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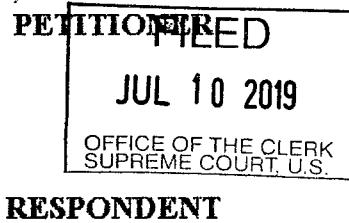
19-5301

In The
Supreme Court of the United States
October Term

AARON ORLANDO RICHARDS,

VERSUS

STATE OF LOUISIANA,



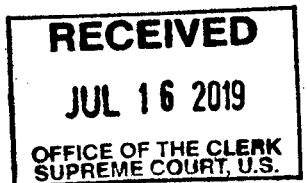
RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

OPINION

Respectfully submitted,
Aaron Orlando Richards 388486
Mr. Aaron Orlando Richards, DOC #388486
Main Prison Complex
Louisiana State Penitentiary
Angola, Louisiana 70712



QUESTIONS PRESENTED

1. Did the appellate court err in its interpretation of *Apodaca* and *Bertrand*? In this first degree murder prosecution, the jury returned an eleven-to-one guilty vote. Relying on La. C.Cr.P. Art. 782(A), the appellate court concluded that only ten jurors needed to vote guilty to produce a constitutional verdict under *Apodaca v. Oregon*, 406 U.S. 404 (1972), and *State v. Bertrand*, 08-2215 (La. 3/17/09), 6 So.3d 738.
2. Louisiana recently voted to change its Constitution to require unanimous verdicts in non-capital cases, where they were not required before. In 2007, without amending the Constitution, the Legislature amended La. R.S. 14:30(C) to give prosecutors a unilateral power to procure first degree murder convictions without unanimous verdicts.
 - a. Can the 2007 *legislative* amendment to La. R.S. 14:30(C) qualify, absent a *constitutional* amendment, as the “attendant provision” necessary to change the classification of a charged capital offense?
 - b. Is the 2007 amendment to La. R.S. 14:30(C) also unconstitutional because it is redundant to the same provisions found in La. R.S. 14:30.1?

INTERESTED PARTIES

1. Aaron Orlando Richards, Pro Se Petitioner
2. Darrel Vannoy, Warden, Louisiana State Penitentiary
3. Keith Stutes, Assistant District Attorney

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**In The
Supreme Court of the United States
October Term**

No.: _____

**AARON ORLANDO RICHARDS,
(Petitioner)**

versus

**DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY,
(Respondent)**

PETITION FOR WRIT OF CERTIORARI

Mr. Aaron Orlando Richards respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana Supreme Court, entered in the above entitled proceeding on April 22, 2019, **Appendix "1,"** regarding Mr. Richard's state court Writ of Certiorari. **Appendix "2."** This matter was also reviewed by the Louisiana's Court of Appeal, Third Circuit who affirmed Mr. Richard's conviction and sentence on direct review. **Appendix "3."** In particular, that Mr. Richards was denied his right to a jury trial in violation of 6th and 14th Amendments to the United States Constitution. Thus, Certiorari is warranted.

OPINIONS BELOW

State of Louisiana v. Aaron Orlando Richards, No. 17-1135 (La.App. 3 Cir. 6/6/18), 247 So.3d 878.

State of Louisiana v. Aaron Orlando Richards, No. 2018-KO-1036 (La. 4/22/19).

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on April 22, 2019. This Court's certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth and Fourteenth Amendments to the United States Constitution.

Louisiana Constitution Article 1, § 17.

STATEMENT OF THE FACTS

Timothy Falgout was delivering pizzas in Lafayette, Louisiana, on March 29, 2010. At approximately 8:30 p.m., when he stopped at the residence of Cassie Lacomb, he was robbed and murdered. He had been stabbed five times. A knife was laying nearby. A video from a home close to the murder scene revealed that light gold Mercedes Benz was in the area at the time of the murder. It appeared the same vehicle was stopped on March 30, 2010, at 4:50 a.m., by the Lafayette Marshall's Office. The vehicle was owned and driven by Marcus Feast ("Feast"). Mr. Aaron Richards was in the front passenger seat and Sheldon Chadbury ("Chadbury"), was in the rear of the vehicle. Feast was brought in for questioning. He denied any knowledge of the murder. After a second interview, he implicated Mr. Richards in the murder. DNA recovered from under the handle of the knife found at the scene revealed a mixed profile of three people. Mr. Richards could not be excluded as a contributor.

STATEMENT OF THE CASE

On October 27, 2010, Mr. Richards was indicted for first degree murder for the stabbing death of Timothy Falgout.¹ On November 15, 2010, Mr. Richards waived

¹ R. p. 34.

formal arraignment and pled not guilty to the charged offense.² The State indicated its notice to seek the death penalty on October 3, 2011.³ On July 9, 2012, a 404(B) hearing was held regarding the admission of other crimes evidence.⁴ The court, citing *State v. Blank*, 04-0204 (La. 4/11/07), 955 So.2d 90, *cert denied*, 552 U.S. 994, 128 S.Ct. 494 (2007), and *State v. Stevens*, 11-175 (La. App. 3 Cir. 10/5/11), 74 So.3d 803, determined that Aaron committed the other crimes by “clear and convincing evidence.”⁵ Mr. Richards trial counsel applied for supervisory writs to the Third Circuit Court of Appeal. The Third Circuit granted counsel’s writ in part and stated that Mr. Richards unadjudicated cocaine use could not be used in the capital sentencing phase; however, the appellate court denied the writ in all other aspects.⁶ On March 5, 2013, the trial court, in an unpublished opinion, declined discretionary review.⁷

On November 12, 2013, the trial court denied Mr. Richards motion for change of venue.⁸ On July 18, 2016, the State gave notice of its intent not to seek the death penalty.⁹ Mr. Richards’ trial began on April 4, 2017.¹⁰ The trial court denied numerous challenges for cause raised by Mr. Richards trial counsel were denied.¹¹ On April 6, 2017, Mr. Richards’ trial counsel moved for a mistrial and re-urged the objection to the admission of other crimes evidence. The trial court denied both motions.¹² On April 11,

2 R. p. 2.

3 R. p. 4.

4 R. p. 10.

5 R. p. 10.

6 See *State v. Richards*, KW 12-1063 (La. App. 3 Cir. 12/17/12); R. p. 1303.

7 *State v. Richards*, 2013-KK-0152 (La. 3/1/13), 108 So.3d 1183; R. p. 1319.

8 R. p. 10.

9 R. p. 13.

10 R. p. 14.

11 R. p. 15.

12 R. p. 19.

2017, Mr. Richards' trial counsel made a standing objection to the *Prieur* hearing.¹³ The State was allowed to proffer previous rulings of the trial court and the Court of Appeal, Third Circuit regarding the admissibility of *Prieur* evidence.¹⁴ On this same day, the jury returned a non-unanimous ten to two verdict of guilty of first-degree murder.¹⁵ The trial court then sentenced Mr. Richards to life imprisonment at hard labor with the benefits of probation, parole, or suspension of sentence to run consecutively with any other sentence he is currently serving.¹⁶ On June 6, 2018, the Third Circuit affirmed Mr. Richards' convictions and sentences.¹⁷ Mr. Richards then filed a Writ of Certiorari in the Louisiana Supreme Court.¹⁸ On April 22, 2019, the Louisiana Supreme Court denied certiorari.¹⁹ This Writ of Certiorari now follows.

REASONS FOR GRANTING THE PETITION

Louisiana has procedural safeguards that prevents the State from altering the scheme of trying cases where capital punishment is permissible. The State obtained an indictment against Mr. Richards for first-degree murder and gave notice of its intent to seek the death penalty. The State later decided not to seek capital punishment without amending the indictment to second-degree murder. Mr. Richards contends that La. R.S 14:30(C)(2) is unconstitutional because it gives the State authority to violate Louisiana Constitution, Article I § 17(A), and La. C.Cr.P Art. 782. Consequently, Mr. Richards was convicted of first

13 In *State v. Prieur*, 277 So.2d 126 (La. 1973), the court addressed the admissibility of other crimes evidence.

14 R. p. 22.

15 R. p. 22.

16 R. p. 23.

17 Appendix "3."

18 Appendix "2."

19 Appendix "1."

degree murder which rest upon a jury verdict that was not unanimous as required by Article I §§ 2, 3, and 17(A) of the Louisiana Constitution of 1974, La. C.Cr.P. art. 782, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

This claim is one that would normally be discoverable under a review for patent error; therefore, Mr. Richards wishes to submit an argument to support why this claim cannot be considered harmless beyond a reasonable doubt. Mr. Richards also address why the Court of Appeal, First Circuit's holding in *State v. Bishop*, 2010-1840 (La. App. 1 Cir. 6/10/11), 68 So.3d 1197, is wrong.

In *Bishop*, the First Circuit said that La. R.S. 14:30(C)(2), "as amended, created the 'attendant provision' [the Louisiana Supreme Court] referred to in *Goodley* that granted discretion to the state to prosecute first degree murder as a non-capital offense[.]"²⁰ The court's opinion in *Bishop* is grossly misplaced.

The hot-topic being debated now is the proposed amendment to the Louisiana Constitution requiring unanimous verdicts after January 1, 2019. It is quite telling that the proposed legislation must go to voters to give it power, but there is nothing to show how La. R.S. 14:30(C)(2) was presented to the voters. Even sadder is the fact that the unconstitutional amendment controverts a defendant's constitutional right to have his fate decided by a jury where district attorney's can now usurp the authority of the jury.

Mr. Richards was indicted by a Lafayette Parish grand jury with one count of first degree murder on October 27, 2010; however, on October 3, 2011,

²⁰ *State v. Bishop*, *supra*.

relying on La. R.S. 14:30(C)(2), the State decided that it no longer wanted to seek the death penalty. As a result, Mr. Richards' rights of Due Process and Equal Protection were violated. This presents a structural error and not a procedural one because there are no provisions for a non-capital capital offense under the Louisiana or United States Constitutions. Since Mr. Richards was still under indictment for first degree murder (a capital offense), he was charged with an offense that is punishable by death. As a result, not only was the verdict required to be unanimous, he should have had the benefit of two experienced capital defense attorney's representing him at trial.

Before it was revised, La. R.S. 14:30(C) provided that first degree murder shall be punished by death or life imprisonment in accordance with the determination of the jury.²¹ As written, now, the statute impermissibly allows the State to violate a criminal defendant's Due Process and Equal Protection rights by ignoring Louisiana Constitution, Article I §§ 2, 3, and 17; and the procedural safeguards provided in the Louisiana Code of Criminal Procedure.²²

Louisiana Revised Statute 14:30(C)(2) provides that:

(2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

21 See La. R.S. Ann. 14:30 (Amended by Acts 2007, 125 § 1).

22 See La. C.Cr.P. art. 782(B).

Additionally, the phrase “relative to cases in which punishment is necessarily confinement at hard labor shall apply” must also be addressed. It is an undisputed and well-settled fact that a life sentence in Louisiana is equivalent to death by incarceration.²³ In fact, in *State v. Mayo*,²⁴ the defendant, convicted of first degree rape of a child under the age of thirteen and sentenced to the mandatory life imprisonment, failed to convince the Third Circuit Court of Appeal that he did not deserve “to die in prison[.]”²⁵ Similar to the defendant in *Anderson v. Calderon*,²⁶ a conviction for first degree murder under Louisiana law makes Mr. Richards “eligible for the two most severe penalties we have. Either he [could] be imprisoned in State Prison for the rest of his natural life with no possibility of parole ever....[to] die in prison. Or he can be put to death [by lethal injection]. Those are the only two choices we have[.]”²⁷ To quote one Louisiana prosecutor:

He’s going to die at Angola. But I want to be clear. This is not a death penalty case. This is a second degree murder. I know we’re getting in semantics here....He will die at Angola but we agree there is a difference between a life sentence and a sentence to death by lethal injection in Louisiana. This is not a death penalty case. But yes, he will die at Angola.²⁸

Unlike the defendant in *Jefferson*, Mr. Richards was prosecuted for first degree murder. However, because of the legislative amendment to La. R.S. 14:30(C), the outcome of both cases are the same. As it stands and as the prosecutor made clear in *Jefferson*, although the State was not seeking the death penalty, Mr. Richards has been

23 Cf. *State ex rel Morgan v. State*, 2015-0100 (La. 10/19/16), 217 So.3d 266, 270; *Graham v. Florida*, 560 U.S. 48, 82, 130 S.Ct. 2011, 2034, 176 L.Ed.2d 825 (2010).

24 2014-1296 (La. App. 3 Cir. 6/3/15), 165 So.3d 436 (citations omitted).

25 *Id.*, at 439.

26 232 F.3d 1053 (C. A. 9 (Cal.) 2000).

27 *Id.*, at 1080.

28 *State v. Jefferson*, No. 521289, St. Tammany Parish District Court, Sec. B, 6/9/18 (Unpublished).

sentenced to die in prison. This further violates the Eighth Amendment's prohibition against cruel and unusual punishment and is also violative of the Thirteenth Amendment which, in pertinent part, provides that:

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

La. R.S. 14:2, in pertinent parts, provides:

A. In this Code the terms enumerated shall have the designated meanings:

(4) "Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

Henry Campbell Black defined hard labor as "[p]unishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary for serious crime, or for misconduct while in prison."²⁹ Construed in the light of the Eighth and Thirteenth Amendments to the United States Constitution, the non-unanimous verdict used to support Mr. Richards' conviction for first degree murder and the resultant life sentence at *hard labor* egregiously offends against both the state and federal Constitutions in that it violates Due Process and Equal Protection. The sentence committing Mr. Richards to the Louisiana Department of Corrections at hard labor by a non-unanimous jury for the remainder of his natural life is violative of the Eighth Amendment to the U. S. Constitution, because it is cruel and unusual punishment. Only after a jury has unanimously voted to convict can it be determined whether a defendant will be subjected to the ultimate penalty of death or be sentenced to spend the remainder of his natural life in prison.

Under Louisiana Constitution, Article I §§ 2, 3, and 17(A), and La.

²⁹ Henry Campbell Black, *Black's Law Dictionary*, 6th ed. (St. Paul, Minn. West Publishing Co., 1990), 717.

C.Cr.P. Art. 782(B), La. R.S. 14:30(C)(2) is unconstitutional for several reasons:

A. Louisiana Constitution, Article I § 17(A)

The meaning and interpretation of **Louisiana Constitution, Article I § 17** has not changed and in pertinent parts provides that:

Section. 17 (A) Jury Trial in Criminal Cases. A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict.

The language found **Article 1 Section 17** of Louisiana Constitution is abundantly clear. If a criminal defendant may be punished by death in a criminal case, then, it is a capital offense. The Article does not allow district attorneys to arbitrarily decide the punishment for first-degree murder, that is, that it is no longer capital because they are not seeking the death penalty in a particular case.

B. La. C.Cr.P. Art. 782

The meaning and interpretation of **La. C.Cr.P. Art. 782** has not changed and in pertinent parts provides that:

A. Cases in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict.

This Article not only restate the Constitutional provision, it also exposes the illegality of **La. R.S. 14:30(C)(2)**. The unconstitutional revision must be rescinded for at least three reasons: 1) it deprived Mr. Richards of his state and federal right of due process; 2) it deprived Mr. Richards of his state and federal right of equal protection; and 3) it gave the State authority to bypass procedural

safeguards by stipulating it would not seek capital punishment in this case.³⁰ Consequently, the revision of La. R.S. 14:30 affected the framework within which Mr. Richards' trial proceeded, and it cannot be viewed as "simply an error in the trial process itself."³¹ It is a structural error and defies harmless-error analysis.

Under Article I § 17 of the Louisiana Constitution of 1974, and La. C.Cr.P. Art. 782, a capital case cannot be treated as a lesser included offense simply because the State decides it no longer wants to seek the death penalty.³²

In *State v. Goodley*, the Louisiana Supreme Court held that:

[T]he Legislature determined that for crimes that were so serious as to validly carry the death, certain special procedural rules were additionally required, among which was the requirement of a unanimous jury to render a verdict. This determination is not based on an after the fact examination of what crime the defendant may eventually be convicted of, nor is it based on an after the fact examination of what sentence he receives. Rather the scheme is based on a determination by the Legislature that certain crimes are so serious that they require more strict procedural safeguards than other less serious crimes. It was determined that in charged capital offenses a unanimous verdict for conviction, not just sentencing, is necessary and there is no attendant provision giving the state authority to alter that scheme on its own motion by simply stipulating that the death penalty will not be sought in a certain case.³³

The 2007 amendment to La. R.S. 14:30(C)(2) is not sufficient to change the constitutional requirements concerning charged capital offenses. The strict procedural safeguards put in place by the Louisiana Constitution cannot be

30 Cf. U.S. Const. art. V; U.S. Const. art. VI; U.S. Const. art. XIV; *State v. Goodley*, 398 So.2d 1068, 1070-1071 (La. 1981); La. Const. art. I, § 2; La. Const. art. I, § 3; La. Const. art. I, § 17; La. C.Cr.P. art. 782(A)(B); La. R.S. 14:30(C)(2).

31 *Arizona v. Fulminante*, 499 U.S. 279, 309-310, 111 S.Ct. 1246, 113 L.Ed.2d 302.

32 See *State v. Goodley*, 398 So.2d 1068 (La. 1981).

33 *Goodley*, at pp. 1070-1071.

removed by an addition to a statute. The statute is controlled by the “Constitution” and not the constitution by the statute. As the *Goodley* Court explained:

The Legislature, in enacting the controlling provision herein, relied on the severity of the punishment provided for a crime as the basis for its classification scheme in providing the number of jurors which must compose a jury and the number of jurors which must concur to render a verdict. As stated above, La. Const. of 1974 Art. I, s 17 and C.Cr.P. art. 782 provide in pertinent part:

‘A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict.’³⁴

In *State v. Lott*, 325 So.2d 576 (La. 1976), the Court discussed *State v. Holmes*, 263 La. 685, 269 So.2d 207 (1972), a murder case where the Court considered the effect of Louisiana’s procedural law in the wake of the United States Supreme Court’s decision in *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), which made the death penalty unconstitutional as it was being applied, at that time. The *Lott* Court said:

In *Holmes* we held that *Furman* did not change the classification of crimes in Louisiana, in spite of the unenforceability of the death penalty, and those crimes which the legislature had classified as capital offenses must continue to be tried by a jury of twelve, all of whom must concur to render a verdict.³⁵

In other words, simply because the United States Supreme Court determined the death penalty as applied at the time was unconstitutional that ruling was still not enough to remove the procedural safeguards created to protect the rights of those charged with capital offenses as defined by Louisiana

³⁴ *Goodley*, at 1070.

³⁵ *Id.*

legislators. In addition, like the defendant in *Lott*, Mr. Richards was also “tried for a crime that the legislature had classified as capital. Therefore, he was entitled to the safeguards afforded a defendant in a capital case.”³⁶

Because the language found in Article I § 17 of the Louisiana Constitution, and La. C.Cr.P. Art. 782(B) has not changed, the 2007 amendment to La. R.S. 14:30(C) is unconstitutional. To allow the State to have a non-capital first-degree murder while existing law provides for the exact same punishment being sought under second degree murder is redundant, unconstitutional, and capricious. First degree murder carries a mandatory minimum of life imprisonment without benefits and the ultimate penalty of death. On the other hand, the only punishment available under second degree murder is life imprisonment without benefits. Unlike the verdict for second degree murder which requires ten (10) votes to convict, first degree murder requires a unanimous vote to convict. By revising La. R.S. 14:30(C) to allow the State to stipulate that it would not seek the death penalty in capital cases without amending the indictment to second-degree murder is unconstitutional. The revision to the Article serves to grant the State an unfair advantage by lessening its burden in (so-called) capital cases and further offends by circumventing the procedural safeguards that are still in place.

After considering the express language found in Article 1 § 17 of the Louisiana Constitution and La. C.Cr.P. Art. 782, it becomes clear that the language of La. R.S. 14:30(C)(2) is contradictory and foul. As it stands, Mr.

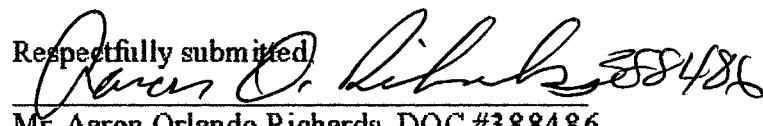
³⁶ *Lott*, *supra*.

Richards was not convicted by a jury of his peers as required by the Louisiana Constitution (1974).

CONCLUSION

Based on the foregoing facts and law it is clear that Appellant's conviction and sentence should be reversed.

Respectfully submitted


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