NO. _____

IN THE
Supreme Court of the United States

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JERMAINE RUFFIN

PETITIONER,

V.

STATE OF LOUISIANA,

RESPONDENT.

_____

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

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

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

Whether the sufficiency of the evidence analysis adopted by the Louisiana courts fails to comply with the *Jackson v. Virginia* due process standard?

PARTIES TO THE PROCEEDING

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

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jermaine Ruffin, respectfully petitions for a writ of certiorari to the Louisiana First Circuit Court of Appeal in *State v. Jermaine Ruffin*, 2018-KA-1230 (La. App. 1 Cir. 2/28/19) (Unpublished opinion) *Appendix "A", Pet. App. 1a-13a.*

OPINIONS BELOW

The judgment of the Louisiana First Circuit Court of Appeal is reported at *State v. Jermaine Ruffin*, 2018-KA-1230 (La. App. 1 Cir. 2/28/19) (Unpublished opinion). *Appendix "A", Pet. App. 1a-13a.* The Louisiana Supreme Court's order denying review of that decision is reported at *State v. Jermaine Ruffin*, 2019-00564 (La. 9/6/19), 278 So.3d 971. *Appendix "B", Pet. App. 14a.* The Louisiana Supreme Court's order denying the Application for Reconsideration is reported at *State v. Jermaine Ruffin*, 2019-00564 (La. 1/22/20), 2020 WL 615069, *Appendix "C", Pet. App. 15a.*

JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana First Circuit Court of Appeal were entered on February 28, 2019. *Appendix "A", Pet. App. 1a-13a.* The Louisiana Supreme Court denied review of that decision on September 6, 2019. *Appendix "B", Pet. App. 14a.* The Louisiana Supreme Court denied reconsideration on January 22, 2020. *Appendix "C", Pet. App. 15a.* This Court's jurisdiction is pursuant to 28 U.S.C. § 1257(a).

The Petition is timely because the Louisiana Supreme Court opinion on January 22, 2020 ***Denied Reconsideration*** rather than rejecting the pleading altogether. For jurisdictional purposes, the Louisiana Supreme Court distinguishes between applications for reconsideration of writ denials – which are either granted or denied – and those that are "not considered."[1] As Chief Justice Johnson explained in a similar case: "Reconsideration of a writ following a denial of a writ application is rare, but not unprecedented, and appears justified by the extreme circumstances in the present case." *State v. LeBlanc*, 2006-1714 (La. 03/23/2007), 951 So. 2d 1087, 1089. The federal Fifth Circuit and the Eastern District of Louisiana have recognized that a conviction does not become final until the denial of the Application for Reconsideration.[2]

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[1] ***Compare*** *State v. Mahogany*, 2019-01324 (La. 02/18/20) ("Application for reconsideration granted. Writ denied."); *State v. Lavigne*, 2019-00803 (La. 11/19/19), 282 So. 3d 1059 ("Reconsideration granted; writ denied."); *State v. Singleton*, 2019-00457 (La. 08/12/19), 279 So. 3d 913, 914 (Writ application not considered) (Reconsideration granted by, Writ denied by *State v. Singleton*, 2020 La. LEXIS 39 (La., Jan. 22, 2020)); *Dynamic Constructors, L. L. C. v. Plaquemines Par. Gov't*, 2015-1782 (La. 12/07/15), 180 So. 3d 1284 (Crichton, J., concurring) ("in rare instances this court has entertained applications for reconsideration from writ denials…"); *State v. Finch*, 2020 La. LEXIS 623 * | 2017-01898 (La. 03/09/20) (Johnson, C.J. dissenting ("I would grant the application for reconsideration. Under the circumstances of this case, I believe this Court erred in denying the prior writ application as untimely.")) ***with*** *State v. Williams*, 2018-00447 (La. 03/09/20), 2020 La. LEXIS 591 ("Application for reconsideration not considered."); *State ex rel. Declouet v. State*, 2018-01827 (La. 02/18/20) ("Application for reconsideration not considered."); *State v. Spells*, 2018-01248 (La. 02/18/20), 2020 La. LEXIS 443 (same).

[2] See *Wilson v. Cain*, 564 F. 3d 702, 707 (5th Cir. 2009) ("It thus appears that Wilson's motion for a rehearing was timely filed following the LSC's Sept. 13, 2002, denial of his writ application. Accordingly, the motion for rehearing must be considered in determining the finality of Wilson's conviction."); *Buniff v. Cain*, 349 Fed. Appx. 3 (5th Cir. 2009) ("The district court found that Buniff's timely motion for reconsideration in the Louisiana Supreme Court did not alter this conclusion. However, after the district court ruled in this case, we held that a timely filed motion for reconsideration should be considered in determining when an applicant's conviction became final."); *Walker v. Vannoy*, No. 15-6809, 2016 U.S. Dist. LEXIS 58795 (E.D. La. Mar. 21, 2016) (same).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

Article 782(A) of the Louisiana Code of Criminal Procedure provides, in pertinent part: "Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict." La. C.Cr.P. art. 782(A).

STATEMENT OF THE CASE

Petitioner[3] was charged by grand jury indictment with second-degree murder and attempted second-degree murder, a violation of La. Rev. Stat. 14:30.1 and 14:27 & 30.1, respectively. He was found guilty as charged by a non-unanimous jury verdict.[4] Petitioner was sentenced to life imprisonment without parole, probation or suspension of sentence for the second-degree murder and to 55 years imprisonment for the attempted second-degree murder. The trial judge ordered both sentences to be served concurrently.

On direct appeal to the First Circuit Court of Appeal, petitioner's court-appointed counsel argued that the convictions were based on insufficient evidence – in a brief that was described as only "three pages of law and argument." Petitioner *pro se* argued, among other things, that his non-unanimous jury verdict convictions should be set aside and his case remanded for a new trial. In his *pro se* motion for remand for a new trial, Petitioner states, "Petitioner Jermaine Ruffin was convicted by a 10-2 non-unanimous jury verdict in the Parish of East Baton Rouge."

Although Petitioner's challenges to his unconstitutional jury verdicts were received before ruling, the First Circuit refused to entertain the claim stating, "On January 25, 2019, the defendant filed a pro se 'motion to remand for a new trial' in this matter. This motion is actually an untimely supplemental pro se brief. This court

[3] The First Circuit Court of Appeal spells Petitioner's last name as "Ruffen". Petitioner spells his name "Ruffin". Throughout this petition, Petitioner uses "Ruffin" as petitioner's last name.

[4] See *State v. Jermaine Ruffin* at Pet. App. 12a, footnote 4. (defendant challenged the constitutionality of his non-unanimous jury verdicts.)

has previously allowed the defendant to file a late supplemental brief. We dismiss the untimely motion to remand." *Pet. App. at 12a footnote 4.* [5]

The Petitioner, unrepresented by counsel, filed a *pro se* application for review with the Louisiana Supreme Court, which denied review on September 6, 2019. *Appendix "B", Pet. App. 14a.* Petitioner then filed a *pro se* application for rehearing, which was construed by the court as an "Application for Reconsideration." The Louisiana Supreme Court denied reconsideration on January 22, 2020, with the Chief Justice concurring in the decision to deny reconsideration and assigned reasons. The Chief Justice states,

> The defendant was apparently convicted by a jury verdict of 10-2. The defendant raised a *pro se* objection to the nonunanimous jury verdict while his case was on direct review in the First Circuit Court of Appeal. 1 Because the Court of Appeal considered the defendant's objection to be an untimely supplemental brief, it did not consider the issue. The defendant ***tried again*** to raise the issue with this Court. As I explained in my dissent in *State* v. *Hodge*, 19-KA-0568 and 19-KA-0569 (La. 11/19/19), I believe the evidence is now clear that Louisiana's non-unanimous jury scheme that originated with Louisiana's 1898 Constitutional Convention, has racist origins and continues to have a racially disparate effect today. Therefore I believe that nonunanimous jury verdicts violate the Equal Protection clause." (Emphasis added).

Appendix "C", Pet. App. 15a.

As Chief Justice Johnson observed in her statement concerning the denial of rehearing: "I write separately to note the diligence with which this defendant has pursued this issue, despite his counsel. … Defendant, sentenced to life in prison without the possibility of parole, tried to raise the issue pro se because his appointed

[5] The Uniform Rules of Appellate Procedure provide sanctions for untimely briefs: "If the brief on behalf of any party is not filed by the date that the brief is due, the party's right to oral argument shall be forfeited…" U.R. App. 2-12.12.

counsel from the Louisiana Appellate Project did not do so in the three pages of law and argument he submitted on behalf of his client…" Pet. App. at 15a & 16a n.1.

REASONS FOR GRANTING THE WRIT

Mr. Ruffin was convicted for second-degree murder and attempted second-degree murder by a non-unanimous jury verdict. He was sentenced to life and 50 years without the benefit of parole, probation or suspension of sentence, respectively. On March 18, 2019, the Court granted a petition for a writ of certiorari in *Evangelisto Ramos v. Louisiana*, 139 S.Ct. 1318 (2019) (No. 18-5924). For the reason stated in that petition, as well as reasons stated in similar petitions filed over the last 45 years, the plurality opinion in *Apodaca v. Oregon,* 406 U.S. 404 (1972) deserves reexamination and disavowal. Given the racial origins of the non-unanimous jury provision, full incorporation by the Fourteenth Amendment of the Sixth Amendments' guarantee of a unanimous jury is required.

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

I. This Court Should Grant, Vacate And Remand The Case So That The Louisiana Courts Can Consider In The First Instance Whether A Non-Unanimous Verdict Is Error Patent Under Louisiana Law.

At the time the Louisiana Court of Appeal and the Louisiana Supreme Court reviewed the conviction, this Court had not addressed the constitutionality of Louisiana's scheme permitting non-unanimous verdicts. This Court should hold the case for *Ramos v. Louisiana*, and then remand to the Louisiana courts to consider in the first instance whether the "constitutionality" of the statute providing for non-unanimous verdicts was subject to error patent review.

This would be consistent with the practice done when the Court determined that non-unanimous six person juries were unconstitutional. When the validity of Louisiana's non-unanimous six person juries was called into question, the Louisiana Supreme Court observed:

> Although the matter is not free from doubt, we have held without discussion that under such circumstances we may, from the minute entry, discover by mere inspection the basis for a defendant's contention that a non-unanimous jury verdict represents constitutional error patent on the face of the proceedings. *State v. Bradford*, 298 So.2d 781 (La.1974); *State v. Biagas*, 260 La. 69, 255 So.2d 77 (La.1971).
>
> We therefore consider on its merits the contention of the unconstitutionality of a non-unanimous verdict by a six-person jury.

State v. Wrestle Inc., 360 So. 2d 831 (La. 1978). The Louisiana Supreme Court rejected the merits of Wrestle's contention and endorsed the view of Professor Lee Hargrave, the Coordinator of Research for the Constitutional Convention of 1974: ""If 75 percent concurrence (9/12) was enough for a verdict as determined in *Johnson v. Louisiana*, 406 U.S. 356, (92 S. Ct. 1620, 32 L. Ed. 2d 152) (1972), then requiring 83

percent concurrence (5/6) ought to be within the permissible limits of Johnson." *Id.* at 838. Ultimately this Court reviewed the merits of the Louisiana Supreme Court's error-analysis finding: "[W]e believe that conviction by a nonunanimous six-member jury in a state criminal trial for a nonpetty offense deprives an accused of his constitutional right to trial by jury." *Burch v. Louisiana*, 441 U.S. 130, 134, 99 S. Ct. 1623, 1625 (1979). The Court upheld the conviction of petitioner *Wrestle Inc*, because it was unanimous, and reversed the conviction of the Petitioner *Burch*, whose conviction was not.

The Louisiana courts continue to recognize that the validity of a verdict – based upon the number of jurors who voted for it – is reviewable as error patent. See *State v. Arceneaux*, 19-60 (La. App. 3 Cir 10/09/19) ("The defendant is correct in that if the Supreme Court finds a non-unanimous jury verdict to be unconstitutional for the types of verdicts returned in the present case and if the Supreme Court applies such a holding retroactively to include the jury verdicts returned in the present case, the verdicts returned in the present case would be improper and would be considered an error patent."); *State v. Ardison*, 52739 (La. App. 2 Cir 06/26/19), 277 So. 3d 883, 897 ("Under Louisiana law, the requirement of a unanimous jury conviction specifically applies only to crimes committed after January 1, 2019. The instant crimes were committed in 2017, and thus, the amended unanimous jury requirement is inapplicable to Ardison's case. Ardison's assertion of an "error patent" is without merit."); *State v. Aucoin*, 500 So. 2d 921, 925 (La. Ct. App. 1987) ("In our earlier opinion, *State v. Aucoin*, 488 So.2d 1336 (La. App. 3rd Cir. 1986), pursuant to court

policy, the record was inspected and we found a patent error from the polling of the jury; the verdict represented a finding of guilty with only nine jurors concurring when ten is required. We reversed and remanded the case. The State filed an application for a rehearing alleging that the polling of the jury actually was a ten to two verdict but there was an error in transcribing the polling of the jury verdict and requested an opportunity to correct the transcript.").

II. This Court Should Grant, Vacate And Remand The Case So That The Louisiana Courts Can Consider In The First Instance Whether A Pro Se Filing Challenging The Non-Unanimous Verdict Is Sufficient To Present The Claim.

Mr. Ruffin raised pro se the effectiveness of his appellate counsel for failing to move for a complete record, and inter alia, challenge the non-unanimity of the jury's verdict. He attempted to raise pro se this issue by himself.

At the time the Louisiana Court of Appeal and the Louisiana Supreme addressed Mr. Ruffin's challenge to the non-unanimous verdict the lack of clarity in the record was not dispositive. As the Court of Appeals notes, Mr. Ruffin raised *pro se* the fact that:

> [H]is appellate counsel "obtained only the records transcribed by the court reporter from the courthouse to research and prepare the assignment of errors" and did not have access to the pre-trial motions, motion hearings transcripts, voir dire transcripts, and minute entry and hearing transcripts of the grand jury indictment…

Pet. App. 11a. The Court of Appeal found that the appellant had not established "prejudice" from the failure of appellate counsel to secure a complete record. The fact that counsel did not raise the non-unanimous verdict is the basis for the Louisiana

Supreme Court's decision to not grant writs, and will likely provide basis for Respondent's Brief in Opposition to this petition.

The fact that petitioner was *pro se* in the Court of Appeal means the Court should relieve him of such harsher pleading requirements proposed by the State. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) ("we hold ['*pro se* complaint'] to less stringent standards than formal pleadings drafted by lawyers. . . ."). It is clear from petitioner's pleadings that the State was put on notice that petitioner was complaining that his conviction by a non-unanimous jury verdict violated his federal constitutional rights, and seeking a full record on which to base his claims.

To the extent the record was incomplete, on direct appeal it is the responsibility of the state to secure a complete record. *State v. Landry*, 97-0499 (La.6/29/99), 751 So.2d 214 (reversing conviction and death sentence because deficiencies deprived the defendant of his constitutional right of appeal and judicial review); *State v. Pinion*, 06-2346 (La. 10/26/07), 968 So. 2d 131 (rejecting contention made by BIO in this case that it is the defendant's responsibility to insure an adequate recording of the proceedings).

In *Lewis v. Louisiana*, 18-7488, a case involving the same issue, the State of Louisiana through the office of the Attorney General agreed:

> This Court granted the petitioner's petition for a writ of certiorari in Ramos on March 18, 2019. Accordingly, the petition in this case should be held pending the Court's decision in Ramos and then disposed of as appropriate in light of that decision.

See *Lewis v. Louisiana*, 18-7488 (Brief in Opposition) at 5; see also *id.* At 6 ("Conclusion: The petition for a writ of certioraria should be held pending this Court's

decision in *Evangelisto Ramos v. Louisiana*, No. 18-5924 (April 3, 2019) and then disposed of accordingly").

At the time the Louisiana Court of Appeal and the Louisiana Supreme Court reviewed the conviction, this Court had not addressed the constitutionality of Louisiana's scheme permitting non-unanimous verdicts. This Court should hold the case for *Ramos v. Louisiana*, and then remand to the Louisiana courts to consider in the first instance whether the "constitutionality" of the statute providing for non-unanimous verdicts was subject to error patent review.

III. The Louisiana Courts Fail To Follow *Jackson v. Virginia* When Reviewing Sufficiency Of The Evidence Claims In Cases Involving Circumstantial Evidence Where The Jury Has Rejected The Defendant's Hypothesis Of Innocence.

In *Jackson v. Virginia*, 443 U.S. 307 (1979), this Court held that "the due process standard recognized in *Winship* constitutionally protects an accused against conviction except upon evidence that is sufficient fairly to support a conclusion that every element of the crime has been established beyond a reasonable doubt." 443 U.S. at 313–314. In so holding, this Court explicitly rejected the "no evidence" doctrine of *Thompson v. Louisville*, 362 U.S. 199 (1960), as the appropriate guide for courts to apply in assessing sufficiency of the evidence claims. This Court explained: "Any evidence that is relevant—that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence—could be deemed a 'mere modicum.' But it could not seriously be argued that such a 'modicum'

of evidence could by itself rationally support a conviction beyond a reasonable doubt." 443 U.S. at 320 (internal citations omitted).

This Court's ruling in *Jackson* draws no distinction between direct and circumstantial evidence. *See, e.g.*, *United States v. Alexander*, 331 F.3d 116, 127 (D.C. Cir. 2003) ("In [applying *Jackson*], we draw no distinction between direct and circumstantial evidence") (internal quotations omitted). Whether the prosecution's case was built on circumstantial evidence, direct evidence, or some combination of the two, the reviewing court must ask whether that evidence was sufficient "to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." 443 U.S. at 316.

The Louisiana courts, however, *do* apply a different standard of review in cases involving circumstantial evidence where the defendant offered a hypothesis of innocence that the jury rejected. Rather than reviewing the record to determine whether there is evidence sufficient fairly to support a conclusion that every element of the crime has been established beyond a reasonable doubt, as *Jackson* demands, the Louisiana courts review the record for evidence of innocence. As the Louisiana court of appeal explained, in this case, "When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt." Pet. App. 9a. If the reviewing court finds no

alternative hypothesis of innocence, as in this case, the conviction stands, even if there is no positive evidence of the defendant's guilt.[6]

By searching the record for evidence to support a hypothesis of innocence, rather than evidence sufficient to establish each element of the offense, the Louisiana courts effectively revert to the "no evidence" standard that *Jackson* explicitly rejected: they allow convictions to stand based merely on the fact that the jury disbelieved the defendant. While a jury's disbelief of a defendant's theory of the case may itself be relevant evidence, it is not sufficient evidence to warrant the onus of a criminal conviction. "When the testimony of a witness is not believed, the trier of fact may simply disregard it. Normally, the discredited is not a sufficient basis for drawing a contrary conclusion." *Base Corp. v. Consumers Union*, 466 U.S. 485, 513 (1984).

Indeed, several other jurisdictions reject Louisiana's approach and hold that the jury's mere disbelief of the defendant, even combined with a lack of exculpatory evidence, is no substitute for evidence that is sufficient fairly to support a conclusion that every element of the crime has been established beyond a reasonable doubt. *See,*

[6] This case is not unusual. The Louisiana courts have repeatedly upheld convictions based on a lack of evidence of innocence, rather than the presence of evidence of guilt. *See, e.g.*, *State v. Calloway*, 1 So. 3d 417 (La. 2009) (reversing court of appeal's finding of insufficient evidence to support a conviction of receiving stolen goods, holding that because the jury had rejected defendant's testimony that she did not know the goods were stolen, and because there was no alternative hypothesis of innocence, the defendant's conviction must be reinstated); *State v. Walker*, 221 So. 3d 951, 964 (La. Ct. App. 2017) (upholding defendant's second degree murder conviction because the jury had rejected the defendant's hypothesis of innocence and "no alternative hypothesis was sufficiently reasonable"); *State v. Rangel*, 16 – 927, *19 (La. App. 3 Cir. 04/05/17) (upholding defendant's conviction of felony theft because the jury had rejected the defendant's hypothesis of innocence and "there is no reasonable [alternative] hypothesis of the defendant's innocence"). *Cf.* Brief for Promise of Justice Initiative et al. as Amici Curiae Supporting Petitioner, *Wallace v. Vannoy*, No. 19-7284 (Petition for Certiorari filed 01/09/2020), at *14–18 (describing the inadequacy of sufficiency of the evidence review in Louisiana state courts in non-capital cases).

e.g., *United States v. Aulicino*, 44 F.3d 1102, 1115–16 (2d Cir. 1995) ("a verdict of guilt cannot properly be based solely on the defendant's denial of the charges and the jury's disbelief of his testimony"); *State v. Alfonso*, 490 A.2d 75, 81 (Conn. 1985) (reversing conviction of possession of marijuana for lack of sufficient evidence, despite the fact that the jury rejected the defendant's testimony that the marijuana was not his, holding that "[e]ven if the jury did not credit the defendant's denial, it was not entitled to conclude that the marijuana was his without *positive evidence* supporting such a conclusion) (emphasis added); *State v. Wynn*, 24 P.3d 816, 819 (N.M. Ct. App. 2001) (reversing conviction of aggravated battery for lack of sufficient evidence, despite the fact that the jury rejected the defendant's testimony that he had no intent to harm the victim, holding that "the trial court's rejection of Defendant's testimony denying the intent to harm the victim did not justify a finding beyond a reasonable doubt that the opposite of Defendant's testimony was true: *i.e.*, that Defendant intended to harm the victim"); *State v. West*, 844 S.W.2d 144, 148 (Tenn. 1992) (reversing defendant's first-degree murder conviction for lack of sufficient evidence, despite the fact that the jury rejected the defendant's testimony, holding that "[a]lthough the jury is permitted to disbelieve the defendant's testimony, it may not construct a theory based on no evidence at all"). *See also State v. Ramsey*, C.C.A. No. 03-C-01-9203-CR-00070, 1993 Tenn. Crim. App. LEXIS 320, *8 (Crim. App May 13, 1993) ("Under the holding in *West*, a jury is entitled to reject the defendant's testimony; however, disbelief of the defendant is not sufficient grounds upon which to base an inference of

premeditation—an essential element of the crime which the state must prove beyond a reasonable doubt").

Because the Louisiana Courts have essentially adopted a no-evidence test to address sufficiency claims in cases where the jury has rejected the defendant's hypothesis of innocence, and because Louisiana's approach is at odds with the law in numerous other jurisdictions, this Court should grant certiorari to clarify the application of the *Jackson* standard to cases involving circumstantial evidence where the defendant offered a hypothesis of innocence that the jury rejected. Alternatively, this Court should remand this case to the Louisiana courts to determine the sufficiency of the evidence by searching for positive evidence of the Mr. Ruffin's guilt, as *Jackson* requires.

CONCLUSION

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

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the ** day of April 2020, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Hillar C. Moore, III, *District Attorney* 19th Judicial District Attorney's Office 222 St. Louis Street, Suite 550 Baton Rouge, Louisiana 70802 Office Phone: (222) 389-3400	Elizabeth B. Murrill Louisiana Department of Justice P.O. Box 94005 Baton Rouge, Louisiana 70804 Phone: (225) 326-6766 Email: MurrillE@ag.louisiana.gov

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