



MARCH 6, 2017

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Pena-Rodriguez v. Colorado

U. S. Supreme Court holds that Under the Sixth Amendment, a Juror's Clear Statement Indicating the Juror Relied on Racial Stereotypes or Animus to Convict May be Used to Impeach the Jury Verdict

In *Pena-Rodriguez v. Colorado*, No. 15-606 (March 6, 2017), a jury convicted petitioner of harassment and unlawful sexual contact against two teenaged girls. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H. C. had expressed strong anti-Hispanic bias toward petitioner and petitioner's alibi witness. Counsel, with the trial court's supervision, obtained affidavits from the two jurors describing a number of biased statements by H. C. The court acknowledged H. C.'s apparent bias but denied petitioner's motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Court of Appeals and the Colorado Supreme Court affirmed, finding that the comments did not fall within an exception to Rule 606(b). The U. S. Supreme Court then granted certiorari and reversed petitioner's convictions.

The Court traced the common law development of the no-impeachment rule and found that it reached a milestone in 1975 with the adoption of the Federal Rule 606(b), which endorsed a broad no-impeachment rule, with only limited exceptions. The Court found that the no-impeachment rule has substantial merit. It promotes full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be summoned to recount their deliberations, and they will not otherwise be harassed or annoyed by litigants seeking to challenge the verdict. The rule also gives stability and finality to verdicts.

But, the Court stated, it must now decide whether the Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt. Furthermore, the Court stated, this case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and those seeking to eliminate racial bias in the jury system. Nevertheless, the Court found, the two lines of precedent need not conflict because racial bias implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice. And, while all forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a 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.

State Prosecution Support Division



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Accordingly, the Court held, where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. Procedurally, before the no-impeachment bar can be set aside to allow further judicial inquiry, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether the threshold showing has been satisfied is committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

However, the Court stated, it need not address what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias or the appropriate standard for determining when such evidence is sufficient to require that the verdict be set aside and a new trial be granted. Instead, the practical mechanics of acquiring and presenting such evidence will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel's post-trial contact with jurors. Additionally, the experience of those jurisdictions that have already recognized a racial-bias exception to the no-impeachment rule, and the experience of courts going forward, will inform the proper exercise of trial judge discretion.

It is unclear how big an impact this decision will have in Georgia. In surveying the law regarding the no-impeachment rule, the Pena-Rodriguez Court, citing Spencer v. State, 260 Ga. 640, 643 (3) (1990) found that Georgia is one eleven states that follow the federal rule, but have a judicially recognized exception for evidence of racial bias. In Spencer, appellant contended that his death sentence was the result of racial discrimination and he relied upon a post-trial affidavit from one of the jurors stating she overheard two white jurors making racially derogatory comments about him during the jury's deliberations. The Spencer Court noted that Georgia has a no-impeachment rule, but acknowledged that the rule is not absolute and may not be applied in such an unfair manner as to deny due process. Id., at 643-44. Nevertheless, the Court held that the trial court's refusal to consider the juror affidavit was proper because other than the lone affidavit, appellant offered no evidence that racial bias materially affected the jury's decision to convict appellant and to impose a death sentence. Id., at 644.