

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPH E. STEVENS,
Plaintiff,
v.
JERRY BEARD, et al.,
Defendants.

Case No. [5:13-cv-03877-EJD](#)

**ORDER ADOPTING PETITIONER'S
PROPOSED FINDINGS AND
CONCLUSIONS OF LAW**

Re: Dkt. Nos. 69, 70

On March 21, 2007, a jury found Petitioner guilty of two counts of murder (Cal. Penal Code § 187) and found true enhancement allegations that Petitioner intentionally discharged a firearm that proximately caused death or great bodily injury (Cal. Penal Code § 12022.53(d)) and the special circumstance of multiple murder (Cal. Penal Code § 190.2(a)(3)). On July 13, 2007, the trial court sentenced Petitioner to two life terms without the possibility of parole, two consecutive 25 years to life terms on the firearm enhancements, plus three years for the assault conviction. On March 9, 2012, the California Court of Appeal, First Appellate District, affirmed the judgment in an unpublished opinion. Dkt. No. 13-3. The California Supreme Court denied review on June 13, 2012. Dkt. No. 13-4. Following extensive briefing, this Court concluded that the state Court of Appeal's decision was contrary to and involved an unreasonable application of clearly established federal law and was based on an unreasonable determination of the facts.

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1 On August 22, 2018, this Court granted Petitioner’s petition for writ of habeas corpus and
 2 ordered the verdict set aside. Dkt. No. 17.¹ The Court then granted the State’s request for an
 3 evidentiary hearing to determine whether Juror #12’s statement was prejudicial. In so granting,
 4 this Court observed that “the Court granted the petition because the Court of Appeal did not
 5 attempt to determine the effect of Juror No. 12’s racist statements.” Dkt. No. 17 at 15–18. As
 6 this court noted, the exact context of Juror No. 12’s alleged statements were unclear, and thus a
 7 hearing was needed to determine the context of the statements. To help determine the context of
 8 the statements, the Court ordered discovery and investigation of the jurors. The Parties were
 9 permitted to contact jurors for interview, and the District Attorney’s Office Inspector contacted all
 10 surviving jurors (one had passed since the time of the trial). *See* Dkt. No. 67.

11 On April 27, 2022, this Court held an evidentiary hearing. Juror No. 5 and Juror No. 12
 12 were deposed a few months before the evidentiary hearing. Prior to the hearing, this Court
 13 reviewed the record of the trial, the video depositions of Juror No. 5 and Juror No. 12 and the
 14 respective reporter’s transcripts, the stipulations regarding the expected testimony from the San
 15 Francisco County District Attorney’s Office Inspector Rami Khoury, and the DMV photo of Juror
 16 No. 12. *See* Dkt. No. 67. After review of these documents, and the transcript of the evidentiary
 17 hearing, the Court finds that Juror No. 5 credibly reported that during deliberations, while the
 18 jurors were discussing the language and culture in the area surrounding the Potrero Hill housing
 19 projects (the scene of the underlying murders), Juror No. 12 said, “You can’t call these people
 20 niggers. They’ll just shoot you.” Juror No. 5 informed the trial court in 2007 that Juror No. 12
 21 made this statement. Juror No. 5 testified in his subsequent deposition that Juror No. 12 made the
 22 statement as “an aside” and described it as dropping a “bomb in the middle of the discussion.”
 23 Dkt. No. 67 at ECF 46. Following interviews by the District Attorney’s Office Inspector, no juror
 24 other than Juror No. 5 recalled hearing the racial epithet during deliberations or recalled hearing
 25 any other improper remarks during deliberation. Dkt No. 67 at ECF 4. During her 2021

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 27 ¹ For a more detailed recitation of the facts, see Docket Number 17.

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1 deposition, Juror No. 12 denied making the comment during deliberations and testified that she is
 2 not biased against black people and is married to an African American man. Dkt. No. 67 at ECF
 3 21.

4 The Sixth Amendment guarantees criminal defendants a verdict by impartial, indifferent
 5 jurors. The bias of or prejudice of even a single juror violates Petitioner’s right to a fair trial. *See,*
 6 *e.g., United States v. Hendrix*, 549 F.2d 1225, 1227 (9th Cir. 1977); *Press-Enterprise Co. v.*
 7 *Superior Court of Cal.*, 464 U.S. 501, 508 (1984) (“No right ranks higher than the right of the
 8 accused to a fair trial.”). Automatic reversal is necessary when a structural error deprives the
 9 defendant of “basic protections” without which the “criminal trial cannot reliably serve its
 10 function as a vehicle for determination of guilt or innocence, and no criminal punishment may be
 11 regarded as fundamentally fair.” *Rose v. Clark*, 478 U.S. 570, 577–78 (1986). Time and again,
 12 the Supreme Court and the Ninth Circuit have recognized that racial bias in the courtroom is a
 13 structural error because it “raises serious questions as to the fairness of the proceedings conducted
 14 there,” “mars the integrity of the judicial system[,] and prevents the idea of democratic
 15 government from becoming a reality.” *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628
 16 (1991). Cognizant that “[t]he duty to confront racial animus in the justice system is not the
 17 legislature’s alone,” *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867 (2017), the Supreme Court
 18 and other federal courts repeatedly have held that the injection of racial prejudice into criminal
 19 proceedings constitutes a structural error that requires no showing of prejudice. Illustrations
 20 include:

- 21 • **Presence of Racially–Biased Juror:** The presence of a racially biased juror “cannot be
 22 harmless; the error requires a new trial without a showing of actual prejudice.” *Dyer v.*
 23 *Calderon*, 151 F.3d 970, 973 n.2 (9th Cir. 1998) (en banc).
- 24 • **Racially–Biased Judge:** Structural error occurs when a judge with racial bias against a
 25 defendant presides at his trial. *Norris v. United States*, 820 F.3d 1261, 1266 (11th Cir.
 26 2016); *see also Tumey v. Ohio*, 273 U.S. 510, 535 (1927).
- 27 • **Racially–Biased Prosecutor:** A prosecutor’s deliberate decision to charge a defendant
 28 on account of his race is structural error. *See Vasquez v. Hillery*, 474 U.S. 254, 264

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1 (1986) (citing *United States v. Batchelder*, 442 U.S. 114, 125 & n.9 (1979)).

2 The “unmistakable principle” underlying these precedents is that racial discrimination in
3 the justice system is intolerable. *Pena-Rodriguez*, 137 S. Ct. at 868. The injection of racial bias
4 into a criminal trial is a structural defect because the trial “cannot reliably serve its function as a
5 vehicle for the determination of guilt or innocence, and no criminal punishment [that results] may
6 be regarded as fundamentally fair.” *Rose*, 478 U.S. at 577–78. Racial bias within the courtroom
7 “raises serious questions as to the fairness of the proceedings conducted there” and mars the
8 integrity of the judicial system. *Edmonson*, 500 U.S. at 628; *see also Batson v. Kentucky*, 476
9 U.S. 79, 87 (1986) (noting that racism in jury selection “undermine[s] public confidence in the
10 fairness of our system of justice”).

11 The Court finds that the racially inappropriate statement was made—a finding supported
12 by the temporality of Juror No. 5’s reporting, the additional problems that arose with Juror No. 12
13 during the trial, and Juror No. 5’s refreshed recollection of the incident years later. While the
14 State argues that the statement was a single remark in the context of a long trial, this ignores the
15 inherent racism in the word “nigger.” Perhaps more problematic was Juror No. 12’s use of “these
16 people,” as if Petitioner is a different class of human being. Juror No. 12’s statement demonstrates
17 a deep bias, and the Court must assume prejudice and error. Indeed, an individual under the
18 influence of such personal prejudice is “presumed to have bias on his mind which will prevent an
19 impartial decision of the case.” Even while this individual may declare that notwithstanding these
20 prejudices he can listen to the evidence and be governed by it, “*the law will not trust him.*” *United*
21 *States v. Burr*, 25 F. Cas. 49, 50 (D. Va. 1807) (emphasis added). For this reason, Juror No. 12’s
22 bias constitutes structural error.

23 Following the evidentiary hearing, the Court invited the Parties to submit proposed
24 findings and conclusions of law. The Court **ADOPTS** Petitioner’s proposed findings and
25 conclusions of law. Accordingly, the Court affirms its earlier decision to vacate the judgment
26 against Petitioner and remand the case to the trial court. Unless the State initiates trial proceedings

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1 within ninety days, this Court orders that Petitioner be released from state custody. The Clerk
2 shall close the file.

3 **IT IS SO ORDERED.**

4 Dated: September 29, 2022



EDWARD J. DAVILA
United States District Judge

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