SCOTUS Carves Out an Exception to the No-Impeachment Rule

By Lindsay Sherwood Fouse / Nov 30, 2017

On March 6, 2017, *Pena-Rodriguez v. Colorado* opened the curtain on jury deliberations for the purpose of correcting racial and ethnic bias that might have infected a jury's verdict. In *Pena-Rodriguez*, the United States Supreme Court retreated from the traditional rule of evidence which generally prohibits the introduction of juror testimony regarding statements made during deliberation. The traditional rule is colloquially known as the "no-impeachment rule." The Court held that the no-impeachment rule must give way when it is alleged that a juror made explicit statements indicating that ethnic or racial animus was a motivating factor in a juror's vote to convict the defendant. The Court decided that the no-impeachment rule was unconstitutional to the extent it barred evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury. Under the framework of *Pena-Rodriguez*, the previously sacrosanct deliberations of the jury are reviewable when evidence is produced that a juror relied on racial or ethnic animus to reach conviction.

Under the Sixth Amendment to the United States Constitution, all defendants are guaranteed the right to a trial by an "impartial jury." U.S. Const. amend. VI. An impartial jury is free of "racial animus." *See Georgia v. McCollum*, 505 U.S. 42, 58 (1992) ("a defendant has the right to an impartial jury that can view him without racial animus, which so long has distorted our system of criminal justice."). The intrusion of discrimination on the basis of race or ethnicity "damages both the fact and the perception" of the jury's role, *Powers v. Ohio*, 499 U.S. 400, 411 (1991), and is "especially pernicious in the administration of justice," *Rose v. Mitchell*, 443 U.S. 545, 555 (1979).

In its most recent Term, the Supreme Court addressed the issue of whether the Constitution requires an exception to the no-impeachment rule where a juror comes forward after the verdict with compelling evidence that another juror made clear statements indicating the presence of motivating racial animus. *See Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 861 (2017). In *Pena-Rodriguez*, a Colorado jury convicted Miguel Angel Pena-Rodriguez of harassment and unlawful sexual contact. *Id*. Following the discharge of the jury, two jurors approached defense counsel in private and stated that, during deliberations, another juror had expressed anti-Hispanic bias toward defendant and his alibi witness. *Id*. Counsel reported this to the Court and with the Court's supervision, obtained sworn affidavits from the two jurors. *Id*. The affidavits described a number of biased statements made by another juror, identified as "H.C." *Id*. at 862. The two jurors reported that H.C. told the other jurors that he believed "Mexican men had a bravado that caused them to believe they could do whatever they wanted to women," that "Mexican men are physically controlling of women because of their sense of entitlement," and that he believes that the defendant "did it because he's Mexican and Mexican men take whatever they want." *Id.* Although the trial court acknowledged H.C.'s apparent bias, the court denied defendant's motion for a new trial relying on the no-impeachment rule. *Id*. A divided panel of the Colorado Court of Appeals affirmed the conviction, agreeing that H.C.'s alleged statements did not fall within an exception to the rule. Id. The Colorado Supreme Court affirmed by a close vote, and the United States Supreme Court granted certiorari to decide whether there is a constitutional exception to the no-impeachment rule for instances of racial bias. *Id*. 863.

The Court began with a review of the no-impeachment rule. Generally, the rule bars a juror's testimony about any statement made during the jury's deliberation or any juror's mental processes concerning the verdict or indictment. *Id*. at 864. See Federal Rule of Evidence 606(b). Under the rule, there are three exceptions about which a juror may testify: 1) extraneous prejudicial information that was improperly brought to the jury's attention, 2) outside influence improperly brought to bear on any juror, or 3) mistake in entering the verdict on the verdict form. *Id*.

The Court reviewed its prior decisions relating to exceptions to the no-impeachment rule, which demonstrate its reach. In *Tanner v. U.S., 483 U.S.* 107, 108 (1987), the Court rejected an exception for evidence that some jurors were under the influence of drugs and alcohol during the trial. Similarly, in *Warger v. Shauers*, 135 S. Ct. 521, 525 (2014), the Court prohibited a party from using a juror affidavit about what another juror said during deliberations to show the other juror's dishonesty regarding partiality during voire dire, but warned that "[t]here may be cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged." The Court then addressed the questions that its precedents "left open" and distinguished racial bias from other types of jury misconduct at issue in prior precedents. *Id*. at 867. The Court explained that while the compromised verdicts found in *Tanner* (due to drug and alcohol abuse) and *Warger* (due to pro-defendant bias) illustrate "troubling and unacceptable" jury behavior, "racial bias of the kind alleged in this case differ in critical ways." *Id*. at 868. By contrast, racial bias is "a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." *Id*. Notably, the Court acknowledged that *Pena-Rodriguez* involved bias based on the defendant's Hispanic identity which is technically referred to as "ethnicity." *Id*. at 863. The Court declined, however, to narrow the scope of the exception and decided to use the terms race and ethnicity interchangeably. *Id*.

Because "racial bias implicates unique historical, constitutional, and institutional concerns," the Court carved out a new exception to the no-impeachment rule. Specifically, the Court held: [W]here 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. *Id*. 869.

A showing is required 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." *Id*. In order to qualify, "the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict" and "[w]hether that threshold showing has been satisfied is a matter 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." *Id*. The Court did not address the "practical mechanics of acquiring and presenting such evidence," or "what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias." *Id*. at 870. "The Court also does not decide the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial be granted." *Id*. The Court, however, noted that the experience

of jurisdictions that have long-recognized a racial-bias exception to the no-impeachment rule, coupled with the courts going forward, "will inform the proper exercise of trial judge discretion." *Id*.

Although state courts have not yet had the opportunity to interpret the reach of *Pena-Rodriguez,* various appeals courts have affirmed the exception to the no-impeachment rule for the evidence of racial animus in jury deliberations. Only time will tell how and under what circumstances trial courts will permit investigation into claims of racial and ethnic bias and whether this will provide a defendant with a meaningful opportunity to present evidence of impartiality.

If you have any questions regarding the content of this alert, please contact Lindsay Fouse or another member of Clark Hill's Litigation Practice Group.