

No. 20-5363

In the Supreme Court of the United States

◆◆◆

REGINALD JONES,

Petitioner

vs.

STATE OF LOUISIANA,

Respondent

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

**BRIEF IN RESPONSE
BY THE
STATE OF LOUISIANA**

JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL*
Solicitor General,
*Counsel of Record
Louisiana Department of Justice
P.O. Box 94005
Baton Rouge, LA 70804-9005
(225) 326-6766
murrille@ag.louisiana.gov

LEON CANNIZZARO, JR.
District Attorney,
Parish of Orleans
DONNA ANDRIEU,
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
(504) 822-2414
donna.andrieu@orleansda.com

QUESTION PRESENTED

Whether this Court's decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), requires reversal of a non-unanimous jury conviction in a case pending on direct review?

TABLE OF CONTENTS

QUESTION PRESENTED	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE.....	1
CONCESSION OF ERROR.....	2

TABLE OF AUTHORITIES

Cases

Griffith v. Kentucky,
479 U.S. 314 (1987) 1, 3

Ramos v. Louisiana,
140 S. Ct. 1390 (2020) ii, 1, 3, 4

Teague v. Lane,
489 U.S. 288, 311 (1989) 3

Statutes

La. R.S. 14:130.1 2

La. RS. 14:37.4(A) 2

La. RS. 14:95.1(A) 2

INTRODUCTION

A twelve-person jury convicted Petitioner Reginald Jones of aggravated assault with a firearm, possession of a firearm by a felon, and obstruction of justice. The conviction for obstruction of justice was by a unanimous jury but the other two convictions were each rendered by a 10-2 vote. His case remains on direct appeal. Pursuant to *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) and *Griffith v. Kentucky*, 479 U.S. 314 (1987), the State of Louisiana agrees he is entitled to a new trial.

STATEMENT OF THE CASE¹

The victim of these crimes, Louis Jones (hereinafter referred to as the Victim for clarity purposes), and Petitioner were neighbors. One morning in 2017, they got into an argument on the street in front of their homes during which Petitioner acted like he was going to hit the Victim. The argument ended, though, and the Victim returned to his home. Upon returning home, the Victim observed Petitioner on his surveillance video standing in his driveway. He exited his house and noticed Jones had "something in his hand" resembling a "pistol." Petitioner then said he was "going to blow [Mr. Jones'] head off." The Victim was terrified but heard someone call Defendant back and say "leave the old man alone." The Victim went back into his home. When his wife arrived home, he told her about the incident, and she called the police. The Victim, his wife, and the police officer testified at trial and the officer's chest camera and the surveillance video were offered into evidence. No gun was ever

¹ Taken from the decision by the Fourth Circuit Court of Appeals. Petr. Appx. A.

found but the Defendant told police that the “gun” he possessed was a toy gun which he could not produce because he had thrown it into the overgrown, wooded canal down the street.

The State ultimately charged Petitioner with aggravated assault with a firearm,² possession of a firearm by a convicted felon,³ and obstruction of justice.⁴ After a trial in 2018, the jury found defendant guilty as charged of aggravated assault and possession of a firearm by 10-2 verdicts. He was found guilty of obstruction of justice by a unanimous verdict.⁵

On August 2, 2018, following a multiple bill hearing, the trial court adjudged the defendant a quadruple offender⁶ and sentenced him to twenty years without benefit of parole, probation, or suspension of sentence on each count, with the sentences to run concurrently.

In October 2018, Petitioner appealed to the Louisiana Fourth Circuit Court of Appeals, who affirmed his convictions and sentences. See Petr. Appx. A. He then filed

² La. RS. 14:37.4(A).

³ La. RS. 14:95.1(A). Petitioner had four previous felony convictions.

⁴ La. R.S. 14:130.1

⁵ Mr. Jones’s application for rehearing before the Louisiana Supreme Court included correspondence from the trial judge to Mr. Jones’s counsel confirming that two of the verdicts were non-unanimous: “I am reliably informed by the court-reporter who transcribed the proceedings... that the verdicts returned in Mr. Reginald Jones’ trial were as follows: Count 1, aggravated assault with a firearm, 10-2 verdict for Guilty a charged [sic]; Count 2, possession of firearm by convicted felon, 10-2 verdict for Guilty as charged, Count 3, obstruction of justice, unanimous verdict of Guilty as charged.”

⁶ Petitioner has four separate convictions for cocaine possession and one conviction for negligent homicide.

an application for supervisory writ with the Louisiana Supreme Court which unanimously denied his application. See Petr. Appx. C.

Between the denial of his writ application by the Louisiana Supreme Court and his filing of this petition, the Court held that the Sixth Amendment requires jury verdicts in felony cases to be unanimous and the Court incorporated that guarantee against the States. See *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). Petitioner returned to the Louisiana Supreme Court filing a Motion for Reconsideration with the Court which refused to consider the motion. Justice Weimer explained, “[In Petitioner’s writ application,] no mention (much less complaint) was made as regards the non-unanimous jury verdict on two of defendant’s three convictions. That issue was raised for the first time in an application for rehearing filed by defendant on June 18, 2020. This court’s ability to address the *Ramos* issue, raised for the first time on rehearing, is foreclosed by both the rules of this court and of the Code of Criminal Procedure. ... Pursuant to these rules, this matter is now final, and not properly reviewable by application for rehearing.” Resp. Appx. A. He further noted that “finality does not leave the defendant without an avenue for potential review. [Petitioner] still has available post-conviction proceedings.” *Id.* at n. 1.

CONCESSION OF ERROR

In *Griffith v. Kentucky*, this Court explained that “failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication.” 479 U.S. 314, 322 (1987); see also *Teague v.*

Lane, 489 U.S. 288, 311 (1989) (plurality opinion). Two of Jones' three convictions were by a non-unanimous 10-2 jury verdict and those convictions are currently pending on direct review. In light of this Court's holding in *Ramos*, the State concedes that the Court should grant certiorari, vacate the lower court judgment, and remand for further proceedings.

Respectfully submitted,

/s/ Elizabeth Baker Murrill

JEFF LANDRY

Attorney General

ELIZABETH BAKER MURRILL*

Solicitor General,

**Counsel of Record*

Louisiana Department of Justice

P.O. Box 94005

Baton Rouge, LA 70804-9005

(225) 326-6766

Murrille@ag.louisiana.gov

LEON CANNIZZARO, JR.

District Attorney Parish of Orleans

DONNA ANDRIEU

619 South White Street

New Orleans, LA 70119

(504) 822-2414

donna.andrieu@orleansda.com