

In the Supreme Court of the United States

MICHAEL ANTHONY ROBBINS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether it was manifest error for the trial court to conclude that a juror harbored bias that made her unable to fulfill her duties.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Robbins, No. S260949 (June 17, 2020) (this case below) (denying petition for review on direct appeal).

California Court of Appeal:

People v. Robbins, No. D075544 (Jan. 23, 2020) (this case below) (affirming conviction).

California Superior Court, Riverside County:

People v. Robbins, SWF13000784 (Jan. 5, 2018) (this case below) (judgment of conviction).

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STATEMENT

1. On January 22, 2013, Matthew Martin was shot and killed in his apartment in Hemet, California. Pet. App. A at 4. Martin and his wife, Shana B., were methamphetamine users; and petitioner Michael Robbins was their supplier. *Id.* at 5. The night before his death, Martin and Shana visited petitioner's apartment to settle a drug debt. *Id.* While there, Shana noticed a sawed-off shotgun in petitioner's apartment. *Id.*

The next morning, Martin, Shana, and petitioner consumed methamphetamine together in Martin's apartment. Pet. App. A at 5. Petitioner became agitated when Martin asked for more; Martin responded by laughing. *Id.* Martin and Shana then left to attend a community college class. *Id.* at 5-6. The two returned to their apartment around noon, and an hour later Shana left for work. *Id.* at 6. At approximately 3:30 p.m., Jason K., a neighbor and friend of Martin's and Shana's, came looking for them at their apartment. *Id.* at 5-6. Jason saw that the front door was open, that items inside were strewn about, and that Martin was lying on the floor in a fetal position. *Id.* at 6. Jason kicked Martin, which caused Martin's body to roll over and revealed a bloody hole in his shirt. *Id.* After quickly searching the apartment for Shana, Jason left. *Id.* On his way out, Jason heard petitioner say, "Jason come here, dog." *Id.* That frightened Jason, who shouted something in return before running home. *Id.*

When Jason got home, he told his parents (whom he lived with) about Martin. Pet. App. A at 7. Jason's mother called 911. *Id.* The police arrived and pronounced Martin dead. *Id.* Shotgun wadding was visible in Martin's chest and in the carpet next to his body. *Id.*¹ During a subsequent autopsy, additional wadding was discovered in Martin's chest. *Id.*

Jason returned to Martin's apartment building, where the police interviewed him and tested his hands for gunshot residue. Pet. App A at 7. The results came back negative. *Id.* Jason told the police he believed petitioner killed Martin. *Id.* at 8. Jason also told police that, a few days before the shooting, petitioner had asked him how to remove gunshot residue or keep it from getting on someone in the first place. *Id.*

When Shana came home, the police questioned her and tested her hands for gunshot residue. Pet. App. A at 8. Shana's hands also tested negative. *Id.* Shana identified petitioner as someone who might want to hurt Martin. *Id.*

That night, the police obtained a warrant and searched petitioner's apartment. Pet. App. A at 8. The apartment's front door was ajar, the screen door was unlocked, and nobody was home. *Id.* Inside, the police observed that the bathroom floor and tub were wet, and that there were wet, sudsy rags on

¹ Shotgun wadding is a plastic cup that holds the pellets together inside a shotgun shell; when the gun is fired, the wadding and pellets travel together through the barrel before eventually separating. Pet. App. A at 7.

the bathroom floor. *Id.* The police also found a bottle of cleaning solution, two spent 20-gauge shotgun shells wrapped in a wet washcloth, a pair of work boots, and a leather jacket. *Id.*² The jacket pockets contained a pair of gloves and eleven grams of methamphetamine worth about \$1,000. *Id.* In a crawlspace above the bathroom, the police discovered a sawed-off shotgun. *Id.* at 9. There were no usable fingerprints on it. *Id.* Ballistic analysis determined that the shotgun likely fired the shells recovered from petitioner's bathroom and the wadding recovered from Martin's body and apartment. *Id.*

Police searched for petitioner for about 10 days before arresting him near his apartment. Pet. App. A at 9. When asked for his address, petitioner gave false information. *Id.*

2. Petitioner was charged with murder, being a felon in possession of a firearm, and possessing drugs for sale, with related enhancement allegations. Pet. App. A at 4-5. At trial, the prosecution introduced the physical evidence found at petitioner's apartment and called Jason and Shana to testify. *Id.* at 5-9. It also introduced evidence showing that petitioner was having financial difficulties, that his girlfriend had recently left him, and that his dog had just died. *Id.* at 9. Petitioner's defense primarily attacked Jason's and Shana's credibility and the thoroughness of the police investigation. *Id.* at 9-10.

² Drops of blood were found on one of the boots, but testing was unable to determine whether it was from a human or an animal. Pet. App. A at 8 & n.7.

During deliberations, the jury sent a note advising that it was deadlocked on at least one count. Pet. App. A at 11-12. The court questioned the foreperson, Juror 9, who said that the jury had reached verdicts on the felon-in-possession and possession-for-sale counts, but was deadlocked seven to five on the murder count after taking at least three votes. *Id.* at 12, 17 n.9. The foreperson indicated that the jury had another question that it had not yet submitted. *Id.* The court sent the jury back for further deliberations and instructed it to submit any additional questions in writing. *Id.*

A short time later, the jury sent a note reading: “1. On what grounds can a juror be replaced? 2. If we cannot replace the juror, we are deadlocked.” Pet. App. A at 12. After conferring with counsel, the trial court decided to interview each juror individually to determine whether there had been any juror misconduct. Neither counsel objected to that approach. The court began by questioning the jury foreperson (Juror 9). The foreperson, who was Black himself, described Juror 8 as an “older Black woman.” *Id.* at 13 & n.14. He told the court that Juror 8 “cannot look at the evidence because of a racial bias”; while Jason and Shana were both White, petitioner was Black, and the foreperson believed that Juror 8 “did not like the fact that two White people . . . were pointing the finger at a Black person.” *Id.* at 13 (alterations omitted). The foreperson also told the court that “that alone was the hold up.” *Id.*

The trial court proceeded to interview each of the other jurors:

- Juror 1 recounted that Juror 8 had said “something along the lines of you have two White people pointing the finger at a Black person,” and that “basically the cops did not do their job because it was two White people pointing the finger at a Black man.” Pet. App. A at 13 (brackets omitted).
- Juror 2 said that “Juror 8 made ‘a comment about not believing those White people,’ and that when other jurors pressed her for clarification, Juror 8 stated “‘I don’t care what that is, it’s—you know, the police were against [petitioner].’” Pet. App. A at 14 (brackets omitted). When another juror disagreed, Juror 8 had replied, “‘Well, you would because you’re White.’” *Id.* (brackets omitted). Juror 2 also recounted “Juror 8’s ‘general discussion’ that ‘she does not believe the police handled the situation fairly because [petitioner] is a Black man, [and] she doesn’t believe that they investigated properly just because he’s a Black man.’” *Id.* (brackets omitted). After jurors “told Juror 8 she ‘needed to give the evidence a fair shake,’ she responded that ‘because of—he’s not going to get a fair shake.’” *Id.* (brackets omitted).
- Juror 3 told the court that Juror 8 had said that her mind was made up and nothing was going to change it. Pet. App. A at 14. When asked for clarification, Juror 3 explained that “[s]ome of it that was brought up was bias related. Essentially racially related. It seemed sort of all a sudden she was not going to change because of a potential bias.” *Id.* (alterations omitted). Juror 3 also reported that Juror 8 had brought up the fact that, in this case, the “finger was pointed at a Black person and two White people accused the Black person,” and had stated “that that’s the way it goes all the time.” *Id.* at 15 (brackets omitted).
- Juror 4 stated that Juror 8 had said “something to the effect that ‘I don’t like that two Whites are pointing the finger at the defendant.’” Pet. App. A at 15 (alterations omitted). Juror 4 also stated that she “did not know whether Juror 8 made any statements ‘about a racial situation regarding whether or not that affected her evaluation of witness credibility or evaluating the evidence.’” *Id.* (alterations omitted).
- Juror 5 reported that “there are members of the jury that don’t feel that all the members are following’ the ‘oath the jurors took at the beginning of the trial’ to ‘not be biased by race, religion, . . . social standings, and so forth.’” Pet. App. A at 15-16 (alterations omitted). When asked to elaborate, Juror 5 responded that “one of the areas was race” and that it appeared that “Juror 8 had ‘maybe gone into the jury room having preconceived opinions on things,’ such as ‘that the cops didn’t do their job.’” *Id.* at 15 (brackets omitted). Juror 5 also said that “Juror 8 did ‘something to the effect of pointing to a White juror and saying if it would

have been you, the case would have been handled differently.”” *Id.* (brackets omitted).

- Juror 6 stated that, while “all jurors were deliberating, ‘the issue is more or less’ that Juror 8 has ‘a racial factor’ that conflicts with the admonition in [the jury instructions] ‘not to let bias, sympathy, prejudice, or public opinion influence your decision.’” Pet. App. A at 16. Juror 6 explained that “Juror 8 ‘was referring to—that because two White people were making a Black person guilty that—because the two White people had pointed the finger that they were automatically . . . true. And then she pointed to a White male in the room and said . . . if someone was pointing at you, they might look more into it. And then she pointed to a Black juror and said “if they pointed to you, then the police would stop looking.’”” *Id.* (alterations omitted).
- Juror 7 said that Juror 8 had “exhibited ‘a racial bias’ and an ‘inability to put all factors in respect to economic standing, racial, and anything else aside to come to a fair and just decision.’” Pet. App. A at 17. As an example, Juror 7 noted that Juror 8 had drawn a ““a comparison referencing one of the other jurors—actually myself, as if I were the accused it would be an entirely different story than somebody of the defendant’s racial background.”” *Id.* (ellipses omitted). Based on this, Juror 7 believed Juror 8 was ““deadlocked on issues not pertaining to the case.”” *Id.*
- Juror 10 reported that Juror 8 was not ““evaluating all of the evidence and witnesses fairly and impartially.”” Pet. App. A at 17. Juror 10 believed that Juror 8 ““was ‘prejudiced,’ and was ‘making it a racial issue instead of looking at the evidence.’”” *Id.* (alterations omitted). Juror 10 also recounted the incident where Juror 8 pointed to different jurors and said they would or would not be charged with a crime based on their race. *Id.* at 18. Juror 10 told the court that ““Juror 8 was ‘not willing to look at the evidence at hand. She’s dismissing everything and making it a—it’s racist. And she thinks that the police botched it from the very beginning. She won’t even look at anything.’”” *Id.*
- Juror 11 thought that Juror 8 was not deliberating impartially because there was ““an instance where race was brought up.”” Pet. App. A at 18. Juror 11 elaborated that ““Juror 8 ‘said that if it was a different colored person they wouldn’t be sitting in that chair.’”” *Id.* And Juror 11 believed ““the whole thing about the race’ indicated that Juror 8 had ‘prejudged.’”” *Id.*
- Juror 12 said Juror 8 ““is not holding up her end of the oath to not bring previous bias in,”” in that ““Juror 8 ‘doesn’t trust the police,’”” and believed

that the police “didn’t do their job” or “look anywhere else when two White people pointed to one Black person. They didn’t look any further.” Pet. App. A at 19 (brackets omitted).

Finally, the court questioned Juror 8. Pet. App. A at 19. Juror 8 denied harboring any bias affecting her ability to be fair and impartial, and told the court that she had not let “the fact that either the witnesses or the police or the defendant or were not of the same race . . . affect [her] ability to be fair and impartial to both sides and to listen and evaluate the testimony and evidence of all witness in this case.” *Id.* at 20-21.³

After hearing from counsel, the trial court excused Juror 8 “for misconduct.” Pet. App. A at 20. Applying the relevant standard under California law, the trial court found that there was a “‘a demonstrable reality’ that [Juror 8] ‘failed to participate with an open mind’ and ‘came into this with attitudes or bias that [made her] unable to fulfill her duty as a juror.’” *Id.* at 22 (alterations omitted). The trial court “cited specific jurors’ testimony indicating Juror 8’s racial bias,” and noted that her “statements made to the other jurors indicated that some thoughts or beliefs based upon the differences even of the jurors of their race or ethnicity [were] interfering with her ability to participate in this deliberative process.” *Id.* (alterations omitted). An

³ The court had planned to ask Juror 8 directly whether she had made statements about the race of petitioner and the witnesses, but it refrained from doing so after defense counsel objected to that question. Pet. App. A at 19, 21.

alternate juror replaced Juror 8, and the reconstituted jury convicted petitioner on all counts. *Id.*

3. The court of appeal affirmed petitioner’s conviction in an unpublished decision. Pet. App. A at 1, 24.⁴ The court held that, under California law, a trial court may “discharge a juror at any time during trial if the court finds that the juror is unable to perform his or her duty.” *Id.* at 22 (quoting *People v. Armstrong*, 1 Cal. 5th 432, 450 (2016)) (internal quotation marks omitted). It further explained that a “sitting juror’s actual bias, which would have supported a challenge for cause, renders him unable to perform his duty and thus subject to discharge and substitution.” *Id.* (quoting *People v. Lomax*, 49 Cal. 4th 530, 589 (2010)) (internal quotation marks omitted). It also recognized that the decision to remove a juror is “committed to the discretion of the trial court,” but that the decision to disqualify a juror must “appear on the record as a demonstrable reality,”—*i.e.*, the record must show that the trial court’s conclusion “is manifestly supported by evidence on which the court actually relied.” *Id.* at 24 (quoting *People v. Homick*, 55 Cal. 4th 816, 899 (2012)) (internal quotation marks omitted).

The court of appeal held that standard satisfied here. Pet. App. A at 24-31. After recounting the testimony of each juror in detail, *id.* at 11-21, the

⁴ The court of appeal struck two enhancements that respondent agreed had been improperly imposed, but otherwise affirmed petitioner’s sentence. Pet. App. A at 4, 51-52.

court concluded that the evidence “established as a demonstrable reality that Juror 8 exhibited racial bias that improperly influenced her evaluation of the prosecution’s evidence.” *Id.* at 24. In its view, the “necessary inference to be drawn” from Juror 8’s comments to the other jurors was that “Juror 8 holds the *general belief*—untethered from any evidence adduced at trial—that accusations by White accusers against Black suspects are inherently untrustworthy, while accusations by non-White accusers are not.” *Id.* at 25. “In other words, she essentially admitted she applied a different standard for evaluating the prosecution’s evidence because White witnesses were accusing a Black suspect.” *Id.* The court noted that there were legitimate reasons to doubt the credibility of Jason and Shana, but it concluded that “Juror 8 identified only the fact that Jason and Shana’s race differs from [petitioner’s] as the reason for viewing their accusations with inherent suspicion.” *Id.*

The court also held that Juror 8 had properly been dismissed because of her statements “impugning the thoroughness of the police investigation based solely on the respective races of the accusers and the suspect,” which “reflect[ed] an improper general bias against law enforcement when race is involved.” Pet. App. A 25. The court observed that “[t]here was no evidence adduced at trial to support Juror 8’s bald statements that ‘the police were against’ [petitioner] and that ‘it was a set up’ because petitioner is Black.” *Id.* at 27. And it concluded that Juror 8’s “comments reflect that, wholly apart from the evidence, Juror 8 was inclined to apply a different level of scrutiny to the

prosecution's evidence because White accusers were implicating a Black suspect." *Id.* at 27-28. The court also rejected petitioner's argument that "Juror 8 was 'simply expressing from her life experience the uncontroversial proposition that racial bias infects the criminal justice system,'" noting that Juror 8 never actually referred to her life experience. *Id.* at 28-29. "Rather, she merely expressed her conclusory view that police tailor the thoroughness of their investigations based on the races of the accusers and suspects." *Id.* at 29.

4. The California Supreme Court summarily denied review. Pet. App. B. Justices Cuéllar and Kruger indicated that they would have granted the petition. *Id.*

ARGUMENT

Petitioner acknowledges that a juror who is unable to fairly deliberate because of racial bias may be disqualified. He asks this Court to grant review to determine whether the trial court correctly found that Juror 8 was racially biased. That fact-bound contention does not merit further review.

1. As petitioner recognizes, "[d]efendants and the government are both entitled to juries free from bias, and especially from racial bias." Pet. 10. Indeed, this Court has long recognized that jurors must be free of bias against the accused and "from any prejudice against his prosecution." *Hayes v. Missouri*, 120 U.S. 68, 70 (1887); *see also Smith v. Phillips*, 455 U.S. 209, 217 (1982) (due process requires a jury "to decide the case solely on the evidence

before it”). And it has consistently held that courts as well as legislatures must take measures to “ensure that individuals who sit on juries are free of racial bias.” *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017); *see also id.* at 867-868 (collecting cases); *J.E.B. v. Alabama ex rel. T.B.* 511 U.S. 127, 153 (1994) (Kennedy, J., concurring) (“The jury system is a kind of compact by which power is transferred from the judge to jury, the jury in turn deciding the case in accord with the instructions defining the relevant issues for consideration. . . . A juror who allows racial . . . bias to influence assessment of the case breaches the compact and renounces his or her oath.”).

A trial court’s conclusion that a juror is “impermissibly biased is a factual finding.” *Darden v. Wainwright*, 477 U.S. 168, 175 (1986). “[S]uch a finding is based upon determinations of demeanor and credibility that are peculiarly within a trial judge’s province” and is “entitled to deference even on direct review.” *Wainwright v. Witt*, 469 U.S. 412, 428 (1985). Indeed, in reviewing “claims of this type, the deference due to [trial] courts is at its pinnacle: ‘A trial court’s findings of juror impartiality may be overturned only for manifest error.’” *Skilling v. United States*, 561 U.S. 358, 396 (2010) (quoting *Mu’Min v. Virginia*, 500 U.S. 415, 428 (1991)).

Here, the trial court’s finding that Juror 8 “failed to participate with an open mind” and came to the case “with attitudes or bias that made [her] unable to fulfill her duty as a juror” was not manifestly erroneous. Pet. App. A at 22 (alterations omitted). After receiving an inquiry about the

circumstances under which a juror could be replaced, the trial court interviewed each member of the jury to determine whether any juror had engaged in misconduct. *Id.* at 12-21. Every other member of the jury indicated that Juror 8 had exhibited racial bias. *Id.* The foreperson told the trial court that Juror 8 could not “look at the evidence because of a racial bias,” and that she “did not like the fact that two White people . . . were pointing the finger at a Black person.” *Id.* at 13 (alterations omitted); *see also id.* at 13, 15, 19 (similar statements from Jurors 1, 3, 4, 12). Juror 2 reported that Juror 8 made a “comment about not believing those White people,” that she “did not believe the police handled the situation fairly because [petitioner] is a Black man,” and that she did not believe that the police “investigated properly just because [petitioner is] a Black man.” *Id.* at 14 (alterations omitted); *see also id.* at 16, 18 (similar statements from Jurors 6, 11, 10). Juror 10 concluded that Juror 8 was “not looking at the evidence that has been given” and was “making it a racial issue instead of looking at the evidence.” *Id.* at 17. And other jurors testified that they believed that Juror 8 had violated her oath not to let “bias, sympathy, prejudice, or public opinion influence [her] decision”—including bias against “witnesses” on the basis of “nationality, national origin, race or ethnicity.” *Id.* at 15-17 & n. 16, 19 (Jurors 5, 6, 7, 12).

2. In urging this Court to grant review, petitioner argues that this case presents the question of whether a juror may be disqualified for expressing “skepticism about whether the law is enforced equally in all circumstances for

all persons in the United States.” Pet. 10. But that was not the basis on which the trial court disqualified Juror 8. Instead, it concluded that issues of “race or ethnicity” were “interfering with her ability to participate in th[e] deliberative process.” Pet. App. A at 20. Petitioner appears to dispute that conclusion. *See, e.g.*, Pet. 12 (arguing that “Juror 8 never said she harbored a reasonable doubt solely because of the race of the defendant and the accusers”). But he makes no effort to show that it was manifestly erroneous. And he does not explain why this Court should grant plenary review of the trial court’s fact-intensive finding. *See* Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”).

Nor does this case present the question of whether a juror may be removed because of her “views of the strength of the case.” Pet. 8. Lower courts have held—and respondent agrees—that a juror may not be excused simply because she “viewed the evidence differently from the way the rest of the jury viewed it.” *People v. Armstrong*, 1 Cal. 5th 432, 453 (2016) (discussing California statutory law); *see also United States v. Symington*, 195 F.3d 1080, 1087 (9th Cir. 1999) (under Federal Rule of Criminal Procedure 23(b), a juror may not be dismissed if the record discloses a “reasonable possibility” that the dismissal “stems from the juror’s views on the merits of the case”).⁵ As

⁵ *See also United States v. Kemp*, 500 F.3d 257, 303-304 (3d Cir. 2007)

discussed, however, that was not the basis on which the trial court dismissed Juror 8. Instead, after interviewing every member of the jury, the trial court came to the conclusion that Juror 8 held “the *general belief*—untethered from any evidence adduced at trial—that accusations by White accusers against Black suspects are inherently untrustworthy, while accusations by non-White accusers are not.” Pet. App. A at 25. Even petitioner recognizes that if the trial court disqualified Juror 8 because she was skeptical of “the two White witnesses because they were White, and refused to convict on that basis, the question of bias would be clear.” Pet. 10.

To be sure, there were some race-neutral reasons for doubting the credibility of the White witnesses. *See Pet. 9.* Both were drug users, both made statements at trial that contradicted earlier statements to investigators, and one admitted that she had previously lied to the police about stealing from her father. Pet. App. A at 25. But those were not the reasons that Juror 8 cited in explaining why she did not believe them. *Id.* The mere existence of such race-neutral reasons for doubting a witness’s credibility cannot excuse a juror’s expressed racial bias; indeed, they will often be present.

Finally, this case does not present the question of whether a juror may be disqualified when her “alleged bias manifests” itself as a belief that law

(collecting cases discussing Rule 23(b)); *State v. Gonzalez*, 315 Conn. 564, 575-579 (2015) (discussing standard for dismissal of jurors under Connecticut state law).

enforcement conducted an “inadequa[te]” investigation because of the defendant’s race. Pet. 8. This is not a case in which a juror expressed a general skepticism of law enforcement in cases involving Black suspects in considering the facts of the circumstances of the case before her. Instead, Juror 8’s comments reveal that she believed that the “cops did not do their job because it was two White people pointing the finger at a Black man,” and that if petitioner were a “different colored person [he] wouldn’t be sitting in that chair.” Pet. App. A at 13, 18 (brackets omitted). Nothing in the record supports Juror 8’s view that “the police were against” petitioner or had attempted to “set [him] up” because he is Black. *Id.* at 27. And, as the court of appeal concluded, Juror 8’s statements “were completely untethered from any evidence about the specific law enforcement officers or agencies involved in the investigation here.” *Id.* at 26.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: January 28, 2021

Respectfully submitted,

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