No. 24-

IN THE

Supreme Court of the United States

GUY BENJAMIN BOWMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JAMES R. THEUER
Counsel of Record
JAMES R. THEUER, PLLC
555 E. Main Street, Suite 1212
Norfolk, VA 23510
(757) 446-8047
jim@theuerlaw.com

Counsel for Petitioner

332871

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the trial court's refusal to ask of the all-White venire defendant's voir dire questions on racial bias, deprivation of the defendant of the court's venire information provided to the Government, and usurpation of the defendant's peremptory strikes constitutes structural error requiring automatic reversal without a showing of harmfulness.

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner Guy Benjamin Bowman and the United States of America.

LIST OF RELATED CASES

- United States v. Bowman, No. 1:22cr21, U.S. District Court for the Western District of Virginia. Judgment entered November 28, 2022.
- United States v. Bowman, No. 22-4680, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 1, 2024.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES AND OTHER AUTHORITIES

OPINIONS BELOW

The oral orders of the United States District Court refusing to pose Petitioner's voir dire questions to the venire, denying Petitioner's request for the venire list provided to the Government, and then itself exercising Petitioner's peremptory strikes are reprinted at App.[1] 17a-18a, 26a, and 27a, respectively, but are not reported. The Fourth Circuit's published opinion affirming the judgment (per Richardson, Diaz, and Rushing, JJ) is reported at 196 F.4th 293 and is reprinted at App. 1a. Other pertinent documents are contained in the Joint Appendix in the record of the United States Court of Appeals for the Fourth Circuit.

JURISDICTION

The Fourth Circuit rendered its decision on July 1, 2024. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND OTHER TEXTS INVOLVED

The Sixth Amendment of the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[1] Citations to the Appendix for this Petition for Certiorari will be noted "App" and citations to the Joint Appendix contained in the record in the Fourth Circuit will be noted "JA".

STATEMENT OF THE CASE

In the late evening hours of March 22, 2022, law enforcement agents executed search warrants on a residential property in Meadowview, Virginia, a Jeep Liberty, and the person of Mr. Bowman as part of a narcotics investigation. Search Warrants, JA14-18, JA30-33, JA44-51. As a result of the executions, law enforcement detained Mr. Bowman. Lord Test., Tr. of Jul. 5, 2022, JA269. Mr. Bowman was indicted in the district court on May 18, 2022, charged with two counts: conspiracy to distribute or possess with intent to distribute 500 grams or more of methamphetamine in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A)(viii) and distribution or possession with intent to distribute 500 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii) and 18 U.S.C. § 2. Indict., JA78-80. Mr. Bowman is Black. His co-defendant and girlfriend, Sally Carr, is White.

On June 6, 2022, Mr. Bowman's court-appointed attorney moved to withdraw. Docket Report no. 66, JA60. The district court granted the motion by minute order entered on June 10, 2022. Id., no. 71, JA60. On June 20, 2022, successive court-appointed counsel moved to withdraw. Id., no. 80, JA61. The district court granted the motion and permitted Mr. Bowman to proceed pro se on June 21, 2022. Id., no. 84, JA61.

The matter proceeded to trial in Abingdon, Virginia, on July 5, 2022. Id., no. 135, JA64. Mr. Bowman was pro se. The jury venire was all White. Tr. of Jul. 5,

2022, App. 22a.[2] After the district court's voir dire, none of which touched on racial attitudes in the venire,[3] Mr. Bowman requested that the district court propound a series of voir dire questions. Id., App. 17a. The questions addressed potential racial prejudice. Id. The district court refused to propound the questions. Id., App. 17a-18a.

The Court did not provide Mr. Bowman with the Venire List though it did provide it to the Government. Id., App. 26a, 27a. The list provided information on the age, address, occupation, education, marital status, parental status, and spousal occupation of the pool. Venire List, JA802-811. In response to Mr. Bowman's protest that he was unable to exercise his peremptory strikes because of the lack of information, the district court exercised his strikes itself. Tr. of Jul. 5, 2022, App. 27a.

Over two days, the Government presented testimony from eleven witnesses: nine sworn law enforcement officers, one local law enforcement evidence technician,

---

[2] The district court's record and the Government's files contain only a redacted venire list, redacted such that the race information on the jurors has been removed. Venire List, JA802-811.

[3] The district court's voir dire did include the following two generic questions to which there was no response by the venire:

> Do any of you know of any reason why you could not decide this case solely on the evidence and the law that I'll tell you about without regard to sympathy, bias, or prejudice? None of you do?
> [. . . .]
> Do any of you know of any reason, even a reason that I've not asked you about, that would make it difficult for you to be fair and impartial in this case? None of you do?

Id., JA182-183.

and one Drug Enforcement Administration chemist. Witness & Exhibit Lists, JA351-368, JA536-655. The jury returned a verdict of guilty on both counts. Verdict Form, JA765-766.

The matter came on for sentencing on November 28, 2022. Docket Report, no. 193, JA68. The district court sentenced Mr. Bowman to a term of imprisonment of 360 months on each count, to run concurrently, five years of supervised release, to run concurrently, conditions of supervised release, and a special assessment of $100. Judgment, JA786-794. Counsel appointed after trial filed a Notice of Appeal on December 1, 2022. Not. Appeal, JA795.

Following oral argument, in a published opinion, Richardson, J., writing for the unanimous Fourth Circuit panel, rejected Mr. Bowman's challenge to the district court's refusal to pose his voir dire questions, holding Mr. Bowman's case wasn't 'inextricably bound up' with race." United States v. Bowman, 106 F.4th 293, 303 (4th Cir. 2024) (quoting United States v. Barber, 80 F.3d 964, 968 (4th Cir. 1996) (en banc). As a result, even with an all-White venire, and his White co-defendant and girlfriend, there was no constitutional violation, and the trial court's voir dire "questions were broad enough to uncover bias, racial or otherwise[, such that] the court's refusal to ask any additional duplicative or immaterial questions was thus appropriate" and not an abuse of discretion. Id.

The Fourth Circuit likewise rejected Mr. Bowman's challenge to the denial or impairment of his peremptory strikes through the district court's usurpation of them and denial to him of the venire list. Id. at 303-306. "[T]he denial or impairment to

one's peremptory strikes only amounts to a constitutional error if [the defendant] can show that a 'member of his jury was removable for cause.'" Id. at 304 (quoting Rivera v. Illinois, 556 U.S. 148, 159, 129 S.Ct. 1446, 173 L.Ed.2d 320 (2009)). While the panel did not "condone a *court* providing disparate information about prospective jurors to the defendant and prosecution. . . . [b]ecause Bowman points to no seated juror who was challengeable for cause, he has not established a Constitutional violation." Id. at 306 (emphasis in original). The Fourth Circuit affirmed Mr. Bowman's convictions and sentence. Id. at 308.

REASONS FOR GRANTING THE WRIT

I. THE FOURTH CIRCUIT MISAPPLIED THE COURT'S PRECEDENT ON STRUCTURAL ERROR

This petition presents circumstances of fundamental unfairness in the impaneling of the jury that count as structural under the Court's precedent as the effects therefrom are simply too hard to measure, requiring automatic reversal of the verdict. A defendant has a constitutional right to a fair and impartial jury. U.S. Const. amend VI. The district court here violated Mr. Bowman's right to a fair and impartial jury by denying Mr. Bowman with information on the venire, information it provided to the Government, and unilaterally exercising Mr. Bowman's peremptory strikes.

Exercise of the Constitutional right to a fair and impartial jury is reinforced through the ability of a defendant under the criminal rules to voir dire prospective jurors and exercise peremptory strikes. Rule 24(a) requires that a trial court permit the parties to ask questions either directly or through the court that the court

considers "proper" if the court engages in voir dire of the venire. Fed. R. Crim. Pro. 24(a).

> Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled. Similarly, lack of adequate voir dire impairs the defendant's right to exercise peremptory challenges where provided by statute or rule, as it is in the federal courts.

Rosales-Lopez v. United States, 451 U.S. 182, 188, 101 S. Ct. 1629, 1634, 68 L. Ed. 2d 22 (1981) (citation omitted). Rule 24(b) provides that a defendant in a felony case is entitled to exercise ten peremptory challenges. Fed. R. Crim. Pro. 24(b). "We have long recognized the role of the peremptory challenge in reinforcing a defendant's right to trial by an impartial jury." United States v. Martinez-Salazar, 528 U.S. 304, 311, 120 S. Ct. 774, 779, 145 L. Ed. 2d 792 (2000).

While non-compliance with Rule 24 is not a constitutional question, it does inform the circumstances that must be analyzed for purposes of structural error. The district court's compound errors at trial that violated Mr. Bowman's right to a fair trial before an impartial jury are very different from the circumstances the Court addressed in Rivera v. Illinois, 556 U.S. 148, 129 S.Ct. 1446, 173 L.Ed.2d 320 (2009), misapplied by the Fourth Circuit below. For while the Fourth Circuit characterized the Court's decision on structural error in Rivera as categorical, the Court was careful to specify that its discussion of fundamental unfairness in Rivera was addressing "the circumstances we confront here[.]" Id. at 161, 129 S.Ct. at 1455. Those circumstances

were very different than those at Mr. Bowman's trial, and the Fourth Circuit misapplied the rationale in Rivera in its opinion below.

The facts in Rivera show why. The State court defendant in Rivera argued that the denial of his peremptory challenge to a juror, permitted under State law, required automatic reversal under the Constitution. Id. at 157, 129 S.Ct. at 1453. The Court rejected the argument, holding "If a defendant is tried before a qualified jury composed of individuals not challengeable for cause, the loss of a peremptory challenge due to a state court's good faith error is not a matter of federal constitutional concern." Id. But, crucially, the defendant in Rivera had been given full opportunity to voir dire the venire, including the juror against whom he sought to exercise a peremptory challenge, in two separate sessions. Id. at 153, 129 S.Ct. at 1451. It was that comprehensive voir dire that established in the record that the juror was not challengeable for cause, underpinning the conclusion there was no Sixth Amendment violation.

Not so here. Mr. Bowman was deprived of the means to exercise his right to trial by an impartial jury through the district court's denial of his attempt to ascertain racial bias in the venire, failure to otherwise inquire as to racial bias, denial of access to information on the venire provided to the Government, refusal to remedy the denial of information, and ultimate deprivation of his peremptory strikes. Here the record does not support the conclusion that was the essential predicate to the decision in Rivera: that the jury was not challengeable for cause. See also Martinez-Salazar, 528 U.S. at 317 fn. 4, 120 S.Ct. at 782 (declining to approve automatic reversal "[b]ecause

we find no impairment, [but] we do not decide in this case what the appropriate remedy for a substantial impairment would be"). Mr. Bowman never got the opportunity to establish the grounds to challenge for cause the members of the venire that were ultimately seated because of the district court's actions.

Mr. Bowman requested that the district court propound a series of voir dire questions. Tr. of Jul. 5, 2022, App. 17a. The questions addressed racial prejudice in an all-White venire. Id. The district court refused, though it had not asked any questions to illicit the same information. Id., JA182-183. Admittedly, "the courts must begin every trial with the idea of not focusing jurors' attention on the participants' membership in [] particular groups. Particularly because we are a heterogenous [sic] society, courts should not indulge in 'the divisive assumption . . . that justice in a court of law may turn upon the pigmentation of skin, the accident of birth, or the choice of religion.'" United States v. Barber, 80 F.3d 964, 967 (4th Cir. 1996) (quoting Ristaino v. Ross, 424 U.S. 589, 596 n. 8, 96 S.Ct. 1017, 1021 n. 8, 47 L.Ed.2d 258 (1976)). But the Court has cautioned that, "In our judgment, it is usually best to allow the defendant to resolve this conflict by making the determination of whether or not he would prefer to have the inquiry into racial or ethnic prejudice pursued." Rosales-Lopez, 451 U.S. at 191, 101 S. Ct. at 1636. Here, the district court offered no justification for its refusal of Mr. Bowman's voir dire questions. It simply rejected them out of hand. Nor did the district court's generic voir dire questions on bias adequately plumb the issue of racial bias. This rejection precluded Mr. Bowman's ability to mount challenges for cause and impaired his ability to exercise

his peremptory strikes.

Furthermore, the district court's refusal of Mr. Bowman's voir dire questions was amplified by the district court's failure to provide Mr. Bowman with the venire list though it had been provided to the Government. Tr. of Jul. 5, 2022, App. 26a, 27a. The venire list is a central part of the voir dire, providing information on the age, address, occupation, education, marital status, parental status, and spousal occupation of the pool compiled from jurors' responses to questionnaires. Venire List, JA802-811. The district court ignored Mr. Bowman's protest that he had been deprived of this information provided to the Government. Instead, it proceeded with jury selection. In fact, Mr. Bowman never received the venire list. The denial of the venire list further precluded Mr. Bowman's ability to mount challenges for cause and impaired his ability to exercise his peremptory strikes.

Finally, having deprived Mr. Bowman of the information needed to mount any challenge for cause of a venire member, the district court then proceeded to exercise unilaterally Mr. Bowman's strikes itself. Tr. of Jul. 5, 2022, App. 27a.

These circumstances establish a structural error that necessitates automatic reversal. See Weaver v. Massachusetts, 582 U.S. 286, 294-96, 137 S.Ct. 1899, 1907-08, 198 L.Ed.2d 420 (2017) (discussing structural error). Weaver discussed "three broad rationales" supporting classification of an error as structural but cautioned the rationales "are not rigid . . . . [and] more than one of these rationales may be part of the explanation for why an error is deemed to be structural." Id. at 296, 137 S.Ct. at 1908. Two of the rationales identified by the Court in Weaver are "the effects of the

error are simply too hard to measure," id. at 295, 137 S.Ct. at 1908, and "the error always results in fundamental unfairness," id. at 296, 137 S.Ct. at 1908, though the Court was adamant that, "[a]n error can count as structural even if the error does not lead to fundamental unfairness in every case," id. (citing United States v. Gonzalez-Lopez, 548 U.S. 140, 149 n. 4, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)).

Both of these rationales are present in the circumstances of Mr. Bowman's trial, yet the Fourth Circuit failed to account for these circumstances that distinguish Mr. Bowman's case from the circumstances in Rivera. The voir dire and jury selection process at Mr. Bowman's trial created circumstances of fundamental unfairness with effects that are too hard to measure as the record does not establish that no juror seated would not have been challengeable for cause. Indeed, Rivera recognized that "[a]mong those basic fair trial rights that can never be treated as harmless is a defendant's right to an impartial adjudicator, be it judge or jury." Id. at 161, 129 S.Ct. at 1455-56 (quoting Gomez v. United States, 490 U.S. 858, 876, 109 S.Ct. 2237, 104 L. Ed. 2d 923 (1989)) (other citations omitted). The errors at trial impaired this basic trial right.

The Court should grant this petition to vacate the Fourth Circuit's decision predicated on its failure to apply properly the Court's precedent on structural error and the Court's holding in Rivera.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that the Court grant his petition for a writ of certiorari. The Fourth Circuit's opinion misapplied the Court's precedent and requires the exercise of the Court's supervisory powers to correct.

Respectfully submitted,

GUY BENJAMIN BOWMAN

James R. Theuer
Counsel of Record
James R. Theuer, PLLC
555 E. Main St.
Suite 1212
Norfolk, VA 23510
757-446-8047
jim@theuerlaw.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

Page

106 F.4th 293
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff – Appellee,
v.
Guy Benjamin BOWMAN, Defendant – Appellant.

No. 22-4680
|
Argued: March 5, 2024
|
Decided: July 1, 2024

Synopsis

Background: Defendant filed motion to suppress statements he made before he was given *Miranda* warnings. The United States District Court for the Western District of Virginia, James P. Jones, Senior District Judge, 2022 WL 2392575, denied motion, and defendant was subsequently convicted of distributing methamphetamine, as well as conspiring to do so. Defendant appealed.

Holdings: The Court of Appeals, Richardson, Circuit Judge, held that:

[1] evidentiary hearing on defendant's motion to suppress was not necessary;

[2] incriminating statements defendant made to police officers prior to being read his *Miranda* rights did not implicate his Fifth Amendment rights;

[3] district court's refusal to ask defendant's proposed questions relating to race and prejudice in conducting voir dire was not abuse of discretion;

[4] jury was impartial for Sixth Amendment purposes;

[5] neither defendant nor district court could hold co-defendant to terms of plea agreement wherein she waived her right to remain silent at trial;

[6] district court was obligated to ensure co-defendant could exercise her Fifth Amendment right to not testify at defendant's trial; and

[7] district court's decision not to play entirety of four jail calls between defendant and co-defendant during closing arguments was not abuse of discretion.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Jury Selection Challenge or Motion.

West Headnotes (31)

[1] **Criminal Law** Right to, and necessity of, hearing or voir dire examination; summary disposition
Criminal Law Preliminary proceedings

The decision whether to conduct an evidentiary hearing on a motion to suppress is left to the sound discretion of the district court, and Court of Appeals will review that decision only for an abuse of discretion.

[2] **Criminal Law** Questions of law or fact

In ruling on a suppression motion, district court is both factfinder and decider-of-law.

[3] **Criminal Law** Right to, and necessity of, hearing or voir dire examination; summary disposition
Criminal Law Trial judge as sole arbiter of credibility

When facts underlying a suppression motion are clear and undisputed, an evidentiary hearing provides little value, but when critical facts are disputed, evidentiary hearing can be helpful, for district court must then resolve conflicts in testimony, weigh evidence, and judge credibility of witnesses.

[4] **Criminal Law** Right to, and necessity of, hearing or voir dire examination; summary disposition

A district court is required to hold an evidentiary hearing on a suppression motion when the motion asserts facts that (1) are disputed and unresolvable on the record and (2) will affect the resolution of the constitutional claim.

[5] **Criminal Law** Presumptions and burden of proof

As defendant bears the burden of proof on a motion to suppress, he also bears the burden of asserting disputed material facts in his motion.

[6] **Criminal Law** Right to, and necessity of, hearing or voir dire examination; summary disposition

Defendant's motion to suppress incriminating statements he made before he was read his *Miranda* warnings presented no material factual dispute, and thus evidentiary hearing was not necessary; because government did not contest order of events set forth in defendant's motion, district court was only required to resolve the legal dispute of whether defendant's Fifth Amendment rights were violated. U.S. Const. Amend. 5.

[7] **Criminal Law** Particular cases or questions

Incriminating statements defendant spontaneously made to police officers prior to being read his *Miranda* rights did not implicate his Fifth Amendment rights, and thus trial court properly denied defendant's motion, absent allegation of any facts suggesting statements were made in response to express questioning or its functional equivalent. U.S. Const. Amend. 5.

[8] **Criminal Law** Custodial interrogation in general

Fifth Amendment is implicated only when a suspect is both in custody and subject to official interrogation. U.S. Const. Amend. 5.

[9] **Jury** Competence for Trial of Cause

Sixth Amendment right to impartial jury is partially protected by jury selection, during which trial judge ensures that jurors have no bias or prejudice that would prevent them from returning verdict according to law and evidence. U.S. Const. Amend. 6.

[10] **Constitutional Law** Fair and impartial jury

A criminal trial is necessarily unfair, in violation of due process, if jury selection does not root out biased jurors. U.S. Const. Amends. 5, 14.

[11] **Jury** Examination of Juror

"Voir dire," or "to speak the truth," refers to questioning of potential jurors during jury selection.

[12] **Jury** Summoning and impaneling; voir dire

To satisfy Sixth Amendment right to an impartial jury, questioning during jury selection must be sufficient to enable district courts to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence. U.S. Const. Amend. 6.

[13] **Jury** Summoning and impaneling; voir dire
Jury Discretion of court

Constitution does not dictate necessary depth or breadth of voir dire questions; instead, district courts have broad discretion to determine what questioning is sufficient.

[14] **Jury** Examination by court
Jury Mode of examination

In conducting voir dire, court may question the jurors itself or supervise the attorney's questioning. Fed. R. Crim. P. 24(a)(1).

[15] **Jury** Summoning and impaneling; voir dire

Outside of the narrow circumstance where racial issues are inextricably bound up with the conduct of a trial and defendant has requested questioning on racial bias, the Constitution does not mandate that the district court ask the jury pool any questions about racial bias whatsoever.

[16] **Criminal Law**🔑Selection and impaneling

Court of Appeals may find abuse of discretion in federal court's refusal to ask prospective jurors about racial prejudice only when (1) such request has been made and (2) there is reasonable possibility that racial prejudice might influence jury.

[17] **Jury**🔑Bias and prejudice

District court's refusal to ask defendant's proposed questions relating to race and prejudice in conducting voir dire at defendant's trial on drug distribution charges was not abuse of discretion; although defendant was Black and jury pool was white, and he had been in interracial relationship with co-defendant, his case was not inextricably bound up with race, as race was not an element of the offenses, evidence did not deal with race, fact that jury was all white did not indicate there was a constitutionally significant risk of racial prejudice, and court's questions to jury pool were broad enough to uncover bias, racial or otherwise.

[18] **Jury**🔑Peremptory challenges

Denial of or impairment to one's peremptory strikes during jury selection only amounts to a constitutional error if defendant can show that a member of his jury was removable for cause.

[19] **Jury**🔑Peremptory challenges

Peremptory challenges during jury selection are not constitutionally protected fundamental rights; rather, they are but one state-created means to the constitutional end of an impartial jury and a fair trial. U.S. Const. Amend. 6.

[20] **Jury**🔑Grounds

Challenges for cause in jury selection are typically limited to situations where actual bias is shown.

[21] **Jury**🔑Competence for Trial of Cause
Jury🔑Summoning and impaneling; voir dire

Defendant's jury at trial for drug distribution was impartial for Sixth Amendment purposes, notwithstanding defendant's claim that district court gave government additional information about prospective jurors that it did not provide to him; although district court could have conducted jury selection in a less disparate manner, there was no showing that any member of the jury was removable for cause. U.S. Const. Amend. 6.

[22] **Jury**🔑Peremptory challenges

So long as defendant is tried before a qualified jury composed of individuals not challengeable for cause, the loss of a peremptory challenge during jury selection is not a matter of federal constitutional concern.

[23] **Courts**🔑Number of judges concurring in opinion, and opinion by divided court
Courts🔑Supreme Court decisions

Court of Appeals is not bound by published decisions of prior panels when those decisions have been abrogated by intervening Supreme Court precedent.

1 Case that cites this headnote

[24] **Jury**🔑Peremptory challenges

Sixth Amendment does not require district courts to ensure equality of information and ability in exercising peremptory strikes during jury selection; rather, district courts have discretion to decide how to ensure fair trial. U.S. Const. Amend. 6.

[25] **Criminal Law**🔑Reception and Admissibility of Evidence

Court of Appeals reviews district courts' evidentiary rulings for abuse of discretion.

[26] **Criminal Law**🔑Representations, promises, or coercion; plea bargaining

Neither defendant nor district court could hold co-defendant, who invoked Fifth Amendment right not to testify at defendant's trial, to terms of plea agreement wherein she waived her right to remain silent at trial; nothing in the agreement contemplated defendant of district court as being the beneficiaries of co-defendant's guilty plea. U.S. Const. Amend. 5.

[27] **Criminal Law**Representations, promises, or coercion; plea bargaining

Plea agreements are governed by law of contracts.

[28] **Self-Incrimination**Incriminating nature in general

Person retains her Fifth Amendment protections so long as there is still possibility of further incrimination. U.S. Const. Amend. 5.

[29] **Self-Incrimination**Right Not to Testify

District court was obligated to ensure co-defendant could exercise her Fifth Amendment right to not testify at defendant's trial on drug distribution charges, notwithstanding her plea agreement with government that waived her right to remain silent at trial, where co-defendant had yet to be sentenced when called to witness stand, and thus still had a legitimate fear of adverse consequences from her testimony. U.S. Const. Amend. 5.

[30] **Criminal Law**Discretion of court in controlling argument

Just as district court is given broad discretion in jury selection and in making evidentiary decisions, it is afforded broad discretion in controlling closing arguments, including limiting arguments to a reasonable time and ensuring that argument does not stray unduly from the mark.

[31] **Criminal Law**For defense

District court's decision not to play entirety of four jail calls between defendant and co-defendant during closing arguments at defendant's trial for drug distribution was not abuse of discretion; upon learning that playing calls would take an hour, court gave defendant chance to pinpoint parts of the calls that provided context he asserted was necessary to understand the portions of the calls the government played, but defendant could not point to any, and, as a result, court informed jury that defendant wanted them to listen to the whole of the calls.

***296** Appeal from the United States District Court for the Western District of Virginia, at Abingdon. James P. Jones, Senior District Judge. (1:22-cr-00021-JPJ-PMS-1)

Attorneys and Law Firms

ARGUED: James R. Theuer, JAMES R. THEUER, PLLC, Norfolk, Virginia, for Appellant. Jonathan Patrick Jones, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee. ON BRIEF: Christopher R. Kavanaugh, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Before DIAZ, Chief Judge, and RICHARDSON and RUSHING, Circuit Judges.

Opinion

Affirmed by published opinion. Judge Richardson wrote the opinion, in which Chief Judge Diaz and Judge Rushing joined.

RICHARDSON, Circuit Judge:

***297** A jury convicted Guy Bowman of distributing methamphetamine as well as conspiring to do so. He now appeals those convictions, arguing that the district court erred before and during his trial. We disagree and thus affirm his convictions.

I. Background

In March 2022, law-enforcement officers executed a search warrant on a property in Meadowview, Virginia, where Bowman and his girlfriend, Sally Carr, lived. The search was a part of an investigation into the couple for the distribution of methamphetamine. And the search, which encompassed the residence and vehicles, yielded evidence of that crime. Among other items, officers found (1) three vacuum-sealed bags containing 997 grams of meth in Bowman's Mercedes,[1] (2) a cell phone in a lock box, and (3) a notebook in a drawer recording how many "8 balls"[2] were sold, the price for which they were sold, and when the buyer would pay the balance. Carr arrived as officers searched the property. But Bowman was nowhere to be found.

Officers located Bowman later that day at the Deluxe Inn in nearby Bristol, Virginia. Officers patrolling the area found Bowman outside the hotel in his Jeep, and—pursuant to an arrest warrant and a search warrant for his person—detained and handcuffed him. A search of Bowman's person yielded $7,108 in cash and another cell phone that was later revealed to contain messages about drug dealing.

Officers then took Bowman into a hotel room to talk. As they entered the room, Bowman proclaimed, "I am good at what I do, and I'm connected with the Sinaloa Cartel."[3] J.A. 503. Surprised by this unprompted assertion, the lead investigator, Drug Enforcement Agency Special Agent Brian Snedeker, stopped Bowman from saying anything else, got a *Miranda* card, read Bowman his *Miranda* rights, then asked Bowman if he wanted to talk to the officers. Bowman said yes. Not once during this process did Bowman ask for a lawyer.

Bowman proceeded to tell officers that "he sold drugs for a living." J.A. 511. Specifically, he said that the meth officers found pursuant to the search warrant was his and that it was part of twenty pounds of meth that he had transported from California to Virginia with the intent to sell. This meth, he said, originated from the Sinaloa Cartel. He had transported the meth to Virginia by concealing it inside a spare tire on his Jeep. And this twenty-pound supply was only part of Bowman's larger drug-trafficking operation. In the prior year, he estimated that he had shipped between 150 and 200 pounds of meth from California to Virginia. Officers arrested Bowman after the interview.

Based on this evidence, Agent Snedeker swore out a criminal complaint against ***298** Bowman, and Bowman and Carr were jointly indicted on two counts. Count One alleged that the pair conspired to distribute and possess with intent to distribute 500 grams or more of a substance containing meth in violation of 21 U.S.C. §§ 846, 841(b)(1)(A)(viii). Count Two alleged the corresponding substantive offense: that both distributed and possessed with intent to distribute 500 grams or more of a substance containing meth in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii).

Jail didn't keep Bowman and Carr from talking. Rather, the two continued to communicate via the jail phones. Over the course of four phone calls, Bowman instructed Carr to collect drug debts for him and once again admitted that he sold drugs for a living.

Eventually, Bowman's and Carr's approaches to their prosecution diverged. Carr pleaded guilty to Count Two, resulting in the dismissal of Count One against her. But Bowman proceeded to trial. And, after two court-appointed attorneys withdrew from representing him, he chose to proceed *pro se*—despite a magistrate judge's advice to the contrary.

Before trial, Bowman filed a motion to suppress the initial statements he made to Agent Snedeker. He did not assert any facts that contradicted the above-described rendition of Agent Snedeker's interaction with him. Instead, he argued that the statements that he "is good at what [he] do[es]" and that he is "connected with the Sinaloa Cartel" should be suppressed because he made them before he was read his *Miranda* rights.

The district court denied the motion without holding an evidentiary hearing. "*Miranda* protections," it explained, "are available only to those who are interrogated by law enforcement officers while in custody." J.A. 735. Because Bowman alleged no facts indicating that he was interrogated before he made the statements in question, the district court determined that there was no basis to suppress them.

Then came trial, starting with jury selection. The district court itself asked prospective jurors questions. It asked about jurors' experiences that may impact their impartiality—*e.g.*, experiences with Bowman, drug offenses, and law enforcement. As catchalls, the district court asked the prospective jurors, "Do any of you know of any reason why you could not decide this case solely on the evidence and the law that I'll tell you about without regard to sympathy, bias, or prejudice?"; "[D]o any of you have any religious or personal belief that would make it difficult for you to sit in judgment as a juror of someone else?"; and "Do any of you know of any reason, even a reason that I've not asked you about, that would make it difficult for you to be fair and impartial in this case?" J.A. 182–83. As a result of these questions, some jurors were excused for cause.

After the district court asked its questions and prospective jurors exited the courtroom, Bowman proposed five more questions for the district court to ask. Those questions were:

1) “Should law enforcement have to abide by the same hunting and fishing regulations as everybody else?”;

2) “Do you believe it's okay to stereotype people?”;

3) “What do you think about black and white marriage?”;

4) “Do you believe in common law marriage?”; and

5) “Do you think it's right for the government to use scare tactics?”

J.A. 187. The district court declined to ask any of them.

The final step of jury selection was to bring the prospective jurors back to the ***299** courtroom for peremptory strikes. The Government got six, and Bowman ten. *See* Fed. R. Crim. P. 24(b)(2). The district court provided both parties with a juror strike list. At some point, Bowman noticed that the Government had another list with more information about the jurors than was included on the strike list. The strike list only had each prospective juror's name, city and county of residence, and occupation. But before trial, the Government had been provided a list with that information, plus address, education level, name of employer, year of birth, race, marital status, spouse's occupation, and number of children. So Bowman protested. The district court didn't address the issue, but asked Bowman if he was going to proceed with his peremptory strikes. Bowman continued to protest, refusing to make his remaining strikes because the Government possessed additional information. In the end, the district court made Bowman's remaining strikes for him.

Once the jurors were chosen and opening statements were made, the Government put on its case-in-chief. It presented various law-enforcement agents as witnesses, including Agent Snedeker, and they testified consistently with the facts described above. In addition, Agent Snedeker testified about what he had learned about drug traffickers through his experience as an agent. Namely, he explained that drug traffickers (1) “routinely take vehicles in as trades” for drugs and thus routinely have multiple vehicles, J.A. 481, (2) “oftentimes possess multiple cell phones,” J.A. 497, and (3) use digital scales to “weigh the product that they're selling,” J.A. 500. This testimony corresponded to evidence that Bowman had multiple vehicles, was found with multiple cell phones, and had a photo of a digital scale on one of those cell phones.

For his case-in-chief, Bowman called two witnesses. The first was Carr. Once on the stand, however, Carr and her attorney told the district court she wanted to exercise her Fifth Amendment right not to testify. The district court accepted Carr's request, explaining that Carr hadn't yet been sentenced and her “testimony ... would ... relate[ ] to her alleged involvement in the charges against her.” J.A. 660. Bowman's only other witness was Jennifer Morrison, who testified that Bowman bought tires from her. Bowman's questioning indicated that he intended Morrison's testimony to show that he sold cars, rather than drugs, for a living.

At closing, both Bowman and the Government summarized the evidence and their arguments. The Government augmented its closing argument by replaying portions of two jail calls between Bowman and Carr. In reaction, Bowman asked to play the entirety of the four recorded jail calls during his closing argument. The district court said no because it believed that only parts of the calls had been admitted into evidence. But, after Bowman finished his argument, the district court realized it had made a mistake—the entirety of the four calls had been admitted into evidence. So the district court conferenced with the parties about how to go forward.

The Government explained that each call was about 16 minutes long, meaning playing the whole of each would take an hour. Bowman couldn't pinpoint any part or parts of the calls he wished to play; he only wanted the full calls played because the jury could only “understand[ ] ... what was really going on” if it heard “the whole phone call.” J.A. 696. The district court chose a middle ground and, rather than playing the calls during closing, told the jury how to access the recordings and that Bowman wanted them to listen to each in its entirety because the portions ***300** played during the Government's argument were “out of context.” J.A. 699.

After deliberation, the jury found Bowman guilty on both counts. Bowman was later sentenced to 360 months’ imprisonment. This appeal followed.

II. Discussion

Bowman urges us to vacate his sentence and convictions and remand for a new trial based on various errors by the district

court. None of those alleged errors, however, are in fact errors. So we affirm.

A. Evidentiary Hearing

Bowman's first argument is that the district court erred when it failed to hold an evidentiary hearing on his suppression motion. It did not.

[1] District courts need not conduct an evidentiary hearing on all suppression motions. Fed. R. Crim. P. 12(c)(1) ("The court *may* ... schedule a motion hearing." (emphasis added)). The decision whether to conduct one is instead "left to the sound discretion of the district court, and we will review that decision only for an abuse of discretion." *United States v. Pridgen*, 64 F.3d 147, 150 (4th Cir. 1995).[4]

[2] [3] This is not to say, though, that an evidentiary hearing is never required. *Cf.* *United States v. Raddatz*, 447 U.S. 667, 677, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980) ("The guarantees of due process call for a 'hearing appropriate to the nature of the case.' " (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950))). In ruling on a suppression motion, a district court is both the factfinder and the decider-of-law. *See* *United States v. Stevenson*, 396 F.3d 538, 541 (4th. Cir. 2005). When the facts underlying the motion are clear and undisputed, an evidentiary hearing provides little value. Yet when critical facts are disputed, an evidentiary hearing can be helpful—for the district court must then "resolve conflicts in testimony, weigh the evidence, and judge the credibility of witnesses." *See* *United States v. Manbeck*, 744 F.2d 360, 392 (4th Cir. 1984).

[4] [5] Accordingly, a district court must hold an evidentiary hearing on a suppression motion only if the motion raises a material factual dispute. *United States v. Taylor*, 13 F.3d 786, 789 (4th Cir. 1994). In other words, a hearing is required when the motion asserts facts that (1) are disputed and unresolvable on the record and (2) will affect the resolution of the constitutional claim. *Id.*; *United States v. Hines*, 628 F.3d 101, 105 (3d Cir. 2010). As the defendant bears the burden of proof on a motion to suppress, *United States v. Dickerson*, 655 F.2d 559, 561 (4th Cir. 1981), he too bears the burden of asserting disputed material facts in his motion.

[6] Here, Bowman presented no material factual dispute in his suppression motion. The motion only asserted that his statements should be suppressed because he made them before he was *Mirandized.* The Government did not contest that order of events. So the district court didn't have to hold an evidentiary hearing—it needed only to resolve the *legal* dispute of whether, taking the facts as the parties agreed them to be, Bowman's Fifth Amendment rights were violated.

[7] [8] And it rightly concluded that they were not. The Fifth Amendment is ***301** implicated only when a suspect is both in custody *and* subject to official interrogation. *United States v. Kimbrough*, 477 F.3d 144, 147 (4th Cir. 2007). The Government asserted that Bowman made his statements spontaneously. Bowman's motion, in turn, did not allege any facts that suggested that his statements were made in response to "express questioning or its functional equivalent."[5] *See* *id.* (quotation omitted). So he failed to allege that there were any material factual disputes warranting a hearing.

Although he acknowledges that his motion contained no contested factual allegations, Bowman argues that the district court still erred for two reasons. For one, he contends that he wasn't able to develop evidence in support of suppression before filing his motion because he lacked sufficient access to discovery. For two, he points out that, during trial, he said that he had requested a lawyer before he made the statements, which evidences a material factual dispute on the suppression issue.

These arguments are beside the point. Even if Bowman's ability to access discovery was limited, that would not have prevented him from *alleging* material facts in his motion. If he remembered officers asking him questions before he made his statements, he could have alleged that fact. He did not need to *prove* facts in his motion to meet the burden required to get an evidentiary hearing. And, as to his second argument, the mere fact that Bowman might have at some point requested counsel is immaterial here. *See* *Edwards v. Arizona*, 451 U.S. 477, 485, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) (holding that *Miranda* doesn't apply—even after a request for counsel—when "the accused himself initiates further communication, exchanges, or conversations with the police"). Again, the facts and allegations available to the district court established that Bowman's confession was uttered spontaneously, meaning any factual dispute about a prior request for counsel, even

assuming there was such a dispute, would not have affected the resolution of Bowman's constitutional claim.

In summary, the district court didn't need to resolve any factual disputes to decide Bowman's motion. So it didn't abuse its discretion by rejecting it without an evidentiary hearing.

B. Jury Selection

Next, Bowman argues that, during jury selection, the district court impaired his constitutional right to a fair and impartial jury in two ways: by refusing to ask the jury pool his proposed questions and by providing him with a juror list containing less information than what was provided to the Government. Yet neither of these actions violated Bowman's constitutional rights.

[9] [10] The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... an impartial jury." U.S. Const. amend. VI. This right is partially protected by jury selection, during which a trial judge "ensur[es] that jurors have 'no bias or prejudice that would prevent them from returning ***302** a verdict according to the law and evidence.' "[6] *United States v. Tsarnaev*, 595 U.S. 302, 312, 142 S.Ct. 1024, 212 L.Ed.2d 140 (2022) (quoting *Connors v. United States*, 158 U.S. 408, 413, 15 S.Ct. 951, 39 L.Ed. 1033 (1895)). And the Supreme Court has "repeatedly said that jury selection falls 'particularly within the province of the trial judge." *Id.* (quoting *Skilling*, 561 U.S. at 386, 130 S.Ct. 2896). That's because, during jury selection, a "trial judge's function ... is not unlike that of [a] juror[ ].... Both must reach conclusions as to impartiality and credibility by relying on their own evaluations of demeanor evidence and of responses to questions." *Rosales-Lopez v. United States*, 451 U.S. 182, 188, 101 S.Ct. 1629, 68 L.Ed.2d 22 (1981) (plurality opinion); *accord* *id.* at 194, 101 S.Ct. 1629 (Rehnquist, J., concurring in result); *Tsarnaev*, 595 U.S. at 312–13, 142 S.Ct. 1024.

1. *Voir Dire*

[11] [12] [13] [14] *Voir dire*, or "to speak the truth," refers to the questioning of potential jurors during jury selection.[7] The Constitution requires that this questioning be sufficient "to enable [district courts] 'to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence.' " *United States v. Caro*, 597 F.3d 608, 614 (4th Cir. 2010) (quoting *Rosales-Lopez*, 451 U.S. at 188, 101 S.Ct. 1629 (plurality opinion)). Yet the Constitution does not dictate "the necessary depth or breadth" of questions. *Skilling*, 561 U.S. at 386, 130 S.Ct. 2896. Instead, district courts have broad discretion to determine what questioning is sufficient. *Id.*

Here, Bowman argues that the district court was constitutionally required to ask the questions that "addressed racial prejudice"[8] because the jury pool was all White ***303** and Bowman is Black. Appellant's Br. at 15. He thus contends that the district court's failure to ask his questions amounted to a constitutional error.

[15] [16] The Constitution does sometimes mandate that a district court ask potential jurors about racial prejudice. But those cases are limited to the narrow circumstance where racial issues are "inextricably bound up with the conduct of a trial" and the defendant has requested such questioning. *United States v. Barber*, 80 F.3d 964, 968 (4th Cir. 1996) (en banc) (quoting *Rosales-Lopez*, 451 U.S. at 189, 101 S.Ct. 1629 (plurality opinion)). Outside that context, the Constitution does not mandate that the district court ask the jury pool any questions about racial bias whatsoever.[9]

[17] Bowman's case wasn't "inextricably bound up" with race. He was charged with possession and distribution of meth and conspiracy to complete that crime. Race is not an element of either of those offenses, and the evidence to support those charges did not deal with race at all—it consisted of drugs found in Bowman's car, evidence found on Bowman's phone, and Bowman's own statements. *Cf. Barber*, 80 F.3d at 968. True, Carr is White, and the Government presented evidence that Bowman and Carr were romantically involved. Yet we explicitly held in *Barber* that the mere existence of an interracial relationship is not enough to show that race is so "inextricably bound up" in a case that the Constitution requires the district court to ask about racial prejudice. *Id.* at 968–69. We also reject Bowman's invitation to assume that, just because the jury pool was all White, there was a constitutionally significant risk of racial prejudice. In our system, "[t]here is no constitutional presumption of juror bias for or against members of any particular racial or ethnic

groups." *Rosales-Lopez*, 451 U.S. at 190, 101 S.Ct. 1629 (plurality opinion).

"Accordingly, we cannot conclude that the court's refusal to" ask Bowman's questions "amounted to an unconstitutional abuse ... of the court's discretion in conducting voir dire." *Barber*, 80 F.3d at 970. The court had already asked sufficient questions "to enable [it] 'to remove prospective jurors who w[ould] not be able impartially to follow the court's instructions and evaluate the evidence.' " *Caro*, 597 F.3d at 614 (quoting *Rosales-Lopez*, 451 U.S. at 188, 101 S.Ct. 1629 (plurality opinion)). Those questions were broad enough to uncover bias, racial or otherwise. The court's refusal to ask any additional duplicative or immaterial questions was thus appropriate.

2. Peremptory Strikes

Bowman also asserts that the district court violated his Sixth Amendment rights by providing him with a juror list that contained less information than what had been provided to the Government. According to Bowman, this impaired his ability to exercise his peremptory strikes so much that he was forced to cede them to the ***304** district court. This denial of peremptory strikes, in Bowman's view, was a *per se* reversible constitutional error.

Peremptory strikes are a historical staple of jury selection. These strikes, which provide both parties the opportunity "to remove any potential juror for any reason—no questions asked," "can be traced back to the common law." *Flowers v. Mississippi*, 588 U.S. 284, 293, 139 S.Ct. 2228, 204 L.Ed.2d 638 (2019). Thus, since before our Nation's birth, peremptory strikes have helped to eliminate "extremes of partiality on both sides" and have supported "the selection of a qualified *and unbiased* jury." *See* *Holland v. Illinois*, 493 U.S. 474, 484, 110 S.Ct. 803, 107 L.Ed.2d 905 (1990).

That said, the Supreme Court has made clear "that there is no freestanding constitutional right to peremptory challenges."[10] *Rivera v. Illinois*, 556 U.S. 148, 157, 129 S.Ct. 1446, 173 L.Ed.2d 320 (2009). Rather, the strikes are "creature[s] of statute." *Id.* (quoting *Ross v. Oklahoma*, 487 U.S. 81, 89, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988)). In federal court, they're provided by Federal Rule of Criminal Procedure 24(b). So denying a federal criminal defendant his peremptory strikes violates the federal rules but does not itself violate our Constitution.

[18] [19] [20] Bowman only challenges the district court's actions under the Constitution. But the denial of or impairment to one's peremptory strikes only amounts to a constitutional error if he can show that a "member of his jury was removable for cause."[11] *Rivera*, 556 U.S. at 159, 129 S.Ct. 1446. Remember, "peremptory challenges are not constitutionally protected fundamental rights; rather, they are but one state-created means to the constitutional end of an impartial jury and a fair trial." *Georgia v. McCollum*, 505 U.S. 42, 57, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992). So as long as the district court's denial of a criminal defendant's peremptory strikes does not impinge upon the defendant's right to an impartial jury, that denial does not offend the Sixth Amendment. *Rivera*, 556 U.S. at 159, 129 S.Ct. 1446.

Bowman denies that this is the correct standard. Instead, he argues that the denial or impediment of peremptory strikes is a *per se* reversible error. In support, he points to our decision *United States v. Ricks*, which stated "[t]he right to peremptory strikes ... is a right of such significance that denial or substantial impairment of the right constitutes per se reversible error." 776 F.2d 455, 461 (4th Cir. 1985), *vacated on reh'g en banc*, 802 F.2d 731 (4th Cir. 1986).

Bowman's reliance on *Ricks* is misplaced for several reasons. First, the *Ricks* opinion that Bowman relies on was vacated, and the case was reheard en banc. The en banc court did not repeat the panel's "per se" language. The vacated panel decision thus carries no precedential weight. *See* ***305** *Quesinberry v. Life Ins. of N. Am.*, 987 F.2d 1017, 1029 n.10 (4th Cir. 1993) (en banc). However, the *Ricks* en banc court did "hold, for the reasons set forth by the majority [in the vacated *Ricks* opinion] ... that there was an impermissible dilution of defendants' statutory right to peremptory challenges of prospective jurors necessitating reversal." 802 F.2d at 732. So, according to Bowman, the en banc court adopted all the panel's language.

Even if that were so, the en banc court in *Ricks* relied on the now-rejected dicta from *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965). *See* *Ricks*, 802

F.2d at 734. In *Swain*, the Supreme Court stated that "[t]he denial or impairment of the right [to peremptory challenges] is reversible error without a showing of prejudice." 380 U.S. at 219, 85 S.Ct. 824. Since then, however, the Supreme Court foreclosed any reliance upon it. Not only has it explicitly "disavowed" *Swain*'s "oft-quoted" dicta, *Rivera*, 556 U.S. at 160–61, 129 S.Ct. 1446; *accord* *United States v. Martinez-Salazar*, 528 U.S. 304, 317 n.4, 120 S.Ct. 774, 145 L.Ed.2d 792 (2000), its decisions holding that courts' denials of peremptory strikes did not amount to reversible error necessarily reject it, *Rivera*, 556 U.S. at 157–59, 129 S.Ct. 1446; *Martinez-Salazar*, 528 U.S. at 316–17, 120 S.Ct. 774.

[21] [22] Consider the Supreme Court's decision in *Rivera*, 556 U.S. 148, 129 S.Ct. 1446, 173 L.Ed.2d 320. During Rivera's criminal trial, the state court didn't allow him to peremptorily strike a juror because it erroneously determined the strike may have been racially motivated. *See* *id.* at 153, 129 S.Ct. 1446. So that juror was seated on the jury that subsequently convicted him. *Id.* On appeal, Rivera argued that the court's denial of his peremptory strike amounted to a reversible error—but he didn't argue the juror was biased against him. *Id.* at 152, 129 S.Ct. 1446. The Supreme Court thus faced the question: "If all seated jurors are qualified and unbiased, does the [Constitution] nonetheless require automatic reversal of the defendant's conviction" following the "erroneous denial of a defendant's peremptory challenge"? *Id.* at 151–52, 129 S.Ct. 1446. It said no. As the Court explained, so long as "a defendant is tried before a qualified jury composed of individuals not challengeable for cause, the loss of a peremptory challenge ... is not a matter of federal constitutional concern." *Id.* at 157, 129 S.Ct. 1446. Since Rivera could not show that any "member of his jury was removable for cause," his "jury was impartial for Sixth Amendment purposes." *Id.* at 159, 129 S.Ct. 1446. In other words, Rivera alleged no constitutional error, reversible or otherwise. *See* *id.* at 157–62, 129 S.Ct. 1446.

[23] *Rivera* forecloses Bowman's argument that we should apply *Rick*'s supposed *per se* rule. We are not bound by the published decisions of prior panels when those decisions have been abrogated by intervening Supreme Court precedent.[12] *See* *United States v. Dinkins*, 928 F.3d 349, 357–58 (4th Cir. 2019). We are instead bound by the Supreme Court's holding that the denial or impairment of a statutory right to peremptory strikes only amounts to a reversible, constitutional error if a juror was seated who was challengeable for cause.

Bowman points to no such juror. He rests his argument on his purported *per se* rule. In fact, he conceded at oral argument ***306** that if the *per se* rule doesn't apply, he loses. Oral Arg. 12:28 – 13:15. And for the reasons stated, the *per se* rule doesn't apply—so the district court did not violate Bowman's Sixth Amendment rights.

[24] In so holding, we recognize that, for better or for worse, parties often have disparate amounts of information when deciding to exercise peremptory strikes. And that is particularly true when a criminal defendant proceeds *pro se.* Yet the Sixth Amendment does not require district courts to ensure equality of information and ability. Rather, we provide district courts with discretion to decide how to ensure a fair trial. And in exercising peremptory strikes, that discretion isn't abused if the district court doesn't require one party to give the other all its information on prospective jurors. *See* *Best v. United States*, 184 F.2d 131, 141 (1st Cir. 1950).

That said, we do not condone a *court* providing disparate information about prospective jurors to the defendant and prosecution. But while the district court could have conducted jury selection better, that doesn't mean it violated Bowman's constitutional right to an impartial jury. *See* *Sasaki v. Class*, 92 F.3d 232, 238–39 (4th Cir. 1996). Because Bowman points to no seated juror who was challengeable for cause, he has not established a Constitutional violation.

In sum, the district court did not violate Bowman's Sixth Amendment rights during jury selection. Both during voir dire and with regard to peremptory strikes, it exercised its discretion within the bounds the Constitution permits.

C. Evidence

Bowman's final challenges regard the evidence admitted—or not admitted—at trial. He argues that the district court erred by (1) allowing Carr to invoke her Fifth Amendment right not to testify, and (2) refusing to play the entire phone calls between him and Carr during closing arguments. We reject each argument in turn.

[25] We review district courts' evidentiary rulings for abuse of discretion.[13] *United States v. Johnson*, 617 F.3d 286, 292 (4th Cir. 2010).

1. Carr's Testimony

Bowman contends the district court abused its discretion by allowing Carr to invoke her Fifth Amendment right not to testify. In Bowman's view, Carr was prohibited from invoking that right because she waived it in her plea agreement.

[26] [27] It is indeed true that Carr's plea agreement states that she waived her "right to remain silent at trial." J.A. 104. But that doesn't mean Bowman's argument prevails. Even assuming Carr's waiver could extend to this context, plea agreements are "governed by the law of contracts." *United States v. Martin*, 25 F.3d 211, 217 (4th Cir. 1994). And contracts can be enforced only by the parties to the contract or third parties that the contract makes clear are its intended beneficiaries. *See* *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157, 164 (4th Cir. 2004); Restatement (Second) of Contracts § 304 (Am. L. Inst. 1981). Bowman is neither. Carr promised *the Government* that she waived her right to remain silent, and nothing in the agreement contemplates Bowman as being the beneficiary of her guilty plea. So Bowman ***307** cannot hold Carr to her promise and mandate that she testify. *Cf.* *United States v. Andreas*, 216 F.3d 645, 663 (7th Cir. 2000).

Neither could the district court. It is also neither a party nor a beneficiary to Carr's plea agreement. It had no duty to seek out Carr's plea agreement or hold her to its terms. And Bowman points to no cases to the contrary. Each case he cites in support of his argument involves the district court's enforcing a plea agreement's waiver of the right not to testify (1) as between the Government and the defendant who pleaded guilty and (2) at the Government's request. *See* *United States v. Smalls*, 134 F. App'x 609, 612–14 (4th Cir. 2005) (per curiam); *United States v. Wise*, 603 F.2d 1101, 1102–04 (4th Cir. 1979). In contrast, when Bowman called Carr to testify and she invoked her Fifth Amendment right, the Government did not seek to enforce the promise Carr made to it.

[28] [29] The district court's obligation, therefore, was not to enforce the Government's contractual rights—it was to ensure Carr could exercise her constitutional rights. The Fifth Amendment protects an individual from "be[ing] compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. While Carr had pleaded guilty by the time Bowman called her as a witness, the Supreme Court "has ... rejected the proposition that 'incrimination is complete once guilt has been adjudicated.'" *Mitchell v. United States*, 526 U.S. 314, 325, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999) (quoting *Estelle v. Smith*, 451 U.S. 454, 462, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981)). A person retains her Fifth Amendment protections so long as there is still a possibility of further incrimination. *See* *id.* at 325–27, 119 S.Ct. 1307. Here, Carr had yet to be sentenced when she took the witness stand. So she still had "a legitimate fear of adverse consequences from [her] testimony." *Id.* at 326, 119 S.Ct. 1307. The district court was thus right to allow her to remain silent rather than force her to testify.

In short, neither the district court nor Bowman could enforce Carr's agreement with the Government. As a result, the district court did not err by allowing her to exercise her constitutional right.

2. Phone Calls

Finally, Bowman asserts that the district court abused its discretion by declining his request to play the entirety of his jail calls with Carr during closing arguments. In his view, the district court was required to have the jury sit through an hour's worth of phone calls in addition to the rest of Bowman's closing statement.

[30] Just as the district court is given broad discretion in jury selection and in making evidentiary decisions, it "is afforded broad discretion in controlling closing arguments." *United States v. Baptiste*, 596 F.3d 214, 226 (4th Cir. 2010) (citation omitted). This includes, for instance, the discretion to limit arguments "to a reasonable time" and "ensure that argument does not stray unduly from the mark." *Herring v. New York*, 422 U.S. 853, 862, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975); *United States v. Wiley*, 93 F.4th 619, 631 (4th Cir. 2024).

[31] The district court's decision not to play the four jail calls during closing arguments was within its discretion. Upon discovering that playing the calls would take an hour, the district court gave Bowman a chance to pinpoint parts of the calls that provided the context he asserted was necessary to understand the portions of the calls the Government played. But Bowman couldn't point to any. He instead contended that the only way to provide the necessary context was to play the entire recordings. So the district court had to decide ***308** whether to play an hour's worth of phone calls—much of which could be irrelevant, repetitive, or confusing—or tell the jury that Bowman wanted them to listen to the whole of the calls during deliberations. It chose the latter. We cannot say that it abused its discretion by doing so. *See Wiley*, 93 F.4th at 631 (holding that the district court did not abuse its discretion by prohibiting legal definitions in closing arguments when those definitions could be "more confusing than helpful"); *cf.* Fed. R. Evid. 611(a) ("The court should exercise reasonable control ... as to ... avoid wasting time.").

* * *

Bowman thinks his convictions and sentence should be reversed. But none of the reasons he provides amounts to an error, let alone a reversible error. Rather, the district court's challenged actions fall within the broad leeway judges must have to manage trials. *See* *United States v. Janati*, 374 F.3d 263, 273–74 (4th Cir. 2004). So Bowman's convictions and sentence are

AFFIRMED.

All Citations

106 F.4th 293

Footnotes

1 Among other evidence showing the Mercedes was Bowman's, officers found a receipt and temporary registration for the Mercedes in Bowman's Jeep.

2 As explained at trial, "[a]n 8 ball is a slang term for an eighth of an ounce or 3.5 grams" and is "indicative of a user quantity." J.A. 483–84.

3 The Sinaloa Cartel is "[a] well known Mexican drug trafficking cartel." J.A. 506.

4 The Government contends that we should review only for plain error since Bowman did not object below to the court's not holding a hearing. But we need not decide whether Bowman preserved this issue because it fails even under the more forgiving abuse-of-discretion standard.

5 We reach this conclusion even considering our liberal construction of *pro se* motions. *United States v. Wilson*, 699 F.3d 789, 797 (4th Cir. 2012). Bowman, in fact, does not argue on appeal that his motion could be read to allege any facts that differed from the Government's, let alone any facts that showed he was interrogated. While the law rightfully requires courts to give *pro se* defendants' submissions the benefit of the doubt, it doesn't require courts to dream up factual assertions that the defendant could have made to support an evidentiary hearing.

6 The Supreme Court has sometimes grounded the need for an impartial jury in the Fifth and Fourteenth Amendments' Due Process Clauses. *See* *Turner v. Murray*, 476 U.S. 28, 36 n.9, 106 S.Ct. 1683, 90 L.Ed.2d 27 (1986); *Skilling v. United States*, 561 U.S. 358, 377–79, 130 S.Ct. 2896, 177 L.Ed.2d 619 (2010); *United States v. Malloy*, 758 F.2d 979, 981–82 (4th Cir. 1985). The Court has explained that those clauses "protect[ ] against criminal trials ... conducted ... in a way that necessarily prevents a fair trial." *Lyons v. Oklahoma*, 322 U.S. 596, 605, 64 S.Ct. 1208, 88 L.Ed. 1481 (1944) (cleaned up). And a trial is necessarily unfair if jury selection doesn't root out biased jurors. *See* *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) ("A fair trial in a fair tribunal is a basic requirement of due process.... In the ultimate analysis, only the jury can strip a man of his liberty or his life.... [So] a juror must be as indifferent as he stands unsworne." (quotations and citations omitted)).

7 The court may question the jurors itself or supervise the attorney's questioning. *Cf.* *Skilling*, 561 U.S. at 372–73, 130 S.Ct. 2896 (discussing the trial judge's rejection of the need for questioning by counsel and noting the trial judge's explanation that jurors provide more forthcoming responses to judge-led questioning). Federal Rule of Criminal Procedure 24(a)(1) provides that "[t]he court may examine prospective jurors or may permit the attorneys for the parties to do so." Where, as here, the court chooses the former, it must permit the parties to either "ask further questions that the court considers proper" or "submit further questions that the court may ask if it considers them proper." Fed. R. Crim. P. 24(a)(2).

8 Bowman's arguments on appeal challenge the district court's refusal to ask his questions writ-large. But only one of Bowman's five questions addressed race explicitly ("What do you think about black and white marriage?"). J.A. 187. Another of his questions addressed prejudice generally ("Do you believe it's okay to stereotype people?"). J.A. 187.. The other three questions don't deal with race or the facts of Bowman's case at all. Bowman doesn't argue that these non-race-related questions were essential to guaranteeing him a fair trial—likely because there's no indication that any of them would have unearthed any relevant prejudice that the prospective jurors harbored. Instead, he only asserts that the district court erred because it needed to probe the issue of racial bias. So that's the argument we respond to.

[9] We have suggested that there may be some contexts in which a district court's failure to ask questions about race does not violate the Constitution but still amounts to a reversible abuse of discretion. As we explained in *United States v. Barber*, "we may find an abuse of discretion in a federal court's refusal to ask prospective jurors about racial prejudice only when (1) such a request has been made and (2) there is a 'reasonable possibility' that racial prejudice might influence the jury." 80 F.3d at 968. But Bowman only asserts constitutional error and does not appeal to any supposed supervisory authority we may have. So we limit ourselves to the constitutional inquiry.

[10] Of course, this doesn't mean that the Constitution doesn't regulate *how* peremptory strikes may be exercised. *See* *Batson v. Kentucky*, 476 U.S. 79, 84, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

[11] "Challenges for cause are typically limited to situations where actual bias is shown." *Person v. Miller*, 854 F.2d 656, 664 (4th Cir. 1988). We have suggested that implied bias might also be a basis for a for-cause challenge in "extreme situations" *Id.* (citing *Smith v. Phillips*, 455 U.S. 209, 221–24, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982) (O'Connor, J., concurring)). But the validity of even a narrow implied-bias doctrine is uncertain. *See* *Smith*, 455 U.S. at 215–18, 102 S.Ct. 940 (majority opinion) (rejecting the argument that a court can imply juror bias); *Fitzgerald v. Greene*, 150 F.3d 357, 365 (4th Cir. 1998) (declining to apply the implied bias doctrine even "[a]ssuming it remains a viable doctrine post-*Smith*").

[12] This principle applies equally to our later cases relying on *Ricks*. *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 504 (4th Cir. 2023).

[13] With respect to Carr's testimony, the Government again argues that we should review only for plain error. But we need not decide whether Bowman preserved this issue because it fails even under the more forgiving abuse-of-discretion standard.

End of Document

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Abingdon Division

UNITED STATES OF AMERICA,	
v.	CRIMINAL ACTION NO. 1:22cr21
GUY BENJAMIN BOWMAN,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS

(TRIAL - DAY 1 of 3)

Abingdon, Virginia

July 5, 2022

BEFORE: THE HONORABLE JAMES P. JONES
Senior United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Martha Suzanne Kerney-Quillen
Steven Randall Ramseyer
Assistant United States Attorney
Counsel for the United States

GUY BENJAMIN BOWMAN, Pro Se

* * *

(The jury was dismissed from the courtroom.)

THE COURT: All right. Let me ask, does the government have any other questions that they would request the Court to ask?

MS. KERNEY-QUILLEN: No, Your Honor, we don't have any additional questions.

THE COURT: All right. Mr. Bowman, do you have any additional questions you would like the Court to ask?

MR. BOWMAN: Am I going to be able to question these jurors myself?

THE COURT: No, sir.
MR. BOWMAN: Why not?
THE COURT: Mr. Bowman, do you have any further questions that you would like the Court to ask?
MR. BOWMAN: Yeah, I do.
THE COURT: You need to tell me now then.
MR. BOWMAN: Okay.
THE COURT: You need to tell me now.
MR. BOWMAN: Yeah, hang on a second. I'm looking them up.
Should law enforcement also have to abide by the same rules as everybody else?
THE COURT: I can't understand you, sir. If you'll speak up.
MR. BOWMAN: Should law enforcement have to abide by the same hunting and fishing regulations as everybody else?
THE COURT: All right. Any other questions you want me to ask?
MR. BOWMAN: Yeah. Do you believe it's okay to stereotype people?
What do you think about black and white marriage?
Do you believe in common law marriage?
Do you think it's right for the government to use scare tactics?
THE COURT: All right. I'm not going to ask any of

those questions.

MR. BOWMAN: I thought I was able to ask my own jurors questions, not you ask the questions for me. How is that fair?

THE COURT: I've already said, sir, I'm not going to do that. I'm going to ask the questions.

MR. BOWMAN: So how is the jury picked? Do you pick the jury?

THE COURT: All right. Now, we have --

MR. BOWMAN: For the record, this is not fair. How are you going to pick my jury?

THE COURT: Mr. Bowman, you cannot talk when I'm talking.

MR. BOWMAN: You asked me a question. I was answering the question.

THE COURT: Well, you've already answered my question to you, so there is nothing more to say at this time.

MR. BOWMAN: So you're just going to be rude?

THE COURT: Counsel, we have 34 on the jury. The government is going to get six strikes, and we'll strike from a list of 28, first 28 on the alphabetical list, and the clerk will mark that, of persons who have not been previously excused.

MR. BOWMAN: This is fucking retarded.

THE COURT: And the defendant will have ten strikes on the same list. Now, Mr. Bowman, are you going to --

MR. BOWMAN: If I can't question my own jurors, then I don't know who the hell I'm picking if you just sent them back out of the room, because I understood that I would ask my own jurors questions. That's how this proceeding is supposed to be going.

THE COURT: The last question to you, Mr. Bowman, is: Are you going to participate in the striking of the jurors? You have ten strikes or preemptory challenges that you don't have to give a reason for. Are you going to do that?

MR. BOWMAN: Yeah, if I get to see the jurors I'm picking.

THE COURT: I'm sorry?

MR. BOWMAN: If I'm seeing the jurors that I'm going pick, yes.

THE COURT: What do you mean if you're seeing them?

MR. BOWMAN: If the jurors are right here, then I can pick and strike who I choose to have.

THE COURT: The jurors will be the courtroom, if that's what you mean.

MR. BOWMAN: Yeah. Let's go.

THE COURT: Is the government ready then?

MS. KERNEY-QUILLEN: We are, Your Honor. We did

have one strike for cause.

THE COURT: Oh, I'm sorry. Go ahead.

MS. KERNEY-QUILLEN: Mr. Mounts, Christopher Lee Mounts, Jr. Your Honor, when you asked the question if Mr. Mounts could be fair and impartial given the situation with his first cousin, he said, "Yes and no." So he did equivocate on that answer, and, Your Honor, we'd ask for that reason that he be stricken for cause.

MR. BOWMAN: I object.

THE COURT: All right. And Mr. Bowman, do you have any challenges for cause of any of the jurors?

MR. BOWMAN: Yeah, because he said he could or he couldn't, so he's still fair.

THE COURT: Do you have any challenges for cause of any of the jurors?

MR. BOWMAN: By the question she said she asked him and the answer he gave.

THE COURT: I'll ask one more time. Do you have any challenges for cause of any of the jurors? I hear that you do not.

MR. BOWMAN: Are you going to give me a chance to even respond? I mean, you're just rushing me through this. I need a chance to respond.

THE COURT: All right. Well, tell me if you have --

MR. BOWMAN: Okay. Well, I'm trying to look that up

right now. I don't know why you're being so damn rude. I don't. I don't understand why you're being so rude.

THE COURT: Answer my question, Mr. Bowman, when you --

MR. BOWMAN: Yes, I do. If you'll give me a second, I will look it up like I told you five times. Jesus Christ.

Just continue on with this sham of a court. Go ahead. We'll just deal with this a different way. Go ahead. You do what you want to do, because that's what you're doing anyways.

You don't need to ask me any questions because you're going to answer for me. You're going to do what you want to do. This is a sham. I'm sitting here in jail clothes because nobody can --

THE COURT: All right. Mr. Bowman --

MR. BOWMAN: I know. I know. I know.

THE COURT: Let me explain to you what we're going to do here.

MR. BOWMAN: I know. I know.

THE COURT: You're going to be quiet unless you have a need to talk and I ask you a question or you question any witnesses. All right. That's the deal.

If you disobey that, let me caution you that I'm going to hold you in contempt, and I may sentence you to a term of imprisonment. You need to understand that.

In addition, you're the one on trial here. If you act in such a way as to be obstructive, that is not going to help you with the jury. So you are duly cautioned, sir.

MR. BOWMAN: Okay. Well, if I have a fair chance to speak in the United States of America and not just be talked down to or spoken -- only can speak when you speak to me, which isn't even right.

First of all, there is not a jury of my peers here. Everybody here is white. I'm black. That's one thing I'd like to get on the record.

THE COURT: All right. We're going to take a short break now, and when we return I'll have the jury in for the strikes.

(A recess was taken from 10:06 to 10:22.)

THE COURT: All right. Again, the procedure we're going to follow is, I am going to excuse the four persons, F-O-U-R, who asked to be excused. That will give you 30 on the jury panel.

The clerk will provide a list of the jurors, and the government will strike first. The government, of course, will have six strikes, and we'll strike two at a time.

Then the defendant will have an opportunity to strike. Again, for the defendant's benefit, a strike means that that person will not serve on the jury.

Then we will end up, of course, with those 12.

There are two additional jurors after I've excused the four, and one of them will be the sole alternate, and I'll allow the defendant the opportunity to strike one of those persons.

So if there are no questions, we'll proceed. We'll have the jury in, please.

(The jury returned to the courtroom.)

THE COURT: All right. We have the jury panel back in the courtroom. I'm going to excuse the following persons: Mr. Martin, you're excused, sir; Mr. Thomason; Mr. Gilbert; and Mr. Mounts.

Now, ladies and gentlemen, all of you are qualified to serve on a jury, but we're going to reduce it at this time, and the way we're going to do that is the parties are going to strike alternately on a list that contains all of your names.

This will take a short period of time, but if you'll just relax and sit there. The parties may want to look at you just to make sure who they're striking, but that's perfectly all right.

We'll start with the government first.

MR. BOWMAN: They get a list and I don't? That figures.

MS. KERNEY-QUILLEN: Your Honor, may I ask a question? May I ask if a particular perspective juror would state their name, please?

THE COURT: Yes.

MS. KERNEY-QUILLEN: Thank you, Your Honor. The gentleman in the back right row in the black shirt, what was your name, sir?

PROSPECTIVE JUROR: Robert Cline, II.

MS. KERNEY-QUILLEN: Robert Cline?

PROSPECTIVE JUROR: C-L-I-N-E.

MS. KERNEY-QUILLEN: Thank you, sir. Thank you, Judge.

THE COURT: Ladies and gentlemen, just to make it easier for the parties, I'm going to ask each of you to just stand and tell me your name.

What we're going to do is we'll start over on the right in the back. Just go down the aisle, and each of you if you'd just stand up and tell us your name. Mr. Bailiff, they can just pass the microphone down.

So if you'll just state your name, please, ma'am.

PROSPECTIVE JUROR: My name a Jahalia Bruck.

PROSPECTIVE JUROR: Charles Petrilak.

PROSPECTIVE JUROR: Joel Brame.

PROSPECTIVE JUROR: Daniel Mabe.

PROSPECTIVE JUROR: Ronald Trent.

PROSPECTIVE JUROR: Matthew Osborne.

PROSPECTIVE JUROR: Joseph Dingus.

PROSPECTIVE JUROR: Gary Mullins.

PROSPECTIVE JUROR: Tammy Scott.
PROSPECTIVE JUROR: Deanie Dimick.
PROSPECTIVE JUROR: Andrew Shockley.
PROSPECTIVE JUROR: Teresa Williams.
PROSPECTIVE JUROR: Cheryl Price.
PROSPECTIVE JUROR: Brittany Moretz.
PROSPECTIVE JUROR: Kathryn Gilmer.
PROSPECTIVE JUROR: Layken Thomas.
PROSPECTIVE JUROR: Robert Cline.
PROSPECTIVE JUROR: Carl Davis, Jr.
THE CLERK: Hold on just a second.
THE COURT: Just hold right there, if you would.
Thank you, sir. You may be seated.
Again, just to make it a little easier, what we're going to do is the clerk is going to again call the roll. When your name is called, if you'll just stand up and wave your hand. All right.
THE CLERK: This will be in alphabetical order.
Charlotte Arnold. Charles Asbury, Jr. Veronica Bandy. Parker Blevins. Vickie Booher. Joel Brame. Jahalia Bruck. Ronald Clark. Robert Cline, II. Carl Davis, Jr. James Davison. Deanie Dimick. Joseph Dingus. Kathryn Gilmer. Kathryn Justice. Anthony Lester. Daniel Mabe. Brittany Moretz. Aaron Mullins. Gary Mullins. Gary Mullins.

PROSPECTIVE JUROR: I'm right here.
THE CLERK: Thank you. Hunter Nichols. Matthew Osborne. Charles Petrilak. Cheryl Price. Tammy Scott. Andrew Shockley. Jo Ann Taylor. Layken Thomas. Ronnie Trent, Jr. Teresa Williams.
Did I get everyone?
THE COURT: All right. Thank you, ma'am.
All right. Mr. Bowman, if you'll make your two strikes; that is, persons who are not going to serve on the jury.
MR. BOWMAN: I can't remember them. I need to ask my jurors questions. This is not fair. This is going to be a problem, and I'm going to let the jurors know it. It's not fair.
They have more paperwork than I have over there. Ask them why they have more paperwork than I do.
THE COURT: Mr. Bowman, you need to make the remainder of your strikes, please.
MR. BOWMAN: Well, that's a question that's very pertinent. The government has more information over there than I do on the jurors.
THE COURT: Mr. Bowman, please be quiet and make your strikes.
MR. BOWMAN: I'm asking a question. I'm not understanding what's going on. How is that fair?

THE COURT: Mr. Bowman, I directed you, please.

MR. BOWMAN: Well, I can't make them if I don't understand what I'm doing.

THE COURT: So you're not going to make any further strikes?

MR. BOWMAN: Yes, I'd like to make further strikes, but the government has more information than I do, so it's not fair for me to pick.

THE COURT: Mr. Bowman, if you do not wish to make any further strikes, then the Court will do it for you. So you need to decide that right now.

MR. BOWMAN: If the government has more information than I do, how can I clearly pick the jury?

THE COURT: All right. Thank you. Madam Clerk, if you'll get the list, and I will make the further strikes.

MR. BOWMAN: How are you going to pick my jurors for me? How is that fair? This ain't fair. Why did you ask me to pick them if you're going to pick for me? Is this how it is in Southwest Virginia?

I thought this was the United States of America, but I guess not. The judge picks my jury. The judge picks my jury for me against my will. Wow. I see how this is going to go. I didn't get to ask my jury no questions, and the judge picked the jury for me.

THE COURT: Mr. Bowman, please be quiet.

MR. BOWMAN: This is not funny. This is ridiculous.

THE COURT: All right. Ladies and gentlemen, the clerk is now going to call the names of the persons who have been selected to serve on this jury.

As your name is called, if you'll come forward and have a seat in the jury box as directed by the court security officer. If your name is not called, if you'll remain seated until I excuse you.

So Madam Clerk, you may proceed.

THE CLERK: Kathyrn Gilmer. Kathryn Justice. Anthony Lester. Daniel Mabe. Brittany Moretz. Aaron Mullins. Hunter Nichols. Matthew Osborne. Cheryl Price. Tammy Scott. Andrew Shockley. Layken Thomas. And Teresa Williams.

Ladies and gentlemen, please rise, raise your right hands, and be sworn.

(The jurors were sworn.)

* * *