No. 21-7076

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD MAURIVAL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in declining to expand its evidentiary hearing by questioning jurors who had allegedly made racially charged comments during the trial, where the juror who reported the comments testified that they had not affected the deliberations and where petitioner did not, after questioning of the reporting juror, ask the court to question any additional jurors.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Maurival, No. 17-cr-14013 (Mar. 20, 2019)

United States Court of Appeals (11th Cir.):

United States v. Maurival, No. 19-11680 (July 7, 2021)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A14) is reprinted at 861 Fed. Appx. 388. The order of the district court (Pet. App. C1-C6) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 7, 2021. A petition for rehearing was denied on November 2, 2021 (Pet. App. B1). The petition for a writ of certiorari was filed on January 31, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on ten counts of assisting in the preparation of false tax returns, in violation of 26 U.S.C. 7206(2), and three counts of filing false tax returns, in violation of 26 U.S.C. 7206(1). Pet. App. D1-D2. The court sentenced him to 84 months of imprisonment, to be followed by one year of supervised release. Id. at D3-D4. The court of appeals affirmed. Id. at A1-A14.

1. Petitioner, a black man of Haitian descent, worked as a tax preparer in Florida and Georgia. Pet. App. A2. From 2011 to 2014, petitioner prepared false income tax returns for his clients and filed false tax returns for himself. Gov't C.A. Br. 3-6. A grand jury indicted petitioner on 16 counts of assisting in the preparation of false tax returns, in violation of 26 U.S.C. 7206(2), and three counts of filing false tax returns, in violation of 26 U.S.C. 7206(1). Pet. App. A2. At trial, the government called several of petitioner's former clients as witnesses. Ibid. Some of those witnesses, who were likewise black and of Haitian descent, "needed an interpreter." Id. at A3.

After jury deliberations began, a juror, G.D., sent the district court a note alleging comments by two other members of the jury. Pet. App. A3. Juror G.D. informed the court that Juror A had said, "I just don't like some of these people is [sic] hard to be impartial," and that Juror B had said, "Some of those

witnesses don't even speak English, they shouldn't even be in this country." Ibid. (citation omitted; brackets in original). The court denied petitioner's request to interview the jurors, identify the jurors who had made those remarks, and remove them from the jury. Id. at A3-A4. The court instead gave a curative instruction admonishing the jury that its "decision must be based only on the evidence presented here" and that the jury "must not be influenced in any way by either sympathy for or prejudice against the defendant." Id. at A4. The jury later found petitioner guilty of ten counts of assisting in the preparation of false tax returns and of three counts of filing false tax returns, but not guilty of the remaining six counts of assisting in the preparation of false tax returns. Ibid.

Petitioner moved for a new trial, arguing the general rule against impeaching jurors for their verdict, see Fed. R. Evid. 606(b), should be overridden by the constitutional concerns identified in Peña-Rodriguez v. Colorado, 137 S. Ct. 855 (2017). Gov't C.A. Br. 9. The district court granted an evidentiary hearing, stating that it would first question only Juror G.D. but could take further measures if it uncovered evidence that the verdicts were racially motivated. Pet. App. A4. The court explained that such an approach would "strike[] the appropriate balance between respecting the no-impeachment bar and fulfilling this court's 'duty to confront racial animus in the justice

system.'" D. Ct. Doc. 140, at 14 (Jan. 17, 2019) (quoting Peña-Rodriguez, 137 S. Ct. at 867).

At the evidentiary hearing, Juror G.D. testified that the alleged comments had been made shortly before deliberations and that no further racially charged comments were made during deliberations. Pet. App. A5. She also testified that, when Juror A had said "'I just don't like some of these people,'" Juror A "was referring to the IRS," not to members of any particular race. Id. at A3, A5 (citation omitted). And she testified that, although Juror B's comment referred to "foreign people," no other juror expressed agreement with that view. Id. at A5 (citation omitted). She further testified that, in the end, Jurors A and B "just put aside their thoughts and continued deliberation with the rest of us"; that the jury "did go over every single piece of evidence"; and that the verdicts were based on the evidence rather than on racial prejudice. C.A. App. 210-211; see id. at 214-215.

After hearing Juror G.D.'s testimony, the district court stated that it was "satisfied that the verdicts were based on the evidence." Pet. App. A7 (citation omitted). When asked by the court if he had "[a]nything further," petitioner did not ask the court to call additional jurors or otherwise object. C.A. App. 218; see Pet. App. A11-A12. The next day, the court entered a written order denying petitioner's motion for a new trial. Pet. App. C1-C6. The court acknowledged that, "if racial animus was a significant motivating factor in a juror's vote to convict, then

the defendant was deprived of a fair trial." C.A. App. 217. The court found, however, that "Juror G.D.'s testimony clearly established that race and/or ethnicity was not a 'significant motivating factor' in the jury's verdict." Pet. App. C5.

2. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A14.

The court of appeals determined that the district court did not abuse its discretion in denying petitioner's motion for a new trial, or in declining to extend the evidentiary hearing beyond the testimony of Juror G.D. Pet. App. A4-A12. The court of appeals emphasized that the scope of such a hearing is committed to the trial court's discretion; that Juror G.D. "said several times that the verdict was, in her opinion, based on the evidence"; that the court had been open to a "more extensive inquiry" if the evidence had warranted it; and that, after Juror G.D.'s testimony concluded, petitioner "did not request that [any other juror] be questioned." Id. at A11-A12. The court of appeals found that the district court had not abused its discretion by declining to call additional jurors to testify sua sponte. Id. at A12.

ARGUMENT

Petitioner renews his contention (Pet. 7-11) that the district court erred in declining to extend its evidentiary hearing by questioning Jurors A and B about their comments before denying his motion for a new trial. Because petitioner forfeited that contention in the district court, it is subject to review only for

plain error. Regardless, the court of appeals correctly rejected it, and its unpublished per curiam decision does not conflict with any decision of this Court or any other court of appeals. No further review is warranted.

1. The law of evidence has long prohibited "the admission of juror testimony to impeach a jury verdict." Tanner v. United States, 483 U.S. 107, 117 (1987). That prohibition is now codified in Federal Rule of Evidence 606, which provides that, "[d]uring an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment." Fed. R. Evid. 606(b)(1).

In Peña-Rodriguez v. Colorado, 137 S. Ct. 855 (2017), this Court held that the Sixth Amendment requires an exception to the no-impeachment rule (as codified in a state evidentiary rule) in the context of allegations of racial bias. The Court concluded that, although "[n]ot every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry," the no-impeachment rule must give way when "a juror comes forward with compelling evidence that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict." Id. at 861, 869. The Court, however, specifically left open "what procedures a trial court must follow

when confronted with a motion for a new trial based on juror testimony of racial bias" and "the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial be granted." Id. at 870-871.

2. Petitioner does not challenge the abuse-of-discretion standard of review that the court of appeals applied to the district court's determination in this case, or even the substance of the district court's finding that racial bias did not taint the jury's verdict in this case. Petitioner instead objects to the procedure that the district court used; he contends (Pet. 7-11) that, in addition to examining the juror who had reported the comments at issue, Juror G.D., the court should have examined the jurors who reportedly made those comments, Jurors A and B.

Although petitioner asked the district court to examine Jurors A and B when Juror G.D. first reported their comments, he did not ask the court to do so during or after the post-trial evidentiary hearing -- even though the court had initially expressed openness to extending the hearing if necessary. See pp. 3-4, supra. Petitioner's contention that the court should have examined those jurors during the evidentiary hearing is thus subject to review only for plain error. Fed. R. Crim. P. 52(b); see Gov't C.A. Br. 17. To obtain plain-error relief, the defendant must show (1) an "error"; (2) that is "plain"; (3) that affected his "'substantial rights'"; and (4) that "had a serious effect on

'the fairness, integrity, or public reputation of judicial proceedings.'" Greer v. United States, 141 S. Ct. 2090, 2096-2097 (2021) (citations omitted).

Petitioner has failed to establish error, much less plain error. As an initial matter, he has failed to make the threshold showing required by Peña-Rodriguez: a showing that "a juror [has] come[] forward with compelling evidence that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict." 137 S. Ct. at 861. Juror G.D. testified that Juror A stated, "I just don't like some of these people." Pet. App. A3 (citation omitted). Petitioner interprets that statement (Pet. 7) as an expression of racial bias, but Juror G.D. clarified that Juror A was "referring to the IRS," expressing dislike for the IRS employees who testified on behalf of the government. Pet. App. A5. Juror A's comment thus does not constitute a "clear and explicit" statement "indicating that racial animus was a significant motivating factor" in the vote to convict. Peña-Rodriguez, 137 S. Ct. at 861.

Juror G.D. also testified that Juror B stated that "[s]ome of these witnesses don't even speak English, they shouldn't even be in this country." Pet. App. A3. That comment, however, was likely a reference to the government's witnesses, some of whom needed an interpreter. Id. at A2-A3. Juror B said nothing about petitioner, who did not need an interpreter. See Gov't C.A. Br. 19-20. Nor

did Juror B's comment, made before deliberations even started, suggest that race influenced the vote. Juror B's comment thus does not amount to a "clear and explicit" statement indicating "that racial animus was a significant motivating factor in the juror's decision. Peña-Rodriguez, 137 S. Ct. at 861. Instead, in these particular circumstances, it is the kind of statement that Peña-Rodriguez would classify as insufficient to justify an exception to the no-impeachment rule. Id. at 869.

Even assuming that petitioner made the threshold showing required by Peña-Rodriguez, moreover, the district court did not abuse its discretion by declining to extend the evidentiary hearing with an examination of Jurors A and B. The availability and scope of an evidentiary hearing is ordinarily left to "the sound discretion of district courts." Schriro v. Landrigan, 550 U.S. 465, 473 (2007). And as the court of appeals recognized, in the particular circumstances of this case, the district court had sound reasons to begin by questioning Juror G.D. and not to require additional testimony after hearing from her. See Pet. App. A8-A12. As the district court explained, beginning with only Juror G.D.'s testimony balanced the competing goals of "respecting the no-impeachment bar and fulfilling th[e] court's 'duty to confront racial animus in the justice system.'" D. Ct. Doc. 140, at 14 (citation omitted). Juror G.D. then testified that she did not hear any comments from any other jurors evincing prejudice; that the jury went "over every single piece of evidence"; and that she

did not believe that race was a significant motivating factor in the jury's vote to find petitioner guilty. Pet. App. A6 (citation omitted). The district court accordingly found that Juror G.D.'s testimony "clearly established that race and/or ethnicity was not a 'significant motivating factor' in the jury's verdict." Id. at C5.

In addition, the district court had given a curative instruction after Juror G.D. reported the comments; once the court issued the instruction, "no more comments about race were made." Pet. App. A5 (brackets and citation omitted); see Peña-Rodriguez, 137 S. Ct. at 871 (recognizing importance of jury instructions in blunting prejudice). The jury also found petitioner guilty on some counts and not guilty on other counts, with that split verdict further indicating that the jury's findings rested on the evidence rather than on prejudice. See Pet. App. A8. Finally, petitioner did not object during the evidentiary hearing to the court's decision to stop after questioning Juror G.D., inviting further proposed questions from the parties, and finding additional intrusion into the jury's deliberations unwarranted. "Viewing the circumstances holistically," the court did not abuse its discretion in not examining those jurors sua sponte. Id. at A12.

3. The decision below does not conflict with the decision of any other court of appeals. Other courts of appeals have found that even statements that might be seen as more indicative of racial bias have failed to meet the high bar set by Peña-Rodriguez

for overcoming the no-impeachment rule. See, e.g., United States v. Birchette, 908 F.3d 50, 57-59 (4th Cir. 2018) (discussing a juror's comment to other jurors that "the two of you are only doing this because of race" and that "it's a race thing for you"), cert. denied, 140 S. Ct. 162 (2019) (brackets omitted); United States v. Robinson, 872 F.3d 760, 770-771 (6th Cir. 2017) (discussing the jury foreperson's statement that she found "it strange that the colored women are the only two that can't see" the defendants' guilt and were protecting the defendants because they "owed something" to their "black brothers"), cert. denied, 139 S. Ct. 55 and 139 S. Ct. 56 (2018), and 139 S. Ct. 786 (2019). And other courts of appeals have likewise viewed the appropriate scope of any evidentiary hearing concerning juror bias to depend on the circumstances. See United States v. Boylan, 898 F.2d 230, 258 (1st Cir.) ("We abjure imposition of a rigid set of rules for the conduct of inquiries into the presence or extent of extrinsic influences [on the jury]."), cert. denied, 498 U.S. 849 (1990); United States v. Calbas, 821 F.2d 887, 896 (2d Cir. 1987) ("The limited inquiry conducted by the district court here was entirely appropriate under the circumstances. The court wisely refrained from allowing the inquiry to become an adversarial evidentiary hearing, so as to minimize intrusion on the jury's deliberations."), cert. denied, 485 U.S. 937 (1988); United States v. Tucker, 137 F.3d 1016, 1031 (8th Cir. 1998) ("[T]he depth of investigation required depends on both the gravity of the alleged

misconduct and the substantiality of the movant's showing of misconduct."); United States v. Register, 182 F.3d 820, 840 (11th Cir. 1999) ("When a juror's alleged improper conduct is brought to the court's attention, the court * * * enjoys substantial discretion in 'choosing the investigative procedure to be used in checking for juror misconduct[.]'") (citation omitted).

Contrary to petitioner's contention (Pet. 10-11), the court of appeals' decision does not conflict with the Sixth Circuit's decision in Harden v. Hillman, 993 F.3d 465 (2021). In Harden, a civil case, Juror T.H. alleged that multiple jurors had stated that the black plaintiff was a "crack head" who was "taking dope * * * during breaks in the trial." Id. at 482 (citation omitted). One juror also described the plaintiff's black lawyer and his team as being the "Cosby Show" and therefore "gave no consideration at all" to what they said. Ibid. (citation omitted). Another juror suggested the plaintiff's romantic partner, who testified at the trial, was probably "on heroin" during the trial. Ibid. (citation omitted). And Juror T.H. further alleged that other jurors had "'discounted and totally disregarded'" the plaintiff's testimony because they believed he was a "'crack addict' who was seeking a payout." Id. at 484 (citation omitted).

The Sixth Circuit determined that the allegations constituted a "clear statement" that multiple jurors may have relied on racial stereotypes or animus when voting and that the district court had abused its discretion by failing to hold any evidentiary hearing

at all. Harden, 993 F.3d at 484 (citation omitted). The court recognized that Peña-Rodriguez had not prescribed "what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias." Id. at 485 (citation omitted). But in the circumstances of that case, the Sixth Circuit ordered the district court, on remand, to hold a hearing in which each side could question Juror T.H. "and the rest of the jury" to determine whether racial stereotypes affected the jury's verdict. Ibid. (citation omitted).

Harden differs from the decision below in multiple respects. The comments in Harden were more troubling than the comments in this case. The reporting juror in Harden alleged that other jurors had completely discounted a party's testimony because of racial stereotypes, whereas the reporting juror here testified that she believed that the verdict rested on the evidence, rather than on racial prejudice. The district court in Harden held no evidentiary hearing; the court here, in contrast, did hold one. And the plaintiff in Harden sought to question jurors beyond the reporting juror; petitioner, in contrast, made no request during the evidentiary hearing in this case to question Jurors A and B. Those difference amply support any difference between the scope of the evidentiary hearing that the Sixth Circuit ordered in Harden and the scope of the evidentiary hearing that the court of appeals found sufficient in this case. See 27 Charles Alan Wright et al., Federal Practice and Procedure § 6076, at 577-578 (2007) ("The

extensiveness of the hearing and the depth of the investigation into jury misconduct may depend on the gravity of the alleged misconduct and the substantiality of the moving party's proof of misconduct.") At a minimum, Harden does not compel the conclusion that a future Sixth Circuit panel would be bound to order a more extensive evidentiary hearing on facts like the ones here.

The petition for a writ of certiorari, at bottom, challenges the court of appeals' and district court's case-specific determinations about the appropriate scope of the evidentiary hearing on these facts. That fact-bound claim does not warrant this Court's review. 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."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). That is particularly so given that the court of appeals and the district court both agreed as to the appropriate scope of an evidentiary hearing. See Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Manufacturing Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949)). In any event, even if the petition might have raised a conflict between the Sixth

Circuit's decision in Harden and the nonprecedential decision below, petitioner's failure to preserve his contention would make this case a poor vehicle for resolving any such conflict.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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