

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHAUN ALLEN DICK — PETITIONER

VS.

STATE OF OREGON — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OREGON COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Fourteenth Amendment fully incorporate the Sixth Amendment guarantee of a unanimous verdict?

PARTIES TO THE PROCEEDING

The petitioner is Shaun Allen Dick, the defendant and appellant in the courts below. The respondent is the State of Oregon, the plaintiff and respondent in the courts below.

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THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Shaun Allen Dick respectfully petitions for a writ of certiorari to the Oregon Court of Appeals in *State v. Dick*, No. A163648 (Or. Ct. App. Aug. 15, 2018).

OPINIONS BELOW

The judgment of the Oregon Court of Appeals is an unpublished order granting summary affirmance, attached as Appendix “A.” The Oregon Court of Appeals denied petitioner’s petition for reconsideration by unpublished order, attached as Appendix “B.” On January 31, 2019, the Oregon Supreme Court denied petitioner’s petition seeking discretionary review of the judgment of the Oregon Court of Appeals by unpublished order, attached as Appendix “C.” The Oregon Court of Appeals issued the appellate judgment, attached as Appendix “D.”

JURISDICTION

The judgment and order of the Oregon Court of Appeals was entered on August 15, 2018. The Oregon Court of Appeals denied reconsideration by order entered on September 26, 2018. The Oregon Supreme Court denied review by order entered on January 31, 2019. This Court's jurisdiction is pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

Article I, section 11, of the Oregon Constitution provides, in pertinent part:

In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise[.]

Or. Const. Art I, §11.

Section 136.450 of the Oregon Revised Statutes provides:

(1) Except as otherwise provided in subsection (2) of this section, the verdict by trial jury in a criminal action shall be by concurrence of at least 10 of 12 jurors.

(2) Except when the state requests a unanimous verdict, a verdict of guilty for murder or aggravated murder shall be by concurrence of at least 11 of 12 jurors.

Or. Rev. Stat. § 136.450.

STATEMENT OF THE CASE

I. Trial court proceedings.

The State of Oregon prosecuted Petitioner Shaun Allen Dick on an indictment charging him with one count of sodomy in the first degree (Or. Rev. Stat. § 163.405); two counts of unlawful sexual penetration in the first degree (Or. Rev. Stat. § 163.411); one count of attempted rape in the first degree (Or. Rev. Stat. § 161.405(2)(b); Or. Rev. Stat. § 163.375); two counts of sexual abuse in the first degree (Or. Rev. Stat. § 163.427); one count of coercion (Or. Rev. Stat. § 163.275); and one count of menacing (Or. Rev. Stat. § 163.190). Pet. App. “E” at 5a-8a. Dick pleaded not guilty and decided to be tried by a twelve-member jury.

Before trial, Dick requested that the trial court instruct the jury that all twelve jurors must agree and return a unanimous

verdict. Pet. App. “F” at 8a-11a. On the day of trial, the court denied the request:

[Defense counsel]: One preliminary matter. At the previous hearing – hearing that was – I had requested a unanimous jury verdict and – and I have filed that. Maybe the Court needs to rule on it.

THE COURT: Denied. You don’t have Oregon case law to support your request, [defense counsel].

.....

We’ve had this conversation before. Oregon does not require a unanimous instruction and I’m not going to overrule that precedent which is prominent in the law at this point in time. So your request for unanimous instruction is denied.

Tr. 131-32.

The State presented evidence that Dick and a woman met through an online dating website, that one month into that relationship she stayed the night at his house and they engaged in consensual sexual intercourse, and that Dick sexually assaulted her the next morning. Tr. 205-08, 216-28. At the close of evidence, the court instructed the jury as follows:

Ten or more jurors must agree on your verdict. So whether your verdict is not guilty or guilty, at least ten of you must agree on that verdict.

If you're divided – divided nine to three, for example, you don't have a verdict.

Tr. 460-61. Dick entered an exception to the court's refusal to give a unanimous-verdict instruction. Tr. 466. The jury returned non-unanimous guilty verdicts on all counts. Tr. 468-70; Pet. App. "G" at 12a. The court received the non-unanimous verdicts, entered convictions on each count, and imposed sentences totaling 200 months in prison. Judgment at 1-12, *Dick*, No. CF150130 (Umatilla County Cir. Ct. entered Oct. 28, 2016).

II. Proceedings on appeal.

Dick appealed to the Oregon Court of Appeals in which he argued that the trial court erred by instructing the jury that it could return a non-unanimous verdict and by receiving non-unanimous guilty verdicts. Appellant's Opening Brief at 2-7. The State moved for summary affirmance on the basis that the appeal did not present a substantial question of law, which the Court of Appeals granted citing *State v. Bowen*, 215 Or. App. 199, 168 P.3d 1208 (2007), *modified on other grounds on recons.*, 220 Or. App. 380, 185 P.3d 1129, *rev. den.*, 345 Or. 415, 185 P.3d 1129 (2008), *cert. den.* 558 U.S. 815 (2009). Pet. App. "A" at 1a. The Oregon Court of Appeals denied

Dick’s petition for reconsideration, and the Oregon Supreme Court denied Dick’s petition for review. Pet. App. “B” at 2a; Pet. App. “C” at 3a.

REASONS FOR GRANTING THE PETITION

On March 18, 2019, the Court granted a petition for a writ of certiorari in *Evangelisto Ramos v. Louisiana*, 139 S. Ct. 1318 (2019) (No. 18-5924). The petition in *Ramos* presents the same question as this case. Petition at ii, *Ramos* (No. 18-5924). For the reasons stated in that petition, as well as reasons stated in similar petitions filed over the last 45 years, the plurality opinion in *Apodaca v. Oregon*, 406 U.S. 404 (1972), deserves re-examination and disavowal. Petition at 10-26, *Ramos* (No. 18-5924). The Court should hold that the Fourteenth Amendment incorporates the Sixth Amendment’s guarantee of a unanimous jury.

As noted in the pending Louisiana case, Oregon is the only other state that allows for non-unanimous jury verdicts. *Id.* at 10. Unlike the State of Louisiana, the State of Oregon has not amended its constitutional provision allowing for non-unanimous jury verdicts.

See 2018 La. Reg. Sess., Act 722. Thus a decision in *Ramos* will affect existing and yet-to-be-initiated criminal cases.

Granting the petition for a writ of certiorari in this case will ensure that this court's decision in *Ramos* will be given immediate effect in the Oregon appellate courts. Additionally, should unforeseen circumstances render *Ramos* moot or otherwise an inappropriate vehicle to decide this important issue, this case will be available for this Court's consideration and decision.

CONCLUSION

For the foregoing reasons, petitioner respectfully asks this court to grant this petition for a writ of certiorari.

Dated this 30th day of April, 2019

Respectfully submitted,

Signed

By Ernest Lannet at 9:29 am, Apr 30, 2019

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