

No. 20-6211

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**

REPLY TO BRIEF IN OPPOSITION

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Petitioner Michael Robbins respectfully submits this Reply Brief to respondent's Opposition Brief to the Petition for Writ of Certiorari.

CERTIORARI IS APPROPRIATE BECAUSE THIS CASE PRESENTS A VEHICLE WITH WHICH TO GUIDE LOWER COURTS TO ASSESS THE COMPLEX ISSUES OF RACIAL BIAS AND MISTRUST OF LAW ENFORCEMENT WITH WHICH ALL JURORS MUST GRAPPLE

Respondent argues this case does not merit review, because it involves merely a trial court's fact-bound determination of credibility, a judgment which must be granted maximum deference. Opp. at 11. The record belies such a conclusion. Rather what is at issue here is the standard which the court used to make a determination of juror bias; this is a question of law and policy which this Court is uniquely situated to address. "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). That is the question presented here.

Juror 8's concern in a nutshell was that the police accepted the accusations of two White witnesses with credibility problems without testing their alibis or further investigating. To her mind, this was reflective of the biases in the system - that White witnesses accusing Black defendants were given less scrutiny. And, as respondent admits, there were good reasons to doubt the credibility of these witnesses. Opp. at 14. Thus Juror 8 was persuaded by the defense argument that the police's failure to eliminate other suspects left room for reasonable doubt. Such a circumstance does *not*, as respondent argues, support the trial court's finding she harbored "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.

Juror 8 did express concern and frustration that, in her view, police were more likely to uncritically accept accusations by White witnesses against Black defendants. Pet. App. A at 24-25. But did

such a view - one that has significant historical support¹ - itself reflect an impermissible bias? Can Juror 8 hold what is likely an empirically correct view of the social and cultural context of policing without being declared biased herself? These are the questions this case presents. They are timely and urgent.

Respondent complains the petition makes no effort to show that trial court's ruling was "manifestly erroneous" while at the same time urging deference to the trial court's factual determination. Opp. at 13. What petitioner is challenging here is the definition of bias - the legal standard - the trial court used to remove Juror 8. The court's factual determination can only be evaluated once the appropriate legal standard has been determined. Respondent fails to acknowledge that this standard is very much an open question.

As questions about racial bias and policing continue to be at the heart of civic discourse and public policy, we should expect that

¹ For an historical overview of the influence of race on credibility assessments, see Sheri L. Johnson, *The Color of Truth: Race and the Assessment of Credibility*, 1 MICH. J. RACE & L. 261 (1996).

these issues will continue to find their way into the jury room.

Courts must have a clear set of standards they can apply when emotionally charged discussions of racial issues arise. The court can use this case to help develop such a set of standards.

In addition, respondent fails to fully address the other significant issues this case presents - whether dismissal of a lone holdout juror can be proper when she views the case as weaker than her fellow jurors. Respondent acknowledges a juror cannot be excused merely because of a different view of the evidence. Opp. at 13. But what about here, where the juror is dismissed for alleged bias manifesting (at least in part) as a belief in the inadequacy of the government's investigation, *which is itself the defense theory of the case?* Respondent argues 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." Opp. at 15. On the contrary, that's precisely what it is. Juror 8 was confronted with the police's inexplicable failure to conduct any follow up investigation on two White witnesses who

had opportunity and potentially motive to commit the offense. These two witnesses had credibility problems, and yet the police appeared to uncritically accept their stories, which all pointed to petitioner as the culprit. Considering these circumstances, Juror 8 was justified in her skepticism.

The Court should grant certiorari, to address head-on whether observations about demonstrative racial bias in the justice system, itself constitutes racial “bias,” in order to provide guidance to lower courts.

CONCLUSION

The Court should grant certiorari.

Dated: February 9, 2021

Respectfully submitted,

/s/ Matthew A Siroka
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