

NO.

IN THE SUPREME COURT OF THE UNITED STATES

Shayne Parker Petitioner

vs.

United State of America - Respondent

PETITION FOR WRIT OF CERTIORARI

John A. Amabile
Amabile & Burkly, P.C.
Massachusetts BBO# 016940
Attorney for Petitioner
380 Pleasant Street
Brockton, MA 02301
Telephone: 508-559-6966
Fax: 508-559-7954
E-mail: jamabile@abpclaw.com

QUESTION PRESENTED

Whether the Massachusetts District Court abused its discretion and violated the African-American Defendant's jury trial right under the Sixth Amendment in declining to root out potentially racially biased jurors by conducting careful individual voir dire on the issue of racial prejudice.

TABLE OF CONTENTS

QUESTION PRESENTED	2
TABLE OF AUTHORITIES	4
OPINION BELOW	5
JURISDICTION	5
CONSTITUTIONAL PROVISION INVOLVED	6
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	12
APPENDIX	14

Opinion of the United States Circuit Court of Appeals for the 1st Circuit *United States v. Shayne Parker, No. 16-1770*

TABLE OF AUTHORITIES

Cases:

<i>Aldridge v. United States</i> , 238 U.S. 308, 310 (1931).....	11
<i>Morgan v. Illinois</i> , 504 U.S. 719, 726-31 (1992).....	11
<i>Pena-Rodriguez v. Colorado</i> , 580 U.S. , 137 S. Ct. 855, 868 (2017).....	9, 10, 11, 12
<i>Pointer v. United States</i> , 151 U.S. 396, 408 (1894).....	12
<i>Ristaino v. Ross</i> , 424 U.S. 589, 596–97 (1976).....	11
<i>Rosales-Lopez v. United States</i> , 451 U.S. 182, 189 (1981).....	11
<i>United States v. Shayne Parker</i> , No. 16-1770.....	3, 5, 6
<i>Wainwright v. Witt</i> , 469 U.S. 412, 423 (1985).....	11

Statutes and Rules:

18 U.S.C § 922(a)(3).....	6
18 U.S.C § 922(g)(1).....	6
28 U.S.C. § 1254(1).....	5

Constitutional Provisions

United States Constitution, Amendment Six.....	1, 6, 7, 8, 9, 11
--	-------------------

NO.

IN THE SUPREME COURT OF THE UNITED STATES

December 2017

Shayne Parker - Petitioner

vs.

United State of America - Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Shayne Parker, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit in Case No. 16-1770, entered on September 19, 2017.

OPINION BELOW

On September 19, 2017, a panel of the Court of Appeals for the First Circuit entered its opinion affirming the judgment of the United States District Court for the District of Massachusetts. The opinion of the Court of Appeals is reported as *United States v. Shayne Parker*, No. 16-1770, and is attached hereto in Appendix A.

JURISDICTION

The Court of Appeals entered its judgment on September 19, 2017.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT SIX

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.

STATEMENT OF THE CASE

Shayne Parker, an African-American man from Boston was indicted on August 11, 2015 for violation of 18 U.S.C § 922(g)(1), possession of ammunition by a person previously convicted of a crime punishable by more than 12 months, and 18 U.S.C § 922(a)(3), interstate transportation of a firearm. He was tried in District Court by a jury commencing in March of 2016, was found guilty on both counts, and in June 2016, was sentenced to 60 months, and judgment entered. He appealed to the United States Court of Appeals for the First Circuit, and on September 19, 2017, the judgment was affirmed. *United States v. Shayne Parker, No. 16-1770*.

The specific allegations in the indictment are that on or about March 22, 2014, Parker possessed 50 rounds of 380-caliber ammunition in Massachusetts and purchased and transported into Massachusetts from New Hampshire an SCCY, Model CXP 9mm firearm. The government proceeded primarily on a theory that the defendant aided and abetted an individual named Ronald Scott in procuring straw

purchasers in New Hampshire to procure the firearm and ammunition and then transporting them to Massachusetts. The government utilized the testimony of the participant straw purchasers who were white drug abusers, to prove the case.

Before jury selection commenced, the defendant requested in writing that the Court conduct individual voir dire of prospective jurors on the issue of racial prejudice to insure, to the greatest extent possible, that an unbiased jury, not infected by racial prejudice, as required by the Sixth Amendment, would be seated to hear the case. Counsel pointed out the cross-racial component between the cooperating Caucasian straw purchasers and the African-American defendant, the inherent stereotyping with the nature of the offense, the statistical evidence of bias against African Americans in the criminal justice process, and the systemic racism and racial polarization evidenced by the then ongoing presidential election campaign. The defense contended that individual or sequestered questioning on this issue was necessary because jurors could not be expected to raise their hands and identify themselves as racially prejudiced in front of the other jurors requiring that they be excused for cause, and because gauging the reaction and way a juror responds to the questioning is critical in rooting out juror bias and in the exercise of peremptory challenges.

The Court refused to adopt the reality that jurors are more likely to be candid regarding racial prejudice if questioned individually, questioned whether the issue should be addressed at all, ruled that his instructions would adequately address the problem of racial prejudice, and opined that this was not a highly publicized case, not

a murder case, not a death penalty case and did not warrant the “...time-consuming and resource-consuming step of individual voir dire”. Counsel pointed out the serious loss of liberty the defendant faced and the fact that conducting the requested voir dire would only add “... a couple of extra hours to ...ensure that we don’t have a racially biased jury...”.

The Court conducted a perfunctory voir dire, initially opting to ask a single question to the entire jury pool, which predictably elicited no response. The defendant objected that a single question about racial prejudice was inadequate and that no one would come forward in front of the whole group. Although the Court agreed to ask two additional questions to the entire pool, which also predictably elicited no response, the request for individual or sequestered voir dire was denied.

The defendant was convicted, sentenced to sixty months, and appealed the judgment to the United States Circuit Court for the First Circuit, on the grounds, inter alia, that his Sixth Amendment rights were violated. On September 19, 2017, the First Circuit rejected the defendant’s Sixth Amendment claim and affirmed the judgment. *United States v. Shayne Parker, No. 16-1770*, appended hereto.

REASONS FOR GRANTING THE WRIT

I. BECAUSE OF THE LOWER COURTS’ RULINGS DENYING REQUESTED AND REQUIRED INDIVIDUAL VOIR DIRE ON RACIAL PREJUDICE WE HAVE NO ASSURANCE THAT THE VERDICT WAS UNBIASED AND NOT THE PRODUCT OF RACIAL ANIMUS.

A. THE SIXTH AMENDMENT REQUIRED THAT THE DISTRICT COURT ENSURE THAT RACIALLY BIASED JURORS BE EXCLUDED BY CONDUCTING CAREFUL VOIR DIRE.

In the last term, this Court strongly mandated and reaffirmed its holdings under the Sixth Amendment that lower courts strive to eliminate racial bias in the jury process, ruling that it is necessary to “...ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy.” *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 868 (2017).

The context was a post-trial claim for a Constitutional exception to the “no impeachment” rule where members of a deliberating jury came forward with statements made during deliberations by a seated juror which indicated that racial animus was a significant motivating factor in his or her finding of guilt. *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 868 (2017).

In a 5-3 ruling confirming this exception under the Sixth Amendment, the Court held that there is a sound basis to treat racial bias with special precaution. “A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after the verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right.” *Pena-Rodriguez v. Colorado*, 580 U.S. 137 S. Ct. 855, 868 (2017).

The decision reviewed the history of racial animus in the jury trial process and the evolution of the Court’s rulings on the issue. Racial bias is a “...familiar and

recurring evil” that “... implicates unique historical, constitutional and institutional concerns...”. *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 871 (2017).

Blatant racial prejudice exists, is antithetical to the functioning of the jury system, and must be confronted. The Nation, and the Courts, must continue to make strides to overcome it, and must move forward by achieving the thoughtful, rational dialogue at the foundation of both the jury system and the free society that sustains our Constitution. “It is the mark of a maturing legal system that it seeks to understand and to implement the lessons of history.” *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 871 (2017).

B. CAREFUL VOIR DIRE ON RACIAL PREJUDICE IS INDIVIDUAL OR SEQUESTERED VOIR DIRE.

It is obvious that identifying and disqualifying racially biased jurors through careful voir dire is far preferable to seating a juror and facing the prospect of impeaching the verdict after trial, a point seemingly agreed to by both the majority and dissenters in *Pena-Rodriguez*. It is also obvious and plain common sense that expecting a prospective juror to endure the stigma of admitting to being a racist or racially prejudiced publicly and in front of other prospective jurors, as occurred here, is an exercise in futility.

The stigma associated with racial prejudice was explicitly acknowledged by the majority. *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 868-869 (2017). As in this case, the trial judge in *Pena-Rodriguez* inquired of the entire panel regarding bias and encouraged jurors to come forward with any concerns about their impartiality.

Pena-Rodriguez v. Colorado, 580 U.S. , 137 S. Ct. 855, 861 (2017). This proved ineffective as no one came forward. After the verdict, it was disclosed that a seated juror harbored egregious racial bias and stereotypes which were not revealed until deliberations. *Pena-Rodriguez v. Colorado*, 580 U.S. , 137 S. Ct. 855, 870 (2017).

Although a trial judge has a level of discretion to determine the proper scope of voir dire, *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981), the exercise of this discretion is limited by the constitutional dictates of due process and the Sixth Amendment right to be tried by an unbiased jury. *Morgan v. Illinois*, 504 U.S. 719, 726-31 (1992). A defendant has a Constitutional right to have prospective jurors questioned on racial bias if the circumstances of the case suggest a significant likelihood of prejudice by the jurors. *Ristaino v. Ross*, 424 U.S. 589, 596–97 (1976). Many factors existed to support such a likelihood in this case, which were presented to the trial judge. *Ristaino v. Ross*, 424 U.S. 589, 596–97 (1976).

The exercise of the trial court’s discretion, and the restriction upon inquiries at the request of counsel, are “subject to the essential demands of fairness.” *Aldridge v. United States*, 238 U.S. 308, 310 (1931). Critical to a fair trial is the Defendant’s right to effective assistance of counsel as guaranteed by the Sixth Amendments, and since the Defendant bears the burden of establishing juror partiality, See *Wainwright v. Witt*, 469 U.S. 412, 423 (1985), it is imperative that the Court permit meaningful examination at voir dire to elicit potential racial bias held by prospective jurors.

“Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored.” *Rosales-Lopez v. United*

States, 451 U.S. 182, 188 (1981). The term, *voir dire*, is a French phrase meaning “to see, to speak”, which underscores the importance and necessity in selecting an unbiased jury of both hearing a juror’s answers to questions and observing how they formulate the answers. A hesitation or equivocation can be crucial to identifying a biased juror and can cause the Court to ask follow-up questions that prove decisive.

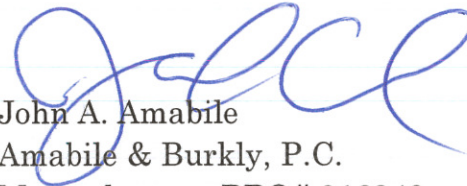
The ability to make informed peremptory challenges during jury selection ensures the right to an impartial jury. The right to challenge a potential juror is “one of the most important of the rights secured to the accused” and “[a]ny system for the empaneling of a jury that prevents or embarrasses the full, unrestricted exercise by the accused of that right, must be condemned.” *Pointer v. United States*, 151 U.S. 396, 408 (1894).

The trial Court’s stated rationale for refusing to conduct careful *voir dire* on racial prejudice, that this was not a highly publicized case, not a murder case, not a death penalty case and did not warrant the “...time-consuming and resource-consuming step of individual *voir dire*” trivialized the importance of seating an unbiased jury and was an abuse of discretion. The defendant faced substantial loss of liberty, was sentenced to 60 months, and the requested individual *voir dire* would have added only “... a couple of extra hours to...” the process. The relief granted in *Pena-Rodriguez* involved a defendant sentenced to probation.

CONCLUSION

By reason of the foregoing, Shayne Parker respectfully requests that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,



John A. Amabile
Amabile & Burkly, P.C.
Massachusetts BBO# 016940
Attorney for Petitioner
380 Pleasant Street
Brockton MA 02301
Telephone: 508-559-6966
Fax: 508-559-7954
E-mail: jamabile@abpclaw.com

Dated: December 14, 2017