

No. _____

IN THE
Supreme Court of the United States

KEVIN SHEPPARD

PETITIONER,

V.

STATE OF LOUISIANA,

RESPONDENT.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

G. Ben Cohen*
Shanita Farris
Erica Navalance
The Promise of Justice Initiative
1024 Elysian Fields Avenue
New Orleans, LA 70117
(504) 529-5955
bcohen@defendla.org

* Counsel of Record

QUESTION PRESENTED

This Court has granted certiorari in *Ramos v. Louisiana*, 139 S.Ct. 1318 (2019) (No. 18-5924). This case also involves a non-unanimous jury verdict, giving rise to the following question:

Whether Petitioner was constitutionally entitled to a unanimous jury under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution?

PARTIES TO THE PROCEEDING

The petitioner is Kevin Sheppard, the defendant and defendant-appellant in the courts below. The respondent is the State of Louisiana, the plaintiff and plaintiff-appellee in the courts below.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	1
PETITION FOR A WRIT OF CERTIORARI	2
OPINIONS BELOW	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE.....	4
CONCLUSION	6
CERTIFICATE OF SERVICE	7

APPENDICES

APPENDIX A: *State v. Kevin Sheppard*, 2018 WL 4520247 (La. App. 1 Cir. 9/21/18) (Unpublished).

APPENDIX B: *State v. Kevin Sheppard*, 2019 WL 1760809 (La. 4/15/19)

TABLE OF AUTHORITIES

Cases

<i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972).....	5
<i>Evangelisto Ramos v. Louisiana</i> , 139 S.Ct. 1318 (2019).....	5
<i>State v. Bertrand</i> , 2008-2215 (La. 03/17/09), 6 So.3d 738.....	5
<i>State v. Kevin Sheppard</i> , 2018 WL 4520247 (La. App. 1 Cir. 9/21/18).....	2, 4
<i>State v. Kevin Sheppard</i> , 2019 WL 1760809 (La. 4/15/19).....	2

Statutes

28 U.S.C. § 1257(a)	2
La. C.Cr.P. art. 782(A).....	3
U.S. Const. Amend. VI.....	3
U.S. Const. Amend. XIV	3

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Kevin Sheppard, respectfully petitions for a writ of certiorari to the Louisiana First Circuit Court of Appeal in *State v. Kevin Sheppard*, 2018 WL 4520247 (La. App. 1 Cir. 9/21/18) (Unpublished). *Appendix A*.

OPINIONS BELOW

The judgment of the Louisiana First Circuit Court of Appeal is an unpublished opinion reported at *State v. Kevin Sheppard*, 2018 WL 4520247 (La. App. 1 Cir. 9/21/18) (Unpublished) *Appendix A*, *Pet. App. 1a-5a*. The Louisiana Supreme Court's order denying review of that decision is reported at *State v. Kevin Sheppard*, 2019 WL 1760809 (La. 4/15/19). *Appendix B*, *Pet. App. 6a*.

JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana First Circuit Court of Appeal were entered on September 21, 2018. *Appendix A*, *Pet. App. 1a-5a*. The Louisiana Supreme Court denied review of that decision on April 15, 2019. *Appendix B*, *Pet. App. 6a*. 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 782(A) of the Louisiana Code of Criminal Procedure provides, in pertinent part: “Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.” La. C.Cr.P. art. 782(A).

STATEMENT OF THE CASE

Petitioner was charged by grand jury indictment with second-degree murder, a violation of LSA-R.S. 14:30.1. He was found guilty as charged by a vote of 10-2;¹ Petitioner was sentenced to life in prison without parole.

The Court of Appeals rejected the State's argument that the non-unanimous jury verdict issue was not properly preserved for appellate review:

Contrary to the State's assertion, it appears that the defendant properly preserved this issue for appellate review. Defense counsel noted that it was raising 'the normal 10 to 2 verdict objection' and then clarified, 'we would object to the non-unanimous verdict structure that's in Louisiana law. It violates the defendant's constitutional rights, Your Honor.

Pet. App. A2.

The Court of Appeals rejected petitioner's challenge to the non-unanimous convictions observing:

The Bertrand Court found that a non-unanimous twelve-person jury verdict is constitutional and that La. C.Cr.P. art. 782 does not violate the Fifth, Sixth, and Fourteenth Amendments.

State v. Kevin Sheppard, 2018 WL 4520247 (2018) at Pet. App. 3a. The court also noted that the equal protection argument had previously been resolved by the Louisiana Supreme Court in *State v. Bertrand*, 2008-2215 (La. 03/17/09), 6 So.3d 738, and that the issue "had already been decided as meritless by a majority of the United States Supreme Court in *Apodaca*." *Id.* at 954, Pet. App. 3a.

¹ See *State v. Kevin Sheppard* at Pet. App. A2 ("In arguing his motion for post-verdict judgment of acquittal, defense counsel again raised the non-unanimous jury verdict issue, noting, 'this was a 10 to 2 verdict,'")

REASONS FOR GRANTING THE WRIT

Mr. Sheppard was convicted and sentenced to life without the possibility of parole by a non-unanimous jury. 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). For the reason stated in that petitioner, 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 reexamination and disavowal. Given the racial origins of the non-unanimous jury provision, full incorporation by the Fourteenth Amendment of the Sixth Amendments' guarantee of a unanimous jury is required.

The Sixth Amendment requires a unanimous verdict to convict a defendant of a nonpetty offense, and the Fourteenth Amendment applies that requirement to the states. Full incorporation is an established principle on which the Court itself has relied for several decades. This Court should overrule *Apodaca*'s idiosyncratic and incorrect holding and apply the Sixth Amendment's unanimity guarantee to the states.

This Court should hold this petition pending its decision in *Ramos*, and then dispose of the petition as appropriate in light of that decision.

CONCLUSION

The petition for writ of certiorari should be held pending this Court's decision in *Evangelisto Ramos v. Louisiana*, 139 S. Ct. 1318 (2019), and then be disposed of as appropriate in light of that decision.

Respectfully Submitted,



G. Ben Cohen*
Shanita Farris
Erica Navalance
The Promise of Justice Initiative
1024 Elysian Fields Avenue
New Orleans, LA 70113
(504) 529-5955
bcohen@defendla.org

*Counsel of Record

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 11th day of June, 2019, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

<p>Ricky L. Babin, <i>District Attorney</i> 23rd Judicial District Attorney P.O. Drawer 750 Donaldsonville, LA 70346-0750 Office Phone: (225) 473-6777 Office Fax: (225) 473-1965 http://www.23rdda.org/</p>	<p>Colin Clark Assistant Attorney General Louisiana Department of Justice P.O. Box 94005 Baton Rouge, Louisiana 70804 Office Phone: (225) 326-6200 Office Fax: (225) 326-6297 Email: ClarkC@ag.louisiana.gov</p>
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G. Ben Cohen