

No. 19-5807

In The
Supreme Court of the United States

Thedrick Edwards,
Petitioner,

v.

Darrel Vannoy, Warden,
Respondent.

On a Writ of *Certiorari* to the United States Court
of Appeals For the Fifth Circuit

**BRIEF OF *AMICUS CURIAE* INNOCENCE
PROJECT NEW ORLEANS IN SUPPORT OF
THEDRICK EDWARDS**

Richard Davis (counsel of record)
Meredith Angelson
Jee Park

Innocence Project New Orleans
4051 Ulloa Street
New Orleans, LA 70119
504-943-1902
RichardD@ip-no.org

Counsel for *Amicus Curiae*

TABLE OF CONTENTS

Interest of <i>Amicus Curiae</i>	1
Summary of Argument.....	3
Argument.....	4
I. Exonerations in Louisiana.....	4
II. The Non-Unanimous Verdict Rule Has Remained True to Its Origins—It is Used to Wrongly Incarcerate Black People by Removing the Power of Black Jurors.....	9
A. The Innocent Men and Women Convicted By Non-Unanimous Juries Were Mostly Black and Faced Unreliable Evidence.....	10
B. The Jurors That Had Their Votes Discounted Were Three Times More Likely to be Black than White.....	13
III. <i>Amicus</i> Estimates That There are 100 Innocent People Currently in Prison Based on Non-Unanimous Verdicts.....	14
Conclusion.....	18
Appendix I: Innocent People Convicted by Non-Unanimous Juries.....	1A
Appendix II: The Races of Jurors in the Trials of Innocent People Convicted Non-Unanimously.....	15A

TABLE OF AUTHORITIES

CASES

<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986).....	11
<i>Dilosa v. Cain</i> , 279 F.3d 259 (5th Cir. 2002).....	11A
<i>Ramos v. Louisiana</i> , 140 S. Ct. 1390 (2020).....	3, 15, 18
<i>Snyder v. Louisiana</i> , 552 U.S. 472 (2008).....	11
<i>State v. Adams</i> , Orleans Parish Case No. 278-951	6...
.....	4A
<i>State v. Alexander</i> , Jefferson Parish Case No. 80-	7
1260.....	7
<i>State v. Beridon</i> , Terrebonne Parish Case No. 78,042	7
.....	7
<i>State v. Bibbins</i> , East Baton Rouge Parish Case No.	6
2-87-979.....	6
<i>State v. Bridgewater</i> , 823 So.2d 877 (La. 2002).....	11
<i>State v. Bright</i> , Orleans Parish Case No. 252-514..	7
<i>State v. Bright</i> , Orleans Parish Case No. 375-994..	8
<i>State v. Brown</i> , 371 So. 2d 751 (La. 1979).....	11
<i>State v. Brown</i> , Jefferson Parish Case No. 97-5794..	7
.....	7
<i>State v. Brown</i> , St. Tammany Parish Case No. 128-	7
634.....	7
<i>State v. Burge</i> , St. Tammany Parish Case No.	6
147,175.....	6
<i>State v. Burrell</i> , Union Parish Case No. 28,734.....	8

<i>State v. Chapman</i> , St. Tammany Parish Case No. 71,385.....	7
<i>State v. Charles</i> , Terrebonne Parish Case No. 106,980.....	7
<i>State v. Clark</i> , Jefferson Parish Case No. 02-0895..	6
<i>State v. Coco</i> , Calcasieu Parish Case No. 14891-95.....	9
<i>State v. Cousin</i> , Orleans Parish Case No. 376- 479.....	8
<i>State v. Crawford</i> , Caddo Parish Case No. 304-048.....	8
<i>State v. Curley</i> , 250 So. 3d 236 (La. 2018).....	9A
<i>State v. Curley</i> , Orleans Parish Case No. 461-907..	6
<i>State v. Davis</i> , Jefferson Parish Case No. 92-4541.....	6, 2A
<i>State v. Daye</i> , Iberia Parish Case No. 11-102.....	7
<i>State v. Delmore</i> , Jefferson Parish Case No. 92-4541.....	6
<i>State v. Dilosa</i> , Jefferson Parish Case No. 87-105..	6
<i>State v. Durham</i> , 673 So.2d 1103 (La. App. 5 Cir. 1996).....	11
<i>State v. Floyd</i> , Orleans Parish Case No. 280-729....	9
<i>State v. Ford</i> , Caddo Parish Case No. 126,005.....	8
<i>State v. Gibson</i> , Orleans Parish Case No. 203-904..	8
<i>State v. Gipson</i> , No. 2019-KH-1815, 2020 La. LEXIS 1039 (La. June 3, 2020).....	10
<i>State v. Goodley</i> , 398 So.2d 1068 (La. 1981).....	8

<i>State v. Graham</i> , Union Parish Case No. 28,734	8
<i>State v. Hammons</i> , 597 So.2d 990 (La. 1992)	12A, 13A
<i>State v. Hammons</i> , St. Tammany Parish Case No. 136-658	6, 12A
<i>State v. Harris</i> , 820 So.2d 471 (La. 2002)	11
<i>State v. Hayes</i> , 806 So.2d 816 (La. App. 5 Cir. 2001)	5A
<i>State v. Hayes</i> , Jefferson Parish Case No. 97-3780	6, 6A
<i>State v. Hill</i> , Orleans Parish Case No. 359-046	9
<i>State v. Hudson</i> , Orleans Parish Case No. 199-523	8
<i>State v. Jackson</i> , 570 So.2d 227 (La. App. 5th Cir. 1990)	13A
<i>State v. Jackson</i> , Jefferson Parish Case No. 87-205	6
<i>State v. Jacobs</i> , 789 So.2d 1280 (La. 2001)	11
<i>State v. James</i> , Jefferson Parish Case No. 81-4366	7
<i>State v. Johnson</i> , Orleans Parish Case No. 380-395	7
<i>State v. Johnson</i> , Sabine Parish Case No. 30,770	7
<i>State v. Johnson</i> , Washington Parish Case No. 89-CRC-39701	7
<i>State v. Jones</i> , East Baton Rouge Parish Case No. 90,052	8
<i>State v. Jones</i> , Orleans Parish Case No. 356-745	7

<i>State v. Jones</i> , Orleans Parish Case No. 356-745, Count 7.....	9
<i>State v. Jones</i> , Orleans Parish Case No. 357-917....	9
<i>State v. Keko</i> , Plaquemines Parish Case No. 92-3292	8
<i>State v. Knapper</i> , Orleans Parish Case No. 270-437..	8
<i>State v. Kyles</i> , Orleans Parish Case No. 303-970....	8
<i>State v. Labran</i> , Orleans Parish Case No. 388-287..	8
<i>State v. Lazzell</i> , Iberia Parish Case No. 46779.....	9
<i>State v. Lewis</i> , Orleans Parish Case No. 432-553....	7
<i>State v. Matthews</i> , Jefferson Parish Case No. 97- 3780.....	8
<i>State v. Meyers</i> , 638 So.2d 1378 (La. App. 5 Cir. 1996).....	1A
<i>State v. Meyers</i> , Jefferson Parish Case No. 92-4541..	6
<i>State v. Morgan</i> , Orleans Parish Case No. 367-809....	7
<i>State v. Myers</i> , 761 So.2d 498 (La. 2000).....	11
<i>State v. Neal</i> , 796 So.2d 649 (La. 2001).....	11
<i>State v. Ramirez-Power</i> , St. Tammany Parish Case No. 587-095.....	9
<i>State v. Ruano</i> , Orleans Parish Case No. 500-456..	9
<i>State v. Seals</i> , 684 So.2d 368 (La. 1996).....	11

<i>State v. Shannon</i> , 101 So.3d 67 (La. App. 4th Cir. 2012)	14A
<i>State v. Shannon</i> , Orleans Parish Case No. 478-693	6
<i>State v. Stewart</i> , Orleans Parish Case No. 464-435	6, 3A
<i>State v. Taylor</i> , 781 So.2d 1205 (La. 2001)	11
<i>State v. Thibodeaux</i> , Jefferson Parish Case No. 96-4522	8
<i>State v. Thompson</i> , Orleans Parish Case No. 305-826	8
<i>State v. Thompson</i> , Orleans Parish Case No. 306-526	7
<i>State v. Triplett</i> , Orleans Parish Case No. 400-740	9
<i>State v. Truvia</i> , Orleans Parish Case No. 252-514	7
<i>State v. Washington</i> , 375 So. 2d 1162 (La. 1979)	11
<i>State v. Williams</i> , 458 So.2d 1315 (La. App. 1st Cir. 1984)	7A
<i>State v. Williams</i> , East Baton Rouge Case No. 01-83-0234	7, 8A
<i>State v. Williams</i> , Jackson Parish Case No. 20,387	7
<i>State v. Williams</i> , Jefferson Parish Case No. 96-2599	9
<i>State v. Williams</i> , Orleans Parish Case No. 199-523	9

<i>State v. Williams</i> , Orleans Parish Case No. 259-071.....	8
<i>State v. Willis</i> , Caddo Parish Case No. 118,517.....	9
<i>Swain v. Alabama</i> , 380 U.S. 202 (1965).....	11

STATUTES

La. R.S. § 15:169.....	8
La. R.S. § 15:572.8.....	1
La. Reg. Sess. 2018, Act No. 335.....	13

OTHER AUTHORITIES

Thomas Aiello, <i>Jim Crow's Last Stand</i> (2d ed. 2019).....	9
Paul G. Cassell, <i>Overstating America's Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions</i> , 60 <i>Ariz. L. Rev.</i> 815 (2018).....	16
Thomas Frampton, <i>The Jim Crow Jury</i> , 71 <i>Vand. L. Rev.</i> 1593 (2018).....	9
Helen Freund, <i>For man convicted by 'shameful' prosecution in '79 murder, freedom at last</i> , <i>Times-Picayune</i> , May 13, 2014, https://www.nola.com/news/crime_police/article_3472af5a-d5c6-5951-9840-3771f599c496.html	5A
Samuel R. Gross & Michael Shaffer, <i>Exonerations in the United States: 1989-2012</i> , National Registry of Exonerations, (June 2012), http://	

www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.....	8
Samuel R. Gross <i>et al.</i> , <i>Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death</i> , 111 <i>Proceeding of the National Academy of Sciences</i> 7230 (2014).....	16
Michelle Hunter, <i>Royal Clark Jr. Freed After 2003 Wrongful Conviction in Terrytown Armed Robbery</i> , <i>Times-Picayune</i> , June 27, 2019, https://www.nola.com/news/crime_police/article_f3ff092a-9b73-5a7e-b1e3-fdc2660f7c53.html	9A
Charles E. Loeffler, Jordan Hyatt, & Greg Ridgeway, <i>Measuring Self-Reported Wrongful Convictions Among Prisoners</i> , 35 <i>J. Quantitative Criminology</i> 259 (2019).....	16
National Registry of Exonerations, http://www.law.umich.edu/special/exoneration/Pages/about.aspx	<i>passim</i>
Paul Purpura, <i>After Nearly 10 Years Behind Bars, a Harvey Man's Murder Conviction is Thrown Out and he Gets to Go Home</i> , <i>Times Picayune</i> , Dec. 21, 2006 at A1.....	6A
Paul Purpura, <i>Murder Charges Dropped Against Three Men in 1992 Marrero Killing</i> , <i>Times Picayune</i> , Sep. 24, 2010, https://www.nola.com/news/crime_police/article_b394f088-d9a9-5fbe-885e-4d7ecef31ca2.html	2A
Michael Risinger, <i>Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate</i> , 97 <i>J. Crim. L. & Criminology</i> 761 (2007).....	16

- Matt Sledge, *After Decade in Prison, New Orleans Woman Who Shot Husband Goes Free as Killing is Deemed Justified*, *Times-Picayune*, Mar. 1, 2019, https://www.nola.com/news/courts/article_3806a6c1-0613-576b-8110-97982547924c.html.....9A
- The First 1600 Exonerations*, National Registry of Exonerations, 14 (2015), http://www.law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf.....6
- Kim Taylor Thomas, *Empty Votes in Jury Deliberations*, 113 *Harv. L. Rev.* 1261 (2000).....13
- Krissah Thompson, *From a Slave House to a Prison Cell: The History of Angola Plantation*, *Washington Post*, Sept. 21, 2016, https://www.washingtonpost.com/entertainment/museums/from-a-slave-house-to-a-prison-cell-the-history-of-angola-plantation/2016/09/21/7712eeac-63ee-11e6-96c0-37533479f3f5_story.html.....18
- Henry Weinstein, *Inmate Freed 2 Years After Codefendant*, *Los Angeles Times*, Dec. 21, 2006 at A20.....6A

INTEREST OF AMICUS CURIAE¹

Amicus, Innocence Project New Orleans (IPNO), is a non-profit law office that provides free legal representation to prisoners with provable claims of actual innocence in Louisiana and Mississippi. IPNO represents prisoners in cases where DNA testing could provide conclusive proof of their innocence, or where innocence may be proven with other evidence. Since IPNO was founded in 2001, its work has led to the exoneration or release of 36 innocent prisoners who, combined, spent over 873 years wrongly incarcerated for crimes that they did not commit.

Amicus has represented the wrongly convicted prisoner in the majority (34) of the 62 known exonerations in Louisiana.² Furthermore, *Amicus* represented most of those prisoners who were exonerated after being convicted by a non-unanimous jury.

In addition to working to exonerate and free the innocent, *Amicus* uses the lessons from these cases to advocate for changes in laws and policies that contribute to wrongful convictions. *Amicus* has

¹ No counsel for a party authored this brief in whole or in part, and no other person or entity other than *Amicus Curiae* has made a monetary contribution to the preparation or submission of this brief. Both Petitioner and Respondent have consented to the filing of this brief.

² In 25 cases, IPNO was counsel on the collateral challenge to the conviction that resulted in exoneration. In a further nine cases, IPNO represented the exonerated person in petitioning for compensation from the Louisiana Innocence Compensation Funds. *See* La. R.S. § 15:572.8.

a direct interest in redressing the injustices caused by non-unanimous jury verdicts of guilt in Louisiana, which created a high risk of wrongful convictions. *Amicus's* experience suggests that unanimous juries provide an important safeguard against convicting innocent men and women. Therefore, in the interests ensuring that no one remains wrongly convicted by a non-unanimous jury in this country, IPNO respectfully files this *Amicus Curiae* brief in support of the Petitioner, Thedrick Edwards.

SUMMARY OF ARGUMENT

The non-unanimous verdict rule has repeatedly produced verdicts that are not accurate. These inaccurate verdicts disproportionately ignored Black jurors' accurate votes and largely convicted innocent Black defendants. Many innocent people are currently in prison based on these inaccurate verdicts.

Of the 62 known cases where a wrongly convicted innocent person was later exonerated in the state of Louisiana, 33 were tried in a way that permitted the defendant to be convicted by a non-unanimous jury. Of these 33 cases, at least 15 defendants were convicted by non-unanimous jury. These 15 innocent people spent a combined 237 years and nine months in Louisiana's prisons.

In *Ramos v. Louisiana*, this Court acknowledged that “non-unanimous juries can silence the voices and negate the votes of black jurors, especially in cases with black defendants . . .” 140 S. Ct. 1390, 1418 (2020) (Kavanaugh, J., concurring). These jury verdicts, poisoned by the underlying law's racist origins, *id.* at 1417, have created an unacceptable risk of convicting innocent Louisianans. Those wrongly convicted in Louisiana have overwhelmingly been young, Black men, including most of those convicted by non-unanimous juries. In this brief, *Amicus* offers new research as to the demographics of the juries that convicted them showing that Black jurors' opinions and votes were disproportionately ignored in the deliberations and erroneous verdicts. *Amicus* also estimates—based on its recent analysis of academic studies, statistics

about the incarcerated population in Louisiana, and thousands of applications for IPNO's help—that there are currently at least one hundred innocent people in prison in Louisiana that were convicted based on non-unanimous verdicts and, like the innocent people already released from wrongful incarceration, that the vast majority of these people are Black.

These conclusions are unsurprising. Louisiana created the non-unanimous verdict rule in the interests of white supremacy, not accurate trial verdicts. One hundred and forty years after its passage, many of the still-living victims of this rule perform hard labor on a penal farm that used to be a slave plantation. The State of Louisiana will no doubt ask this Court to avoid imposing on it the cost of vacating non-unanimous jury verdicts like that of Petitioner Thedrick Edwards. But justice for innocent people convicted by a racist law far outweighs the cost to the State of unconstitutional convictions being vacated.

ARGUMENT

I. Exonerations in Louisiana

Amicus is familiar with the 62 cases³ prosecuted in state courts in Louisiana that resulted

³ The National Registry of Exonerations (NRE) has 60 entries for exonerations in Louisiana state courts. *See List of Exonerations*, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (last visited July 16, 2020). This includes a single entry for an exonerated man, Robert Jones, who was wrongly convicted

in an exoneration recorded by the National Registry of Exonerations (hereinafter NRE), which tracks exonerations that have occurred since 1989.⁴

by three distinct judgments of three distinct crimes. As a result, the NRE accounts for 62 exoneration cases. As noted above, IPNO represented the prisoner in a collateral challenge to the conviction and/or compensation proceedings in 34 of these cases. IPNO is familiar with the remaining 28 cases because it collects and updates information from court records on Louisiana exoneration cases in order to maintain a central repository for information on exonerations in Louisiana.

⁴ The NRE defines an exoneration as:

A person has been exonerated if he or she was convicted of a crime and later was either: (1) declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action. The official action may be: (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence; (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted; or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have been the result, at least in part, of evidence of innocence that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known to the defendant, the defense attorney and the court at the time the plea was entered. The evidence of innocence need not be

According to a NRE report in 2015, Louisiana is second only to Illinois in its *per capita* rate of exonerations.⁵ 33 of these Louisiana exonerations were cases in which the jury was permitted to convict by a non-unanimous vote and at least 15 people were convicted by non-unanimous verdicts.⁶

an explicit basis for the official action that exonerated the person.

Glossary, National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited July 16, 2020). The NRE does not track the cases of innocent people that enter guilty or no contest pleas to resolve their cases and be immediately released from prison. IPNO has represented seven innocent people who have been “freed” but not technically exonerated. And, freed or exonerated people are only a subset of innocent people who are convicted.

⁵ See *The First 1600 Exonerations*, National Registry of Exonerations, 14 (2015), http://www.law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf

⁶ The 15 known non-unanimous cases are: 1) *State v. Reginald Adams*, Orleans Parish Case No. 278-951; 2) *State v. Gene Bibbins*, East Baton Rouge Parish Case No. 2-87-979; 3) *State v. Gerald Burge*, St. Tammany Parish Case No. 147,175; 4) *State v. Royal Clark*, Jefferson Parish Case No. 02-0895; 5) *State v. Catina Curley*, Orleans Parish Case No. 461-907; 6) *State v. Glenn Davis*, Jefferson Parish Case No. 92-4541; 7) *State v. Larry Delmore*, Jefferson Parish Case No. 92-4541; 8) *State v. Douglas Dilosa*, Jefferson Parish Case No. 87-105; 9) *State v. Robert Hammons*, St. Tammany Parish Case No. 136-658; 10) *State v. Travis Hayes*, Jefferson Parish Case No. 97-3780; 11) *State v. Willie Jackson*, Jefferson Parish Case No. 87-205; 12) *State v. Terrence Meyers*, Jefferson Parish Case No. 92-4541; 13) *State v. Michael Shannon*, Orleans Parish Case No. 478-693; 14) *State v. Kia Stewart*, Orleans Parish Case No. 464-

This represents almost a quarter of all Louisiana exoneration cases and almost half of the cases in which this outcome was possible.⁷ These 15 people spent a combined 237 years in prison.

435; 15) *State v. Archie Williams*, East Baton Rouge Case No. 01-83-0234.

The remaining 18 remaining case that could have been non-unanimous are: 1) *State v. Malcolm Alexander*, Jefferson Parish Case No. 80-1260; 2) *State v. Cheryl Beridon*, Terrebonne Parish Case No. 78,042; 3) *State v. Gregory Bright*, Orleans Parish Case No. 252-514; 4) *State v. Dennis Brown*, St. Tammany Parish Case No. 128-634; 5) *State v. Nathan Brown*, Jefferson Parish Case No. 97-5794; 6) *State v. Vernon Chapman*, St. Tammany Parish Case No. 71,385; 7) *State v. Clyde Charles*, Terrebonne Parish Case No. 106,980; 8) *State v. Anthony Daye*, Iberia Parish Case No. 11-102; 9) *State v. Henry James*, Jefferson Parish Case No. 81-4366; 10) *State v. Anthony Johnson*, Washington Parish Case No. 89-CRC-39701; 11) *State v. Craig Johnson*, Orleans Parish Case No. 380-395; 12) *State v. Rickey Johnson*, Sabine Parish Case No. 30,770; 13) *State v. Robert Jones*, Orleans Parish Case No. 356-745; 14) *State v. Ryan Lewis*, Orleans Parish Case No. 432-553; 15) *State v. Jerome Morgan*, Orleans Parish Case No. 367-809; 16) *State v. John Thompson*, Orleans Parish Case No. 306-526; 17) *State v. Earl Truvia*, Orleans Parish Case No. 252-514; 18) *State v. Michael Anthony Williams*, Jackson Parish Case No. 20,387

⁷ This represents only the number of cases where *Amicus* has been able to confirm that the jury verdict was non-unanimous. There are likely several more in this group that counsel cannot confirm. Complete information is not available in all of the 33 exonerations where the conviction could have been by non-unanimous verdicts. In some cases, the record is ambiguous. For example, in *State v. Nathan Brown*, Jefferson Parish Case No. 97-5794, the judge collected written polling slips and declared the verdict “legal” but then did not make the polling

Of the remaining 29 cases, 17 were tried as capital (first degree murder or capital rape),⁸ so a non-unanimous verdict was not permitted.⁹ *State v. Goodley*, 398 So.2d 1068, 1071 (La. 1981). The other

slips part of the record or otherwise record the specific vote count.

⁸ A disproportionate number of Louisiana exonerations are in cases that were tried as first-degree murders because post-conviction counsel is provided to individuals who are sentenced to death. La. R.S. § 15:169. In every exoneration case, the defendant has required the assistance of post-conviction counsel to obtain relief. Therefore, people sentenced to death are disproportionately likely to be exonerated, even though they cannot be convicted by non-unanimous verdict. See Samuel R. Gross & Michael Shaffer, *Exonerations in the United States: 1989-2012*, National Registry of Exonerations, 16 n. 26 (June 2012), http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.

⁹ The 17 verdicts in cases tried as first-degree murders or capital rapes were in the following cases: 1) *State v. Dan Bright*, Orleans Parish Case No. 375-994; 2) *State v. Albert Burrell*, Union Parish Case No. 28,734; 3) *State v. Shareef Cousin*, Orleans Parish Case No. 376-479; 4) *State v. Rodricus Crawford*, Caddo Parish Case No. 304-048; 5) *State v. Glenn Ford*, Caddo Parish Case No. 126,005; 6) *State v. Roland Gibson*, Orleans Parish Case No. 203-904; 7) *State v. Michael Graham*, Union Parish Case No. 28,734; 8) *State v. Larry Hudson*, Orleans Parish Case No. 199-523; 9) *State v. Wilbert Jones*, East Baton Rouge Parish Case No. 90,052; 10) *State v. Anthony Keko*, Plaquemines Parish Case No. 92-3292; 11) *State v. Isaac Knapper*, Orleans Parish Case No. 270-437; 12) *State v. Curtis Kyles*, Orleans Parish Case No. 303-970; 13) *State v. Dwight Labran*, Orleans Parish Case No. 388-287; 14) *State v. Ryan Matthews*, Jefferson Parish Case No. 97-3780; 15) *State v. Damon Thibodeaux*, Jefferson Parish Case No. 96-4522; 16) *State v. John Thompson*, Orleans Parish Case No. 305-826; 17) *State v. Calvin Williams*, Orleans Parish Case No. 259-071.

12 were convicted by means other than a 12 person jury, so a non-unanimous verdict was not possible.¹⁰

II. The Non-Unanimous Verdict Rule Has Remained True to Its Origins—It is Used to Wrongly Incarcerate Black People by Removing the Power of Black Jurors.

Louisiana’s non-unanimous verdict rule was created by Confederate veterans, Redeemers and White Leaguers whose purpose was “reimposing white southern rule and formulating the convict lease system.”¹¹ The facts show that, 140 years later, the non-unanimous verdict rule still works as its white supremacist creators intended. It has

¹⁰ 1) *State v. Allen Coco*, Calcasieu Parish Case No. 14891-95 (bench trial); 2) *State v. John Floyd*, Orleans Parish Case No. 280-729 (bench trial); 3) *State v. Darrin Hill*, Orleans Parish Case No. 359-046 (adjudged not guilty by reason of insanity and involuntarily detained for 20 years); 4) *State v. Robert Jones*, Orleans Parish Case No. 357-917 (guilty plea); 5) *State v. Robert Jones*, Orleans Parish Case No. 356-745, Count 7 (guilty plea); 6) *State v. David Lazzell*, Iberia Parish Case No. 46779 (guilty plea); 7) *State v. Hollie Ramirez-Power*, St. Tammany Parish Case No. 587-095 (six person jury with unanimity requirement); 8) *State v. Julio Ruano*, Orleans Parish Case No. 500-456 (bench trial); 9) *State v. Eddie Triplett*, Orleans Parish Case No. 400-740 (six person jury with unanimity requirement); 10) *State v. Hayes Williams*, Orleans Parish Case No. 199-523 (guilty plea); 11) *State v. Michael Williams*, Jefferson Parish Case No. 96-2599 (bench trial); 12) *State v. Calvin Willis*, Caddo Parish Case No. 118,517 (bench trial).

¹¹ Thomas Aiello, *Jim Crow’s Last Stand* 5, 10-14, 16-19 (2d ed. 2019); see also Thomas Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1615 (2018).

continued to wrongly make Black people prisoners by removing the power of Black jurors.

The rule has stayed true to its original purpose despite the fact that, when the rule was perpetuated in 1974, its proponents managed to refrain from publically repeating the expressly racist justifications of the late Nineteenth Century. As the Chief Justice of the Louisiana Supreme Court recently stated, when the law was reauthorized, “the expected ease of convicting African Americans in Louisiana had come to simply be described as ‘judicial efficiency.’ . . . But despite ‘race neutral’ language justifying the law in 1974, it has continued to have a detrimental effect on African American citizens.” *State v. Gipson*, No. 2019-KH-1815, 2020 La. LEXIS 1039, at *4 (La. June 3, 2020) (Johnson, C.J., dissenting from denial of *certiorari*).

A. The Innocent Men and Women Convicted By Non-Unanimous Juries Were Mostly Black and Faced Unreliable Evidence.

There are fifteen innocent people that are known to have been wrongly convicted by non-unanimous verdicts in Louisiana. Their names and ages at the time of wrongful arrest are as follows: Reginald Adams (26), Gene Bibbins (29), Gerald Burge (29), Royal Clark (24), Catina Curley (32), Douglas Dilosa (35), Glenn Davis (19), Larry Delmore (22), Robert Hammons (31), Terrence Meyers (21), Travis Hayes (17), Willie Jackson (17), Michael Shannon (41), Kia Stewart (17), Archie Williams (22). All but Ms. Curley are male. All but

Mr. Burge, Mr. Dilosa, and Mr. Hammons are Black. The nine people that were youngest when wrongly arrested, including all four that were teenagers, are Black.

All but three of these innocent men and women were sentenced to life in prison without the possibility of parole based on a non-unanimous jury verdict, with none of them receiving a sentence of less than forty years.

These fifteen people were convicted based on questionable evidence at cursory trials. Ten of the fifteen cases involved incorrect eyewitness identification. Nine of the people were tried at proceedings that lasted less than a day; several were convicted after startlingly brief jury deliberations. And, most were convicted in parishes where other kinds of racial discrimination regarding jury service are prevalent.¹²

¹² Seven of the fifteen known wrongful convictions by non-unanimous verdict happened in Jefferson Parish and another two in East Baton Rouge Parish. Jefferson Parish prosecutors have disproportionately removed Black jurors and have been found to have violated *Batson v. Kentucky*, 476 U.S. 79 (1986). See *Snyder v. Louisiana*, 552 U.S. 472 (2008); *State v. Harris*, 820 So.2d 471 (La. 2002); *State v. Bridgewater*, 823 So.2d 877 (La. 2002); *State v. Neal*, 796 So.2d 649 (La. 2001); *State v. Taylor*, 781 So.2d 1205 (La. 2001); *State v. Jacobs*, 789 So.2d 1280 (La. 2001); *State v. Myers*, 761 So.2d 498 (La. 2000); *State v. Seals*, 684 So.2d 368 (La. 1996); *State v. Durham*, 673 So.2d 1103 (La. App. 5 Cir. 1996). In East Baton Rouge, defendants have been found to be victims of systemic discrimination against Black jurors that violates *Swain v. Alabama*, 380 U.S. 202 (1965). *State v. Washington*, 375 So. 2d 1162 (La. 1979); *State v. Brown*, 371 So. 2d 751 (La. 1979).

These fifteen people's cases are profiled in the incorporated Appendix I. They include: Travis Hayes, who was convicted by ten jurors that discounted exculpatory DNA evidence and sent an innocent teenager to prison for life; Archie Williams, who was convicted based on testimony of an eyewitness that had twice failed to identify him, even though he was excluded as the source of bloody fingerprints at the scene; Glenn Davis, Larry Delmore, and Terrence Myers, three young cousins that were convicted based on the implausible account of a person who admitted to being a drug addict; Kia Stewart, another teenager sentenced to life without parole by a non-unanimous verdict reached after 73 minutes of deliberation; Robert Hammons, who was convicted even though a police officer and eleven other witnesses placed him in Alabama at the time of the crime; and Reginald Adams, convicted based solely on a confession that in no way matched the facts of the crime.

All fifteen of these innocent people had the relative good fortune that they had post-conviction lawyers and that, while it sometimes took decades, new evidence emerged to prove them innocent. Travis Hayes and Archie Williams would be performing penal labor or buried in a prison graveyard if exculpatory forensics had not been matched with the actual perpetrators after their trials. The same would be true of Robert Hammons and Kia Stewart if the true perpetrators of the crimes had not bragged about their guilt and, also,

of Glenn Davis, Larry Delmore, Terrence Myers, Gerald Burge, and Reginald Adams if hidden police documents establishing the guilt of others were not eventually discovered. There are many innocent people currently in prison based on weak cases that will never be even this lucky.

B. The Jurors That Had Their Votes Discounted Were Three Times More Likely to be Black than White.

The racist agenda of the creators of the non-unanimous verdict rule has operated in the modern court room through policies and biases that exclude many non-white jurors from the jury, and majority rule dynamics that allow for minority viewpoints—those more likely to be held by non-white jurors—simply to be ignored. See Kim Taylor Thomas, *Empty Votes in Jury Deliberations*, 113 Harv. L. Rev. 1261, 1263-64 (2000).

Amicus's research demonstrates how these dynamics have played out in the cases of innocent people. *Amicus* has worked to systematically gather data on the juries in the fifteen cases in which people were wrongly convicted based on non-unanimous verdicts.¹³ This data establish that, of the 94 votes

¹³ The identities of the jurors were established from reviewing court records. The races of the jurors were primarily identified from voter records, with supplementary online research. The identities of the jurors that did not vote guilty were identified by court records in cases in which that information had been obtained prior to the passage of Act 335 of 2018, which allowed for mass sealing of the relevant court records. In other cases,

that are known to have been cast by white jurors, only 7 were discounted. However, of the 45 votes cast by Black jurors, 11 were discounted. This means that a white juror has a 7% of having his or her vote discounted and an innocent person convicted over his or her objection, but a Black juror has a 25% of this happening to them. A greater than three-fold discrepancy.

The data also establish that, while 80% of people wrongly convicted by non-unanimous verdicts were Black, in all but one of the cases in which the dissenting jurors have been identified, at least one non-white juror voted to acquit and was ignored.

The data collected by *Amicus* are collected in the incorporated Appendix II.

III. *Amicus* Estimates That There are 100 Innocent People Currently in Prison Based on Non-Unanimous Verdicts.

The individuals addressed in this brief certainly do not represent every innocent person that has been convicted in Louisiana. *Amicus* has current clients who are still incarcerated despite strong evidence of innocence, potential innocence cases that it is investigating, and is aware of many individuals whose cases would be investigated if resources were available. The State of Louisiana has complained of the burden that it would face if all

interviews with jurors or trial counsel were used. Supporting documentation is maintained at undersigned counsel's office.

non-unanimous verdicts were vacated. Brief of Respondent at 49, *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). However, a significant number of the people currently imprisoned because of these verdicts are innocent. Presumably, the State would concede that it does not have a legitimate interest in maintaining the convictions of innocent people.

By cross-referencing its case/applicant database, which contains over 5,000 applicants, with data on cases in which there is evidence of a non-unanimous verdict, IPNO has identified one hundred individuals that are currently incarcerated based on non-unanimous verdict in cases in which there are indicia of innocence. These one hundred individuals are current IPNO clients or people that have had their cases selected for current or future investigation by IPNO because of case facts that match indicators of actual innocence.¹⁴ Ninety-one of these one hundred individuals are Black, suggesting that 91% of innocent people that are currently in prison because of verdicts made possible by a white supremacist law are Black.

This estimate is likely to be under-inclusive. Some innocent individuals in Louisiana who were

¹⁴ While IPNO has received thousands of applications from people claiming to be innocent, it does not have the resources to investigate or even plan to investigate every case. Therefore, IPNO prioritizes cases through a grading system, setting for investigation those cases which receive one of its top two grades. These grades mean that, based on information provided by the applicant and the existing court record, “[n]ew evidence appears to give strong indication of innocence” or the “[o]riginal conviction based on weak case or new evidence appears to partially undermine the state’s case.”

convicted by non-unanimous verdicts will not have completed the IPNO application process or will not fall within its mandate.¹⁵ Nevertheless, the estimate is a useful guide to the scale of the problem.

The estimate is also compatible with academic studies of wrongful conviction rates. The estimated false conviction rate for individuals sentenced to death from 1973 to 2004 is 4.1%.¹⁶ The estimated rate of innocent people convicted of capital rape-murder cases in the 1980s is 3.3-5%.¹⁷ The estimated wrongful conviction rate for incoming prisoners committed into the custody of the Pennsylvania Department of Corrections from November 2015 to March 2016 is 6.2%.¹⁸ This gives a range of 3.3% to 6.2%.¹⁹ The best information is

¹⁵ See *supra* note 14. Additionally, IPNO's mandate only allows it to investigate the cases of prisoners claiming to be innocent who have final convictions and a life or near-life sentence (or, in clear DNA cases, are serving a sentence of at least 10 years).

¹⁶ Samuel R. Gross *et al.*, *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 *Proceeding of the National Academy of Sciences* 7230 (2014).

¹⁷ D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 *J. Crim. L. & Criminology* 761 (2007).

¹⁸ Charles E. Loeffler, Jordan Hyatt, & Greg Ridgeway, *Measuring Self-Reported Wrongful Convictions Among Prisoners*, 35 *J. Quantitative Criminology* 259 (2019).

¹⁹ An additional paper offers a rate of 0.031%. Paul G. Cassell, *Overstating America's Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions*, 60 *Ariz. L. Rev.* 815 (2018). Even assuming this paper was methodically sound, its focus on cases resolved by pleas means it is inapplicable to population at issue here;

that there are currently 1,558 people incarcerated in Louisiana based solely on a final conviction produced by a non-unanimous jury verdict.²⁰ Applying a range of 3.3% to 6.2% to this number—which merely assumes that people convicted by non-unanimous verdicts are no more likely to be innocent than the populations in these studies—would lead to an estimate that there are between 51 and 97 innocent people doing hard labor in prison in Louisiana based on non-unanimous jury verdicts.

It is unsurprising that the estimate from IPNO’s case information falls narrowly outside the upper end of the range calculated from studies of possible overall wrongful conviction rates. None of the academic studies are Louisiana-specific, and, as noted above, Louisiana has the second highest *per capita* wrongful conviction rate in the country. Consistent with this, it seems reasonable to assume that allowing a guilty verdict to be returned when up to two jurors have a reasonable doubt as to the defendant’s guilt would lead to a higher wrongful conviction rate.

Even if there are only 51 innocent people currently in prison based on non-unanimous verdicts, these are 51 people, most of whom, statistically, are Black, that are performing hard labor on penal farms because they were found guilty of crimes that they did not commit as a result of an

individuals that went to trial and were convicted by non-unanimous verdicts.

²⁰ Brief of *Amici Curiae* The Promise of Justice Initiative, the Louisiana Association of Criminal Defense Lawyers, and the Orleans Public Defender, *Edwards v. Vannoy*, No. 19-5807.

unconstitutional white supremacist law. Some of these innocent prisoners are currently picking cotton in the exact same fields that were once worked by enslaved people and those leased as convicts.²¹

CONCLUSION

This Court's decision in *Ramos* that non-unanimous juries should be "relegated to the dustbin of history," *Ramos*, 140 S. Ct. at 1410 (Sotomayor, J., concurring), did not free the innocent people in prison whose convictions based on non-unanimous verdicts were final. It will take holding *Ramos* to be retroactive, either in this case or a later case concerning state court collateral review of a conviction, to allow these people back into court to seek justice. The innocent people currently in prison based on non-unanimous verdicts are urgently in need of an avenue for relief. As a result, *Amicus* supports Mr. Edwards's petition.

Respectfully submitted,
 Richard Davis (counsel of record)
 Meredith Angelson
 Jee Park
 Innocence Project New Orleans
 Counsel for *Amicus Curiae*

²¹ Krissah Thompson, *From a Slave House to a Prison Cell: The History of Angola Plantation*, Washington Post, Sept. 21, 2016, https://www.washingtonpost.com/entertainment/museums/from-a-slave-house-to-a-prison-cell-the-history-of-angola-plantation/2016/09/21/7712eeac-63ee-11e6-96c0-37533479f3f5_story.html (discussing the history of the Louisiana State Penitentiary at Angola).

APPENDIX I: Innocent People Convicted by Non-Unanimous Juries

The following fifteen men and women are innocent people convicted by non-unanimous juries. *Amicus* represented ten of these people.¹

Glenn Davis, Jr.,² Larry Delmore,³ and Terrence Meyers⁴

Glenn Davis, Larry Delmore, and Terrence Meyers were arrested at 19, 22, and 21 years old respectively and convicted based on the testimony of a single eyewitness who was lying. He testified that he saw the three men perpetrate the drive-by shooting of Samuel George Jr. *State v. Meyers*, 638 So.2d 1378, 1381 (La. App. 5 Cir. 1996). The witness admitted to smoking crack about an hour before the crime. *Id.* The witness had a long history of arrests. His story was implausible. He claimed that he could identify three perpetrators, including Glenn Davis

¹ All of the facts contained in the descriptions of these cases are contained in district and appellate records of the cases. All of the underlying documentation and records are contained in *Amicus*'s files and the court files and are available upon request. In addition, the National Registry of Exonerations case profile is cited for each person.

² *Glenn Davis, Jr.*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3158> (last visited July 18, 2020).

³ *Larry Delmore*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3170> (last visited July 18, 2020).

⁴ *Terrence Meyers*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3441> (last visited July 18, 2020).

whom the witness testified was the back-seat passenger. The crime was committed using a two-door Cutlass with inoperable back-seat windows. In the witness's scenario, Mr. Davis would have had to lean forward and over the top of the front-seat passenger and stick his head out of the front passenger window for the witness to have seen his face. *State v. Davis*, Jefferson Parish Case No. 92-4541 at 4 (Feb. 16, 2007).

After three hours of deliberation, ten of the jurors found the witness credible beyond a reasonable doubt, but two did not. The views of these two jurors were disregarded and the three men were convicted and sentenced to life without parole. Evidence discovered after trial demonstrated that the State's eyewitness was not at the crime scene when the shooting occurred. *Id.* Other evidence, much of which was in the possession of the State at the time of trial, showed the identity of the likely true perpetrator. *Id.* This new evidence led to the court vacating the defendants' convictions and the State dropped all charges against them.⁵

Kia Stewart⁶

Kia Stewart was also convicted based on the testimony of a single eyewitness. He was mistakenly identified as the man who shot Bryant Craig on a

⁵ Paul Purpura, *Murder Charges Dropped Against Three Men in 1992 Marrero Killing*, Times Picayune, Sep. 24, 2010, https://www.nola.com/news/crime_police/article_b394f088-d9a9-5f8e-885e-4d7ecef31ca2.html.

⁶ *Kia Stewart*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4675> (last visited July 18, 2020).

public street in broad daylight on the morning of July 31, 2005, just a month before Hurricane Katrina would devastate New Orleans. Mr. Craig had been driving with a friend, Mr. Alexander, to his mother's house in the Lafitte Housing Project area of New Orleans. Mr. Craig got out of his car to talk with a pedestrian, who shot him. Police developed Mr. Stewart as a suspect based on an inaccurate anonymous tip and, having done no further investigation, included Mr. Stewart's photograph in an array for Mr. Alexander to identify, which he did.

When 17-year-old Kia Stewart heard that there was a warrant for his arrest, he turned himself in to the police so that he could clear his name. Because Hurricane Katrina hit three weeks later, he waited four years in jail for a trial. His defense counsel were two law students. The State presented the one eyewitness. The defense presented no witnesses. The jury deliberated for one hour and thirteen minutes before finding him guilty. The vote was 10-2. Kia Stewart was sentenced to spend the rest of his life in prison. Joint Stipulations at 1, *Stewart v. Cain*, Orleans Parish Case No. 464-435 (April 9, 2015).

IPNO later discovered at least 18 witnesses who either saw the crime and knew that Mr. Stewart was not the shooter, heard the true perpetrator confess to the crime, were with the perpetrator in the immediate aftermath of the crime, or proved Mr. Stewart's alibi. *Stewart v. Cain*, Orleans Parish Case No. 464-435 at 2 (April 13, 2015). In 2015, the trial court vacated Mr. Stewart's conviction. *Id.* The DA's office immediately dismissed all charges and

Kia Stewart was released after spending almost ten years prison for a murder he did not commit.

Reginald Adams⁷

Reginald Adams was indicted for the murder of Cathy Ulfers, a New Orleans Police Department Officer's wife, who was shot and killed in her home on October 7, 1979.

The evidence against Mr. Adams consisted exclusively of his confession, made to an NOPD detective and the District Attorney's investigator while Mr. Adams was in jail awaiting trial on an unrelated burglary charge. The "confession" was inconsistent with the known facts of Cathy Ulfers's murder. The jury was told that there was no physical evidence linking Mr. Adams to the crime and no gun was recovered. Nevertheless, after three hours and 25 minutes of deliberation, ten of the jurors voted to convict Mr. Adams. Two did not. Reginald Adams was sentenced to life without parole. Joint Motion to Vacate Conviction and Sentence at 1, *Adams v. Cain*, Orleans Parish Case No. 278-951 (May 12, 2014).

In 2014, IPNO discovered a police report that carefully documented the initial police investigation, which included recovering the weapon used to kill Ms. Ulfers and property stolen from her home from a brother and sister who had absolutely no connection to Reginald Adams and who fled the area soon after the murder. *Id.* at 2-3. Reginald Adams

⁷ *Reginald Adams*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4430> (last visited July 18, 2020).

was exonerated on May 12, 2014, after 34 years wrongly in prison.⁸

Travis Hayes⁹

Travis Hayes was six weeks past his seventeenth birthday when he was arrested and charged with being the getaway driver for a gunman who murdered a local corner store owner during an armed robbery. *State v. Hayes*, 806 So.2d 816, 820-21 (La. App. 5 Cir. 2001). Travis Hayes and Ryan Matthews were arrested in a traffic stop several hours after the murder and miles away. At trial the jury heard that, after around six hours of through-the-night interrogation, the 17-year-old Mr. Hayes had accepted the police's accusation that his friend, Ryan Matthews, was the murderer and he was the getaway driver. *Id.* Additionally, two witnesses to the aftermath of the crime identified Travis Hayes's car as having driven away from the scene. *Id.* at 820.

The defense's main evidence was that DNA from a ski mask left at the scene by the perpetrator did not match Travis Hayes or Ryan Matthews. *Id.* at 822. The defense also presented evidence that the window of Travis Hayes's front passenger car door was stuck in the up position and would not go down, making it impossible for witnesses to have seen the gunman jump through that passenger window and

⁸ Helen Freund, *For man convicted by 'shameful' prosecution in '79 murder, freedom at last*, Times-Picayune, May 13, 2014, https://www.nola.com/news/crime_police/article_3472af5a-d5c6-5951-9840-3771f599c496.html.

⁹ *Travis Hayes*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3289> (last visited July 18, 2020).

discard his ski mask, shirt and glove out of that window. Ten jurors heard this evidence and were certain of Mr. Hayes's guilt beyond a reasonable doubt. Two jurors, including the only Black person on the jury, did not vote to convict. *Id.* at 820.

After the verdict, evidence proving the two dissenting jurors correct was discovered. Most significantly, the unaccounted-for DNA from the perpetrator's ski mask was matched to a man who more closely matched the description of the perpetrator than Ryan Matthews, who had bragged repeatedly about killing the grocery store owner, and who had committed another murder nearby soon after. Hearing and Oral Ruling, *State v. Hayes*, Jefferson Parish Case No. 97-3780 (Dec. 19, 2006). Mr. Matthews—who had been tried separately from Mr. Hayes—was exonerated in 2004, but Mr. Hayes' conviction was not vacated until December 2006. Mr. Hayes was released at 26 years old after having spent almost ten years wrongly imprisoned.¹⁰ The State dropped charges soon after.

Archie Williams¹¹

Archie Williams was tried for the 1982 rape and stabbing of a woman in her Baton Rouge home. The attacker had forced his way into the victim's

¹⁰ Henry Weinstein, *Inmate Freed 2 Years After Codefendant*, Los Angeles Times, Dec. 21, 2006 at A20; Paul Purpura, *After Nearly 10 Years Behind Bars, a Harvey Man's Murder Conviction is Thrown Out and he Gets to Go Home*, Times Picayune, Dec. 21, 2006 at A1.

¹¹ *Archie Williams*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5529> (last visited July 18, 2020).

house and attacked her in an upstairs bedroom. When a neighbor came in, the assailant stabbed the victim and then fled. *State v. Williams*, 458 So.2d 1315 (La. App. 1st Cir. 1984). The victim and neighbor described the perpetrator as being taller than 5'7"—about 5'9 to 5'11". Williams is 5'4", and had an alibi—three people testified at his trial that he was home asleep when the attack occurred. The physical evidence—including fingerprints and semen—did not point to Mr. Williams as the assailant. In fact, the jury heard that the fingerprints lifted from the scene, even those found in smears of the victim's blood, were not Mr. Williams's.

Nearly one month after the crime, the victim was shown a photo array that included Williams, but she did not select him as the assailant. She did, however, tell police officers that when they look for the assailant, they should look for an individual who resembled Williams's photo. Police showed the victim a second array and again she did not select Williams, but again told police to look for someone who resembled him. It was only after the victim was shown a third array with Williams's photo that she selected him as the assailant. Both the victim and her neighbor were shown an in-person line up with Williams. The neighbor selected a filler, not Williams. The victim, now having seen Williams a fourth time, identified him. Mr. Williams was found guilty by a jury vote of 11-1. *Williams*, 458 So.2d 1315.

Thirty-five years later, the unidentified prints found at the scene of the crime were run through the FBI's new Next Generation Identification

fingerprint database and were found to match a convicted serial rapist who committed several other home-invasion rapes in the area at the time and who exactly matched the victim's initial composite sketch of her attacker. Joint Motion to Vacate Conviction at 1, *State v. Archie Williams*, East Baton Rouge Case No. 01-83-0234 (Mar. 21, 2019). Mr. Williams was promptly exonerated by the Nineteenth Judicial District Court upon the joint motion of the State and Mr. Williams's counsel. *State v. Archie Williams*, East Baton Rouge Case No. 01-83-0234 (Mar. 21, 2019). He had spent 36 years wrongly imprisoned.

Royal Clark, Jr.¹²

Royal Clark was arrested in 2001 for armed robbery of a Burger King after several of the witnesses to the crime picked him out of a photo array. Fingerprints lifted from a cup that the robber had been drinking from before the crime were claimed to be unusable. At trial, six employees of the restaurant testified to varying descriptions of the robber, some of which did not match Mr. Clark. The investigating detective said that the witnesses had all claimed that the robber had gold teeth, as Mr. Clark did, but all of the witnesses denied saying this. After 78 minutes of deliberation, Royal Clark was convicted by a vote of 10-2. He was sentenced to 49 ½ years in prison without parole.

In 2018, IPNO sought to have the robber's fingerprints reexamined. Advances in latent print

¹² *Royal Clark, Jr.*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5588> (last visited July 18, 2020).

examination resulted in a positive match between the prints and a serial armed robber who was still incarcerated for a string of robberies committed a few months after Mr. Clark's arrest. Mr. Clark was exonerated in June 2019 after more than 17 years in prison.¹³

Catina Curley¹⁴

Catina Curley spent nearly 11 years in prison for shooting her abusive husband after an argument during which he pushed her against a wall, choked her, and threw a can of soda at her. *State v. Curley*, 250 So. 3d 236, 238 (La. 2018). In her original trial, Ms. Curley's attorney offered no evidence or expert testimony about Battered Women's Syndrome (BWS), although jurors did hear that the decedent had been abusive.¹⁵ Ms. Curley was convicted by a vote of 11-1. The Louisiana Supreme Court overturned her conviction based on her lawyer's failure to offer expert testimony. *Curley*, 250 So. 3d at 250. During the retrial by judge, almost every witness who knew the couple testified that Ms.

¹³ Michelle Hunter, *Royal Clark Jr. Freed After 2003 Wrongful Conviction in Terrytown Armed Robbery*, Times-Picayune, June 27, 2019, https://www.nola.com/news/crime_police/article_f3ff092a-9b73-5a7e-b1e3-fdc2660f7c53.html.

¹⁴ *Catina Curley*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5520> (last visited July 18, 2020).

¹⁵ Matt Sledge, *After Decade in Prison, New Orleans Woman Who Shot Husband Goes Free as Killing is Deemed Justified*, Times-Picayune, Mar. 1, 2019, https://www.nola.com/news/courts/article_3806a6c1-0613-576b-8110-97982547924c.html.

Curley's husband frequently abused her. The defense presented several expert witnesses who testified that she had BWS and post-traumatic stress disorder and lived in fear for her life. The judge found the killing to be justified. Ms. Curley was acquitted.

Gene Bibbins¹⁶

Gene Bibbins was convicted by a non-unanimous jury in Baton Rouge in 1987 of rape based only on an eyewitness identification. He was found with a radio that had been stolen from the victim's apartment, but explained that he had found it nearby. He was identified by the victim shortly after the crime when he was brought to her house in a police car with a flashlight shining in his face. His clothing and hair did not match her description of the rapist. Despite testimony at trial that fingerprints at the scene might have been his, a separate crime lab report concluded that they could not have been. He spent almost 17 years wrongly imprisoned before DNA testing of material from the rape kit conclusively showed that he was not the rapist.

Gerald Burge¹⁷

Gerald Burge was convicted by a non-unanimous jury in St. Tammany Parish of a 1984

¹⁶ *Gene Bibbins*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3027> (last visited July 18, 2020).

¹⁷ *Gerald Burge*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3071> (last visited July 18, 2020).

murder based on the testimony of a co-defendant (who had already confessed to committing the crime himself and changed his story to include Burge) and the testimony of the victim's mother and sister who alleged that Mr. Burge told them details of the crime that only the perpetrator could have known. He was exonerated after seven years in prison when tapes in the trunk of the investigating detective's car revealed that he had hidden statements from the victim's mother that contradicted her trial testimony, as well as statements from other witnesses indicating that the co-defendant had confessed to the crime, and that he had persuaded the mother and sister, who was now his wife, to lie on the stand. At a subsequent trial where all of this evidence was presented, Mr. Burge was acquitted.

Douglas Dilosa¹⁸

Douglas Dilosa was convicted by a non-unanimous jury in Jefferson Parish of murdering his wife in 1987 after emergency services found him bound up in his own home. His son had called 911. Claiming they found no physical or other corroborating evidence of Mr. Dilosa's story of two black male intruders in the home and determining he had motive to kill his wife, authorities charged Mr. Dilosa and eleven of the jurors at his trial voted to convict him. *Dilosa v. Cain*, 279 F.3d 259 (5th Cir. 2002). He was exonerated in 2003 when a supplemental police report revealed unidentified fingerprints in the home, hair that could have come

¹⁸ *Douglas Dilosa*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3178> (last visited July 18, 2020).

from an African American (the Dilosas are white), reports of a possible attempted break-in nearby, and a cab driver who saw two Black men driving out of the apartment complex around the time of the crime looking tense and driving slowly. *Id.* at 263.

Robert Hammons¹⁹

Robert Hammons was convicted by a non-unanimous jury of the 1984 armed robbery of a St. Tammany Parish pharmacy based on several eyewitness identifications by the pharmacy employees. He was convicted despite evidence that witnesses described the perpetrator as having a short beard while Hammons had a long, bushy beard; that a print found on tape used by the robber did not match Hammons; and that Hammons had twelve alibi witnesses who testified that he was at home in Alabama when the crime occurred, including a police officer who testified that Hammons drove his tow truck to the scene of an accident at a time that would have been impossible if he was driving back from committing a robbery in Slidell, Louisiana. *State v. Hammons*, 597 So.2d 990 (La. 1992). He was exonerated six years later when another man confessed to the crime. The jury, which took less than two and a half hours to deliver its 10-2 verdict, could only have spent a few minutes considering the testimony of each of the 24 witnesses. Memorandum in Support of Motion for New Trial at 1, *State v. Hammons*, St. Tammany Parish Case No. 136-658 (June 12, 1986). In

¹⁹ *Robert Hammons*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5471> (last visited July 18, 2020).

vacating his conviction, the Louisiana Supreme Court observed that the jury's verdict against Hammons was unreliable because "the same jury also found (Hammons's) father guilty of every essential element of the crime of armed robbery, when there was absolutely no evidence presented to the jury that (his) father had anything whatsoever to do with the perpetration of the robbery . . ." *Hammons*, 597 So.2d at 999.

Willie Jackson²⁰

Willie Jackson was convicted in 1989 by a non-unanimous jury of attempted aggravated rape and robbery in Jefferson Parish, Louisiana. He was convicted—despite strong evidence that his brother may have been the perpetrator and alibi witnesses putting him at home in Mississippi at the time of the crime—based on the victim's identification and a forensic odontologist's conclusion that bite marks on the victim were from Mr. Jackson. *State v. Jackson*, 570 So.2d 227, 228-29 (La. App. 5th Cir. 1990). In 2003, DNA testing excluded Willie Jackson and proved that his brother, by then serving a life sentence for another rape, was the perpetrator. Willie Jackson was released after over 18 years in prison.

²⁰ *Willie Jackson*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3319> (last visited July 18, 2020).

Michael Shannon²¹

Michael Shannon was convicted by a non-unanimous jury after spending 12 years in prison (six of which were awaiting trial). His conviction was based on eyewitness testimony alone. *State v. Shannon*, 101 So.3d 67 (La. App. 4th Cir. 2012). He was exonerated in 2017 when numerous witnesses testified he could not have been the gunman and the rationale for his becoming a suspect (that he was related to the victim) was thoroughly undermined.

²¹ *Michael Shannon*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5278> (last visited July 18, 2020).

**APPENDIX II: The Races of Jurors in the
Trials of Innocent People Convicted Non-
Unanimously**

Case	Races of All Voting Jurors				Races of Dissenting Jurors			
	White	Black	Asian	Unknown	White	Black	Asian	Unknown
<i>Adams</i>	2	9	1	0	0	0	0	2
<i>Bibbins</i>	7	1	0	4	2	0	0	0
<i>Burge</i>	6	1	0	5	2	0	0	0
<i>Clark</i>	4	4	1	3	1	0	1	0
<i>Curley</i>	0	1	0	11	0	1	0	0
<i>Davis</i>	9	3	0	0	0	2	0	0
<i>Delmore</i>	9	3	0	0	0	2	0	0
<i>Dilosa</i>	8	0	0	4	0	0	0	1
<i>Hammons</i>	6	3	0	3	0	0	0	2
<i>Hayes</i>	9	1	0	2	1	1	0	0
<i>Jackson</i>	6	3	0	3	0	0	0	2
<i>Shannon</i>	4	7	0	1	0	2	0	0
<i>Stewart</i>	8	4	0	0	1	1	0	0
<i>Meyers</i>	9	3	0	0	0	1	0	0
<i>Williams</i>	7	2	0	3	0	1	0	1
Total	94	45	2	38	7	11	1	8