

No. \_\_\_\_\_

IN THE  
*Supreme Court of the United States*

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CHARLES P. MAYEUX,  
PETITIONER,  
V.  
STATE OF LOUISIANA,  
RESPONDENT.

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

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PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether a conviction based upon a non-unanimous verdict violates 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 Charles P. Mayeux Jr., 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, Charles Mayeux, respectfully petitions for a writ of certiorari to the Louisiana Supreme Court in *State v. Mayeux*, 2020 Lexis 201 (La. Jan. 29, 2020), affirming the decision of the Third Circuit Court of Appeal in *State v. Mayex*, 265 So. 3d 1096, 2019 La. App. Lexis 168 (La. App. 3 Cir. 02/06/19).

## OPINIONS BELOW

The per curiam opinion of the Louisiana Supreme Court is reported at *State v. Mayeux*, 2019-00369 (La. 01/29/20), 2020 Lexis 201, is attached as Appendix “A”, pet app. 1a-7a. Chief Justice Johnson’s concurrence noting the non-unanimous verdict is at 6a. Justice Genovese’ dissent addressing the insufficiency of the evidence is at 6a-7a.

The Supreme Court’s writ grant in *State v. Mayeux*, 2019-00369 (La. 09/06/19), 2019 La. LEXIS 2014 is at Appendix “B”, at pet. app. 8a. The underlying opinion of the Third Circuit Court of Appeal in *State v. Mayeux*, 265 So. 3d 1096, 2019 La. App. LEXIS 168 (La.App. 3 Cir., Feb. 6, 2019), is attached as Appendix “C”, pet app. 9a-36a.

## JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana Supreme Court was issued January 29, 2020. See Appendix A, pet. app. 7a. This Court’s jurisdiction is pursuant to 28 U.S.C. § 1257(a).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part: “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...”.

U.S. Const. Amend V.

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 I, Section 17 of the Louisiana Constitution of 1974 provided in relevant and pertinent part: “A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.” La. Const. Art. I, Sec. 17.<sup>1</sup>

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<sup>1</sup> La. Const. Art. 1 § 17 was amended in 2018 to provide:

Article 782(A) of the Louisiana Code of Criminal Procedure provided – at the time of Petitioner’s trial, 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).

Article 920 of the Louisiana Code of Criminal Procedure provides:

The following matters and no others shall be considered on appeal:

- (1) An error designated in the assignment of errors; and
- (2) An error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.

La. C. Cr. P. Art. 920.

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A case for an offense committed prior to January 1, 2019, in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case for an offense committed on or after January 1, 2019, in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, all of whom must concur to render a verdict.

## STATEMENT OF THE CASE

Charles Mayeux, Petitioner, was the Chief of Police and the Assistant Fire Chief of Evergreen, Louisiana. Pet. App. 4aa. On March 21, 2015, he called 911 to report a fire at his residence. Pet. App. 4a. His wife, Shelly Mayeux, died in the fire. Pet. App. 3a. On July 16, 2015, he was indicted on one count of second degree murder.

Evidence at trial was circumstantial. “We note that the record does not contain any direct evidence that Shelly was murdered, that Defendant killed her, or that Defendant started the fire at issue. However, various circumstantial evidence apparently led experts to conclude Shelly had died before the fire and the fire was intentionally set to cover up a homicide.” Pet. app. 28a, *State v. Mayeux*, 15-97 (La. App. 3 Cir 02/06/19), 265 So. 3d 1096, 1118; see also Pet. app. 7a, *State v. Mayeux*, 2020 La. Lexis 201, \*13 (“The record in this case does not contain any direct evidence that the victim was murdered, or that the defendant killed her, or that the defendant started the fire at issue.”). Following trial, petitioner was found guilty by a 10-2 jury verdict of second degree murder. The Third Circuit Court of Appeal found no errors patent, and rejected petitioner’s challenge to the sufficiency of the evidence. *Id.*

The Louisiana Supreme Court granted writs, and ultimately issued an opinion affirming the conviction. The Court acknowledged “that the State's case against defendant here is entirely circumstantial, and the most significant piece of the puzzle—the victim's cause of death—remains unknown.” *State v. Mayeux*, 2019-00369 (La. 01/29/20), pet app. at 4a. The Court found damning that “defendant was an assistant fire chief who had firefighting equipment available to him both in his

carport and at the fire station which was short distance away... Nonetheless he made no effort to aid the victim or fight the fire and simply called 911 and waited.” The Court also emphasized circumstantial evidence (including arguably inadmissible evidence) of a history of domestic violence, and discrepancies between statements about his activities on the day of the offense. Ultimately, however, the Louisiana Supreme Court found that the state met the *Jackson* due process standard because the jury “rejected the exculpatory hypothesis of innocence offered by defendant’s own testimony and there is no alternative hypothesis that is sufficiently reasonable so as to render the jury’s determination irrational.” The defendant, the Court observed, assumed the risk of negating a sufficiency claim, by testifying on his own behalf. Pet. App. 4a-5a (“In exercising that right [to testify], the defendant ran the risk that the jury would not believe him....Thus, when a jury reasonably and rationally rejects the exculpatory hypothesis of innocence offered by a defendant’s own testimony, an appellate court’s task in reviewing the sufficiency of the evidence under the Due Process Clause is at an end...”).

Chief Justice Johnson concurred observing that the conviction was based upon a 10-2 vote permitted by “Louisiana's 120 year history of permitting non-unanimous jury verdicts” where “jury deliberations tend to be less robust and shorter when non-unanimous verdict rules are in place.” Pet. app. 6a. Chief Justice Johnson observed “I believe this law, rooted in racism, has undermined confidence in our criminal legal system. However in this case, the record reflects that Mr. Mayeux's counsel neither

objected to this split jury verdict nor assigned it as error on appeal. Because the issue is not before the Court, I concur in the result reached today.” Pet. App. at 6a.

Justice Genovese dissented from the affirmance of the conviction observing: “There is no direct evidence linking the defendant to a homicide or, arguably, even proof of a homicide at all.” Pet. App. at 6a. While the Court of Appeal had relied upon the testimony of the “forensic experts” to establish the sufficiency of the evidence, Justice Genovese explained:

The expert medical testimony considered by the jury at trial failed to identify a precise mechanism of death and instead offered only speculation about various ways the victim could have died. The expert arson investigator could not state with any particularity what caused the fire to begin, and he was unable to find any evidence of an accelerant that might have been used to start the fire. His conclusion that the fire was incendiary rested entirely upon a circularity that the victim died as the result of a homicide.

Pet. App. 7a, *State v. Mayeux*, 2019-00369 ( La. 01/29/20) n.1.

## SUMMARY OF THE ARGUMENT

Petitioner was convicted by a non-unanimous verdict. The law is clear: under the Sixth Amendment, the government can only sustain a conviction and life sentence based upon a unanimous verdict. The vast majority of the Bill of Rights have been fully incorporated and made applicable to the states through the Fourteenth Amendment. This Court heard oral argument in *Ramos v. Louisiana* on October 7, 2019.

The State of Louisiana has disavowed Justice Powell’s theory of partial incorporation which formed the bedrock for the *Apodaca v. Oregon* opinion. See Brief

of Respondent, *Ramos v. Louisiana*, 18-5924 (“neither party is asking the Court to accord Justice Powell’s solo opinion in *Apodaca* precedential force.”); Oral Argument, *Ramos v. Louisiana*, 19-5924, at 34 (Ms. Murrill: Justice Ginsburg, we don’t think that Justice Powell’s decision was entirely clear with regard to the rule as it would apply historically); see also *id.* at 39, lines 6-18.

The non-unanimous verdict in this case is subject to error patent review, which should be conducted in the first instance by the Louisiana courts.

Ultimately, this case also presents a striking example of a pervasive problem in the Louisiana courts handling of sufficiency claims. The Louisiana Courts have essentially adopted a no-evidence test to address sufficiency claims, and held here that the *Jackson v. Virginia* analysis is terminated where a defendant testifies, and the jury’s verdict appears to be a rejection of that testimony. However, this converts the due process analysis required under *Jackson v. Virginia* into a rubber stamp, and the defendant’s exercise of his right to testify in his own behalf into evidence against him.

## REASONS FOR GRANTING THE WRIT

### **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.”).

This Court should hold the case pending the decision in *Ramos v. Louisiana*, and if the petitioner in that case prevails on the merits, petitioner here respectfully asks this Court to remand to the state courts to grant him a new trial or at least address in the first instance the procedural posture of the case.

**II. 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.” *Id.* 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).

In reviewing sufficiency of the evidence claims in cases involving circumstantial evidence where the defendant testified at trial and the jury rejected his testimony, the Louisiana courts fail to follow *Jackson*. They do not review 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. Instead, as in this case, they review the record for evidence of innocence: “When a jury reasonably and rationally rejects the exculpatory hypothesis of innocence offered by a defendant’s own testimony, an appellate court’s task in reviewing the sufficiency of the evidence under the Due Process Clause is at an end unless an alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt.” Pet. App. 5a. *State v. Mayeux*, 2019-00369 ( La. 01/29/20). If the reviewing court finds no alternative hypothesis of innocence, the conviction stands, even if there is no positive evidence of the defendant’s guilt.

This case provides a stark example of the pitfalls of Louisiana’s approach. As Justice Genovese recognized,

This is a strictly circumstantial evidence murder case. There is no direct evidence linking the defendant to a homicide or, arguable, even proof of a homicide at all. . . . [N]o evidence at all was presented as to defendant’s mens rea, and thus there was no way for the jury to rationally determine whether this was a murder, a manslaughter, or a negligent homicide. . . . [T]here is no proof by the state that the defendant set the fire and no proof of the cause of the victim’s death—only that the victim was dead before the fire started.

Pet. App. 6a, *State v. Mayeux*, 2019-00369 ( La. 01/29/20) (Genovese, J., dissenting).

Yet the lack of positive evidence of Mr. Mayeux’s guilt made no difference to the Louisiana Supreme Court’s sufficiency analysis. Rather, because “the jury rejected

the exculpatory hypothesis of innocence offered by defendant’s own testimony,” Pet. App. 5a, the Louisiana Supreme Court searched the record for evidence that might support an alternative hypothesis of innocence—evidence that Mr. Mayeux bore no burden of presenting at trial. Finding none, it upheld Mr. Mayeux’s conviction. Pet. App. 6a.

This case is not unusual.<sup>2</sup> 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. App. 2<sup>nd</sup> Cir. 5/17/17) (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*, 2017 La. App. Unpub. LEXIS 89, (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

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<sup>2</sup> It is, however, an excellent vehicle for this Court to address Louisiana’s treatment of sufficiency of the evidence claims. This case is on direct appeal, and as the separate opinions of the Louisiana Justices make clear, the issue presented is one of law, not fact.

(describing the inadequacy of sufficiency of the evidence review in Louisiana state courts in non-capital cases).

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 testimony 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, 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”).

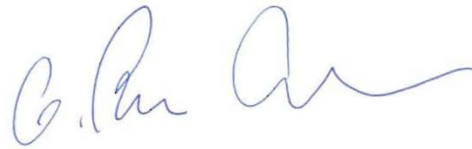
Because the Louisiana Courts have essentially adopted a “no evidence” test to address sufficiency claims in cases where the jury has rejected the defendant’s testimony, thereby turning the defendant’s exercise of his right to testify in his own behalf into evidence against him, and because Louisiana’s 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 in which the jury has rejected the

defendant's testimony. 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. Mayeux's guilt, as *Jackson* requires.

### CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



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