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## Michigan Supreme Court: Race not a reason to keep juror

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A Wayne County judge's decision to keep an African-American woman on a jury in a wrongful-death lawsuit because he wanted to ensure racial balance was overturned Monday by the Michigan Supreme Court as unconstitutional discrimination, nullifying a \$14.9-million verdict.

The court, in a 5-2 decision, threw out the jury award (worth about \$18 million with interest) to a Macomb County man, Anthony Pellegrino, whose wife was killed in a shuttle bus accident at Metro Airport in 2003.

The majority opinion said the decision to include the juror because of her race was as pernicious as a decision to exclude her because of it would have been, and was sharply critical of Wayne Circuit Judge Michael Callahan for permitting it.

At trial, Callahan said granting a request by defense lawyers to exclude the woman, who was twice widowed and grieving the death of her mother, would be "race-baiting."

"I am, until either removed from the bench ... or ordered to have a new trial, ... going to seek to have this proportional representation on the juries that hear cases in this court," Callahan said.

Michigan's legal community was watching the case closely because of its potential effect on efforts in urban counties to increase the number of racial minorities on jury panels.

John Jacobs, a Detroit attorney who represented the shuttle bus operator in the appeal, said Monday that the court reached the correct decision. The lower court's decision "to turn a blind eye to all of the juror's biases" in order to achieve racial balance "went way, way too far," Jacobs said.

Neither Pellegrino nor his attorney, Geoffrey Fieger, could be reached Monday.

Forming the majority was Chief Justice Marilyn Kelly and Justices Michael Cavanagh, Maura Corrigan, Stephen Markman and Robert Young Jr.

Dissenting were Justices Diane Hathaway and Elizabeth Weaver.

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## Michigan high court rules race can't be considered in jury picks

Court reverses \$14.9M award in airport accident, chastises judge in case

*DOUG GUTHRIE*

*The Detroit News*

*Detroit* -- The Michigan Supreme Court said Monday that race cannot be a factor in jury selection as it overturned a multimillion-dollar lawsuit verdict and criticized a Wayne County judge.

Wayne Circuit Judge Michael Callahan refused to allow lawyers defending a Metro Airport shuttle bus operator to dismiss an African-American woman from a jury that set the amount the company should pay after it conceded liability for the 2003 death of a Macomb County woman.

The eight-member jury, which included three black women, awarded \$14.9 million to the estate of Shirley Pellegrino and her husband, Anthony Pellegrino.

While lawyers were selecting the jury, Callahan vowed to seek "proportional representation on the juries that hear cases in this court" until he is "either removed from the bench by the disciplinary committee or ordered to have a new trial."

Callahan refused to allow lawyers for Ampco Systems Parking to dismiss one of the black women using a peremptory challenge. Each side in a lawsuit is afforded numerous peremptory challenges to excuse jurors to obtain an unbiased set of fact finders.

Although Ampco's lawyers wanted to dismiss the woman because she was twice widowed and might still be grieving her mother's recent death, Callahan said he would not engage in "race baiting" even if it meant he might be in "hot water" with higher authorities. Speaking from the bench, Callahan, who is white, said he was the father of six black children.

Michigan's Supreme Court decided on a 5-2 vote Monday that "decisions to include and to exclude particular jurors must be undertaken without consideration of race." The ruling overturned an earlier Court of Appeals decision that backed Callahan's decision.

Another trial will be held in Wayne County's Circuit Court, where only the amount of damages is to be determined by a new jury.

Reached while visiting relatives Monday in North Carolina, Callahan declined to comment because he hadn't heard about the ruling.

The court's majority made the unusual suggestion that a new judge should be assigned to oversee the second trial, and also implied Callahan's comments and actions rise to a level that could require review by the Michigan Judicial Tenure Commission.

"A trial court is not free to disregard rules, orders and case law with which it disagrees or to become the law unto itself," Justice Stephen Markman wrote for court's majority.

"The trial court expressly acknowledged that it was attempting to engineer the composition of the jury to reflect the 'diverse racial composition' of the community. The trial court was not free to do this under the law and constitution and by doing so, violated the constitutional right of defendant to a jury that, with regard to race, had been 'indifferently " chosen.'

Pellegrino and her husband were riding on an airport shuttle operated by Ampco on April 7, 2003, when the vehicle swerved on ice and hit a concrete barrier, according to court records. Shirley Pellegrino was killed and her husband suffered serious injuries. Anthony Pellegrino filed a no-fault action against Ampco, which the parking company conceded, leaving for trial only the amount of damages to be paid.

"In denying defendant's peremptory challenge, the court expressly took (the juror's) race into account and expressly evaluated her race in light of the race of every other juror on the panel," Markman wrote in the opinion also signed by Justices Marilyn Kelly, Michael Cavanagh, Maura Corrigan and Robert Young. "It is hard to conceive of a more flagrant and unambiguous violation of the court rules."

Justices Diane Hathaway and Elizabeth Weaver dissented because Callahan's position resulted in no injustice.

Pellegrino's attorney, with Geoffrey Fieger's Southfield-based law firm, was unavailable for comment Monday.

Callahan was a lawyer and Catholic priest when elected to the bench in 1990. He left the church after getting married.

As a judge, he oversaw the 2007 whistleblower lawsuit trial that unearthed the text messages that brought down former Detroit Mayor Kwame Kilpatrick.

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