by a felon (Cal. § 29800(a)(1); and possession for sale of a controlled substance (Cal. Health & Saf. Code, § 11378).

After three days of evidence, the jury deliberated for about a day, and reached guilty verdicts on the felon-in-possession and possession-for-sale counts, but was deadlocked on the murder count. App. A, p. 2. The jury foreman reported to the trial court that the lone holdout—Juror 8, an "older Black woman"—was refusing to deliberate. The foreman explained that Juror 8 "cannot look at the evidence . . . because of a racial bias"—she "did not like the fact that two [W]hite people were pointing the finger at a [B]lack person." App. A, p. 2. The court conducted an inquiry, in which some jurors claimed Juror 8 had preconceived opinions on race, because of her comments that, for example, the police "didn't look any further" once "two [W]hite people pointed to one [B]lack person." App. A, p. 2.

One juror characterized Juror 8's position as "'basically the cops did not do their job because it was two [W]hite people pointing the finger at a [B]lack man. [¶] . . . [¶] ...[S]he was pretty adamant that [Robbins] wasn't even there and that....the testimony given was false testimony.'" App. A, p. 13. More generally, jurors indicated Juror 8 believed that if the defendant had been White, the case would have been handled differently. App. A, p. 16.

When questioned, Juror 8 denied that "the fact that either the witnesses or the police or the defendant were not of the same race ... affect[ed] [her] ability to be fair and impartial to both sides." App. A, p. 3.

"The trial court found that Juror 8 failed to deliberate and exhibited racial bias. Accordingly, the court replaced her with an alternate juror and instructed the reconstituted jury to begin deliberations anew. After about one hour, the jury returned guilty verdicts on all counts." App. A, p. 3.

In its unpublished decision, the Court of Appeal modified aspects of the sentence but otherwise affirmed. App. A, p. 51-52.

The court declined to rule on whether Juror 8 had deliberated, but rather found that "Juror 8 improperly allowed racial bias to influence her deliberations." App. A, p. 3, n. 3.

The California Supreme Court denied discretionary review on June 17, 2020. App. B. Two of the court's seven justices were of the opinion that review should have been granted. App. B.

REASONS FOR GRANTING CERTIORARI

THIS CASE PRESENTS AN IMPORTANT AND RECURRING QUESTION OF CONSTITUTIONAL LAW THAT SITS AT THE HEART OF CONTEMPORARY CONCERNS ABOUT RACIAL BIAS AND LAW ENFORCEMENT

This case presents the important and deceptively simple question of what constitutes juror bias sufficient to excuse a sitting juror over defense objection. This Court's jurisprudence "in the area of juror bias is sparse. Although we know that biased jurors may be dismissed from deliberations without offending the Constitution, we don't know precisely what it means for a juror to be biased."

Williams v. Johnson, 840 F.3d 1006, 1010 (9th Cir. 2016), citing *United States v. Wood*, 299 U.S. 123, 146, 57 S. Ct. 177, 81 L. Ed. 78 (1936) (noting that "the Constitution lays down no particular tests" for juror bias). This case presents just such a question.

Also, this case sits at another important Sixth Amendment threshold on the issue of bias, because in this case the juror in question was the lone holdout juror for acquittal. Circuit courts have held that dismissal of a holdout juror must be entirely *independent* of the juror's views of the strength of the evidence of the case. *United States v. Carson*, 455 F.3d 336, 352 (D.C. Cir. 2006) (per curiam); *United States v. Kemp*, 500 F.3d 257, 304-05 (3d Cir. 2007); *United States v. Abbell*, 271 F.3d 1286, 1302 (11th Cir. 2001); *United States v. Thomas*, 116 F.3d 606, 622 (2d Cir. 1997); *United States v. Edwards*, 303 F.3d 606, 634 (5th Cir. 2002); *United States v. Ginyard*, 444 F.3d 648, 652 (D.C. Cir. 2006).

This case poses the question, what if the juror's alleged bias manifests (at least in part) as a belief in the inadequacy of the government's investigation, *which is itself the defense theory of the case*?

Here, Juror No. 8, an African-American woman, expressed her concern that the police had not sought to corroborate alibis of two White suspects, nor conducted any forensic testing of them, but simply accepted their accusations against petitioner, who is Black.[1] Noting the various evidentiary lacunae pointed out by defense counsel, during deliberations she observed that had Robbins been White, the police might not have been so quick to settle on him as the prime suspect. For this, she was accused of racial bias, and removed from the jury. The Court of Appeal noted that there "were plenty of reasons to doubt" the credibility of the two primary witnesses, who were White. App. A, p. 25. Yet despite the witness credibility problems, the court below held that because Juror 8 was imputing implicit bias to the police as an explanation for their failure to follow through on the investigation, this was "anti-police bias" which justified removing her.

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[1] In accordance with the opinion below, Petitioner capitalizes the terms "Black" and "White." App. A, p. 2.

Issues of racial bias in law enforcement and the criminal justice system are at the forefront of the national conversation. This country is struggling to come to terms with its legacy of slavery and white supremacy and is trying to come "ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017). Defendants and the government are both entitled to juries free from bias, and especially from racial bias. *Ibid.* And yet, jurors do not live in a vacuum, and there is room for healthy skepticism about whether the law is enforced equally in all circumstances for all persons in the United States. This case asks the Court to weigh in on the question of whether such skepticism *itself* is a form of disqualifying bias.

Petitioner is unaware of any cases that present the question in this form, making this case a proper vehicle for exploring and resolving it. Had Juror 8 simply expressed skepticism of the two White witnesses because they were White, and refused to convict on that basis, the question of bias would be clear. Here, however, the defense theory of the case was that the police had failed to

adequately investigate, and that the two (White) witnesses were lacking in credibility. Juror 8 accepted this theory, and as the Court of Appeal noted, there were reasons to doubt the credibility of the witnesses. App. A, p. 25. There were legitimate reasons to be concerned about whether police had done enough to eliminate other potential suspects or to bolster the credibility of the witnesses. Juror 8's concern about potential bias in law enforcement simply meant she found the defense theory more plausible.

Juror 8 was concerned that the White accusers were being given more credence than they deserved under the facts of the case, and that police unreflective trust of White accusers where a Black defendant was concerned was commonplace in our society. Juror 8 never said or implied that White accusers of Black suspects are *inherently* untrustworthy; she said that our society unreflectively finds White accusers of Black suspects to be inherently trustworthy. And, Juror 8 was saying, this is a plausible explanation for why the police failed to adequately investigate the case.

Juror 8 never said she harbored a reasonable doubt solely because of the race of the defendant and the accusers. Her reasonable doubt came from evidentiary lacunae and the primary accusers' credibility problems. Juror 8 said that the race of the accusers and the defendant were likely explanations of why there had been inadequate follow-up. Petitioner does not believe this conclusion is evidence she "applied a different standard for evaluating the prosecution's evidence because White witnesses were accusing a Black suspect." App. A, p. 25. Nor does such a view reflect "general anti-police bias." App. A, p. 26. Yet these are exactly the beliefs the Court of Appeal attributed to Juror 8.

Moreover, it is hard to escape the conclusion that Juror 8's removal was *not* independent of her views on the case. This Court has never clarified whether the Sixth Amendment requires removal of a sitting juror to be entirely independent of her views on the case, particularly when she is known to be a holdout for acquittal.

The Court should grant certiorari, to address head-on whether observations about demonstrative racial bias in the justice system,

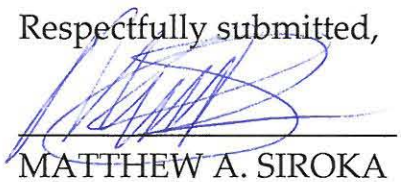
itself constitutes racial "bias," and whether suggesting that implicit law enforcement bias could explain a lack of investigation constitutes "anti-police" bias. Moreover, the Court should grant certiorari to clarify the conditions under which a sitting juror may be removed. These are pressing questions as our society confronts issues of racism and law enforcement daily in our criminal courtrooms. Jurors must know if they are to be precluded from expressing free, frank and (often accurate) assessments of the institutionalized biases that inhere in our system, or whether they will be excluded from jury service for doing so.

CONCLUSION

For the reasons stated herein, the Court should grant certiorari.

Dated: October 26, 2020

Respectfully submitted,



MATTHEW A. SIROKA
Attorney for Petitioner