

No. 19-_____

IN THE
Supreme Court of the United States

KENDRICK TAYLOR,

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The issue presented is whether the Sixth Amendment right to a jury trial requires an unanimous jury verdict and, if so, would that unanimity requirement be required in state criminal jury trials via the Fourteenth Amendment. In deciding this question, the Court will be asked to revisit the plurality opinions of *Johnson v. Louisiana* and *Apodaca v. Oregon*.

PARTIES TO THE PROCEEDING

Kendrick Taylor is the Defendant and Defendant-Appellant in this case and the respondent, the State of Louisiana, is the Plaintiff and Plaintiff-Appellee in the Courts below. To date, the State of Louisiana has been represented by the 22nd Judicial District Attorney's Office. However, since the question raised concerns the constitutionality regarding the manner on how criminal jury trials are conducted within the State of Louisiana, it is anticipated that The Louisiana Attorney General's Office may elect to represent the State in this matter.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS.....	iii
APPENDICES.....	iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION STATEMENT	1
PETITION OF WRIT OF CERTIOARI	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
REASONS FOR GRANTING A WRIT OF CERTIORARI.....	3
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	8
APPENDICES.....	9

APPENDICES

APPENDIX A: Trial Court's Post-Conviction Ruling

APPENDIX B: Decision of the Louisiana First Circuit Court of Appeals

APPENDIX C: Decision of the Louisiana Supreme Court

APPENDIX D: Petitioner's Post Conviction Application

APPENDIX E: State's Answer

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Johnson v. Louisiana</i> , 406 U.S. 356 (1972).....	4, 5, 6,
<i>Apodaca v. Oregon</i> , 406 U.S. 404 (1972).....	4, 6, 7
<i>Burch v. Louisiana</i> , 441 U.S. 130 (1979).....	5
<i>Brown v. Louisiana</i> , 447 U.S. 323 (1980).....	5
<i>Richardson v. United States</i> , 526 U.S. 356 (1999).....	5
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	4, 5, 6
<i>Timbs v. Indiana</i> , ____ U.S. ____ (2019).....	4, 5, 6
<i>United States v. Gipson</i> , 553 F.2d 453 (5 th Cir.1977).....	5
<i>United States v. Edmonds</i> , 80 F.3d 810 (3 rd Cir. 1996).....	5
<u>Statutes</u>	
La. C.Cr.P. Art. 782.....	3
<u>Constitutional Provisions</u>	
U.S. Const. Amend VI.....	2, 3, 4, 5, 6
U.S. Const. Amend XIV.....	1,2,4, 5,6

OPINIONS BELOW

The judgment of the Louisiana First Circuit Court of Appeal is an unpublished opinion reported as *State v. Taylor* , No. 2018-kw-1279, 2018 La. App. Lexis 2250, (La. App. 1 Cir. 11/09/18). After receiving an adverse ruling, this petitioner sought a writ of certiorari from the Louisiana Supreme Court which was denied in an opinion published as *State v Taylor*, 272 So.3d 888, 2018-kp-2009 (La. 06/03/19).

JURISDICTIONAL STATEMENT

The trial court denied Mr. Taylor's post-conviction application on July 19, 2018. The judgment and opinion of the Louisiana First Circuit Court of Appeal was entered on November 9, 2018. The Louisiana Supreme Court denied review of that decision on June 3, 2019. This Court's jurisdiction is pursuant to 28 U.S.C. 1257(a).

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Kendrick Taylor, respectfully requests a writ of certiorari to the Louisiana Supreme Court in *State v. Taylor*, 272 So.3d 888 (La. 06/03/19). This petition raises the issue whether the United States Constitution requires an unanimous jury in criminal cases and, if so, whether this provision is incorporated into the due process clause of the Fourteenth Amendment and made applicable to the states. It raises a similar issue found in *Ramos v. Louisiana* in which this Court granted cert. on March 18, 2019.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides a defendant with the right to a jury trial in criminal cases. Both history and tradition have interpreted this to mean an unanimous jury. So, it is now settled that an accused has a fundamental right to an unanimous jury in federal prosecutions. 48 states have adopted this approach with Louisiana and Oregon being the “hold outs.” Recently, Louisiana amended its constitution to fall in line with this tradition. However, Mr. Taylor was convicted before this new provision was enacted in a 10-2 decision.

The Due Process clause of the Fourteenth Amendment requires the states adopt those Bill of Rights that are either fundamental to our scheme of liberty or deeply rooted in our nation’s history and tradition. We submit the right to an unanimous jury in a criminal proceeding is one of those rights. The scope of this issue will also be addressed by the Court in *Ramos v. Louisiana* (cert granted March 18, 2019).

STATEMENT OF CASE

Kendrick Taylor was charged with possessing between 200-400 grams of cocaine. He was convicted on February 24, 2015 of attempted possession of cocaine between 28-200 grams at a jury trial and ultimately sentenced to 22 years at hard labor. The defendant appealed his conviction which was denied on March 3, 2017 though the case was remanded to remove the prohibition against parole eligibility. A post-conviction application was filed and denied on July 19, 2018 and the defendant took writs to the First Circuit Court of Appeals who denied the writ

application without reasons on November 9, 2018. Thereafter, the petitioner sought relief with the Louisiana Supreme Court who denied his claims on June 3, 2019. This writ of certiorari now follows.

STATEMENT OF THE FACTS

The defendant was convicted responsively of attempted possession of cocaine between 28-200 grams. The defendant's post conviction application challenged trial counsel's effectiveness for failing to properly litigate the suppression of a statement that would link him to a telephone found in close proximity to the cocaine which allowed the state to argue his constructive possession of the drugs at trial. Mr. Taylor was convicted in a 10-2 decision. Were Louisiana required to provide an unanimous jury, as is the federal custom, before depriving a citizen of his liberty, Mr. Taylor would not be convicted.

REASONS FOR GRANTING A WRIT OF CERTIORARI

Louisiana law requires the concurrence of 10 of 12 jurors to render a verdict for crimes necessarily punishable by hard labor. La. C.Cr.P. Art. 782. This petitioner believes that this procedural scheme is unconstitutional and runs afoul of a long-standing legal tradition requiring unanimous juries in criminal cases. It is urged below that this view is now universally recognized as a requirement for federal prosecutions. This petition now seeks to apply a person's federal Sixth Amendment right to an unanimous jury with equal measure to the state of Louisiana.

Admittedly, this position is at odds with two plurality decisions that gave Louisiana and Oregon permission for devising a non-unanimous jury scheme. See *Johnson v. Louisiana*, 406 U.S. 356 (1972) and *Apodaca v. Oregon*, 406 U.S. 404 (1972). The rationale of these two decisions is succinctly described in *McDonald v. City of Chicago*. In *McDonald*, it was noted that 8 justices believed the rights afforded by the Sixth Amendment applied equally to the states and federal governments with 4 of them deciding an unanimous jury was required and 4 suggesting it did not. Justice Powell was the tie breaker who “split the baby” if you will and held that unanimity was required by the federal government but not the states. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In essence, he gave a “two track” approach to the Fourteenth Amendment’s incorporating the provisions of the Bill of Rights through its due process clause. This position no longer holds sway.

In *McDonald*, it was suggested neither the *Johnson* or *Apodaca* decisions stood as an endorsement of a 2 track approach to incorporating provisions of the Bill of Rights. More recently in *Timbs v. Indiana*, this Court held whenever a Bill of Rights protection is incorporated, there is “no daylight” between the conduct required or prohibited to the two governments. *Timbs v. Indiana*, ____ U.S. ____ (2019). In other words, the states cannot afford less protections than required of the federal government for an identical right made applicable to the states through the Fourteenth Amendment.

The United States Fifth Circuit Court of Appeals considers it a well settled legal principle that a criminal defendant has a constitutionally based right to an

unanimous verdict. *United States v. Gipson*, 553 F.2d 453 (5th Cir. 1977). The Third Circuit held similarly in *United States v. Edmonds*, 80 F.3d 810 (3rd Cir. 1996). Though *Edmonds* concerned the unanimity jury instruction within the context of a Continuing Criminal Enterprise (CCE) prosecution, the holding was recognized and supported by this Court in *Richardson v. United States*, 526 U.S. 813 (1999).

Notwithstanding the *Johnson* decision, this Court has, since *Johnson*, intervened into Louisiana's procedural scheme in favor of unanimous juries. In *Burch v. Louisiana*, this Court reversed the non-unanimous conviction for a non-petty criminal offense when 5 of 6 jurors voted to convict. *Burch v. Louisiana*, 441 U.S. 130 (1979). *Burch* was followed by *Brown v. Louisiana*, which simply made the holding in *Burch* retroactive. *Brown v. Louisiana*, 447 U.S. 323 (1980). These two decisions indicate that an unanimous jury has historical roots and can be required before the state can deprive a person of their liberty. But, these cases dealt with less serious crimes. Why would the standards be lessened when the consequences for an erroneous conviction are increased for those crimes requiring a 12 person jury?

This logical fallacy of making it easier to jail someone for life than it is to convict someone for shoplifting is precisely why a two track approach to the trial rights afforded by the Sixth Amendment makes no sense. Again, returning to *McDonald* and *Timbs*, this approach is rejected and uniformity is required whenever a Bill of Rights protection is incorporated into the Fourteenth Amendment's due process clause and made applicable to the states. Since an unanimous jury is

required for federal prosecutions so too must it now be for state prosecutions. Any procedural rule to the contrary are unconstitutional.

CONCLUSION

As recently as a few months ago, this Court's *Timbs* decision recognized the principle that those Bill of Rights applicable to the states through the due process clause of the Fourteenth Amendment are given the full measure of what is required or prohibited to the federal government. At issue here is whether Louisiana's non-unanimous jury rule runs afoul of the Sixth Amendment's jury trial rights. Appellate Courts, in analyzing this Court's precedents, have reasoned that the right to a unanimous jury is required for federal prosecutions as a matter of constitutional law. Notwithstanding this jurisprudential recognition, this Court's rulings in the *Johnson* and *Apodaca* cases have been viewed as supporting less than an unanimous jury for state proceedings. These decisions are implicitly rejected by the *Timbs* decision as well as Footnote 14 in *McDonald* since they reject a two tiered approach to the Bill of Rights. Interestingly, 8 Justices in *Johnson* recognized the principle that the Sixth Amendment's panoply of rights applied identically to the states and federal government with 4 saying unanimity was required and 4 saying otherwise. Justice Powell was the swing vote saying the right exists in federal cases but was not required for the states. Now that Justice Powell's two track approach is rejected by current precedent, shouldn't we reconsider the underpinnings of the *Johnson* and *Apodaca* decisions? That is what this writ of certiorari seeks to accomplish.

Respectfully Submitted,
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Dated:
August 30, 2019

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 30th day of August 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.

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