(Official Translation)

PAGE: 01

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO APPELLANT	CASE NUMBER ..... AC-2021-0086 ORIGINAL ..... NSCR201600145 ON APPEAL KLCE202100016
VS.	
CENTENO, NELSON DANIEL APPELLEE	CIVIL APPEAL
	CIVIL ACTION OR CRIMINAL OFFENSE

NOTICE

I CERTIFY THAT, REGARDING THE SECOND MOTION TO RECONSIDER, THE COURT ISSUED THE RESOLUTION ATTACHED HERETO.

ATTY. SOLER FERNÁNDEZ, JOSÉ DAVID
jdsoler@salpr.org

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ATTY. PR SUPREME COURT CLERK
notificacionesTSPR@gmail.com

IN SAN JUAN, PUERTO RICO, THIS 13TH DAY OF DECEMBER 2021.

[SEAL]

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ MILKA Y. ORTEGA CORTIJO
ASSISTANT CLERK

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	**No.** AC-2021-0086	Certiorari

RESOLUTION

San Juan, Puerto Rico, December 10, 2021.

Examined the Second Motion to Reconsider filed by respondent, denied. Movant is advised to abide by the decision of this Court.

It was so agreed by the Court and certified by the Deputy Clerk of the Supreme Court. Justices Estrella Martinez and Colon Perez would reconsider. Chief Justice Oronoz Rodriguez takes no part in this decision.

(*signature*)
Bettina Zeno González
Deputy Clerk of the Supreme Court

(Seal of the Supreme Court of Puerto Rico)
(Certificate of authentication of the Court dated December 13, 2021)

[SEAL]

(Official Translation)

PAGE: 02

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO APPELLANT VS. CENTENO, NELSON DANIEL APPELLEE	CASE NUMBER ..... AC-2021-0086 ORIGINAL ..... NSCR201600145 ON APPEAL ..... KLCE202100016 CIVIL APPEAL CIVIL ACTION OR CRIMINAL OFFENSE

NOTICE

I CERTIFY THAT, REGARDING THE MOTION TO RECONSIDER, THE COURT ISSUED THE RESOLUTION ATTACHED HERETO.

ATTY. SOLER FERNÁNDEZ, JOSÉ DAVID
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IN SAN JUAN, PUERTO RICO, THIS 2ND DAY OF NOVEMBER 2021.

[SEAL]

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ ROSALÍA PABÓN RIVERA
ASSISTANT CLERK

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	AC-2021-0086	

RESOLUTION

San Juan, Puerto Rico, November 1, 2021.

Examined the First Motion to Reconsider, denied. To the Motion for Amendment Nunc Pro Tunc, the Clerk of the Court is instructed to take the proper actions.

It was so agreed by the Court and certified by the Deputy Clerk of the Supreme Court. Justices Estrella Martinez and Colon Perez would reconsider. Chief Justice Oronoz Rodriguez takes no part in this decision.

(*signature*)
Bettina Zeno González
Deputy Clerk of the Supreme Court

(Seal of the Supreme Court of Puerto Rico)
(Certificate of authentication of the Court dated December 13, 2021)

[SEAL]

(Official Translation)

PAGE: 01

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO APPELLANT VS. CENTENO, NELSON DANIEL APPELLEE	CASE NUMBER ..... AC-2021-0086 ORIGINAL ..... NSCR201600145 ON APPEAL ..... KLCE202100016 CIVIL APPEAL CIVIL ACTION OR CRIMINAL OFFENSE

NOTICE

I CERTIFY THAT, REGARDING THE PETITION FOR CERTIORARI, THE COURT ISSUED THE OPINION AND JUDGMENT ATTACHED HERETO.

ATTY. SOLER FERNÁNDEZ, JOSÉ DAVID
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ATTY. PR SUPREME COURT CLERK
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IN SAN JUAN, PUERTO RICO, THIS 9TH DAY OF SEPTEMBER 2021.

[SEAL] (Seal of the Supreme Court of Puerto Rico)

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ EVELYN RAMOS VELILLA
ASSISTANT CLERK

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	Certiorari 2021 PRSC 133 207 DPR ___

Case: AC-2021-86

Date: September 9, 2021

Court of Appeals:

Panel X

Office of the Solicitor General:

Fernando Figueroa Santiago, Esq.
Solicitor General

Javier O. Sepúlveda Rodríguez, Esq.
Deputy Solicitor General

Omar Andino Figueroa, Esq.
Deputy Solicitor General

Liza M. Delgado González, Esq.
Assistant Solicitor General

Legal Aid Clinic
Counsel for respondent:

Luis A. Gutierrez Marcano, Esq.

corrections inherent to the. process of compilation and official publication of the decisions of the Court.

[SEAL]

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico
Petitioner

v. AC-2021-0086

Nelson Daniel Centeno
Respondent

JUSTICE KOLTHOFF CARABALLO delivered the Opinion of the Court.

(Rule 50)

San Juan, Puerto Rico, September 9, 2021.

Following the decision in *Ramos v. Louisiana*[1] as adopted in *Pueblo v. Torres Rivera* [*II*],[2] we are tasked with elucidating the correctness of a jury instruction specifying that a *guilty* verdict must be unanimous, but that, in contrast, a verdict *to acquit* may be rendered by a majority vote of nine jurors.

For the reasons set forth below, we hold that it shall only be valid to instruct the jury that both a *guilty* verdict and a *not-guilty* verdict must be unanimous.

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[1] 5[9]0 US ___, 140 S.Ct. 1390 (2020).

[2] 204 DPR 288 [104 PR Offic. Trans. 22] (2020).

I

For events occurring on January 4, 2016, the People of Puerto Rico filed several criminal complaints against Nelson Daniel Centeno (respondent) in the Court of First Instance. Following the proper proceedings, respondent was charged with the commission of the following offenses: aggravated burglary, first degree murder, attempted murder, and infractions to the Weapons Act.

During the trial, the People filed a Motion Requesting Jury Instruction before the Court of First Instance. Specifically, and pursuant to the standard established in *Ramos* and adopted in *Torres Rivera* [*II*], the People requested that the jury receive instructions to the effect that they essentially "must all agree and vote unanimously whether to find the defendant guilty or to find him not guilty."[3]

For his part, respondent challenged the instruction suggested by the People.[4] To start, he contended that both our Constitution and the Rules of Criminal Procedure establish a majority vote and that the *Ramos* standard, which was adopted in *Torres Rivera* [*II*], limited the unanimity requirement to *guilty* verdicts. Specifically he maintained that in *Torres Rivera* [*II*] we circumscribed the controversy to determining whether, in light of *Ramos,* a conviction obtained by a majority vote in our jurisdiction infringes the procedural

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[3] Motion Requesting Jury Instructions, *Appendix*, at 79.

[4] Motion to Oppose the "Motion Requesting Jury Instruction," Appendix, at 81-86.

safeguards inherent to the fundamental right to a trial by jury as guaranteed by the Sixth Amendment to the Constitution of the United States. He therefore argued that, in accordance with *Ramos,* we ruled to institute the jury unanimity requirement to obtain a conviction.

Consequently, respondent proposed that the jury receive the following instructions:

> In order for a not-guilty verdict to be valid, at least nine (9) of you must agree to it. The verdict to find the defendant not guilty shall state if the majority vote is 9 to 3, 10 to 2, 11 to 1, or if it is unanimous. In contrast, for a guilty verdict to be valid, it must be unanimous, that is, you must all be in agreement. The outcome of the voting shall be recorded by the Foreperson in the form provided by the Court.[5]

Having evaluated the parties' arguments, the Court of First Instance issued a Resolution through which it denied the Motion Requesting Jury Instruction filed by the People. In what is relevant hereto, the decision provided as follows:

> In requiring the jury to find a defendant not guilty unanimously, we believe we would be placing defendants in a position where they would have to prove their innocence. In that sense, the defense would have the burden of proof, insofar as they would have to prove to a jury that the defendant is not guilty. However, who by legal provision has the burden of proof is the People of Puerto Rico, as this party must

[5] Id. at 84.

> prove the defendant's guilty *beyond a reasonable doubt.* The People are responsible for presenting evidence that produces certainty or the moral conviction in an unprejudiced mind.
>
> Both the law and the caselaw establish that the defendant has no obligation whatsoever to bring any evidence on their behalf and that the burden of proof does not shift at any stage of the proceedings since the defendant rests on the presumption of innocence.
>
> As it is the People who bear the burden of proof, they are called upon to demonstrate the defendant's guilt to the jury *beyond a reasonable doubt,* which is satisfied by obtaining a unanimous verdict, as it would have convinced, appealed to the intelligence, and satisfied the reason of the 12 members of the jury. In this way, the right to a fair and impartial trial is provided, where there can be no reasonable doubt that the offense was committed.[6]

Immediately, the trial court emphasized that the standard prescribed in *Ramos* referred only to *guilty* verdicts by stating the following:

> Now then, the verdict alluded to is the guilty verdict and not the verdict to acquit. It is well-known that all persons accused of a crime have a constitutional right to be presumed innocent until proven guilty.

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[6] Judgment of the Court of First Instance, Appendix, at 92-94.

> Unanimity establishes an essential procedural protection for the defendant facing a criminal proceeding in which they may be deprived of their freedom. As it is the right of the defendant, it is the State who must convince the 12 jurors *beyond a reasonable doubt*.[7]

Thus, the Court of First Instance concluded that to require unanimity for an *acquittal* would go against the precepts of law. Therefore, it ruled to instruct the jury per respondent's request. That is, it determined that, in order to reach a verdict of *not guilty,* at least nine members of the jury had to concur; hence, the verdict must state whether the majority vote is 9 to 3, 10 to 2, 11 to 1, or whether it is unanimous.[8]

Dissatisfied, the Solicitor General appealed before the Court of Appeals through a Petition for Certiorari whereby he contended that the lower court erred in adopting the jury instruction proposed by respondent stating that the *guilty* verdict must be unanimous, but for a *not-guilty* verdict the concurrence of at least nine jurors sufficed.[9] To summarize, the Solicitor General argued that, under the Constitution of the United States, a verdict–whether to convict or to acquit–that fails to meet the unanimity requirement is constitutionally invalid. Thus, the Solicitor General concluded that this was the applicable standard at the federal level, "and it is the prevailing standard in Puerto Rico with the activation of the institution of the jury in our

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[7] Id. at 93.

[8] Id.

[9] Petition for Certiorari, Appendix, at 42.

jurisdiction in accordance with the Sixth Amendment and the ruling in Ramos v. Louisiana, *supra*."[10]

For his part, respondent filed a Motion to Oppose.[11] Essentially he argued that, after *Ramos,* the requirement of a majority vote for acquittal arising from our Constitution and the relevant laws had not been altered or eliminated by any constitutional or legislative amendment or by any ruling of unconstitutionality from a competent court of law. In that regard, respondent posited that:

> It is the State that should have a second chance to prove a defendant's guilt if, during the first proceeding, it was unable to obtain a unanimous guilty verdict. However, a second proceeding should not be a second chance for a defendant to prove their innocence where, during the first trial, at least nine (9) jurors found the defendant to be innocent.[12]

After analyzing the arguments put forward by both parties, the intermediate appellate court affirmed the ruling of the Court of First Instance. According to the reasoning of the Court of Appeals, the decision of the Supreme Court of the United States in *Ramos,* through which the unanimity requirement was established as an essential feature of the fundamental right to a trial by jury, was limited exclusively to the unanimity of *guilty* verdicts. The court added that the

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[10] Id. at 62.

[11] Motion to Oppose, Appendix, at 97-117.

[12] Id. at 116.

restrictive application of the Sixth Amendment, with no legal support, was not in order. It also emphasized that in both *Ramos* and *Torres Rivera* [*II*], the courts only ruled on whether the Sixth Amendment required unanimity for a *guilty* verdict, and, in adopting such requirement, they held that jury unanimity operated as a material requirement to obtain a conviction. According to the interpretation of the Court of Appeals, unanimity was recognized as a natural corollary to the impartiality mandated under the Sixth Amendment.

The Court of Appeals added that the Solicitor General's proposal would render ineffectual the core provisions of our legal framework that establish that no less that nine of the twelve members of the jury must concur in order to return a verdict. In that context, it stated that we have recognized that, compared to the Constitution of the United States, our Constitution is of a broader scope, and therefore, to confer greater protections on defendants than what is afforded at the federal level does not contravene recent state and federal caselaw.

Finally, the intermediate appellate court concluded that were it to accept the position of the Solicitor General, the court would be modifying our system of criminal justice, insofar as it would impose on defendants the more onerous burden of having to prove their innocence and minimize the burden of proof that the State must satisfy in criminal cases. It explained that such construal of *Ramos* is in open conflict with the presumption of innocence afforded to all defendants in our jurisdiction. In that respect, the court

underscored that, in a criminal proceeding, what is adjudged is the guilt of a defendant and not their innocence; as a result, it would make no sense to have to prove something that is presumed until that presumption has been defeated beyond a reasonable doubt.

For these reasons, the Court of Appeals held that there was no margin to adopt the interpretation of the Solicitor General, since the legal source used to sustain his contention-Ramos-does not address the controversy at bar. That is, the standard established in *Ramos* requiring a unanimous verdict to find a defendant *guilty* cannot be extended to verdicts to acquit or to find the defendant *not guilty.*

Not satisfied, the Solicitor General filed an Appeal before this Court through which he argued the following:

> The Court of Appeals erred in concluding in this case that a guilty verdict must be unanimous, while for a verdict of not guilty, the concurrence of nine members of the jury suffices.[13]

Due to the importance and the public interest of the case before us, we proceed to dispose of the controversy without further proceeding pursuant to our Supreme Court Rule 50, 4 LPRA App. XXI-B. Let us now lay out the applicable legal framework.

II

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[13] Appeal, at 9.

A. Trial by Jury

All persons accused of a felony have the right to be judged by an impartial jury. This guarantee is a fundamental right enshrined in the Sixth Amendment to the Constitution of the United States and in the Constitution of Puerto Rico.

Specifically, the Sixth Amendment to the Constitution of the United States provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.[14]

For its part, and in what is relevant hereto, Article II, Section 11 of the Constitution of Puerto Rico prescribes the following:

> In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, **who may render their verdict by a majority vote** which in no case may be less than nine. . . .[15]

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[14] US Const. amend. VI, LPRA, tit. 1, 2016 ed. at 186.

[15] PR Const. art. II, § 11, LPRA, tit. 1. (Emphasis added.)

On several occasions, we have upheld the validity of this portion of that constitutional clause:[16] However, on this occasion, we will analyze it in light of the ruling in *Ramos,* but in the context of unanimous *not-guilty* verdicts. In other words, we will analyze the implicit effect of *Ramos* on the fragment of the constitutional provision at issue with respect to acquittals. Nevertheless, and in the interest of setting forth our reasoning in deciding this case, we must also look back to our constitutional history, farther back even than the Constitutional Convention.

As we know, in *Ramos,* the Supreme Court of the United States examined a *guilty* verdict, the proportion of which was as follows: 10 jurors found 'the evidence brought by the state of Louisiana against the defendant to be persuasive, while two jurors believed that the State had failed to prove that the defendant was guilty beyond a reasonable doubt, and they voted to acquit. Thus, the defendant was sentenced to life in prison without parole.[17] This decision contrasted with

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[16] Pueblo v. Casellas Toro, 197 DPR 1003, 1018-1019 [97 PR Offic. Trans. 52, ___] (2017), citing Pueblo v. Báez Cintrón, 102 DPR 30 [2 PR Offic. Trans. 42] (1974); Pueblo v. Santiago Padilla, 100 PRR 780, 782 (1972); Pueblo v. Batista Maldonado, 100 PRR 935 (1972); Pueblo v. Hernández Soto, 99 PRR 746, 756-757 (1971); Pueblo v. Aponte González, 83 PRR 491, 493 (1961); Jaca Hernández v. Delgado, 82 PRR 389, 393-396 (1961); Fournier v. González, 80 DPR 254 (1958).

[17] *Ramos*, 140 S.Ct., at 1393-1394. Note that the purpose of this proportion was "to ensure that African-American juror service would be meaningless." Similarly, the state of Oregon allowed for non-unanimous verdicts following efforts by the Ku

the law in 48 states of the Union, which prescribe that one vote to acquit from a member of the jury suffices to declare a mistrial.[18]

These events prompted the Supreme Court of the United States to have to definitively rule on whether a unanimous verdict was necessary to convict a defendant. After hearing the parties' arguments, the Supreme Court held that the Sixth Amendment–incorporated to the states through the Fourteenth Amendment–requires a unanimous vote by the members of a jury to render a *guilty* verdict.

Thus, despite the fact that the text of the Sixth Amendment does not mention that the verdict must be unanimous, the federal Supreme Court held that the concept of a "trial by an impartial jury" included the widespread and broadly-accepted requirement of unanimity.[19] Hence, a jury must reach a unanimous verdict in order to convict.[20]

Nevertheless, it is important to point out that, although the origin of the unanimous verdict requirement as an intrinsic part of the federal criminal prosecution is not entirely correct, the requirement

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Klux Klan to dilute any racial, ethnic, and religious influence on members of the jury. Id. at 1394.

[18] Id.

[19] Id. at 1396. ("If the term 'trial by an impartial jury' carried any meaning at all, it surely included a requirement as long and widely accepted as unanimity.")

[20] Id. ("A jury must reach a unanimous verdict in order to convict.")

itself is apparently rooted in the Middle Ages.[21] Specifically, in *Ramos* the Supreme Court of the United States explained that the unanimity requirement was adopted from 14th-century England as a vital right protected by common law,[22] even though this was not the case in other European countries. Evidence of this is the multitude of times that the Supreme Court has recognized that unanimity in verdicts is a fundamental requirement of a trial by jury at the federal level.

Now then, that the unanimity requirement of the Sixth Amendment applies equally to both state and federal trials is unquestionable.[23] Therefore, if the right to a trial by jury that emanates from the Sixth Amendment requires a unanimous verdict to secure a conviction in federal court, by virtue of the Fourteenth Amendment, state courts must require nothing less.[24]

Subsequently, and in line with the above, we heard *Torres Rivera* [*II*] where we decided a controversy similar to *Ramos* and evaluated whether–in light of that opinion–a conviction handed down by way of a non-unanimous verdict transgressed the procedural safeguards inherent to the fundamental right to a trial by

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[21] Apodaca v. Oregon, 406 US 404, 407 n.2 (1972).

[22] *Ramos*, 140 S.Ct., at 1395.

[23] Id. at 1397. ("There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trial equally.").

[24] Id. ("So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.")

jury guaranteed under the Sixth Amendment. In analyzing that controversy, we reasoned that:

> A reading of the opinion of the United States Supreme Court in *Ramos v. Louisiana* shows that unanimity constitutes an additional essential procedural protection that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.[25]

Now then, although the institution of the jury originated in common law, it is also true that in Puerto Rico the figure of the jury had been instituted under the first civil government in the early 20th century, beginning with the passing of the Act to Establish Trial by Jury in Porto Rico[26] and the Act Concerning Procedure in Jury Trials. Similarly, the right to a trial by jury was recognized in Section 185 of the Puerto Rico Code of Criminal Procedure, which required a

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[25] *Torres Rivera* [*II*], 204 DPR, at 306-307 [104 PR Offic. Trans. 22, at 10].

[26] *Act to Establish Trial by Jury* in *Porto Rico* of January 12, 1901, 34 LPRA § 462n (repealed 1963), and the Act Concerning Procedure in Jury Trials of January 31, 1901.

unanimous verdict.[27] To that effect, it prescribed that "[a] jury shall consist of twelve men **who must unanimously concur in any verdict rendered**." Nevertheless, this provision was subsequently amended through Law No. 11 of August 19, 1948 to authorize verdicts obtained by a majority of not less nine jurors, and, in 1952, the minimum vote to sustain a verdict was incorporated into the Constitution of Puerto Rico.[28]

In the following section we will analyze the rationale the delegates to the Constitutional Convention had for adopting this reasoning in our Constitution.

B. The Debate on Trial by Jury within the Constitutional Convention

In our function as interpreters of constitutional clauses, it is necessary that we evaluate the intent of our Constitutional Convention.

Regarding this, we have stated that "when considering the scope of a clause of the Puerto Rico Constitution, even though it may be analogous to a clause of the United States Constitution, it is our obligation to turn to the Journal of Proceedings of the Constitutional Convention as a primary source."[29]

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[27] Pueblo v. Casellas Toro, at 1017 [97 PR Offic. Trans. 52, at ___].

[28] Id. at 1017-1018.

[29] Pueblo v. Serrano Morales, 201 DPR 454, 494-495 [101 PR Offic. Trans. 32, ___] (2018). *See also*, Tatiana Vallescorbo Cuevas,

During the process of drafting and approving our Constitution, the Bill of Rights Committee, presided by Jaime Benitez, presented a Report on the deliberations, proposals, and on its own undertakings as to the assignment it received from the Constitutional Assembly. This draft bill also included the motivations behind the Bill of Rights, with the purpose of obtaining its eventual approval.[30] Concerning the judgment of an impartial Jury, its composition, and the number of jurors needed to render a verdict, the Report stated as follows:

> The text permanently fixes the number of jurors at twelve, as a response to the prevailing tradition in the country and the common law tradition In contrast to that tradition, a verdict may be rendered by a majority vote, the number of which will be determined by the legislative power, but that shall not be less than nine. This is the system that is in effect by law. We believe that the proposed formula will allow the Legislative [Assembly] to increase the margin of the majority up to unanimity, were it to deem it fitting in the future.[31]

Interpretando la factura más ancha, 46 Rev. Jur. UIPR 303, 327-330 (2012).

[30] *Diario de Sesiones de la Convención Constituyente de Puerto Rico* 1103 (19[61]).

[31] 4 *Diario de Sesiones de la Convención Constituyente de Puerto Rico,* Bill of Rights Committee Report, at [2570]. As we shall explain in detail and is summarized in Pueblo v. Casellas Toro, 197 DPR, at 1017-1018 [97 PR Offic. Trans. 52, at ___]:

Regarding the above, amendments to Section 11 of the Bill of Rights were recommended during the Constitutional Convention. Specifically, there was an attempt to strike the original phrase "who may render their verdict by a majority vote which in no case may be less than nine." According to Delegate Ernesto Juan Fonfrías, once the jury had been instituted, it was incumbent upon the Legislature to determine the number of jurors who would comprise it.[32] That is, he suggested that any mention of anything related to the composition and number of jurors who must concur in order to return a verdict be stricken.[33] Thus, he believed that the Legislative Assembly could determine

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> [P]rior to the approval of our Constitution in 1952, the figure of the jury had already been instituted in Puerto Rico. Specifically, the first civil government under the United States provided for this right in criminal cases. *See*, Act of January 12, 1901, 34 LPRA § 462 (repealed 1963). While it is a tenet that verdicts rendered by juries by virtue of this law had to be unanimous, years later before the approval of our Constitution this provision was amended through Law No. 11 of August 19, 1948, 34 LPRA § 611 and § 811 (repealed 1963), to authorize that guilty verdicts may be rendered with the concurrence of nine jurors.

[32] 3 *Diario de Sesiones*, at 1588. It is worth mentioning that the School of Public Administration of the University of Puerto Rico agreed with the position that the institution of the Jury should remain -as it had theretofore- in the hands of the Legislature, and it should not be enshrined in the Constitution. Escuela de Administratión Pública de la Universidad de Puerto Rico, *La Nueva Constitución de Puerto Rico* 174 (Ed. Fascsimilar 2005).

[33] 3 *Diario de Sesiones*, at 1589. *See*, III J. Tries Monge, *Historia constitucional de Puerto Rico* 195, Editorial UPR (1982).

whether the verdict "[be by a vote of] nine, or by a majority of seven to five. . . ." Concerning this matter, Jaime Benitez confessed to fearing that federal caselaw had ruled that the expression "trial by jury" meant "trial by jury rendering a unanimous verdict."[34] He stated that to eliminate the minimum number the number of jurors that must concur would decidedly be fixed at twelve.[35] Likewise, prior to the defeat of Mr. Fonfrías proposal, Mr. Benítez stated that he opposed the suggested amendment because he believed that:

> [A] jury's verdict to convict must be by at least nine votes against the defendant, and no more. **It must have at least nine votes <u>against or</u> it must have nine votes <u>in favor</u>**, but a defendant must not be found guilty with a vote of less than three-fourths of the total number of jurors.[36]

As we can see, at no point during the debate did any of the members of the Convention even mention the possibility that the requirement of nine jurors to convict could be different than what was required to acquit. On the contrary, when the matter was raised, the intent to have a symmetry of the verdicts is shown.

In fact, in his book, José Trías Monge chronicles how, prior to the approval of the Constitution, the Foraker and Jones Acts were silent on the matter of a

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[34] [3] *Diario de Sesiones*, at 1589.

[35] Id.

[36] Id.

trial by jury.[37] However, when the first civil government was instituted,[38] the first session of the Legislative Assembly was convened, and, among other things, it enacted the Act Concerning Procedure in Jury Trials of January 31, 1901 (Act of 1901). Immediately after Section 1 of this Act defined the jury as "a body of men selected from the citizens of a particular district, and invested with power to try questions of fact,"[39] Section 2 provided that "a jury shall consist of twelve men who must **unanimously concur in any verdict** rendered" on felony offenses.[40]

After this standard had remained in effect for 47 years, in 1948, the majority verdict was introduced in our jurisdiction. Thus, the Code of Criminal Procedure was amended to provide that the "verdict shall be by the concurrence of not less than three-fourths (¾) of

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[37] III J. Trías Monge, *Historia constitucional de Puerto Rico* 194, Editorial UPR (1982).

[38] Foraker Act of April 12, 1900, Historical Documents, LPRA tit. 1. *See*, III J. Trías Monge, *Historia constitucional de Puerto Rico* 195 Editorial UPR (1982).

[39] Act Concerning Procedure in Jury Trials of January 31, 1901 (Act of 1901), 1901 PR Laws 112. 3 *Diario de Sesiones,* at 1587. We underscore that the unanimous verdict was also incorporated through the Code of Criminal Procedure of March 1, 1902.

[40] Id. (Emphasis added). It is appropriate to point out that, during the Constitutional Assembly, there was a proposal to retain the language of the Act of 1901 where it prescribed that the men who would comprise the jury would be elected, thereby rejecting the suggestion of "twelve residents of the district." 3 *Diario de Sesiones,* at 1587.

the jury."[41] That is why the Bill of Rights Committee Report stated that the majority verdict was the current system under the law and that, at the same time, it authorized the Legislature to increase the number of jurors that needed to concur in order to render a verdict.[42] However, and as we have seen, what was amended was the minimum number of jurors necessary to reach a verdict and not the proportion between the two verdicts.

In conclusion, when the portion of Section 11 of the Bill of Rights at issue here was being discussed, neither the distinction between the two verdicts nor the number of jurors who needed to be in agreement to return a verdict to *convict* or a verdict to *acquit* was brought to the floor of the Constitutional Assembly. Moreover, the wording that was eventually approved showed that the Constitutional Assembly's nonaction in distinguishing the verdicts and the deciding

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[41] Section 2 of Law No. 11 of August 19, 1948 (34 LPRA § 61[2]) (repealed 1963) (Act of 1948). According to Trias Monge, the Act of 1948 was passed because Pedro Albizu Campos's return increased the presence of Puerto Rican nationalists, and so the amendment limited the right to a trial by jury as conceived of prior to the approval of the Constitutional Assembly, and it deauthorized the use of a jury in certain felony cases. III J. Trías Monge, *Historia constitucional de Puertp Rico* 194, Editorial UPR (1982). However, regarding majority verdicts, in Pueblo v. Figueroa Rosa, 112 DPR 154, 160 [12 PR Offic. Trans. 186, 194] (1982) we recognized that the adoption of the proportion of jurors in agreement to render a verdict in the referenced law was to "prevent having the isolated actions of a [single] juror thwart the unanimity of the verdict and quash the efforts and team work of the jury panel."

[42] 4 *Diario de Sesiones*, Report, at 2570.

proportion was not due to the naivete or lack of awareness of our delegates since the Report and the debate guide our interpretation, and they unquestionable show a preference for the equal treatment for both verdicts. Therefore, there is but room to interpret that, pursuant to our Constitution and even to history prior to its approval, the proportion of jurors to render a verdict is the same for both a *guilty* and a *not-guilty* verdict.

It is precisely this lack of distinction between both verdicts in the clause in question and the authority that emanates from the journal of proceedings of the Constitutional Convention to by way of legislation–increase the proportion to render a verdict from a majority to unanimity that subjected the Legislature to the same balance for either verdict, nothing more, nothing less. Thus, as we have explained, in order for the Legislative Assembly to comply with the constitutional provision, an increase in this proportion to ten, eleven, or twelve jurors for a *guilty* verdict must also be so for a *not-guilty* verdict.

C. Broader Scope

As is well-known, "the applicability of a federal constitutional right constitutes only the minimum scope of that right."[43] That is, Puerto Rico may interpret its Constitution to broaden the scope of a right, thereby granting greater protection than that

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[43] Pueblo v. Díaz, Bonano, 176 DPR 601, 621 [76 PR Offic. Trans. 37, ___] (2009).

recognized under the Constitution of the United States.[44] On the basis of this principle, we have recognized that "our Bill of Rights is of a broader scope than the federal Constitution." Nevertheless, the extension of that broader scope to a right that is expressly recognized by the Constitution or Supreme Court of the United States does not apply automatically.

In *Pueblo v. Díaz, Bonano*,[45] we adopted the interpretative standard of the phrase "broader scope" devised by former Associate Justice Antonio Negrón García in his Dissenting Opinion in *Pueblo v. Yip Berríos*.[46] In that case, he set forth the following:

> *the aforementioned "broader [scope]" is descriptive, not prescriptive.* It should not thoughtlessly give rise to a process through which the Puerto Rican constitutional standard is mechanically determined by using as basis the degree of protection of privacy established by Federal Supreme Court caselaw and subsequently broadening the same. That our caselaw could establish a higher degree of protection than the Federal Constitution may be predictable, but this is not, and must not be a prerequisite.
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> **What our Constitution requires** is not that we automatically establish a broader protection than the federal protection, but that we

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[44] Id.

[45] Id.

[46] 142 DPR 422 [42 PR Offic. Trans. 39] (1997) (Negrón García, J., dissenting).

> establish **a protection grounded on the principles embodied in our own Bill of Rights.** *If the reasoning laid down in the caselaw of other jurisdictions persuades us, it is perfectly appropriate* to *adopt the same.*[47]

In this context, Article II, Section [1]9 of our Constitution prescribes that:

> The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy.

Nevertheless, it is important to clarify that what is established in Section [1]9 is only possible insofar as the Constitution itself provides the space in which to do so, as this Court is but an interpreter and not a creator.[48] Hence, we--not only this Court, but also the Legislative Assembly--are barred from broadening rights that, from the beginning, our framers clearly did not wish to extend.

In conclusion, through the application of *Ramos* in *Torres Rivera* [*II*], a *guilty* verdict rendered by a jury must be unanimous to avoid a violation of the Sixth Amendment to the Constitution of the United States. **However, in the sphere of our Supreme Law, *not-guilty* verdicts have to keep the same proportion**

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[47] Pueblo v. Díaz, Bonano, 176 DPR, at 624 [76 PR Offic. Trans. 37 at ___].

[48] Pueblo v. Rivera Surita, 202 DPR 800, 812 [102 PR Offic. Trans. 44, ___] (2019) (citing Clínica Juliá v. Sec. de Hacienda, 76 DPR 509, 521 [76 PRR 476, 487] (1954)).

of jurors to render a verdict so as to avoid infringing Article II, Section 11 of the Constitution of Puerto Rico.

With this analysis, it is abundantly clear that *Ramos* invalidated the constitutional text that establishes the "verdict by a majority vote which in no case may be less than nine," and only the intention of proportional equality or symmetry regarding the types of verdicts is salvaged.

III

The Court of First Instance allowed the members of the jury to be instructed that to return a *guilty* verdict, the vote must be unanimous, but that, in contrast, a *not-guilty* verdict may be reached by a majority of nine jurors. We reason that it is not proper to impart that instruction on the jury. Thus, we conclude that the courts a quo erred in permitting this. Let us see.

Although *Ramos* was most certainly circumscribed to non-unanimous *guilty* verdicts, we have no doubt that this decision overturned our constitutional clause. **This is so insofar as our founding fathers established the same deciding proportion for both guilty and *not-guilty* verdicts.** To put it another way, at no time did the delegates to Constitutional Assembly separate or distinguish the results of jury deliberations.

As we have seen, our constitutional clause does not distinguish between *guilty* and *not-guilty* verdicts,

it only prescribes "verdict by a majority." It is unreasonable to believe that this was due to ignorance or a lack of awareness on the part of the drafters of our Constitution. Note that, according to the Constitutional Assembly, the Legislature was empowered to increase the number of jurors required to render a verdict up to unanimity, **but it did not authorize it to make distinctions in the deciding proportion of verdicts.**

In short, through its ruling in *Ramos,* the federal Supreme Court extended a protection that is binding for the states and for Puerto Rico regarding convictions. Nevertheless, and as the wording of our constitutional clause does not allow for the existence of disproportionality in verdicts, the binding nature of the verdict to *convict* in *Ramos* established for the benefit of the defendant also binds us, in our jurisdiction, to the unanimity of verdicts *to acquit*.

Prior to *Ramos,* a vote of less than nine jurors to find a defendant guilty was not sufficient to obtain a conviction and would result in the dissolution of the jury without having reached a verdict, or what is known as a hung, jury. In other words, the outcome was a hung jury because the number of votes required for the jury to reach a verdict had not been obtained. That principle remains unaltered. The only thing that does change is the number of votes required to render a verdict. Now, a non-unanimous vote is insufficient. Unless the twelve jurors agree, the number of votes required to return a verdict cannot be obtained. The outcome is still the same: a hung jury. In cases where the jury

cannot reach a unanimous verdict, the proceedings do not necessarily come to an end, but rather the defendant may be tried a second time. we reiterate that, as is the case around the Nation, at the state and federal level, this does not place on defendants the burden of proving their innocence.

Finally, as we find that it is completely meritless, we reject the position that to require unanimity for verdicts *to acquit* would transfer onto the defendant the burden of proof or would subvert the presumption of innocence. At the federal level, the unanimity requirement operates both for *guilty* verdicts as well as for *acquittals,* leaving the presumption of innocence untouched and the burden of proof on the State.[49] To

[49] In this regard, contrary to the ruling of the Court of Appeals, the reality is that the burden of proof in a criminal proceeding is not transferred to the defendant by requiring a unanimous verdict. As established in our current legal framework, the People of Puerto Rico continue to have the burden of proving the charges filed beyond a reasonable doubt since the defendant is presumed innocent. At the federal level, where the requirement of unanimity required in *Ramos* has traditionally prevailed, this constitutional precept operates in two directions: *guilty* or *not guilty*, without requiring defendants to prove their innocence and without affecting this presumption.

conclude otherwise would have the effect of conferring upon the presumption of innocence a scope that it simply does not have in federal jurisdiction, which is the source from which we adopted our own presumption of innocence.

IV

For the foregoing reasons, and without further proceeding pursuant to our Supreme Court Rule 50, we vacate the Judgment of the Court of Appeals and remand the case to the Court of First Instance for further proceedings consistent with this decision.

Judgment will be rendered accordingly,

Erick V. Kolthoff Caraballo
Associate Justice

[SEAL]

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico

Petitioner

v.

Nelson Daniel Centeno

Respondent

AC-2021-0086

JUDGMENT

San Juan, Puerto Rico, September 9, 2021.

For the reasons stated in the foregoing Opinion, which is made an integral part of this judgment, and without further proceeding pursuant to our Supreme Court Rule 50, 4 LPRA App. XXI-B, we vacate the Judgment of the Court of Appeals and remand the case to the Court of First Instance for further proceedings consistent with this Opinion.

It was so decreed and ordered by the Court and certified by the Deputy Clerk of the Supreme Court. Justice Estrella Martinez issued a dissenting opinion. Justice Colon Perez issued a dissenting opinion. Chief Justice Oronoz Rodriguez took no part in this decision.

Bettina Zeno Gonzalez
Deputy Clerk of the Supreme Court

[SEAL]

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	AC-2021-0086	Certiorari

JUSTICE ESTRELLA MARTINEZ, dissenting.

San Juan, Puerto Rico, September 9, 2021.

> It is not difficult to argue that in Puerto Rico verdicts to acquit by a vote or nine or more are valid. On the one hand, our Constitution explicitly provides so: a jury shall be composed of "twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine" (Art. II, § 11). This is codified in Criminal Procedure Rule 112. *Ramos* only addressed the matter of verdicts to convict. Accordingly, a unanimous verdict to convict is required pursuant to *Ramos* and *Torres Rivera*. However, since *Ramos* is circumscribed to the constitutional right of the accused to a unanimous verdict to convict, there is no federal rule barring the enforcement of the provision that authorizes a verdict to acquit by a vote of nine or more,

> which is part of the Bill of Rights of the Puerto Rico Constitution. To posit that *Ramos* applies to all manner of verdicts, one would have to weave a rather tight argument to sustain that, after *Ramos*, the Sixth Amendment's trial-by-jury clause is an indivisible whole, and cannot be divided into parts, that demands unanimity for all manner of verdicts. The problem is that the incorporation doctrine is conceived to expand on the rights of the accused recognized under state law, not to abridge them. Which is to say, the Puerto Rico Constitution recognizes the right of the accused to be acquitted by a vote of nine or more. It is difficult to argue that the effect of *Ramos* is to take away this right from the accused.
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> Paper by Prof. Ernesto L. Chiesa Aponte, Aug. 27, 2021, *Análisis del Término 2020-2021 de Derecho Procesal Penal*, UPR School of Law, at 46.

The US Supreme Court opened the door to recognize greater guaranties for citizens in the matter of guilty verdicts, and it was left open for state courts to construe their respective constitutions on the issue of acquittals by a majority vote. So did the Oregon Supreme Court, being proactive in the defense of individual guarantees afforded to the citizens by validating a not-guilty verdict returned by a majority [of the jury]. Unfortunately, today a majority of this Supreme Court of Puerto Rico has opted to close this door.

On the contrary, this Court should have applied a harmonious reading of the autochthonous protections afforded by the Constitution of Puerto Rico together with the individual rights recognized and laid down in Ramos v. Louisiana, *infra*. By not doing so, a majority of this Court Adopts a restrictive approach to individual liberties and imposes a unanimity requirement for verdicts to **acquit**. This result is incompatible with the most basic pillars of our Penal Law and ignores other constitutional protections.

As I believe that Ramos v. Louisiana, *infra*, does not require that a jury return a unanimous verdict to acquit and, in addition, that such a requirement is in keeping with the homegrown guarantees of our constitution, I dissent from the course of action taken by a majority of this Court, and I endeavor to set forth my reasons below.

I

Several charges are pending against Mr. Nelson Daniel Centeno. As part of the proceedings before the court, the process of jury selection began on February 25, 2020. Such process was interrupted by the judicial measures adopted due to the Covid-19 pandemic. Meanwhile, on April 20, 2020 the Supreme Court of the United States issued its decision in the case of Ramos v. Louisiana, 590 US ___ [, 140 S.Ct. 1390] (2020), whereby it ruled that a unanimous **guilty** verdict is an essential feature of the constitutional right to an impartial jury and, pursuant to the right of due process

of law under the Fourteenth Amendment, the states are compelled to apply it.

Consequently, within the criminal proceeding against Centeno, the State moved the court to instruct the jury specifically that the verdict must be unanimous, whether to convict or to acquit the defendant. In opposition, Centeno argued that the jury unanimity requirement only applied to guilty verdicts but not to not-guilty verdicts, which are valid when returned by a majority.

After examining both positions, the Court of First Instance correctly ruled that it was not in order to grant the State's request. The trial court reasoned that adopting a unanimity requirement for not-guilty verdicts would infringe on the presumption of innocence that protects all persons accused of a crime and, moreover, would be contrary to Ramos v. Louisiana. Thus, it held that a valid not-guilty verdict only required a majority vote of not less than nine jurors.

In disagreement, the State, this time through the Solicitor General, sought review with the Court of Appeals, arguing that the trial court's decision distanced itself from the unanimity requirement laid down in Ramos v. Louisiana. The State added that such a requirement seeks to protect minorities in their role as jurors.

In his Brief in Opposition, Centeno argued that Ramos v. Louisiana only applied to guilty verdicts, and thus our legal framework with regards to a not-guilty verdicts by a majority vote was still in force.

Ultimately, the Court of Appeals issued the writ of certiorari filed with that court and affirmed the trial court's decision. First, it clarified that the holding in Ramos v. Louisiana, adopted by this Court in Pueblo v. Torres Rivera II, 204 DPR 288 [104 PR Offic. Trans. 22] (2020), only applied to guilty verdicts and it did not lie to extend its application by analogy to not-guilty verdicts. It further emphasized that our criminal justice system authorizes verdicts rendered by a majority to acquit a defendant, without violating the rule laid down by the federal Supreme Court. The appellate court added that such a construction was more in line with our Constitution and with the authority to afford greater protections to defendants in our courts that that which is provided in the federal sphere.[50]

Aggrieved, the State filed a petition for appeal with this Court, which we agreed to hear and issued as a writ of certiorari.

Unlike the position of the majority of this Court, I am of the opinion that this controversy provides us with a perfect opportunity to recognize, specify, and lay down that the constitutional requirement of jury unanimity set forth in Ramos v. Louisiana is limited to guilty verdicts and not to acquittals. This Court, however, adopted a construction that is incompatible with the federal court ruling and with our constitutional framework. Let us see.

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[50] Judge Rodriguez Casillas issued a separate concurring vote.

II

The Sixth Amendment to the United States Constitution expressly recognizes the right of the accused to an impartial jury. US Const., amend. VI, LPRA tit. 1.[51] The Constitution of Puerto Rico also recognizes that right. In what is relevant here, Article II, Section 11 of the Constitution of Puerto Rico provides that:

> In all prosecutions for a felony the accused shall have the right of trial **by an impartial jury** composed of twelve residents of the district, **who may render their verdict by a majority vote which in no case may be less than nine**.

PR Const., art. II § 11, LPRA tit. 1. (Emphasis added.)

This provision was also codified in the Rules of Criminal Procedure, 34 LPRA Ap. II. Specifically, Rule 112 provides that "[j]uries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes." In addition, Criminal Procedure Rule 151 provides that:

> When a verdict is rendered, the jury may be polled at the request of either party or on the court's own motion. If as the result of this poll,

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[51] It specifically provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e."

> it is determined that the verdict was not rendered by at least nine (9) jurors, the jury must be sent out for further deliberation or it may be discharged.

Even through in the federal jurisdiction and in many states the vote by a jury must be unanimous in order to convict, this was not deemed to be a fundamental right applicable to the states and territories because in our jurisdiction,[52] as in Louisiana and Oregon, verdicts returned by a majority of the jury are permissible.[53]

Last year, however, the constitutional Criminal Law landscape changed dramatically with the arrival of Ramos v. Louisiana. The crux of the issue in this case was born precisely from state laws that allowed a jury to return a nonunanimous verdict to convict a

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[52] See, Pueblo v. Casellas Toro, 197 DPR 1003 [97 PR Offic. Trans. 52] (2017). In this case, this Court stated that, given that the US Supreme Court declined to recognize at that time the jury unanimity requirement as a fundamental right and absent such requirement in our legal system, "the constitutional validity of verdicts rendered by a majority of nine or more jurors in our courts is firmly established." Id. at 1019 [97 PR Offic. Trans. 52, at ___]. Until early last year, "[i]t seemed as if the position adopted by our Supreme Court was correct and well grounded. On April 20, 2020, however, the Supreme Court of the United States decided a case that forced our Supreme Court to change course. This case was Ramos v. Louisiana." José A. Alicea Matías, Los derechos de confrontación y juicio por jurado en tiempos de pandemia, 60 Rev. Der PR 1, 19 (2020).

[53] See, Apodaca v. Oregon, 406 US 404 (1972); Johnson v. Louisiana, 406 US 356 (1972).

defendant in a criminal prosecution.[54] When the US Supreme Court made its pronouncements on the matter Louisiana[55] and Oregon allowed for convictions based on verdicts by a vote of 10 to 2.[56] This is similar to Puerto Rico, where a majority vote of 9 to 3 is valid.

Consequently, the petitioner in Ramos v. Louisiana was found guilty by a jury with a divided verdict of 10 to 2 and sentenced to life in prison without the possibility of parole. As part of his defense on appeal, the petitioner questioned the constitutionality of a nonunanimous verdict, as permitted under Louisiana state law.

Insofar as it concerns us here, the Supreme Court of the United States unequivocally defined the controversy at bar as such: "[w]e took this case to decide whether the Sixth Amendment right to a jury trial–as incorporated against the States by way of the Fourteenth Amendment–requires a unanimous verdict to **convict** a defendant of a serious offense." (Emphasis added.)[57] With this in mind, it concluded that "a jury

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[54] K. Stanchi, The Rhetoric of Racism in the United States Supreme Court, 62 B.C. L. Rev. 1251, 1272 (2021).

[55] It is worth noting that "Louisiana voted to eliminate nonunanimous jury convictions for felony cases after 2019, leaving Oregon as the only state to retain them." Sixth Amendment-Right to Jury Trial-Nonunanimous Juries-Ramos v. Louisiana, 134 Harv. L. Rev. 520 (2020).

[56] R.C. Chandler, R.A. Enslen and P.G. Renstrom, Constitutional Law Deskbook: Jury unanimity § 5:10 (Suppl. 2021).

[57] Ramos v. Louisiana, [590 US, 140 S.Ct. 1390,] 1394 [(2020)].

must reach a unanimous verdict in order to **convict**"[58] and that "if the Sixth Amendment's right to a jury trial **requires a unanimous verdict to support a conviction** in federal court, it requires no less in state court." (Emphasis added.)[59]

In other words, the US Supreme Court held that jury unanimity for convictions was an essential feature of the constitutional right to an impartial jury, and therefore such requirement was applicable to the states through the Fourteenth Amendment due process of law guarantee. Thus, it was categorically declared that "unanimity was clearly necessary for state criminal convictions."[60] In doing so, a unanimous verdict in order to convict a criminal defendant was elevated to a fundamental right.

> Writing for a majority in some sections and a plurality in others, Justice Gorsuch **ruled that the Sixth Amendment requires conviction by a unanimous jury and that this right is incorporated against the states**. The Sixth Amendment promises a trial "by an impartial jury" but contains no further textual detail. To discern its requirements, Justice Gorsuch looked to English common law history, state practices in the Founding era, and opinions and treatises written soon after the Founding. **All sources**

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[58] Id. at 1395.

[59] Id. at 1397.

[60] Sixth Amendment-Right to Jury Trial–Nonunanimous Juries–Ramos v. Louisiana, *supra*, at 522.

> **confirmed that a jury must reach a unanimous verdict to convict a criminal defendant of a felony.** And while the version of the Sixth Amendment that was ultimately ratified did not explicitly guarantee unanimity, Justice Gorsuch argued that the omission could just as likely demonstrate lawmakers' attempt to avoid surplusage as it did the desire to abandon a well-established common law right.[61]

(Emphasis added.)

It is clear, thus, that the ruling in Ramos v. Louisiana extends only to unanimous verdicts by a jury to convict a criminal defendant. There is nothing in this decision that refers to, or may be construed as referring to, jury verdicts to acquit a defendant.

In fact, in Pueblo v. Torres Rivera II, this Court recognized that jury unanimity was necessary to render a criminal conviction valid and, accordingly, applied this constitutional requirement for the first time in our jurisdiction. As in Ramos v. Louisiana, we defined the question to be resolved as follows:

> Specifically, we must decide whether, in view of this opinion, **a defendant convicted in our jurisdiction based on a nonunanimous verdict** violates the inherent procedural safeguards of the fundamental right to trial

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[61] Id. at 521-22.

> by jury protected by the Sixth Amendment of the Constitution of the United States.[62]

(Emphasis added.)

Similarly, we emphasized that the reasoning in Ramos v. Louisiana laid down "how the requirement of a unanimous verdict constitutes a fundamental procedural protection for all those accused of a felony."[63] Consequently, we concluded that "this federal ruling institutes the unanimity of the jury as a substantive requisite **for obtaining a criminal conviction**." (Emphasis added.)[64]

The parameters set forth in Ramos v. Louisiana are so evident that, as a question of law, when faced with a controversy similar to the one before us today, the Oregon Supreme Court flatly declined to extend them to verdicts by a jury to acquit a criminal defendant. In State v. Ross, 367 Or. 560 (2021), a state [trial] court ruled in favor of instructing the jury that it must return a unanimous verdict, whether to acquit or to convict, in light of Ramos v. Louisiana.

The Oregon Supreme Court rejected this interpretation and held that "Ramos does not imply that the Sixth Amendment prohibits acquittals based on non-unanimous verdicts or that any other constitutional provision bars Oregon courts from accepting such

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[62] Pueblo v. Torres Rivera II, [204 DPR 288,] 291 [104 PR Offic. Trans. 22, 3] [(2020)].

[63] Id. at 300 [104 PR Offic. Trans. 22, at 7].

[64] Id. at 301 [104 PR Offic. Trans. 22, at 7].

acquittals."[65] This is because the discriminatory history of those provisions permitting nonunanimous verdicts by a jury was, ultimately, not the principal grounds for the federal Supreme Court's decision, but rather criticisms of the precedent set forth in Apodaca v. Oregon, [406 US 404 (1972)]. Instead, the unconstitutionality lies in that such provisions cannot be reconciled with the federal requirement that jury verdicts must be unanimous to obtain a conviction. Therefore, an inverse reasoning as to the possible discriminatory effects on the use of nonunanimous not-guilty verdicts was improper grounds for requiring unanimity in such cases.

In sum, a detailed analysis of Ramos v. Louisiana allows for only one conclusion, which was that which the Oregon Supreme Court reached. "Oregon law, in conformance with the Sixth Amendment, requires a unanimous guilty verdict for all criminal charges and permits a not-guilty verdict by a vote of eleven to one or a vote of ten to two".[66] Simply put, "[g]uilty verdicts must be unanimous, which means that each and every juror must agree on a guilty verdict. But not-guilty verdicts may be nonunanimous. At least 10 jurors must agree on a not-guilty verdict. If you are divided nine to

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[65] State v. Ross, [367 Or. 560,] 573 [(2021)].

[66] "Oregon law requires unanimous guilty verdict for all criminal charges and permits not-guilty verdict by a vote of 11 to 1 or vote of 10 to, 2," West's Criminal Law News NL48, vol. 38, no. 7 (2021).

three, for example, you do not have a not-guilty verdict."[67]

III

The summary of the applicable law set forth above clearly reveals the confines of Ramos v. Louisiana as to whether jury unanimity is a requirement for guilty verdicts as a fundamental right opposable to the states. To such ends, the US Supreme Court issued a decision in which it held that it affirmatively was, strictly adhering to the context of a guilty verdict returned by a jury, as provided by the current constitutional framework.

And it cannot be any other way since the right to an impartial jury under the Sixth Amendment to the United States Constitution strictly protects the **accused**. Therefore, raising this protection to the stature of a fundamental right only serves to favor criminal defendants and buttress the constitutional safeguards that apply to criminal prosecutions by the State against them. In fact, so held this Court in Pueblo v. Torres Rivera II, 204 DPR, at 306 [104 PR Offic. Trans. 22, at 10] when we stated that "[a] reading of the opinion of the United States Supreme Court in Ramos v. Louisiana shows that unanimity constitutes **an additional essential procedural protection** that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the

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[67] Oregon Uniform Criminal Jury Instructions: Verdict–Felony Case, UCrJI No. 1015.

Sixth Amendment to the United States Constitution." (Emphasis added.)

Thus, on the basis that Ramos is **not** extensible to not-guilty verdicts, Prof. Julio E. Fontanet Maldonado explains the following:

> Whoever has doubts about this must ask themselves whether, in light of the Sixth Amendment and the ruling in Ramos, it would be unconstitutional for a state to have a provision of the constitution or even a statute establishing a majority vote for not-guilty verdicts. It is evident that the answer is no. It can be no other way. The opposite would be to affirm that **"the government" has a fundamental right under the Sixth Amendment to demand unanimity. This is contrary to the basic notions of US Constitutional Law, which provides that fundamental rights are guarantees in favor of the accused that are opposable to the state, and not the other way around**.[68]

(Emphasis added.)

It is precisely the need to protect the integrity of the process while safeguarding the rights of the accused that precludes an interpretation that a not-guilty verdict must be unanimous. Let us see.

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[68] Julio Fontanet Maldonado, "La unanimidad y los condenados erroneamente," in Punto de vista, El Nuevo Día 43 (Sept. 2, 2021).

As the US Supreme Court identified the discriminatory origins of statutes such as the ones at issue in Ramos v. Louisiana, so I reviewed in my separate dissenting vote in Pueblo v. Alers De Jesus, 2021 TSPR 56, how the issue of a majority verdict in Puerto Rico has its roots discrimination on the basis of political ideology. The motivation was simple, to enable guilty verdicts against leaders and members of the Independence movement at the time. This strategy, directed to ensure convictions, clearly operated against the accused, placing them at a disadvantage in a process where they already were the weaker party. Thus, the undeniable effect of requiring jury unanimity to convict is to protect the accused from such schemes.

The fact that a majority vote as provided in our Constitution does not favor the accused in the context of a conviction does not mean, however, that it is not favorable in the context of an acquittal. Any interpretation to the contrary, however consistently applied, defies logic and leads to an undue automatic response that takes no notice of the harmonious interpretation of the other constitutional safeguards. First, because a majority vote to acquit provides broader protection, favorable to the accused, who would not have to be subjected to a new criminal proceeding against them in the courts if a unanimous not-guilty verdict is not returned.

Second, this in turn is in keeping with our Constitution's more comprehensive vision regarding individual guarantees. **We cannot forget that the rights enshrined in the Constitution belong to the**

accused, and not to the State nor to the jurors. Although the criminal judicial system recognizes and upholds the significance of each juror's vote, we are barred from construing our legal system so as to through a cloak of absolute protection over such votes at the expense of the guarantees and rights of those subject to a criminal prosecution. Moreover, as stated before, fundamental rights are not recognized to protect the State, but rather to protect the people against the State.

Therefore, even though the majority vote was introduced in our jurisdiction for both convictions and acquittals, the discriminatory reasons that breathed life into such provisions are seen in the intent to circumvent the rights of the accused to ensure their conviction, and not their acquittal. Accordingly, to recognize the effectiveness and legality of that constitutional clause in the context of acquittals runs counter to the nefarious intentions that once served as basis for its inception since undoubtedly, perpetuating the majority vote for acquittals benefits the accused.

It is my opinion that such an interpretation is perfectly congruous with the basic principle of the presumption of innocence and the standard of proof in criminal proceedings that allows for a conviction only where a jury is convinced of the defendant's guilt beyond a reasonable doubt.

As we know, the first sentence in Section 11 of our Constitution's Bill of Rights[69] recognizes that the accused shall enjoy the right to be presumed innocent.[70] This clause, whose "prescriptive power is substantial because it is a fundamental right,"[71] also seeks to:

> [C]learly provide that it falls to the prosecution to prove, with admissible evidence, the defendant's guilt beyond any reasonable doubt. Accordingly, the person's innocence is the starting point for every criminal proceeding, until the state proves otherwise, thus defeating the presumption. As expressed in the debates during the Constitutional Convention: "The most important presumption we know under the American judicial system is the presumption of innocence."
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> The **aim** of this clause is to **discharge the full burden of proof as to the defendant's guilty on the prosecution** and overrule any

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[69] As a question of law, the United States Constitution does not have an express provision analogous to ours. In our constitutional system "the 'broader scope' expresses itself through the unequivocal incorporation of the presumption of innocence in our Bill of Rights." Ernesto L. Chiesa, Los derechos de los acusados y la factura más ancha, 65 Rev. Jur. UPR 83, 104 (1996).

[70] In his most recent publication, Prof. Farinacci Fernós states that, as opposed to the other rights recognized in this constitutional provision, the presumption of innocence "does not directly appear in the Sixth Amendment to the federal Constitution," but rather, citing the Bill of Rights Committee, reminds us that it is a legal standard previously laid down and adopted through the decisions of our courts. Jorge Farinacci Fernós, La Carta de Derechos 201 [Ed. UIPR] (2021).

[71] Id. at 202.

> legal provision that is contrary to this important principle.[72]

(Some emphasis added.)

Which is to say, the legal consequences of the right to be presumed innocent are: (1) "[t]he accused is not compelled to bring evidence in their defense, as they may rest on the presumption of innocence, the effect of which is to place the burden of bringing evidence and persuading on the People," and (2) "[t]he prosecution must prove the defendant's guilt beyond a reasonable doubt; this standard of proof is required to defeat the presumption of innocence."[73] Consequently, as provided under Criminal Procedure Rule 110 (34 LPPA Ap. II): "[I]n every criminal prosecution a defendant is presumed innocent until the contrary is proved, and in case of a reasonable doubt as to his guilt he shall be acquitted". In other words, if the State does not meet its burden of proof, the presumption of innocence prevails, and it lies to acquit the defendant.

In view of the direct link between the presumption of innocence and the State's duty to defeat this presumption with evidence of guilt beyond a reasonable doubt, why then should entire jury be convinced of the absence of guilt since this presumption already exists and it falls to the State to defeat it? Of course, if a unanimous guilty verdict is not obtained, logic dictates that the State failed to prove guilt beyond a reasonable doubt

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[72] Id.

[73] Chiesa, supra, at 104.

and, accordingly, the presumption of innocence prevailed, the effect of which is to acquit [the defendant] of all criminal charges. Hence, failure to convince the entire jury as to guilt necessarily implies that the not-guilty status is sustained, which requires an acquittal on all charges filed.

Through its petition before this Court, the State invites us to reshape the cornerstone of our criminal law system by imposing on every juror the requirement of being convinced of the absence of guilt–which is already presumed–while at the same time, being convinced of the existence of guilt. Moreover, the burden of proving innocence is forced upon the defendant under the same standard required of the State to prove guilt. This has the parallel effect of lessening the prosecution's evidentiary burden and dodging a not-guilty verdict. Such pretense is impermissible and destabilizes the very bedrock of our criminal law system.

Furthermore, if, for the sake of argument, we were to accept the erroneous conjecture that there is ground for such a conclusion, as we know, the parameters of a federal constitutional right merely describes the minimum ambit of such a right.

Therefore, the Supreme Court of a state, including Puerto Rico, has the authority to construe, pursuant to its own Constitution, that the right encompasses a greater scope of protection, which may lead to a more comprehensive guarantee than what is provided under the federal Constitution. Pueblo v. Díaz, Bonano, 176 DPR 601, 621 [76 PR Offic. Trans. 37, ___] (2009). Thus,

the scope of a federal caselaw standard, as it pertains to Puerto Rico, represents the minimum that the courts on our island are required to apply.[74]

By supplying only the minimum content, the US Supreme Court is not privy to the constitutional and statutory tenets of our legal system, which allow us to expand such guarantees and interpret the minimum content.[75] Moreover, in what pertains to this specific controversy, we must closely consider that, '[e]ven though there is a similarity between the phrasing of [the] second sentence of Section 11 and the Sixth Amendment, the specific wording is homegrown."[76]

Sure enough, federal law requires jury unanimity both to convict and to acquit. Nevertheless, under the minimum content rule, we are only compelled to recognize unanimity to convict a defendant of a felony. This is to say that, given that to maintain the custom of accepting acquittals by a majority vote signifies a broader protection of the constitutional rights of the accused, the systems permits us to keep it. Conversely, adopting the unanimity requirement for not-guilty verdicts would not operate in favor of the accused, but rather it would abridge the protections that our criminal law tradition already bestows.

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[74] Ernesto L. Chiesa Aponte, 1 Derecho procesal penal de Puerto Rico y Estados Unidos 39, Ed. Forum (1991).

[75] See, Pueblo v. Ferrer Maldonado, 201 DPR 974 (101 PR Offic. H:.Trans.,4] (2019) (Estrella Martinez, J., dissenting).

[76] Farinacci Fernós, supra, at 205.

Therefore, considering our authority to expand the minimum content provided by the Supreme Court of the United States, I maintain that the jury unanimity requirement should not be extended to acquittals. Quite the contrary, to recognize the legality and validity of a not-guilty verdict by a majority vote would accentuate and amplify the constitutional guarantees and rights of the accused in our jurisdiction. Simply put, we should have recognized more, not less.[77] Wherefore, the more judicious conclusion is to hold that, given that the states may confer greater rights than the minimum afforded under the federal Constitution, verdicts by a majority vote are permissible where they seek to provide guarantees favorable to the accused. Unfortunately, a majority of this Court uses the **additional** protections recognized by the US Supreme Court incorrectly to restrict, paradoxically, the basic guarantees contained in the Constitution of Puerto Rico in the context of acquittals.

Furthermore, it is worth noting that the jury unanimity requirement to convict, which is an essential feature of the right to trial by jury enshrined in the Sixth Amendment to the US Constitution, as recognized in Ramos v. Louisiana, was extended to the states through the Fourteenth Amendment,[78] that is to

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[77] See, Pueblo v. Alers De Jesús, 2021 TSPR 56, at 17 (Estrella Martinez, J., dissenting).

[78] As a question of law, "the Court (has] incorporated the various provisions of the Sixth Amendment, finding for the most part that the Fourteenth Amendment's Due Process Clause guaranteed defendants in state courts the same fundamental procedural protections guaranteed by the Framers to defendants in federal

say, through the incorporation doctrine. This concept is defined as the constitutional principle through which the protections granted in the Bill of Rights of the Constitution of the United States were made applicable to the states through the Due Process Clause of the Fourteenth Amendment.[79] Prior to the Fourteenth Amendment's existence, and, consequently, the existence of the incorporation doctrine, the Bill of Rights only applied to the federal government and to federal court cases.[80]

Given that the incorporation doctrine serves to limit states' rights with respect to a citizen's civil

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courts." S. Chhablani, Disentangling the Sixth Amendment, 11 U. Pa. J. Const. L. 487, 494 (2009).

[79] "Since the adoption of the Fourteenth Amendment to the United States Constitution, there has been a continuing debate as to whether it incorporates the Bill of Rights guarantees of the first eight amendments. While the Supreme Court has rejected the theory of absolute incorporation, it has held that through the fourteenth amendment certain of the 'fundamental rights' of the first eight amendments place limitations upon state as well as federal exercise of power." D.G. Collins, The Incorporation Doctrine: Sixth Amendment Trial by Jury, 15 Howard L.J. 164 (1968).

[80] The first eight amendments to the federal Constitution originally applied only to the federal government, and the possibility that the Fourteenth Amendment changed this structural principle was understood to have been rejected by the Supreme Court not long after the Amendment had been ratified. The so-called incorporation doctrine reversed that result and was by any measure one of the Warren Court's major legacies." J.Y. Stern, First Amendment Lochnerism & the Origins of the Incorporation Doctrine, 2020 U. Ill. L. Rev. 1501, 1503 (2020).

rights and liberties,[81] and bearing in mind that Ramos v. Louisiana only ruled on jury unanimity for guilty verdicts, the argument positing the incorporation of jury unanimity for acquittals lacks merit. In view of the above discussion, it is counterintuitive that the Supreme Court of Puerto Rico should forcibly incorporate a restrictive aspect on the right to a jury trial that is incompatible with the minimum content of the federal guarantees, as set forth in Ramos v. Louisiana, in addition to the homegrown guarantees afforded by our Constitution; especially considering that the incorporation doctrine is rooted in the due process guarantee which, in turn, is intrinsically linked to the presumption of innocence.

Following this line of argumentation concerning our Constitution, we must not forget that our constitutional delegates explicitly rejected jury unanimity when drafting the Constitution, even though

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[81] In the sections concerning full incorporation, " 'to make secure against invasion by the states the fundamental liberties and safeguards set out in the Bill of Rights' was how Justice Black characterized the 'incorporationist' intentions of those in both houses of Congress who authored and sponsored the fourteenth amendment. . . . Contending that the first section of the fourteenth amendment literally embodied–or was shorthand for–the totality of the wording, content and the essential procedures to implement the specific guarantees of the first eight amendments, Justice Black held that the amendment circumscribed the state authority in precisely the same manner as the Bill of Rights constrained federal authority." Robert L. Cord, The Incorporation Doctrine and Procedural Due Process under the Fourteenth Amendment: An Overview, 1987 BYU L. Rev. 867, 875-876 (1987).

unanimity existed at the federal level. Therefore, the construction most consistent with our own Constitution is the one I have put forward here.

That is to say, a careful analysis of the controversy forces us to conclude that to require unanimity to acquit a defendant would be to quash the express provisions of our Constitution, which by no means clashes with the federal Supreme Court's decision or with this Court's holding in Pueblo v. Torres II.[82]

However, I find that the debates of the members of the Constitutional Convention have bearing on this matter.[83] During the discussions that led to the adoption of Article II, Section 11 of the Constitution of Puerto Rico, an amendment was being considered–but was ultimately defeated–to strike the phrase "who may render their verdict by a majority vote which in no case may be less than nine."[84] The purpose of this amendment to allow the Legislative Assembly to

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[82] As Prof. Jorge Farinacci Fernós explains, the majority vote provided in our Constitution was superseded "in part" by Ramos v. Louisiana. "For all practical purposes, the Legislative Assembly was deprived of their authority to allow nonunanimous guilty verdicts." Farinacci, supra, at 208, n.495. Thus, even though he mentions that it is not completely clear whether the majority rule still applies to -acquittals, he stresses in the following footnote that, according to Ramos v. Louisiana "it is a constitutional requirement that a verdict **to convict** be unanimous." Id. at 209, n.497. (Emphasis added.)

[83] 3 Diario de Sesiones de la Convención Constituyente [1588-1590] (19[61]).

[84] Id. at [1588].

determine the number of [votes] for a jury to render a verdict. The amendment was debated as follows:

> Mr. BENÍTEZ: As to Delegate Fonfrías's amendment, I would like to say that our fear is that, based on the case law that touches on the expression "trial by jury" in the common law, the concept of a "trial by jury" **means "trial by jury rendering a unanimous verdict."** If perchance the amendment proposed by Delegate Fonfrías were to proceed, it would take the matter even further out of the hands of this Legislative [Assembly] because, pursuant to this case law, it would unfailingly fix at twelve the number of jurors who must concur.
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> Mr. FONFRÍAS: My idea, Mr. Committee Chairman, is to leave the matter of the number [of votes] to render a verdict to the Legislative [Assembly] rather than setting it in the constitution. Or that it be determined now, that it be fixed, if so decided. The situation presented by Mr. Benitez would not come to pass. The Legislative [Assembly] may determine that it be nine, or by a majority of seven to five. . . .
>
> Mr. BENÍTEZ: Precisely, Mr. Fonfrías. What I mean is that in that case we would be discussing a different amendment. The amendment would not be to strike what is provided here in that a verdict may be rendered by a majority vote which in no case may be less that nine, but rather something else. We would also oppose any modification in this regard on the belief a jury's verdict to convict

> must be by at least nine votes against the defendant, and no more. It must have at least nine votes against **or it must have nine votes in favor**, but a defendant must not be found guilty with a vote of less than three-fourths of the total number of jurors.
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> Mr. FONFRÍAS: If Mr. Committee Chairman thinks that the amendment is not in order, but rather another that differs from the one we have proposed–ours was that it be stricken completely and a period [be placed] after "district"–then an amendment to such ends for the Legislative [Assembly] to set the number of jurors to render the kind of verdict presented here. That might be the amendment, to not determine in the constitution the number of jurors–in this case, nine–to render a verdict. Nevertheless, the rest of the paragraph would still be stricken in its entirety, the provision we want stricken.[85]

(Emphasis added.)

As this debate develops, it is plain to see the interest in preventing the application of the historical equivalence between a trial by jury and a trial by jury rendering a unanimous verdict.[86] This is to say, the intention of the framers of our Constitution was clear: the system that governs our criminal law does not require a unanimous verdict. Considering the current state of our criminal law, the only cohesive and

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[85] Id. at [1589].

[86] Chiesa, supra, at 439 n.10.

conciliatory interpretation is that it subsists in the context of acquittals.

In sum, it is evident that the part of our Constitution affected by Ramos v. Louisiana is limited to the majority vote to convict, while a majority vote to acquit is still valid. Any interpretation to the contrary would unduly suppress the letter of our Constitution. As we was, nothing in the law warrants such a deviation.

This Court must not construe our criminal law system bases on analogies, moreover when such an interpretation is in detriment to the guarantees that protect the accused. To this I must add that legal consequences for those who are subject to a criminal prosecution, who will have to endure a new trial since, in this scenario, even though the State did not manage to prove guilt beyond a reasonable doubt, the State is given another chance to try. Contrariwise, if an acquittal by a majority vote is permitted, the weaker party is protected from enduring, for a second time, all the tribulations of a criminal proceeding when, under the current law, he or she should have prevailed in the first place.

And so, I believe that the instructions to the jury should be that, to render a not-guilty verdict, it may be by a majority vote of not less than nine. Therefore, verdicts by a vote of 9 to 3, 10 to 2, and 11 to 1 are permissible for an acquittal. To render a guilty verdict, and only to render a guilty verdict, it must be unanimous. This conclusion operates in favor of justice and is a harmonious interpretation that recognizes **all** the constitutional guarantees that protect the people in these processes.

IV

As the Dean of the Inter American University School of Law, Prof. Julio Fontanet Maldonado, well advises:

> If there is consensus in Puerto Rico that a unanimous not-guilty verdict is desirable, the only option is to amend the Constitution, not to apply a distorted interpretation of Ramos or of the raison d'être behind the provisions of our Constitution. Sure enough, we would be the only country to amend its Constitution to take away rights.[87]

Today, a majority of this Court weaves a misguided and automated ruling that ascribes nonexistent effects to federal caselaw leading to a paradoxical application of the law. This is so because the US Supreme Court ruling is the polar opposite of the ruling issued by a majority of this .Court, **insofar as it concerns an additional guarantee and not a curtailing of the rights of the people who face a jury trial**. Furthermore, the thread of the Puerto Rican constitutional scheme on the subject of indispensable individual guarantees is cut by setting aside the letter of the Puerto Rico Constitution and invalidating acquittals by majority vote. In light of such action, I DISSENT.

Luis F. Estrella Martinez
Associate Justice

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[87] J., Fontanet Maldonado, supra.

IN THE SUPREME COURT OF PUERTO RICO

People of
Puerto Rico

Petitioner

v. AC-2021-0086 *Certiorari*

Nelson Daniel Centeno

Respondent

JUSTICE COLÓN PÉREZ, dissenting.

San Juan, Puerto Rico, September 9, 2021.

> The Constitution, of course, speaks only to what it takes to convict. Making it harder to convict is a standard part of constitutional criminal procedure doctrine, developed to ensure that innocent people avoid incarceration. But making it more difficult to acquit is no express part of any constitutional requirement and could, if taken to an extreme, violate the rights of an accused.[88]

Today, this Court, through an act that is far-removed from and that skews the history and plain text of our Highest Law, has amended *sub silentio* the

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[88] Sherry F. Colb, *Should Acquittals Require Unanimity*, Veredict.Justicia.com, Should Acquittals Require Unanimity? | Sherry F. Colb | Verdict | Legal Analysis and Commentary from Justia (last visited, Sept. 2, 2021). The author is a professor at Cornell Law School.

Constitution of the Commonwealth of Puerto Rico and completely displaced the standard of verdicts by a nine-vote majority in jury trials that has prevailed to date in our jurisdiction. Without any legal basis whatsoever, this Court concluded from a reading of *Ramos v. Louisiana*, [590 US ___, 140 S.Ct. 1390 (2020)], as well as a supposed rule of symmetry–presumably conceived by the delegates to our Constitutional Assembly–that the Puerto Rican criminal law framework requires unanimity for both guilty and not-guilty verdicts. Nothing could be farther from the truth; therefore, we emphatically dissent from the ruling of this Court.[89]

While it is true that the current state of the law in our jurisdiction demands that guilty verdicts in criminal proceedings be reached by the unanimous vote of the jury pursuant to the ruling in *Ramos v. Louisiana* and *Pueblo v. Torres Rivera [II]*, [204 DPR 288 [104 PR Offic. Trans. 22] (2020)], it is also true that not-guilty verdicts can be returned with the concurrence of at least nine of the twelve jurors, in accordance with the plain text of Article II, Section 11 of our Constitution, [LPRA tit. 1]. This is so, of course, until the People or

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[89] In doing so, we also distance ourselves from the unnecessarily fast-tracked process through which this Court has disposed of this controversy. This Court, motu proprio, activated the exceptional mechanism of Rule 50 of the Rules of this Court, 4 LPRA App. XXI-B, to not only hastily subvert the logic of the process, terms, and opportunities the parties ordinarily have to file their briefs, but also to shorten the time period that the Justices of this Court have to study the controversy and the record with the care and depth warranted.

the Legislative Assembly–and not this Court–provide otherwise as deemed necessary within the constitutional parameters. Let us see.

I.

The core facts that gave rise to this litigation are not at issue. On January 9, 2016, the People of Puerto Rico filed several criminal complaints against Nelson Daniel Centeno who, after probable cause was found to arrest and try him for the offenses charged, opted to exercise his right to a trial by jury.

As the date scheduled for the conclusion of the trial–November 18, 2020–drew near, the Court of First Instance held a hearing to address the matter of the instructions that would be read to the jury. During said hearing, the People requested that the jury be instructed that the verdict they were to render, whether it was to find Centeno guilty or not guilty, should be unanimous. The People based their petition on the ruling of this Court in *Pueblo v. Torres Rivera [II]* through which the standard established by the Supreme Court of the United States in *Ramos v. Louisiana* was adopted.

Centeno's legal representative disagreed and opposed the People's proposed jury instruction. In doing so, Centeno's legal counsel argued in court that a not-guilty verdict in which at least nine of the twelve members of the jury concurred was valid in light of the provisions of our Constitution, the Rules of Criminal Procedure, and the applicable caselaw. To that end, the

defense underscored that the standard established in *Ramos* and in. *Torres* was limited to requiring unanimity to convict.[90]

Having examined the parties' arguments, on December 7, 2020 the trial court issued a Resolution denying the People's motion for jury instruction. The court determined that, in light of the presumption of innocence and the rulings in *Ramos* and in *Torres*, in Puerto Rico a not-guilty verdict is valid where it has been issued by a majority of nine or more members of the jury. The People moved the trial court reconsider its decision, but that request was denied.

Dissatisfied with the ruling of the Court of First Instance, on January 4, 2021 the Solicitor General sought review with the Court of Appeals through a Petition for Certiorari. In his petition, the Solicitor General argued that the trial court erred in adopting the jury instruction as proposed by Centeno that a guilty verdict needed to be unanimous, but that for a

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[90] Centeno also submitted a written motion to oppose the People's petition for jury instructions. Therein, he emphasized his arguments and proposed that the following instructions be imparted to the jury instead:

> In order for a not-guilty verdict to be valid, at least nine (9) of you must agree to it. The verdict to find the defendant not guilty shall state if the majority vote is 9 to 3, 10 to 2, 11 to 1, or if it is unanimous. In contrast, for a guilty verdict to be valid, it must be unanimous, that is, you must all be in agreement. The outcome of the voting shall be recorded by the Foreperson in the form provided by the court.

See, Appendix to the Appeal, at 84.

not-guilty verdict, the concurrence of nine of the jurors sufficed. To summarize, he contended that, under the Sixth Amendment to the Constitution of the United States, [LPRA tit. 1], and the ruling in *Ramos v. Louisiana* a verdict that does not meet the unanimity requirement, whether to convict or t acquit, is constitutionally invalid.

For his part, Centeno appeared before the intermediate appellate court through a Motion to Oppose. Therein, he insisted that *Ramos v. Louisiana* did not alter the requirement of a majority vote for reaching a not-guilty verdict, and that the standard prescribed in our Constitution and in the Rules of Criminal Procedure to that effect remained in force. Furthermore, he stressed that no constitutional or legislative amendment had been approved to change the provisions of the constitutional clause on not-guilty verdicts. Subsequently, Centeno also filed an Urgent Informative Motion through which he requested that the court take notice of the decision of the Oregon Supreme Court in *State v. Ross*, 367 Or. 560 (2021), where that court decided a similar controversy.[91]

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[91] The Oregon Supreme Court held that the law of that state, pursuant to the Sixth Amendment of the Constitution of the United States, [LPRA tit. 1], requires unanimity for guilty verdicts, while allowing not-guilty verdicts by a majority vote of 11 to 1 or 10 to 2. Specifically, the court concluded that:

> ***Ramos* does not imply that the Sixth Amendment prohibits acquittals based on nonunanimous verdicts or that any other constitutional provision bars Oregon courts from accepting such acquittals.** . . . The trial court erred in its determination that,

Having analyzed the filings of both parties, on April 6, 2021 the Court of Appeals served notice of a Judgment through which it affirmed the ruling of the Court of First Instance. It agreed that *Ramos v. Louisiana*, and *Pueblo v. Torres Rivera [II]* only addressed the question of whether the Sixth Amendment required a unanimous vote of the members of the jury to render a guilty verdict; thus, the court refused to expand the standard established in those cases. As a result, the intermediate appellate court ruled that to adopt the Solicitor General's proposal would "render the core provisions of the local legal framework ineffectual," since our own Constitution also allows for not-guilty verdicts of 9-3, 10-2, and 11-1, and that does not contravene the standard prescribed in *Ramos v. Louisiana*.[92]

The Court of Appeals further concluded that our Constitution is of a broader scope and that to accept the position of the State would also "have the effect of modifying our system of criminal justice to the point of imposing on the defendant the more onerous burden of having to prove their innocence and minimizing the burden of proof that the State must satisfy in criminal cases," which is clearly at odds with the presumption of innocence.[93] Finally, the intermediate appellate court specified that it was important to clarify the obvious, and therefore stated that "**in a criminal**

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in light of *Ramos*, the provisions of Oregon law permitting nonunanimous acquittals could not be applied.

[367 Or. 560, 573]. (Emphasis added.)

[92] Judgment of the Court of Appeals, delivered by the illustrious Hon. Gina Méndez Miró, at 11.

[93] *Id.* at 12.

proceeding, the only thing that is adjudged is the guilt of the defendant and not their innocence. Innocence is presumed <u>at all times</u>. It would make no sense to have to prove something that is presumed until it is defeated with evidence beyond a reasonable doubt."[94] The Solicitor General requested that the court reconsider its decision, but that request was denied.

Still not satisfied, the Solicitor General came before us through a petition for appeal. He argued that the Court of Appeals erred in affirming that the verdict to find the accused guilty must be unanimous, while, for a verdict of not guilty, it was sufficient to have the concurrence of at least nine of the twelve members of the jury.

As we have mentioned, a majority of this Court–after altering the terms and the procedure that is ordinarily followed in this type of litigation–erroneously opted to subscribe to the request of the Solicitor General.[95] We energetically dissent from this regrettable course of action. We explain below.

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[94] *Id.* at 14 (Some emphasis added).

[95] It is worth mentioning that the writ in above-captioned case was issued as a certiorari since that was the adequate mechanism. Now then, on June 19, 2021, a majority of this Court issued a Resolution through which it granted both parties to the litigation a period of thirty (30) days to simultaneously file their briefs. This, as we have stated, differs from the procedure through which these matters are ordinarily handled. Under these circumstances, and in compliance with orders, both the Solicitor General and Mr. Centeno filed their briefs, through which they reiterated the arguments brought before the lower courts. In this way, and

II.

A.

As is well-known, Article II, Section 11 of the Constitution of the Commonwealth of Puerto Rico provides that "[i]n all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine." PR Const. art. II, § 11, LPRA tit. 1.

That constitutional mandate was incorporated into Criminal Procedure Rule 112, 34 LPRA App. II, which reads as follows:

> RULE 112. – JURY; NUMBER OF JURORS; VERDICT
>
> Juries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.

This, however, has not always been so. Although, in our country, since the early 20th century, all persons accused of a felony–and some misdemeanors–have the right to be tried by an impartial jury, it was not until the latter part of the 1940s that the standard of a verdict by a majority of nine (9) votes was introduced. *Pueblo v. Casellas Toro*, 197 DPR 1003, 1021 [97 PR Offic. Trans. 52, (2017) (Oronoz Rodriguez, C. J., concurring); *Pueblo v. Narváez Narváez*, 122 DPR 80, 84 [22 PR Offic. Trans. 74, 78] (1988); *Pueblo v. Laureano*,

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citing Supreme Court Rule 50, 4 LPRA App. XXI-B, a majority disposed of the case at bar without further proceeding.

115 DPR 4[4]7 [15 PR Offic. Trans. 589] (1984). Therefore, prior to stating our position regarding the case at bar, it is necessary to provide a brief summary of the historical events that led to the institution of trial by jury in our jurisdiction.

B.

In explaining the genesis of the institution of a jury trial in Puerto Rico, the then-delegate to the Constitutional Assembly and former Chief Justice of this Court, José Trías Monge, remarks that "[t]he Foraker and Jones Acts [were] silent on trial by jury, but that it was established by legislation in 1901, limited to the prosecution of felony offenses." 3 José Trías Monge, *Historia Constitutional de Puerto Rico*, 194 (1982), It was then, following the approval by the United States Congress of a civil government for Puerto Rico, that a series of decrees–although very limited–began to be adopted to recognize certain rights to the inhabitants of the island before the State. *See*, José J. Álvarez, La *protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133, 135-138, 144-145 (1988).

In line with the above, on January 12, 1901 the Legislative Assembly of Puerto Rico enacted the Act to Establish Trial by Jury in Porto Rico, 1901 PR Laws 1-2. Through this law, local courts were vested with the jurisdiction to hear jury trials where an individual was accused of a crime for which the penalty was capital punishment or confinement for a period of two years or more in any penal institution on the island. *Id.*

Subsequently, on January 31, 1901, the Act Concerning Procedure in Jury Trials was approved. This statute organized the manner in which jury trials would operate in our jurisdiction. To that effect, the text provided that the term "jury" would mean "a body of men" that would consist of twelve persons "who must unanimously concur in any verdict rendered." 1901 PR Laws 112.

Moreover, on March 1, 1902 the Act to Establish a Code of Criminal Procedure for Porto Rico, [1902 PR Laws 621], was adopted. Section 185 of that piece of legislation read that "[a] jury shall consist of twelve men who must unanimously concur in any verdict rendered." [1902 PR Laws, at 661]. Henceforth, and for almost fifty years, that would be the standard that governed all matters related to trial by jury in our jurisdiction.

Then, on August 19, 1948, Law No. 11, known also as the Majority Verdict Act, was enacted. The purpose of this act was to amend Section 185 of the Code of Criminal Procedure to provide that "[i]n all cases in which, under the laws of Puerto Rico, a jury must render a verdict, said verdict shall be by the concurrence of not less than three-fourths (3/4) of the jury." [1948 PR Laws 212, 2143.[96]

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[96] The records of both legislative chambers show that H.B. 2 and S.B. 76, which became Law No. 11, were approved without much debate. See, *Actas del Senado de Puerto Rico* and *Actas de la Cámara de Representante[s]* for February and July of 1948, respectively.

Later, and taking the above as a starting point, with the approval of our Constitution in 1952, the right to a trial by jury, as well as the standard of a majority verdict of nine, was given to constitutional statute.[97] This standard, as we know, is presently in effect.

Regarding the scope of the above, we must point out that a reading of the debate amongst the delegates to the Constitutional Assembly makes clear that they were aware that in the common law–from which we initially adopted the trial by jury–required unanimity for guilty verdicts. Even so, the proposal that prevailed in that assembled body–which was the architect of our Constitution–was verdict by a majority of no less than nine votes, as was originally considered by the Bill of Rights Committee. In that regard, it is relevant to cite at length from the discussion on that matter as recorded in the Journal of Proceedings:

> Mr. FONFRÍAS: Mr. President and fellow delegates: An amendment: . . . Eliminate "who may render their verdict by a majority vote which in no case may be less than nine."

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[97] In interpreting the constitutional provision on trial by jury and majority verdict, this Court has held that the practical reason behind changing the former standard of a unanimous verdict to a majority verdict of no less than nine was to "prevent having the isolated actions of a [single] juror thwart the unanimity of the verdict and quash the efforts and team work of the jury panel." *Pueblo v. Figueroa Rosa*, 112 DPR 154, 160 [12 PR Offic. Trans. 186, 194] (1982]. However, Trías Monge revealed that the change was due more to "the increase in Puerto Rican nationalist activity arising from the return of Albizu[, which] motivated other limitations [to the right to trial by jury]." Trías Monge, *supra.*

The institution of the jury has already been enshrined in the constitution. **I believe that determining the number of jurors necessary to render a verdict must be a legislative act.** Currently, through legislation, they have been experimenting with verdicts rendered by a majority of nine. It is experimental. Up to this point, it is working. **We do not know whether this experiment will work out in the long run, and then we would be obliged to do what? To amend the constitution, which is much more difficult than any amendment made statutorily.**

. . . . . .

Mr. FONFRÍAS: . . . **My amendment is to the effect that we eliminate everything that entails fixing in the constitution the number jurors needed to return a verdict. That should be left to the Legislative [Assembly].** It may be that the Legislative [Assembly] considers that it should be by majority, it could be that the Legislative [Assembly] considers that the principle of verdicts by the twelve members of the jury should be retained. **As I see it, the process should be eminently legislative and not a matter for the constitution at this time.**

. . . . . .

Mr. BENÍTEZ: As to Delegate Fonfrías's amendment, I would like to say that **our fear is that, based on the case law that touches on the expression "trial by jury" in the common law, the concept of a "trial by**

> **jury" means "trial by jury rendering a unanimous verdict." If perchance the amendment proposed by Delegate Fonfrías were to proceed, it would take the matter *even* further out of the hands of this Legislative [Assembly] because, pursuant to this case law, it would unfailingly fix at twelve the number of jurors who must concur.**
>
> . . . . . .
>
> Mr. FONFRÍAS: The amendment would be as follows: On the same page, page 4, line 8, after "district," "who may render their verdict by a majority vote, as provided by law." That is the amendment.
>
> . . . . . .
>
> Mr. PRESIDENT: Mr. Fonfrías amendment will be submitted to a vote. All in favor say "aye" . . . Those opposed say "no" . . . **The amendment is defeated.**

3 *Diaro de Sesiones de la Convención Constituyente de Puerto Rico* 1588-1590 (1961).(Emphasis added.)

As we can see, with this vote, and as it pertains to trial by jury, the original proposal of the Bill of Rights Committee, presided by Delegate Jaime Benítez, was upheld in three aspects, to wit: 1) the right to trial by jury was given to constitutional statute; 2) the jury must render a verdict with the concurrence of no less than nine votes; and 3) the Legislative Assembly may

increase statutorily the number of votes required for a verdict, should it eventually deem it fitting to do so.

Regarding the last point, we must indicate that the Bill of Rights Committee Report addressed the concern of some members of the Constitutional Assembly regarding the formula for returning verdicts by the concurrence of no less than nine members of the jury. Specifically, the following was voiced:

> The text permanently fixes the number of jurors at twelve, as a response to the prevailing tradition in the country and the common law tradition. In contrast to that tradition, a verdict maybe rendered by a majority vote, **the number of which will be determined by the legislative power**, but that shall not be less than nine. This is the system that is in effect by law. **We believe that the proposed formula will allow the Legislative [Assembly] to increase the margin of the majority up to unanimity, were it to deem it fitting in the future.**

4 *Diario de Sesiones de is Convención Constituyente de Puerto Rico*, Bill of Rights Committee Report 2570 (1961) (Emphasis added.)

Finally, and as it pertains to the matter under examination, it is also convenient to refer to the most recent publication by Professor Jorge Farinacci Fernós, *La Carta de Derechos.* Therein, through a certain

analytical model,[98] Professor Farinacci Fernós explains that the **purpose** of Article II, Section 11 of our Constitution "is to interpose the democratic institution of the jury between the punitive power of the State and the accused." Jorge Farinacci Fernós, *La Carta de Derechos* 209, San Juan, Ed. UIPR (2021). Similarly, he remarks that the right to trial by jury, as it was drafted into the Constitution, has a **dual intention**: 1) to elevate that right to constitutional stature and 2) to distinguish ourselves from the common law tradition by ratifying the standard of a verdict by a majority vote as the legislative power may determine, which shall never be fewer than nine. *Id.* [at 209-210.] The distinguished professor adds that "the **objective** of this clause is to curb the power of the State to deprive a person of their liberty;" therefore, Section 11 of Article II--the Bill of Rights--is related to the right to liberty contained in Section 7 of that same article. *Id.* [at 210.]

Now then, having established that the rule of verdicts by a majority of nine or more has prevailed in Puerto Rico for more than half a century–a constitutional postulate that has been construed by this Court

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[98] The referenced model is organized into nine components: 1) text; 2) origin of the provision; 3) communicative content; 4) general prescriptive content; 5) normative structure; 6) nature; 7) operation; 8) semantic or normative link to other constitutional provisions; and 9) an integrated reformulation of law. For a more detailed explanation, we refer the reader to Chapter 2 of the book *La Carta de Derechos.* Jorge Farinacci Fernós, *La Carta de Derechos* 21-36, San Juan, Ed. UIPR (2021).

on numerous occasions[99]–is our duty to recognize that said precept was altered last year with the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, which was adopted by this Court in *Pueblo v. Torres Rivera [II].*

C.

Bearing the above in mind, and concerning the trial by jury in the United States, we must recall that the Sixth Amendment to the federal Constitution prescribes that:

> [I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to

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[99] See *Pueblo v. Casellas Toro*, 197 DPR 1003, 1019 [97 PR Offic. Trans. 52, ___] (2017) ("there is no doubt that in the courts of . . . Puerto Rico a guilty verdict is valid when, at least, nine members of the jury concur"); *Pueblo v. Baez Cintrón*, 102 DPR 30, 34 (2 PR Offic. Trans. 42, 47] (1974) ("we reiterate our position acknowledging autonomy to Puerto Rico within its political relationship with the United States to adopt that rule. We ratify once more the validity of verdicts by majority of 9 or more"); *Pueblo v. Batista Maldonado*, 100 PRR 935 (1972); *Fournier v. González*, 80 PRR 254, 258(1958) ("The peculiar development of the institution of trial by jury in the administration of our criminal justice was taken into account in the constitutional debates. The advantages and disadvantages of said institution were considered and only a limited guarantee, which extends solely to the 'felonies' and which does not include the principle of unanimity, was adopted.")

> be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in 'his favor, and to have the Assistance of Counsel for his defen[s]e.[100]

US Const. amend. VI, LPRA tit. 1.

Note that the federal Constitution, contrary to our own, does not explicitly incorporate a requirement as to the number of votes necessary to render a verdict. However, the Supreme Court of the United States has provided the contours of said protection through caselaw and historical construction.

In that regard, since *Duncan v. Louisiana*, 391 US 145 (1968), the highest federal court has held that the right to a trial by jury under the Sixth Amendment is a fundamental right that extends to the states through the Fourteenth Amendment. Having recognized this, the Court subsequently inquired into whether a unanimous vote, which historically had been required at the federal level, extended to state jury trials.

In *Apodaca v. Oregon*, 406 US 404 (1972), the Supreme Court of the United States considered whether a guilty verdict rendered by majority vote violated the fundamental right to a trial by jury under the Sixth Amendment.[101] The Court issued a plurality opinion in that case.

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[100] [Translator's note: This footnote quotes the original English text cited above.]

[101] See also, *Johnson v. Louisiana*, 406 US 356 (1972), decided on the same date as *Apodaca v. Oregon*, 406 US 404 (1972).

On the one hand, four US Supreme Court Justices agreed with the ruling that a unanimous vote was not a constitutional requirement, much as the composition of a jury of twelve members was also not a requirement. *Id.* at 406. On the other hand, four other federal Supreme Court Justices dissented, as they believed that the Sixth Amendment demanded a unanimous vote of the jury and that said requirement was applicable to the states by way of the Fourteenth Amendment.

Nevertheless, and as his concurring opinion was the deciding vote, Justice Powell indicated that the Sixth Amendment to the Constitution of the United States demanded unanimity in federal trials but not in state trials. *Id.* at 371-372 (Powell, J., concurring). *See also*, Ernesto L. Chiesa Aponte, *Procedimiento Criminal y* la *Constitución: etapa adjudicativa* 437-438, Puerto Rico, Ed. SITUM (2018). As a result, this ruling laid down the standard that a unanimous verdict was not required for state jury trials.

The ruling in *Apodaca* was in force for about half a century. This is because, as recently as last year, the highest federal court was again faced with the question of whether the right to a trial by jury and the Sixth Amendment--which was extended to the states through the Fourteenth Amendment--allowed for non-unanimous guilty verdicts in criminal cases tried in state court.

Thus, in *Ramos v. Louisiana*, 590 US ___[, 140 S.Ct. 1390] (2020), following a careful and detailed

historical analysis of the Sixth Amendment and the right to trial by jury guaranteed thereby, the Supreme Court of the United States overturned *Apodaca v. Oregon. [Ramos*, 140 S.Ct., at 1395-1397]. The Court based its decision on the fact that *Apodaca* ignored the historical background of the right to trial by an impartial jury,[102] as well as the racist and discriminatory origins of the statutes at issue, among other reasons. *Id.*, at [1394-1397].

As it pertains to the case at bar, the highest federal court concluded that, the text and structure of the federal Constitution clearly suggested that the term "trial by an impartial jury" entailed a certain meaning with regard to its content and requirements, one of those requirements being unanimity. In other words,

> **Wherever we might look to determine what the term "trial by an impartial jury trial" meant at the time of the Sixth Amendment's adoption**--whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward--**the answer is unmistakable. A**

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[102] Regarding this historical understanding, the highest federal court recalled that the proposed text for the Sixth Amendment at one point stated that unanimity was required for a conviction. ("The trial of all crimes . . . shall be by an impartial jury of freeholders of the vicinage, with the **requisite of unanimity for conviction**, of the right of challenge, and other accustomed requisites.") 1 Annals of Cong. 435 (1789) (Emphasis added.)) However, that requirement was so plainly included in the right to a trial by an impartial jury that the senators at the time decided to eliminate it, as it was deemed unnecessary. *Ramos v. Louisiana*, [590 US ___, 140 S.Ct. 1390,] 1400 [(2020)].

> **jury must reach a unanimous verdict in order to convict.**
>
> The requirement of juror unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law. **As Blackstone explained, no person could be found guilty of a serious crime unless "the truth of every accusation . . . should . . . be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion."**

Id. at 1395, *quoting* 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769). (Emphasis added.)

In this way, the highest federal court ruled that the two contested statutes-one from Louisiana and one from Oregon, both allowing for conviction by majority verdict-were contrary to the Sixth Amendment of the Constitution of the United States. *Id.* at 14[01]. As a result, the Supreme Court of the United States held that "**if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court**." *Id.* at [139]7. (Emphasis added.)

It is important to point out that, as we have mentioned, the standard established in *Ramos v. Louisiana* was subsequently incorporated into our own caselaw through *Pueblo v. Torres Rivera [II]*, 204 DPR 288 [104 PR Offic. Trans. 22] (2020). In that respect, this Court, in deciding that case, held that,

> A reading of the opinion of the United States Supreme Court in *Ramos v. Louisiana* shows that unanimity constitutes **an additional essential procedural protection [for the defendant]** that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.

Id. at 306-307 [104 PR Offic. Trans. 22, at 10]. (Emphasis added.)

Pursuant to the ruling of the Court at the time, in that case, we ordered a new trial and advised that, under the new standard established in *Ramos v. Louisiana*, "**in order to obtain a conviction**, the jury must return a unanimous verdict." *Id.* at 307 [104 PR Offic. Trans. 22, at 101. (Emphasis added.)

Thus, in light of the standards set forth above, we proceed to pass on the above-captioned case from a position of dissent.

IV.

As we have mentioned, **in** this case, we are tasked with evaluating whether the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, adopted in our jurisdiction through *Pueblo v. Torres*

Rivera [II], completely superseded the standard of majority verdict provided in Article II, Section 11 of our Constitution and incorporated into Criminal Procedure Rule 112. Specifically, we must evaluate the Solicitor General's argument is correct in that the intermediate appellate court erred in affirming that a guilty verdict requires unanimity while concurrence of at least nine jurors is sufficient for a not-guilty verdict. He is mistaken.

While the analysis that we have set forth makes it glaringly clear that our constitutional clause on trial by jury in criminal cases *was* displaced in part by the decision of the federal Supreme Court in *Ramos v. Louisiana*, since, for all practical purposes, the Legislative Assembly was deprived of their authority to allow non-unanimous guilty verdicts,[103] **it is also clear that the constitutional clause that permits a jury to render a not-guilty verdict by a majority vote in which no less than nine jurors must concur and the text of Criminal Procedure Rule 112 remain in full effect.**[104] This is so because those provisions

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[103] Farinacci Fernós, *supra*, at 208 n.495. (Emphasis added.)

[104] Moreover, "[w]hoever has doubts about this must ask themselves whether, in light of the Sixth Amendment and the ruling in Ramos, it would be unconstitutional for a state to have a provision of the constitution or even a statute establishing a majority vote for not-guilty verdicts. It is evident that the answer is no. It can be no other way. The opposite would be to affirm that "the government" has a fundamental right under the Sixth Amendment to demand unanimity. This is contrary to the basic notions of US Constitutional Law, which provides **that fundamental rights are guarantees in favor of the accused that**

have not been amended, repealed, or declared entirely contrary to the Sixth Amendment to the federal Constitution. In this regard, both Article II, Section 11 of our Constitution and Criminal Procedure Rule 112 govern the above-captioned matter as it pertains to the issue of not-guilty verdicts.

As we have explained, the Legislative Branch–which the Constitutional Assembly empowered to increase the minimum number of votes required for a verdict–may lay down through legislation a unanimity requirement for not-guilty verdicts. *Nevertheless*, **to date, this has not happened**.

On the contrary, currently the Legislative Assembly is considering H.B. 283 to, among other things, amend Criminal Procedure Rule 112 so that it may read as follows:

> RULE 112. – JURY; NUMBER OF JURORS; VERDICT
>
> Juries shall be of twelve (12) residents of the district, **who shall render a <u>not-guilty verdict by majority vote</u>**, the concurrence of which shall not be less than nine (9) votes. **To issue a <u>guilty verdict</u>, it shall be necessary for the vote to be <u>unanimous</u>.**

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are opposable to the state, and not the other way around." *See*, Julio Fontanet, *La unanimidad y los condenados erróneamente*, elnuevodia.com, **La unanimidad y los condenados erróneamente–El Nuevo Día (elnuevodia.com)** (last visited, Sept. 2, 2021).

In other words, this is a bill the sole purpose of which is to attune the Rules of Criminal Procedure to the ruling in *Ramos v. Louisiana*, and nothing else.[105] This is, without a doubt, a step in the right direction.

V.

In short, we do not see how a formula requiring unanimity for a conviction and a majority for an acquittal (although anomalous, as a majority of this Court indicates) contravenes the precepts enshrined in the Sixth Amendment of the federal Constitution and the ruling in *Ramos v. Louisiana*.[106] What is genuinely

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[105] The Statement of Motives of the referenced bill states that:

> [A]s criminal convictions rendered by non-unanimous juries have been declared unconstitutional, the result is the invalidation of the Puerto Rican constitutional provision that allows for convictions reached by the concurrence of no less than nine (9) jurors.
>
> Therefore, we believe it is appropriate to harmonize Puerto Rican law with the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, 590 US (2020), by amending Rules 112 and 151 of the Rules of Criminal Procedure of 1963, as amended, for the purposes of establishing that verdicts rendered by a jury must be unanimous in order to be effective.

[106] Note that this proposal is also consistent with the logic of Article II, Section 19 of our Constitution (PR Const. Art. II S 19, LPRA tit. 1), insofar as that constitutional clause that recognizes the "especially dynamic order of the law in this field" invites the Legislative Assembly to expand the rights that emanate from the Constitution, as well as to add whatever new rights may be recognized throughout the years. *See*, Farinacci Fernós, *supra*, at 358-359, *citing* Trías Monge, *supra*, at 208. Bear in mind that the intent of the Constitutional Assembly was "that the Bill of Rights

anomalous is how this Court, by judicial fiat, has subverted the state of the law on the pretext of a supposed rule or intent of symmetry of the verdicts.

The only position that may be attributed to the delegates of the Constitutional Assembly, both from the history of the trial by jury in our country and the clear intent included in the wording that was ultimately drafted into the Bill of Rights, is that of a majority verdict with the concurrence of at least nine members of the jury. Thus, the supposed intent of symmetry in verdicts on which the conclusion reached by a majority of my

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not be construed as an exhaustive catalog of [the] rights [of all persons] in Puerto Rico." Trías Monge, *supra*, at 208.

Furthermore, and although we are aware that, in the context of a trial by jury in our jurisdiction, "the intent has always been to grant strictly what arises from the federal imperative and nothing more," we must point out that our Bill of Rights, when considered as a whole, is of a broader scope than what is traditionally afforded. *See*, Ernesto L. Chiesa, *Los derechos de los acusados y la facture más ancha*, 65 REV. JUR. UPR 83, 108-107 (1996). See also, *E.L.A. v. Hermandad de Empleados*, 104 DPR 436, 440 [4 PR Offic. Trans. 605, 610] (1975). *Pueblo v.* [*Díaz, Bonano*], 176 DPR 601 [76 PR Offic. Trans. 37] (2009).

Along those lines, this Court and any other political power can, in fact, interpret our Constitution to grant more rights and protections to individuals than are recognized under the federal Constitution. *See*, José J. Álvarez, [*La protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133,] 174-175. For this reason, when we understand the Constitution as a living document and read it as a whole, we can see multiple instances in which the rights of the accused are of a broader scope. *See*, *e.g.*, Chiesa, *supra.* Thus, we believe the manner in which the state of the law on trial by jury and verdicts has been upended in the Puerto Rican legal framework is incompatible with all of this.

colleagues on the bench rests **does not figure** in the discussions of the delegates or from the inner workings of the development of trial by jury in our jurisdiction. Therefore, the error assigned was not committed.[107]

VI.

For the foregoing reasons, I emphatically dissent from the outcome reached today by a majority of this Court.

Angel Colon Perez
Associate Justice

I CERTIFY that this is an Official Translation made by the Bureau of Translations of the Supreme Court of Puerto Rico.

In San Juan Puerto Rico: OCT 08 2021
[Illegible]

Clerk of the Supreme Court

[SEAL]

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[107] The foregoing gains even more relevance considering the ruling of the Oregon Supreme Court in *State v. Ross* [367 Or. 560 (2021)]. Last February, said court overwhelmingly held that, pursuant to the Sixth Amendment, Oregon law required guilty verdicts for all criminal charges to be unanimous, while it accepted not-guilty verdicts by an 11-to-1 or 10-to-2 margin. The court reasoned that what the federal Supreme Court so carefully decided in *Ramos v. Louisiana* left no doubt that guilty verdicts require unanimity, but that this in no way implied that the Sixth Amendment prohibited acquittals based on nonunanimous verdicts.

(Official Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
FAJARDO JUDICIAL REGION

THE PEOPLE OF PUERTO RICO	CASE NO. KLCE202100016
V.	RE: INTERLOCUTORY
CENTENO, NELSON D	CRIMINAL CERTIORARI

NOTICE

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THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT, REGARDING THE: PETITION FOR CERTIORARI-JANUARY 4, 2021

THIS COURT ISSUED A JUDGMENT ON MARCH 31, 2021,
A COPY OF WHICH IS ATTACHED HERETO, OR THE LINK IS INCLUDED HEREUNDER:

YOU ARE ADVISED THAT, AS A PARTY OR LEGAL COUNSEL IN THE CASE SUBJECT TO THIS RESOLUTION ON RECONSIDERATION, FROM WHICH MAY FILE FOR APPEAL OR CERTIORARI PURSUANT TO THE PROCEEDING AND WITHIN THE TERM ESTABLISHED BY LAW, RULE, OR REGULATION, I ISSUE THIS NOTICE TO YOU.

I FURTHER CERTIFY THAT ON THIS DAY A COPY OF THIS NOTICE WAS SENT TO THE PERSONS INDICATED ABOVE TO THE ADDRESSES INCLUDED IN THE CASE IN ACCORDANCE WITH THE APPLICABLE RULES. A COPY OF THIS NOTICE WAS ENTERED IN THE RECORD ON THE SAME DATE.

IN SAN JUAN, PUERTO RICO, THIS 6TH DAY OF APRIL 2021.

LILIA M. OQUENDO SOLIS	BY: sgd./REBECCA CARABALLO SERRANO
NAME OF THE CLERK OF THE COURT OF APPEALS	NAME AND SIGNATURE OF THE ASSISTANT CLERK OF THE COURT

OAT 1835 Single Notice Form – Court of Appeals (March 2017)

(Official Translation)

Commonwealth of Puerto Rico
COURT OF APPEALS
PANEL X

THE PEOPLE OF PUERTO RICO Petitioner v. NELSON DANIEL CENTENO Respondent	KLCE202100016	Certiorari originating from the Court of First Instance, Superior Court of Fajardo Case No.: NSCR201600145 through NSCR201600150 Re: PENAL CODE sec. 93-A, Attempt PENAL CODE sec. 93-A, Weapons Act sec. 5.15 (2 counts), Weapons Act sec. 5.04, PENAL CODE sec. 195-A

Panel composed of Rodríguez Casillas, as presiding judge, and Judges Romero García and Méndez Miró.[1]

Judgment was delivered by Judge Méndez Miró.

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[1] Pursuant to Administrative Order TA-2021-043, the composition of the panel has been modified.

JUDGMENT

San Juan, Puerto Rico, March 31, 2021.

The State requests that this Court review the Resolution issued by the Court of First Instance, Fajardo Part (CFI), whereby the CFI denied the Motion Requesting Jury Instruction filed by the State regarding the unanimity requirement for a guilty or not-guilty verdict.

The writ of certiorari is issued and the decision of the CFI is affirmed.

I. Procedural Background

On January 9, 2016, the State filed several criminal charges against Nelson Daniel Centeno for events that occurred on January 4, 2016. He was charged with one count of first-degree murder and one count of attempted murder under Section 93 of the Penal Code of 2012, Law No. 146 of 2012, as amended, 33 LPRA § 5142(a); one count of aggravated burglary under Section 195A of the Penal Code of 2012, 33 LPRA § 5265; one count for violation of Section 5.04 and two counts for violation of Section 5.15 of the repealed Weapons Act, Law No. 404 of September 11, 2000, as amended, 25 LPRA 55 458c & 458n.

After the State filed the information, on February 25, 2020, the jury selection process began. On November 18, 2020, the State filed a Motion Requesting Jury Instruction through which it requested the jury be

instructed that the verdict must be unanimous, both for conviction as well as for acquittal.

On November 30, 2020, Centeno filed a Motion to Oppose the "Motion Requesting Jury Instruction" and in Compliance with Order. He argued that a not-guilty verdict in which at least nine jurors concur is valid.

On December 3, 2020, the CFI issued a Resolution denying the State's request. In short, it ruled that, for a not-guilty verdict, such an outcome may be obtained with the concurrence of at least nine jurors, while a guilty verdict must be unanimous.

Aggrieved, on December 4, 2020, the State moved the Court to reconsider its decision. On December 7, 2020, the CFI issued a Resolution denying that motion.

Subsequently, the State filed a Petition for Certiorari stating:

> THE CFI ERRED IN ADOPTING, CONTRARY TO THE [STATE'S] REQUEST, [CENTENO'S] PROPOSAL OF INSTRUCTING THE JURY THAT A GUILTY VERDICT MUST BE UNANIMOUS, BUT THAT FOR A NOT-GUILTY VERDICT THE CONCURRENCE OF AT LEAST NINE (9) JURORS MAY SUFFICE.

Centeno filed a Motion to Oppose on February 3, 2021 and subsequently filed an Urgent Informative Motion. He requested that this Court take notice of the decision of the Oregon Supreme Court in *State v. Ross*, 367 Or. 560 (2021), on how the scope of the prohibition

of the Sixth Amendment does not extend to not-guilty verdicts.

With the benefit of the briefs from both parties, we shall now decide.

II. Legal Framework

A. Certiorari

A writ of certiorari is the procedural vehicle through which this Court may review a ruling of a lower court. *IG Builders et al. v. BBVAPR*, 185 DPR 307, 337-338 [85 PR Offic. Trans. 10, ___] (2012); *Pueblo v. Diaz* de *Leon*, 176 DPR 913, 917 [76 PR Offic. Trans. 41, ___] (2009). The distinguishing feature of this writ is the discretion of this Court to issuance the same and pass on the merits. *IG Builders et al. v. BBVAPR*, 185 DPR, at 338 [85 PR Offic. Trans. 10, at ___]. That is, unlike with a petition for appeal, this Court may decide whether to exercise its power to issue the writ. *García v. Padró*, 165 DPR 324, 334 [65 PR Offic. Trans. 19, ___] (2005).

However, this discretion does not operate in a vacuum. In the interest of exercising our discretion to hear or not hear the controversies brought before this Court, Court of Appeals Rule 40, 4 LPRA App. XXII-B, provides that the following criteria must be considered:

> (A) If the remedy and the decision sought to be reviewed, unlike its grounds, are contrary to law.

(B) If the facts set forth present are the most adequate situation for analyzing the problem.

(C) If there has been prejudice, partiality or bias, or gross and manifest error in the weighing of the evidence by the Court of First Instance.

(D) If the issue raised requires a more thorough consideration in light of the original record, which shall be transmitted, or more elaborate briefs.

(E) If the stage of the proceedings at which the case is brought is the most appropriate for its consideration.

(F) If issuance of the writ or of the show cause order does not cause an undue fragmentation of the action and an unwanted delay in the final adjudication of the same.

(G) If issuance of the writ or of the show cause order prevents a miscarriage of justice.

This rule, however, does not provide an exhaustive list, and none of these factors are decisive in and of themselves. *Garcia v. Padró*, 165 DPR, at 335 [65 PR Offic. Trans. 19, at ___] n.15. Our Highest Court has held that this Court must evaluate "both the correctness of the decision to be reviewed and the stage of the proceeding at which it was brought in order to determine whether it is the most appropriate time to intervene so as not to cause the undue fractioning of or unwarranted protraction of the litigation." *Torres*

Martinez v. Torres Ghigliotty, 175 DPR 83, 97 [75 PR Offic. Trans. 6, ___] (2008).

This Court may disturb the CFI's discretionary authority where the lower court "(1) acted with bias or partiality, (2) committed a gross abuse of discretion, or (3) erred in its construction or application of any procedural or substantive law rule." *Rivera y otros v. Bco. Popular*, 152 DPR 140, 155 [52 PR Offic. Trans. 10, ___] (2000). Thus, "discretionary decisions of the Court of First Instance shall not be overturned unless it is shown that the court abused its discretion." *SLG Zapata-Rivera v. J.F. Montalvo*, 189 DPR 414, 434 [89 PR Offic. Trans. 19, ___] (2013). This is because "appellate courts must not purport to administrate or manage the regular course of cases before the trial court." *Id.*

The finding that a court abused its discretion is closely linked to the concept of reasonableness. *Id.* at 434-435 [89 PR Offic. Trans. 19, at ___]. Our Highest Court has defined discretion as "a way of reasonableness applied to the judicial discernment in order to reach a just conclusion." *Id.* at 435 [89 PR Offic. Trans. 19, at ___]; *IG Builders et al. v. BBVAPR*, 185 DPR, at 338 [85 PR Offic. Trans. 10, at ___]. The Court further explained that discretion "involves a rational judgment grounded on a simple sense of justice. . . . It cannot be put into practice unrestricted by at one's will or fancy" nor does it imply "the power to act one way or another, abstracting the situation from the rest of the law." *SLG Zapata-Rivera v. J.F. Montalvo*, 189 DPR, at 435 [89 PR Offic. Trans. 19, at ___]; *Bco. Popular de P.R.*

v. Mun. de Aguadilla, 144 DPR 651, 658 [44 PR Offic. Trans. 24, ___] (1997). Therefore, the writ of certiorari must be used with caution and only for compelling reasons. *Pérez v. District Court*, 69 PRR 4, 16 (1948).

B. Trial by Jury

Both the Constitution of the United States and the Constitution of Puerto Rico guarantee the right of all defendants to be tried by an impartial jury. The Sixth Amendment to the Federal Constitution, US Const. amend. VI, LPRA tit. 1, provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.[2]

Article II, Section 11 of the Constitution of the Commonwealth of Puerto Rico, PR Const. art. II, § 11, LPRA tit. 1, provides that:

> In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of

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[2] [Translator's note: This footnote quotes the original English citation.]

> the district, who may render their verdict by a majority vote which in no case may be less than nine.

In Puerto Rico, the jury has a dual function. First, as a constitutional right, it assures that a defendant is tried by their peers as a guarantee that they will make sense of the facts of the criminal case using the same values scale with which the accused weighs their own reality. Second, as triers of fact, it guarantees the neutrality of the process when it comes to assigning a value to the defendant's actions. 2 Olga E. Resumil, *Derecho Procesal Penal* 98, Orford, Equity Pub. Co. (1990).

The local constitutional standard on the validity of certain majority verdicts was included in the Rules of Criminal Procedure of Puerto Rico, 34 LPRA App. II. On this matter, Criminal Procedure Rule [1]12, 34 LPRA App. II, provides as follows:

RULE 112. JURY; NUMBER OF JURORS; VERDICT

> Juries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.[3]

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[3] In construing this rule, the Supreme Court has held that the main reason for changing our criminal procedure from the standard of unanimous verdict to that of a verdict by a majority of no less than nine was to prevent the isolated actions of one juror from thwarting unanimity and canceling the effort and teamwork of the jury panel. *Pueblo v. Figueroa Rosa*, 112 DPR 154 [12 PR Offic. Trans. 186] (1982). The: Supreme Court has also held that

The United States Supreme Court recently held in *Ramos v. Louisiana*, 590 US ___[, No. 18-5924 (slip op.)] (2020), that the fundamental right to a trial by jury guaranteed by the Sixth Amendment–as incorporated against the States through the Fourteenth Amendment–does not admit nonunanimous guilty verdicts in criminal cases tried in state court. In what is relevant hereto, the Court provided as follows:

> There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice" and incorporated against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.

Id. at 7. (Emphasis added.)

In *Pueblo v. Torres Rivera*, 2020 TSPR 42 [104 PR Offic. Trans. 22], Puerto Rico's Highest Court incorporated the standard requiring a unanimous guilty verdict in jury trials in *Ramos v. Louisiana.* With this

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a verdict is not null and void for the fact that it was not unanimous. *People v. Alicea Cruz*, 100 PRR 294 (1971).

ruling, the Court sought to cement unanimity as an essential feature of the fundamental right to a trial by jury. *Id.* To that end, the Court held that:

> A reading of the opinion of the United States Supreme Court in *Ramos v. Louisiana* shows that unanimity constitutes an **additional essential procedural protection** that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.

Id. at [23] [104 PR Offic. Trans. 22, at 10]. (Emphasis added.)

In light of the legal standards discussed. above, this Court shall now decide.

III. Discussion

In sum, the State contends that the CFI erred in not instructing the jury on the unanimity requirement for both scenarios (guilty and not guilty) and posits that it is so required under the Sixth Amendment. It argues that a nonunanimous verdict finding Centeno not guilty would be contrary to *Ramos v. Louisiana.* The State also maintains that this does not do away with the presumption of innocence nor does it alter the

burden that falls to the State to prove the defendant's guilt beyond a reasonable doubt. We do not agree.

Centeno contends that it does not lie to provide such instructions to the jury. He argues that a not-guilty verdict may be sustained with the concurrence of the majority–at least nine votes–of the 12 jurors. He supports his position on the provisions of the Constitution of Puerto Rico and the Rules of Criminal Procedure of Puerto Rico that require as much. He posits that said precepts remain in full force for the purposes of a not-guilty verdict. We agree.

Ramos v. Louisiana solely and exclusively addressed the unanimity requirement in the context of finding a defendant guilty in felony criminal proceedings. Specifically, the controversy hinged on guilty verdicts in which 10 of the 12 jurors were in agreement.

Here, this Court entertains the applicability of that requirement to a not-guilty verdict. This Court is clear that before us is a controversy that is notably different; therefore, strictly based on the law, it is incorrect to apply this standard analogously as the State intends. It is not incumbent upon this Court to grant *Ramos v. Louisiana* such broad scope in the absence of a directive from a higher court.

The State also requests that this Court apply the Sixth Amendment restrictively without setting forth any legal grounds. We do not agree. In both *Ramos v. Louisiana* and *Pueblo v. Torres Rivera*, unanimity was recognized as an essential feature of the fundamental right to a trial by jury. This Court stresses that both

rulings were circumscribed to the question of whether the Sixth Amendment requires unanimity for a guilty verdict. For this reason, the United States Supreme Court instituted jury unanimity as a substantial requirement for obtaining a conviction in a criminal proceeding for a felony offense.[4] Thus, it recognizes unanimity as a natural consequence of the impartiality ordered by the Sixth Amendment.[5]

We must underscore that in *Ramos v. Louisiana*, the United States Supreme Court sought to stamp out racial discrimination with respect to the participation of African Americans on juries, so that the vote of each juror would truly be counted.[6] Again, this occurred in the context of guilty verdicts.

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[4] "We took this case to decide whether the Sixth Amendment right to a jury trial–as incorporated against the States by way of the Fourteenth Amendment–**requires a unanimous verdict to convict a defendant of a serious offense**." *Ramos v. Louisiana*, 590 US ___[, No. 18-5929 (slip op.)], at 3 (2020). (Emphasis added.)

[5] *Pueblo v. Torres Rivera*, 2020 TSPR 42, [at 15-16] [104 PR Offic. Trans. 22, 7].

[6] The Supreme Court specifically addressed the relationship between the origin of nonunanimity rules in the two remaining states of the Union–Oregon and Louisiana–where unanimity was not a requirement for guilty verdicts, and the promotion of discriminatory policies:

> Louisiana first endorsed nonunanimous verdicts for serious crimes at a constitutional convention in 1898. According to one committee chairman, the avowed purpose of the convention was to "establish the supremacy of the white race," and the resulting document included many of the trappings of the Jim Crow era: a poll tax, a combined literacy and property ownership test, and a

This Court will not exceed the limits of the standard established in that case; much less will we adopt it to restrict the application of the Sixth Amendment in our jurisdiction. As our Highest Court held, the unanimity requirement constitutes an additional protection under the Sixth Amendment. *Pueblo v. Torres Rivera*, 2020 TSPR 42, at [23] [104 PR Offic. Trans. 22, at 10]. This Court rules that to adopt the position of the State would curtail such protection.

> grandfather clause that in practice exempted white residents from the most onerous of these requirements.
>
> Nor was it the only prospect of African-Americans voting that concerned the delegates. Just a week before the convention, the U.S. Senate passed a resolution calling for an investigation into whether Louisiana was systematically excluding African-Americans from juries. Seeking to avoid unwanted national attention, and aware that this Court would strike down any policy of overt discrimination against African-American jurors as a violation of the Fourteenth Amendment, the delegates sought to undermine African-American participation on juries in another way. With a careful eye on racial demographics, the convention delegates sculpted a "facially race-neutral" rule permitting 10-to-2 verdicts in order "to ensure that African-American juror service would be meaningless."
>
> Adopted in the 1930s, Oregon's rule permitting nonunanimous verdicts can be similarly traced to the rise of the Ku Klux Klan and efforts to dilute "the influence of racial, ethnic, and religious minorities on Oregon juries." In fact, no one before us contests any of this; courts in both Louisiana and Oregon have frankly acknowledged that race was a motivating factor in the adoption of their States' respective nonunanimity rules.

Ramos v. Louisiana, 590 US[, slip op.], at 2-3. (Emphasis added.)

To adopt the proposal of the State would, for example, leave fundamental provisions of our legal framework inoperative, since our Constitution provides that a verdict may be reached through the concurrence of no less than nine of the 12 members of the jury. PR Const. art. II, § 11, LPRA tit. 1. For this reason, it allows not-guilty verdicts of 9-12, 10-2, and 11-1 without contravening the *Ramos* standard. This standard was laid down through statute in Criminal Procedure Rule [1]12.[7]

To uphold that conclusion, on occasion, our Highest Court has held that, as compared to the federal constitution, ours is of broader scope.[8] That is, it may

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[7] Were we to adopt the theory put forward by the State, the instructions for a valid verdict included in the Jury Instructions Handbook would also become inoperative. There is no doubt that they are an effective guarantee of constitutional protections in criminal proceedings. Therefore, in order that all defendants be treated equally, our Highest Court has held that "the best practice for the courts should be to conform their instructions to those laid down in the aforementioned handbook, unless other circumstances justify a deflection therefrom." *Pueblo v. Mangual Hernández*, 111 DPR 136, 146 [11 PR Offic. Trans. 176, 189] (1981).

[8] In *Pueblo v. Diaz [, Bonano]*, 176 DPR 601, [ ]622 [76 PR Offic, Trans. 37, ___] (2009), our Highest Court ruled that:

> [The] Constitution [of Puerto Rico] is broader than the Federal Constitution as it concerns the granting of rights. . . .
>
> . . . . . .
>
> We do not deny that our Bill of Rights has greater breadth in its protections than the Federal Constitution. After all, it is a Bill of Rights that was adopted

confer greater protections against State interference. To that effect, in *Pueblo v. Diaz [, Bonano]*, 176 DPR 601, 621 [76 PR Offic. Trans. 37, ___] (2009), the Supreme Court stated:

> It is well known that the applicability of a federal constitutional right constitutes only the minimum scope of that right. That is why the supreme court of a state, including Puerto Rico, may interpret their own constitution to provide a right with broader confines, which may result in greater individual protections than those recognized by the federal constitution. . . . As a result of this principle, our Bill of Rights is of a broader scope than the federal Constitution. . . . That is, like the states of the Union, in Puerto Rico we may be broader and more encompassing than the United States Supreme Court in construing an equivalent clause of the federal constitution.[9]

For that reason, this Court may confer greater guarantees to defendants than those provided at the federal level. This action does not contravene the standard recognized in *Ramos v. Louisiana* or in *Pueblo v. Torres Rivera* since the ruling in both of these cases pertains exclusively to guilty verdicts.

In short, to accept the State's proposition would have the effect of modifying the criminal justice system

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more than a century after the Bill of Rights of the United States Constitution.

[9] [Translator's note: This footnote quotes the original English citation.]

to the point of imposing on defendants the more onerous burden of having to prove their innocence while minimizing the burden of proof that the State must satisfy in criminal cases. Such a constrution of *Ramos v. Louisiana* is in open tension with the presumption of innocence that extends to all defendants in our jurisdiction, as enshrined in Article II, Section 11 of our Constitution.

This Court carefully examined the applicable standards and concluded that there is no margin to adopt the interpretation proposed by the State. It is clear that the only legal basis to support the States contention, *Ramos v. Louisiana*, does not address the controversy presented here. It is thus proper to construe and apply it in a manner that is consistent with its scope. Nothing more, nothing less. Compelling constitutional reasons allow for no other alternative.

Regarding the instructions read to the jury, this Court highlights the broad discretion afforded to the CFI under Criminal Procedure Rule 137, 34 LPRA App. II:

> Either party may present to the court any written request that certain instructions be given, at the end of the evidence, or prior thereto if the court reasonably so orders. A copy of said request must be served on the adverse party. The court may accept or refuse any or all the requests, indorsing its decision on each one, and shall give its decision to the parties before they argue to the jury. Neither party may assign as error any portion of the

> instructions or omission therein unless objection is raised thereto or additional instructions are requested before the jury retires to deliberate, stating clearly the grounds of challenge or of its request. An opportunity to make such objection or request outside the presence of the jury shall be given to both parties. The court shall then proceed to decide the matter, entering its decision in the record or giving any additional instruction which it might deem pertinent. After giving its instructions the court shall appoint a foreman of the jury and shall order that the jury retire to deliberate. In their deliberations and verdict the jury are bound to accept and apply the law as stated by the court in its instructions.

(Emphasis added.)

The CFI must, of course, exercise this discretion without failing to comply with its "inescapable obligation of seeing to it that their instructions are correct, clear, specific, and logical." *Pueblo v. Ortíz Martínez*, 116 DPR 139, 150 [16 PR Offic. Trans. 174, 186] (1985). To argue that determining that the instructions imparted to the jury pursuant to current law constitutes an error is simply unsustainable. Particularly because a correct instruction is that which has been given pursuant to the current, applicable legal framework. The obvious must be made clear: in a criminal proceeding, all that is adjudged is the defendant's guilt, not their innocence. Innocence is presumed at all times. It would make no sense to have to prove something that is

presumed until it has been defeated by evidence beyond a reasonable doubt.

As there is no valid legal basis in favor of the position put forward by the State, this Court will not exercise powers that it does not have.

IV.

For the foregoing reasons, the writ of certiorari is issued, and the decision of the CFI is affirmed.

Judge Rodriguez Casillas issues a separate concurring vote.

It was so agreed by the Court and certified by the Clerk of the Court of Appeals.

(*signature*)
Lilia M. Oquendo Solis, Esq.
Clerk of the Court of Appeals

(Official Translation)

Commonwealth of Puerto Rico
COURT OF APPEALS
PANEL X

THE PEOPLE OF PUERTO RICO Petitioner v. NELSON DANIEL CENTENO Respondent	KLCE202100016	**Certiorari** originating from the Court of First Instance, Superior Court of Fajardo Case No.: NSCR201600145 through NSCR201600150 Re: PENAL CODE sec. 93-A, Attempt PENAL CODE sec. 93-A, Weapons Act sec. 5.15 (2 counts), Weapons Act sec. 5.04, PENAL CODE sec. 195-A

Panel composed of Chief Judge Rodriguez Casillas, Judge Romero Garcia, and Judge Mendez Miro.[1]

[1] Pursuant to Administrative Order TA-2021-043, the composition of the panel has been modified.

SEPARATE CONCURRING VOTE OF JUDGE RODRIGUEZ CASILLAS

San Juan, Puerto Rico, March 31, 2021.

We are tasked with deciding whether the state of the law *post Ramos v. Louisiana*, 590 US ___ (2020), and adopted in Puerto Rico through *Pueblo v. Torres Rivera*, 2020 TSPR 42 [104 PR Offic. Trans. 22]–which requires a unanimous verdict to find a defendant guilty–should also require the same unanimity when it comes to not-guilty verdicts. The answer is no. Let us see.

-I-

The facts of this case date back to January 9, 2016, when the prosecution filed the following criminal complaints against Nelson Daniel Centeno (the petitioner) for an incident that occurred on January 4, 2016; to wit: one count of first-degree murder and one count of attempted murder under Section 93 of the Penal Code of 2012.[2] The prosecution also filed a criminal complaint under Section 195A of the 2012 Penal Code,[3] another for violation of Section 5.04 and two more counts for violation of Section 5.15 of the repealed Weapons Act, Law No. 404 of 2000.[4]

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[2] Law No. 146 of 2012, as amended, 33 LPRA § 5142(a).

[3] 33 LPRA5265.

[4] Law No. 404 of September 11, 2000, as amended, 25 LPRA §§ 458c & 458n.

After the preliminary hearing, the prosecution was authorized to file the information for the aforementioned complaints. Thus, on February 25, 2020 the process of impaneling the jury began.

On November 18, 2020, the State filed a Motion Requesting Jury Instruction. To summarize, it requested that the CFI instruct the jury that, pursuant to *Ramos v. Louisiana*, the verdict must be unanimous both to find the defendant guilty as well as to acquit. The defense filed a Motion to Oppose the "Motion Requesting Jury Instruction" and in Compliance with Order. In short, the defense argued that, under the same case of *Ramos v. Louisiana*, the CFI could instruct the jury that, for a valid not-guilty verdict, it was enough for at least nine jurors to be in agreement. Therefore, it was not correct to demand unanimity for an acquittal.

The issue thus joined, on December 3, 2020, the CFI issued a Resolution denying the prosecution's motion. The court reasoned, in short, that for a guilty verdict to be valid, the unanimity requirement established in *Ramos v. Louisiana* was necessary. However, said requirement was not necessary for a not-guilty verdict since the jury could render a valid acquittal in favor of the defendant with the votes of at least nine of its members.

On December 4, 2020, the prosecution filed a Motion to Reconsider, which was denied on December 7, 2020. Thus, the Office of the Solicitor General has come

before us in a timely manner and assigns the following error:

> THE CFI ERRED IN ADOPTING, CONTRARY TO THE [STATE'S] REQUEST, [CENTENO'S] PROPOSAL OF INSTRUCTING THE JURY THAT A GUILTY VERDICT MUST BE UNANIMOUS, BUT THAT FOR A NOT-GUILTY VERDICT THE CONCURRENCE OF AT LEAST NINE (9) JURORS MAY SUFFICE.

Petitioner, for his part, filed a Motion to Oppose on February 3, 2021.

-II-

In criminal law, the concept of an "impartial trial" was included in the Constitution of the United States through the Sixth Amendment, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.[5]

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[5] US Const. amend. VI, LPRA tit. 1.

In Puerto Rico, the Constitution of the Commonwealth of Puerto Rico was adopted under the plenary powers of the United States Congress, and the right to an "impartial trial" in criminal cases was enshrined in Article II, Section 11 of the Bill of Rights, which provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to have a speedy and public trial, to be informed of the nature and cause of the accusation and to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have assistance of counsel, and to be presumed innocent.
>
> **In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine.**
>
> No person shall be compelled in any criminal case to be a witness against himself and the failure of the accused to testify may be neither taken into consideration nor commented upon against him.
>
> No person shall be twice put in jeopardy of punishment for the same offense.
>
> Before conviction every accused shall be entitled to be admitted to bail.
>
> Incarceration prior to trial shall not exceed six months nor shall bail or fines be

> excessive. No person shall be imprisoned for debt.[6]

As ours is a constitution framed in the rights of men and women and with cutting-edge vision of individual liberties,[7] we can see that under the protections of an impartial trial, we require, among other rights, that trials for felony offenses **be heard before an impartial jury composed of 12 residents of the district.** However–and in contrast to the Sixth Amendment–we have provided that this jury may render **a majority verdict in which no less than nine jurors concur.** It was thus included in Criminal Procedure Rule 112, which provides that:

> Juries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.[8]

Under this scheme, valid verdicts--both guilty and not-guilty--are 9-3, 10-2, 11-[1], or a unanimous vote of 12. As a result, a verdict by a vote of 8-4 is not valid

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[6] PR Const. art. II, § 11, LPRA tit. 1. (Emphasis added.)

[7] Let us not forget that pursuant to Article II, Section 19 of the Constitution of the. Commonwealth, LPRA tit. 1, courts must construe the Bill of Rights broadly and without excluding other rights; thus, it provides as follows: "*The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of* other *rights not specifically mentioned which belong to the people in a democracy. The power of* the *Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively.*" [(Emphasis added.)]

[8] Rule 112. JURY; NUMBER OF JURORS; VERDICT (34 LPRA App. II, R. 112).

for any finding of innocence or guilt. To that end, Criminal Procedure Rule 144, in what is relevant hereto, provides for the dissolution of the jury when:

> The court may order the jury to be discharged before verdict in the following cases:
>
> (a) . . .
>
> (b) . . .
>
> (c) If deliberation extends for a length of time that the court may deem sufficient to conclude clearly and manifestly that there is no possibility that the jury can agree.
>
> (d) . . .
>
> (e) . . .
>
> In all cases where a jury is discharged under the provisions of these Rules, the cause may be tried again.[9]

Note that the judge presiding over a jury trial may to dissolve the jury in cases where the judge determines that it is clearly and manifestly impossible for the jury to come to an agreement. Now then, that same rule provides that the prosecution may retry the defendant where the jury was discharged under the circumstances regulated thereunder.

It is well known that, until *Ramos v. Louisiana*, 590 US ___ (2020), United States Supreme Court caselaw had recognized that nonunanimous guilty

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[9] Rule 144. JURY; DISCHARGE (34 ‘,PRA App. II, R. 144).

verdicts returned by state juries were valid.[10] In that regard, *Ramos v. Louisiana* decreed–as a fundamental right–that the right to a trial by jury guaranteed under the Sixth Amendment did not admit nonunanimous guilty verdicts in criminal cases tried in state court.[11] For this reason, that right was extended to the states through the Fourteenth Amendment to the United States Constitution.[12]

As it concerns Puerto Rico, the case of *Pueblo v. Torres Rivera*, 2020 TSPR 42 [104 PR Offic. Trans. 22], incorporated the unanimity requirement for guilty verdicts in jury trials decreed in *Ramos v. Louisiana*, as it

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[10] *See*, *Apodaca v. Oregon*, 406 US 404 (1972); *Johnson v. Louisiana*, 406 US 356, 360 (1972); *Williams v. Florida*, 399 US 78 (1970).

[11] "This Court has long explained that the Sixth Amendment right to a jury trial is 'fundamental to the American scheme of justice' and incorporated against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court." *Ramos v. Louisiana*, 590 US ___[, No. 185924 (slip op.)], at 7 (2020).

[12] Section 1 of the Fourteenth Amendment to the Constitution of the United States provides as follows: "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." US Const. amend. XIV, § 1, LPRA tit. 1.

was a fundamental right that affects the right to an impartial trial.[13]

According to the State, the CFI erred in not instructing the jury that unanimity was necessary for a valid guilty or not-guilty verdict. We do not agree.

First, *Ramos v. Louisiana* institutes as a **fundamental right of the accused**–and it was thus reaffirmed in *Pueblo v. Torres Rivera*–the unanimity of the jury as a substantial requirement for obtaining a conviction in a criminal proceeding. Which is to say, the Sixth Amendment requires unanimity for a guilty verdict, not for a not-guilty verdict.

Second, neither Article II, Section 11 of the Constitution of the Commonwealth nor Criminal Procedure Rule 112 were voided by the ruling in *Ramos v. Louisiana*. Note that, under this scheme, both guilty and not-guilty verdicts required verdicts of 9-3, 10-2, 11-[1], or a unanimous vote of 12. Now, unanimity operates only for guilty verdicts; therefore, a jury may issue a valid not-guilty verdict by a vote of 9-3, 10-2, 11-[1], or a unanimous vote of 12.

Third, if a jury is unable to come to an agreement to render a unanimous guilty verdict or the jurors are unable to reach a minimum vote of 9-3 for a not-guilty verdict, Criminal Procedure Rule 144 addresses this situation by authorizing the judge presiding the trial to dissolve the jury if the judge were to determine that

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[13] *Pueblo v. Torres Rivera*, 2020 TSPR 42, at 15-16 [104 PR Offic. Trans. 22, 7].

it is clearly and manifestly impossible for the jury to agree on a verdict. In these circumstances, the prosecution may request a new trial for the defendant.

In conclusion, as I have indicated above, we have a constitution that is framed in the human rights of men and women and with cutting-edge vision of individual liberties; therefore, the rights listed therein--and even those that go unmentioned--are to be construed broadly and in a manner that is inclusive of other rights that belong **to all individuals** in a democracy. That is our *raison d'être*.

-IV-

For the foregoing reasons, I issue this separate vote in concurrence with the majority.

It was so agreed and ordered by the Court and certified by the Clerk of the Court.

(*signature*)
Roberto Rodriguez Casillas
Judge of the Court of Appeals

(Official Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR COURT OF FAJARDO

THE PEOPLE OF PUERTO RICO	CASE NO. NSCR201600145 COURTROOM NO. 306
VS.	RE: A93/FIRST DEGREE MURDER SUBSECTION A
CENTENO, NELSON D DEFENDANT	

NOTICE

TO: FAJARDO DISTRICT ATTORNEY'S OFFICE
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THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT, REGARDING THE: MOTION: CASE OF CAPTION THIS COURT ISSUED A RESOLUTION ON DECEMBER 3, 2020.

A COPY IS ATTACHED HERETO OR THE LINK IS INCLUDED HEREUNDER:

SGD. GEMA GONZÁLEZ RODRÍGUEZ
SUPERIOR COURT JUDGE

YOU ARE ADVISED THAT, AS A PARTY OR LEGAL COUNSEL IN THE CASE SUBJECT TO THIS RESOLUTION, YOU MAY FILE FOR APPEAL, REVIEW, OR CERTIORARI PURSUANT TO THE PROCEEDING AND WITHIN THE TERM ESTABLISHED BY LAW, RULE, OR REGULATION.

I CERTIFY THAT THE RESOLUTION ISSUED BY THE COURT WAS DULY ENTERED AND FILED TODAY, DECEMBER 3, 2020, AND THAT COPY OF THIS NOTICE WAS SENT TO THE ABOVE-STATED PARTIES AT THEIR ADDRESSES INCLUDED IN THE CASE IN ACCORDANCE WITH THE APPLICABLE RULES. A COPY OF THIS NOTICE WAS ENTERED IN THE RECORD ON THE SAME DATE.

IN FAJARDO, PUERTO RICO, THIS 3RD DAY OF DECEMBER 2020.

	(*illegible signature*)
WANDA I. SEGUI REYES	By: sgd./AIMEE RIVERA BOCANEGRA
NAME OF THE REGIONAL CLERK	NAME AND SIGNATURE OF THE ASSISTANT CLERK OF THE COURT

Cases joined NSCR201600146 NSCR201600147 NSCR201600148 NSCR201600149 NSCR201600150

[SEAL]

(Seal of the Court of First Instance of Puerto Rico,
Superior Court of Fajardo)
(Stamped) N080 (Illegible initials)
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(Certificate of authentication of the Court dated
December 16, 2021)

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF FAJARDO

THE PEOPLE OF PUERTO RICO **vs.** **NELSON DANIEL CENTENO** DEFENDANT	CRIMINAL NO. **NSCR201600145 through NSCR201600150** FOR: **PENAL CODE SEC. 93-A; ATTEMPT PENAL CODE SEC. 93-A; WEAPONS ACT SEC. 5.15 (2 COUNTS); WEAPONS ACT SEC. 5.04; PENAL CODE SEC. 195-A**

RESOLUTION

On November 18, 2020, a Hearing was held to pass on the instruction to be read to the jury. On that day, the Prosecution filed a Motion Requesting Jury Instructions arguing, in sum, that according to the decision in Pueblo v. Torres Rivera, 2020 TSPR 42 [104 PR Offic. Trans. 22], which adopted the rule laid down in Ramos v. Louisiana, 590 US ___[, 140 S.Ct. 1390] (2020), the jury must be instructed as to the unanimity requirement in order to find a defendant either guilty or not guilty.

During the Hearing, the parties put forward their positions as to the instruction. The Prosecution argued that the unanimity requirement applies to both guilty and not-guilty verdicts, as provided by caselaw and as observed in the treatment afforded in other circuits.

The defense, however, argued that, under the Constitution of the Commonwealth of Puerto Rico, a majority vote should be upheld for verdicts of not guilty, while a unanimous vote must be returned for guilty verdicts, as determined through caselaw. After the parties were heard, they were ordered to present their position in writing for the Court.

On November 30, 2020, Nelson Daniel Centeno's counsel filed a Motion Requesting Jury Instructions, to Instruct the Jury, and to Comply with Order. In short, the defense opposed the Prosecution's request; however, they recommended that for a not-guilty verdict to be valid, at least 9 jurors must be in agreement, and, consequently, that the verdict returned must state whether the decision was reached by a majority vote of 9-3, 10-2, or 11-1, or if it was unanimous. Meanwhile, for a verdict of guilty to be valid, it must be unanimous. Should the jury, in fact, return a verdict with 11 votes for guilty and 1 vote for not-guilty, the Court must dissolve the jury and order a new trial.

After evaluating the positions .set forth by the parties and the respective motions, the Court determines the following:

APPLICABLE LAW

A. Presumption of Innocence and Burden of Proof

Both the Constitution of the Unites States and the Constitution of the Commonwealth of Puerto Rico

recognize the right of all persons accused of a crime to have a speedy and public trial by an impartial jury, that no person shall be compelled to be a witness against themselves, and that the failure of the accused to testify may not be used against them. US Const. amends. V & VI; PR Const. art. II, § 11[, LPRA tit. 1].

In Pueblo v. Rosaly Soto, 128 DPR 729 [28 PR Offic. Trans. 39] (1991), the Supreme Court discussed the legal effect of the constitutional mandate and stated that "it is incumbent upon the State to establish a defendant's guilt 'beyond a reasonable doubt' through the presentation of evidence in a public trial that is 'sufficient at law.'" Id. at 739. In this regard, a person charged with a crime is not required to bring evidence in their defense, but rather may rest on the presumption of innocence. Id. Accordingly, "the defendant is presumed to be innocent as to every essential element of the offense and the burden of proof does not change at any stage of the proceeding." People v. Tina, 84 PRR 37, 51 (1961)

The presumption of innocence requires that every conviction be sustained by evidence that establishes *beyond a reasonable doubt* every element of the offense and the defendant's link to the same. Pueblo v. Bigio Pastrana, 116 DPR 748, 760–761 [16 PR Offic. Trans. 923, 938] (1985); Pueblo v. Pagán Díaz, 111 DPR 608, 621 [11 PR Offic. Trans. 763, 779] (1981). This does not mean that the Prosecution must destroy all possible doubt and that the defendant's guilt must be established with mathematical precision, but rather that the evidence establish "a moral certainty which convinces,

directs the intelligence, and satisfies the reason." Pueblo v. Bigio Pastrana, 116 DPR, at 761 [16 PR Offic. Trans., at 938]. Therefore, the evidence put forward must produce certainty and moral conviction in an unprejudiced mind. Pueblo v. Rosaly Soto, 128 DPR, at 739 [28 PR Offic. Trans. 39, at Pueblo v. Bigio Pastrana, 116 DPR, at 761 [16 PR Offic. Trans., at 938]; People v. Ortiz Morales, 86 PRR 431 (1962); Pueblo v. Carrasquillo Carrasquillo, 102 DPR 545, 552 [2 PR Offic. Trans. 696, 703] (1974); Pueblo v. Cabán Torres, 117 DPR 645, 652 [17 PR Offic. Trans. 776, 783] (1986).

The Supreme Court stated that reasonable doubt "is a well-grounded doubt, the result of reckoning all the elements of judgment involved in the case. It should not be, then a speculative or imaginary doubt." Pueblo v. Bigio Pastrana, 116 DPR, at 761[–762] [16 PR Offic. Trans., at 938–939]; People v. Gagot Mangual, 96 PRR 611, 613 (1968). Thus, in Pueblo v. Pagán Díaz, 111 DPR, at 622 [11 PR Offic. Trans., at 780–781], the Supreme Court held that until we have an infallible method to discover the truth, that determination will be a matter of conscience. Pueblo v. Carrasquillo Carrasquillo, 102 DPR, at [551–]552 [2 PR Offic. Trans., at 703].

Consequently, it is incumbent upon the Court to instruct the jury as follows:

> As previously instructed, the charges in the information are not, in themselves, proof that the defendant committed a crime. Defendant _____ is presumed to be innocent of the crime(s) charged. In all

criminal cases, the basic principle established under the constitution of Puerto Rico is that the defendant is innocent until proven guilty. This presumption of innocence remains with defendant _____ throughout the trial and until you render a verdict.

Defendant _____ has no obligation to testify or to produce evidence to prove his/her innocence, so if the defendant chooses not to do so, you must draw no inference from his/her silence, and you may not take the defendant's failure to testify into account. The burden of proof is on the State; that is, the prosecution must destroy the defendant's presumption of innocence and prove his/her guilt beyond a reasonable doubt.

The law provides that when there is reasonable doubt as to the defendant's guilt, the defendant must be acquitted of the charges against him/her. This means that sufficient and convincing evidence must be brought to defeat the presumption of innocence.

For it to be beyond a reasonable doubt, the evidence, in addition to being sufficient, must also be satisfactory; that is, it must produce certainty and conviction in an unprejudiced mind. . . . Therefore, all the elements of the crime and the defendant's link to the same must be proven beyond a reasonable doubt.

Reasonable doubt is not any possible doubt; nor may it be a speculative or an imaginary doubt. The reasonable doubt that justifies an acquittal is that which results from

the careful, fair, and impartial consideration of the entire evidence admitted during the trial. You may decide that there is reasonable doubt when, after a careful and impartial examination, analysis, and comparison of all the proof or evidence, you are firmly convinced that you cannot determine what the truth is in this case. That is, your conscience is not satisfied with the evidence brought to sustain the charges.

To reach this belief or conviction regarding the truth does not mean that the defendant's guilt must be established with mathematical precision. The evidence considered must produce in your minds a certainty which convinces, directs the intelligence, and satisfies the reason, after an impartial, fair, and careful consideration of the entire evidence.

You may decide that there is reasonable doubt when there is insufficient evidence to prove one or more of the elements of the crime or to link the defendant with such elements. If this is so, you must render a verdict of not guilty.

If you are firmly convinced beyond a reasonable doubt that the evidence admitted at trial is sufficient and satisfactory as to each and every one of the elements of the crime and the defendant's link to the same, your duty is to render a verdict of guilty.

Proyecto de Libro de Instrucciones al Jurado [Draft Jury Instructions], September 2008, at 13–14, [Instruction] 1.9.

B. Jury Unanimity

The Supreme Court of the United States, in the case of Ramos v. Louisiana, 140 S.Ct., at 1394, decided whether the right to a trial by jury under the Sixth Amendment, incorporated through the Fourteenth Amendment, demands a unanimous verdict to convict a person accused of a crime

Even though in 48 states and in the federal courts a single vote by a juror to acquit is sufficient to prevent a conviction, Oregon and Louisiana have kept verdicts by a majority vote of 10 to 2. Ramos v. Louisiana, 140 S.Ct., at 1393. The opinion of the Court expresses that these states had preserved convictions by majority vote due to their racist history, for which reason the validity of nonunanimous verdicts was questioned.

The [US Supreme] Court analyzed whether unanimity was an essential feature of the right to a jury trial in criminal cases. Thus, it held that the intent of the Senate when drafting the Sixth Amendment was to require that "[a] jury must reach a unanimous verdict in order to convict." Id. at 1385. As this is a fundamental procedural guarantee of every defendant accused of committing a felony, a unanimous verdict is required. In fact, being a constitutional right under the Sixth Amendment to the United States Constitution, the Court held that it extends to the states under the

Fourteenth Amendment. Id. at 1397. Likewise, the US Supreme Court stated:

> When the American people chose to enshrine that right in the Constitution, they weren't suggesting fruitful topics for future cost-benefit analyses. They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed. As judges, it is not our role to reassess whether the right to a unanimous jury is "important enough" to retain. With humility, we must accept that this right may serve purposes evading our current notice. We are entrusted to preserve and protect that liberty, not balance it away aided by no more than social statistics.

Id. at 1402.

In Pueblo v. Torres Rivera, the Puerto Rico Supreme Court adopted the decision of the US Supreme Court in Ramos v. Louisiana. In such case, Torres Rivera's defense "pointed out that the prosecution did not prove *beyond a reasonable doubt* that he committed the offenses charged and, thus, the conviction should be vacated." Pueblo v. Torres Rivera, at [3] [104 PR Offic Trans. 22, at 3–4].

Our Highest Court held that the US Supreme Court decision "institutes the unanimity of the jury as a substantive requisite for obtaining a criminal conviction. Thus, unanimity is recognized as a natural corollary to the impartiality demanded by the Sixth Amendment" Id. at [15] [104 PR Offic. Trans. 22, at 7].

Accordingly, as they are protections and guarantees that stem from the rights designated as fundamental by the United States Supreme Court, they extend to Puerto Rico. Id. at [18] [104 PR Offic. Trans. 22, at 8]. Moreover, as they are an inherent characteristic of the fundamental right to a trial by an impartial jury, it "is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms." Id. at [23] [104 PR Offic. Trans. 22, at 10].

> Both decisions mention that unanimity is necessary to obtain a conviction. According to Black's Law Dictionary (11th ed. 2019), in http://1.next.westlaw.com (last visited Nov. 30, 2020), the word "conviction" in the federal context means "**1.** The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. **2.** The judgment (as by a jury verdict) that a person is guilty of a crime." However, in our legal system, a conviction is the "finding of guilty of the accused." Glosario de Términos y de Conceptos Jurídicos o Relativos al Poder Judicial [Glossary of Legal Terms or Words Relating to the Judicial Branch], Office of Court Administration, Puerto Rico Judicial Academy, 2015, at 15, available [in Spanish] https://ramajudicial.pr/orientacion/glosario.pdf (last visited Nov. 30, 2020).

DISCUSSION

In the present case, we must determine whether the jury must be instructed that to convict or to acquit

a defendant, the decision must be unanimous. In other words, unanimity from the jury is required for both a guilty and a not-guilty verdict.

Pursuant to the above discussion, all persons accused of a crime are protected by the presumption of innocence enshrined in Article II, Section 11 of the Constitution of the Commonwealth of Puerto Rico. Therefore, the burden of proof falls to the State, who must prove *beyond a reasonable doubt* all the elements of the crime and that the defendant committed them.

The Prosecution argues that to acquit the defendant, the jury must return a unanimous not-guilty verdict, according to holding in Ramos v. Louisiana. Having examined the prosecution's position, and in view of the law set forth above, we do not agree.

In requiring the jury to find a defendant not guilty unanimously, we believe we would be placing defendants in a position where they would have to prove their innocence. In that sense, the defense would have the burden of proof, insofar as they would have to prove to a jury that the defendant is not guilty. However, it is the People of Puerto Rico who have the burden of proof by legal mandate, as this party must prove the defendant's guilty *beyond a reasonable doubt.* The People are responsible for bringing evidence that produces certainty or the moral conviction in an unprejudiced mind.

Both the statutory law and the caselaw establish that the defendant has no obligation whatsoever to bring any evidence on their behalf and that the burden

of proof does not shift at any stage of the proceedings since the defendant rests on the presumption of innocence.

As it is the People who bear the burden of proof, they are called upon to show the defendant's guilt to the jury *beyond a reasonable doubt*, which is satisfied by obtaining a unanimous verdict, as it would have convinced, appealed to the intelligence, and satisfied the reason of the 12 members of the jury. Thus, the right to a fair and impartial trial is secured where there is no reasonable doubt as to the commission of the was committed

As discussed, in Ramos v. Louisiana, the US Supreme Court held that the right to a jury trial demands a unanimous verdict in a criminal case for a felony prosecuted in state court. However, the verdict referred to is a conviction, not an acquittal. It is well known that all persons accused of a crime have a constitutional right to be presumed innocent until proven guilty.

Unanimity establishes an essential procedural protection for the defendant facing a criminal proceeding where they may be deprived of their freedom. As it is the right of the defendant, it is the State who must convince the 12 jurors *beyond a reasonable doubt.*

In light of these facts, we believe that the unanimity requirement for not-guilty verdicts would be contrary to law. We adopt, on the other hand, the proposal put forward by the defense, that the jury be instructed that to render a verdict of not guilty, at least 9 jurors must agree to acquit, and that such verdict must state

if it was reached by a majority vote of 9-3, 10-2, or 11-1, or if it was unanimous. Thus, the Court shall determine, pursuant to its ministerial duties, the validity of a verdict.

RESOLUTION

FOR THE FORGOING REASONS, the Motion Requesting Jury Instructions filed by the Prosecution on November 18, 2020 is hereby **Denied**. However, we grant the defense's suggestion that the jury be instructed as to the majority requirement to find a defendant not guilty.

TO BE ENTERED AND NOTIFIED.

In Fajardo, Puerto Rico, this 3rd day of December 2020.

(*signature*)
GEMA GONZALEZ RODRIGUEZ
Superior Court Judge

(Seal of the Court of First Instance of Puerto Rico, Superior Court of Fajardo)
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[SEAL] I CERTIFY that this is an Official Translation made by the Bureau of Translations of the Supreme Court of Puerto Rico.

In San Juan Puerto Rico: 12 JAN 2022

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Clerk of the Supreme Court

IN THE SUPREME COURT OF PUERTO RICO

People of Puerto Rico Respondent v. Tomas Torres Rivera Petitioner	**No.** CC-2019-0916

Justice Rodríguez Rodríguez delivered the Opinion of the Court.

San Juan, Puerto Rico, May 8, 2020.

> The principle has been followed equally in reverse: if a state cannot do it constitutionally, neither can Puerto Rico.[1]

On this occasion, it is incumbent upon us to examine the reach of the United States Supreme Court decision in *Ramos v. Louisiana*, 590 US ___ (2020), No. 18-5924 (slip op.), in our criminal system. Specifically, we must decide whether, in view of this opinion, a defendant convicted in our jurisdiction based on a non-unanimous verdict violates the inherent procedural safeguards of the fundamental right to trial by jury

[1] David Helfeld, *How Much of* the *United States Constitution and Statutes are Applicable to the Commonwealth of Puerto Rico?*, 110 F.R.D. 449, 452-75 (1985).

protected by the Sixth Amendment of the Constitution of the United States.

I.

Tomas Torres Rivera was charged with committing several criminal offenses: lewd acts with a minor, Section 133 [] of the Puerto Rico Penal Code of 2012, 33 LPRA § 5194[(a)] (3 counts); attempted lewd acts, Sections 35, 36, and 133 of the Puerto Rico Penal Code of 2012, 33 LPRA §§ 5048, 5049, and 5149 (1 count), and child abuse, Section 58 of Law No. 246 of 2011, known as the Child Safety, Well-being, and Protection Act, as amended, 8 LPRA § 117[4] (7 counts). After the trial, a jury found him guilty on all charges. In eight of the eleven counts, the jury rendered a unanimous guilty verdict. Nevertheless, the jury rendered a guilty verdict by majority vote on the three counts of lewd acts with a minor under Section 13311 of the Puerto Rico Penal Code.[2]

Dissatisfied, Torres Rivera appealed the decision to the Court of Appeals and made three assignments of error. First, petitioner averred that the Court of First Instance erred in denying his petition to instruct the jury on the requirement that their verdict should be unanimous. He contended that, in accordance with the Sixth Amendment of the United States Constitution,

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[2] For two of those counts, a guilty verdict was rendered with a vote of 9-3, while a vote of 11-1 was reached for the remaining count. Thus, found guilty on all charges, petitioner was sentenced to a total of twenty-two years and six months in prison.

the Territory Clause contained in the federal constitution, and the decision reached by the United States Supreme Court in *Commonwealth of Puerto Rico v. Sanchez Valle*, 136 S.Ct. 1863 (2016), unanimity was an indispensable requirement for a conviction. As to the second assignment of error, Torres Rivera posited that the first instance court had erred in its construction of sections of the Penal Code related to aggravating factors and the concurrence of crimes. Lastly, Torres Rivera pointed out that the prosecution did not prove beyond a reasonable doubt that he committed the offenses charged and, thus, the conviction should be vacated.[3]

On October 7, 2019, the Court of Appeals issued a judgment affirming the judgment entered at the trial court which found petitioner guilty on all counts. Regarding error assigned pertaining to the application of aggravating factors, the intermediate appellate court remanded the case to the Court of First Instance to reexamine the penalties imposed. The Court of Appeals supported its decision to affirm the guilty verdicts rendered by a jury's majority vote by citing our ruling in *Pueblo v. Casellas Toro*, 197 DPR 1003 [97 PR Offic. Trans. 52] (2017) to the effect that the juror unanimity requirement was not a fundamental constitutional

[3] While the case was pending at the appellate level, Torres Rivera filed a petition for a bond on appeal with the Court of First Instance. After the hearing, the trial court denied the petition. Dissatisfied, petitioner filed a petition for appeal with the Court of Appeals, which was issued as a writ of certiorari and consolidated with the petition for appeal to vacate the conviction. The petition for writ of certiorari was subsequently denied.

right applicable to Puerto Rico. *See*, Judgment of the Court of Appeals of October 7, 2019, at 37, 51.

Thus, on October 22, 2019, Torres Rivera moved the Court of Appeals to reconsider its judgment and stay the proceedings until the United States Supreme Court issued its opinion in *Ramos v. Louisiana*. Petitioner maintained that should the United States Supreme Court rule that the juror unanimity requirement is applicable to the states, he would prevail in his first assignment of error. Though a resolution notified on November 12, 2019, the intermediate appellate court denied his petition to reconsider and stay the proceedings.

Still aggrieved, on December 11, 2019, Torres Rivera filed a petition for a writ of certiorari with this Court and a Motion to Stay Proceedings. In the petition for certiorari, he contended – among other matters[4] –

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[4] In his petition for certiorari, Torres Rivera made three additional assignments of error related to the standard of proof and the appropriateness of the mitigating factors in his specific case. Specifically, the errors assigned were the following:

"FIRST ERROR: The Court of Appeals, Carolina-Guayama Judicial Region, Special Division, erred in denying the Motion to Stay Proceedings until the Supreme Court of the United States renders its opinion in the case of *Ramos v. Louisiana*, as regards to whether the Fourteenth Amendment of the Constitution of the United States incorporates to the States the jury unanimity requirement for convictions, since this is the same question raised as an error on appeal in this case and, should the federal Supreme Court find in favor of the defendant, Torres Rivera would prevail regarding the argument that a nonunanimous guilty verdict is unconstitutional.

that the Court of Appeals had erred in not staying the proceedings and affirming the conviction based on a nonunanimous guilty verdict rendered by a jury. In so doing, Torres Rivera restated the arguments posited with the Court of Appeals and maintained that it would be proper to stay the proceedings in his case until the United States Supreme Court ruled over the constitutionality of nonunanimous guilty verdicts rendered by juries in criminal cases. On January 24, 2020, this Court issued a resolution denying the issuance of the writ for certiorari and the motion to stay proceedings, notice of which was served on January 29. Torres Rivera timely filed a motion for reconsideration which was also denied through resolution and notified on March 3, 2020.

While pending a second motion for reconsideration filed on March 6, 2020, Torres Rivera filed on April 21, 2020 a paper captioned Urgent Motion to Take Judicial Notice of *Ramos v. Louisiana* and to Issue a Remedy in

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"SECOND ERROR: The Court of Appeals, Carolina-Guayama Judicial Region, Special Division, erred in affirming the decision of the Court of First Instance to not consider the mitigating factors when imposing the penalty.

"THIRD ERROR: The Court of Appeals, Carolina-Guayama Judicial Region, Special Division, erred in affirming the judgment entered by the Court of First Instance without weighing the impact of the prosecution's slim and bare evidence and stereotyped testimony on the constitutional standard requiring the State to prove beyond a reasonable doubt all the elements of the offense.

"FOURTH ERROR: The Court of Appeals erred in ruling that the prosecution submitted evidence to prove that lewd acts tend to awake, excite or satisfy the sexual passion or desire of the accused." Petition for certiorari, at 4.

Accordance Therewith. In this motion, Rivera Torres stated that the decision of the United States Supreme Court on April 20, 2020 in the *case Ramos v. Louisiana*, 590 US ___ (2020), No. 18-5924 (slip. op.), disposed of his case and, pursuant thereto, it lied to vacate the judgment entered against him. Having received this Urgent Motion as a motion for order in aid of jurisdiction, on April 22, 2020 we ordered the Solicitor General to appear before us and show cause why, in light of the decision in *Ramos v. Louisiana*, we should not vacate the judgment entered by the trial court in this case.

Observing our order, the Solicitor General filed on May 1, 2020 a Motion in Compliance with Order indicating, at the outset, that "the Office of the Solicitor General, on behalf of the People of Puerto Rico, in accordance with the applicable caselaw . . . acknowledges that the decision in *Ramos v. Louisiana* generally applies to Puerto Rico." In addition, the Solicitor General recognizes to begin with that he "agrees that in this case a decision may be rendered only to the effect of ordering a new trial exclusively for the 3 counts for which the jury rendered a nonunanimous verdict, in accordance with the new legal framework." See, Motion in Compliance with Order, at 2. The Solicitor General, however, clarifies that this concession "is utterly bound by the procedural events of this case, which is pending direct review before this Court, with 3 nonunanimous guilty verdicts rendered by the jury, and a defendant who preserved the issue." *Id.*

With the benefit of the parties' briefs and considering the procedural stage of the controversy at bar,

this Court grants the Second Motion for Reconsideration filed by the petitioner and issues the writ of certiorari only in regard to the first assignment of error, so as to pass on the effects of the United States Supreme Court decision in *Ramos v. Louisiana* in our legal system.[5]

II.

The Sixth Amendment of the Constitution of the United States defines the rights recognized to the accused in federal criminal proceedings by establishing that

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

[US Const. amend. VI, LPRA vol. 1.]

In time, the different rights listed in this amendment have been recognized as fundamental rights for an impartial criminal trial and have been expressly

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[5] On May 4, 2020, the United States Supreme Court issued a writ of certiorari in the case of *Edwards v. Vannoy*, No. 19-5807 (5th Cir.), to resolve the issue regarding the retroactive effect of *Ramos v. Louisiana*, 590 US (2020).

incorporated to the States through the Fourteenth Amendment.[6] Consequently, the fundamental rights of the accused have been recognized at the state level, namely: the right to a speedy trial,[7] the right to a public tria1,[8] the right to present witnesses in defendant's favor,[9] the right to confront witnesses testifying against the defendant,[10] the right to counsel,[11] and,

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[6] See, *Duncan v. Louisiana*, 391 US 145, 148-49 (1968) ("The test for determining whether a right extended by the Fifth and Sixth Amendments with respect to federal criminal proceedings is also protected against state action by the Fourteenth Amendment has been phrased in a variety of ways in the opinions of this Court. The question has been asked whether a right is among those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,' whether it is 'a basic in our system of jurisprudence,' and whether it is a 'fundamental right, essential to a fair trial.' ") [Citations omitted.] See also, *Gosjean v. American Press, Co.*, 297 US 233, 243-244 (1936).

[7] *Klopfer v. North Carolina*, 386 US 213, 223 (1967) ("We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment").

[8] *In re Oliver*, 333 US 257, 278 (1948) ("It is the law of the land' that no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal.").

[9] *Washington v. Texas*, 388 US 14, 19 (1967) ("Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.").

[10] *Pointer v. Texas*, 380 US 400, 403-04 (1965) ("We hold today that the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment.").

[11] *Gideon v. Wainwright*, 372 US 335, 344 (1963) ("The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.").

particularly relevant to the question at hand, the right to a trial by jury.[12]

In *Duncan v. Louisiana*, 391 US 145 (1968), the United States Supreme Court ruled that the right to a trial by jury in criminal proceedings is inherent to the due process of law pervading throughout the American constitutional scheme. See, *Duncan*, 391 US, at 149 ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which-were they be tried in a federal court – would come within the Sixth Amendment's guarantee.").

Subsequent decisions defining the outlines of this fundamental right to a jury trial rejected to impose on the states, through the Fourteenth Amendment, the requirement for unanimous verdicts in order to convict. See, *Apodaca v. Oregon*, 406 US 404 (1972); *Johnson v. Louisiana*, 406 US 356, 360 (1972); *Williams v. Florida*, 399 US 78 (1970). In this way, it is clear that the United States Supreme Court opted not to require the uniform incorporation against the states of the fundamental right to a trial by jury as enshrined in the Sixth Amendment.[13]

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[12] *Duncan*, 391 US, at 157-58 ("Our conclusion is that in the American States, as in the federal judicial system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants.").

[13] However, in *Malloy v. Hogan*, 378 US 1, 10-11 (1964), the United States Supreme Court, in an opinion delivered by Justice

Until very recently, thus, United States Supreme Court caselaw upheld the validity of state convictions by nonunanimous jury verdicts.[14] In accordance with this pattern, in *Pueblo v. Casellas Toro*, 197 DPR 1003, 1005 [97 PR Offic. Trans. 52, ___] (2017), this Court held that the unanimity requirement for guilty verdicts was not a fundamental right recognized by the United States Supreme Court and, therefore, was not applicable to Puerto Rico. In this sense, this Court noted that the incorporation of the right to a trial by jury to the states by virtue of *Duncan* did not entail "extensive changes in a state's criminal procedure as to juries of less than twelve jurors and the unanimity requirement for a conviction." *Id.* at 1014 [97 PR Offic. Trans. 52, at ___].

Brennan, suggested the importance of the uniform interpretation of the substantive content of the rights protected by the Bills of Rights, as these rights have been incorporated to the states through the Fourteenth Amendment. ("The Court thus has rejected the notion that the Fourteenth Amendment applies to the States only a 'watered-down, subjective version of the individual guarantees of the Bill of Rights.").

[14] After the decision in *Apodaca* and until recently, the United States Supreme Court repeatedly denied granting petitions for writ of certiorari seeking to review nonunanimous verdicts at the state level and demanding the recognition of the unanimity requirement as an essential element of the right to a trial by jury. See: *Bowen v. Oregon*, O.T. 2009, No. 08-1117, *cert. denied*, 558 US 815, S.Ct. 52, 175 L.Ed. 2d 21 (2009); *Lee v. Louisiana*, O.T. 2008, No. 07-1523, *cert. denied*, 555 US 823, 129 S.Ct. 143, 172 L.Ed.2d 39 (2008); *Logan v. Florida*, O.T. 2007, No. 077264, *cert. denied*, 552 US 1189, 128 S.Ct. 1222, 170 L.Ed.2d 76 (2008).

Hence, in *Pueblo v. Casellas Toro* this Court concluded that a guilty verdict reached by the consensus of, at least, nine out of twelve jurors was valid and satisfied the requirements of the Sixth Amendment right to a trial by jury. *Casellas Toro*, 197 DPR, at 1019 [97 PR Offic. Trans. 52, at ___] Our decision was made pursuant to the rule of law in force at that moment, Thus, we upheld the text of Section 11, Clause 2, of our Bills of Rights, which allows guilty verdicts by a majority vote. ("In all prosecutions for a felony[,] the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine"). PR Const. art. II, § 11, LPRA vol. 1.

Lastly, as grounds for our decision, this Court stressed that "in Puerto Rico only the fundamental rights of the United States Constitution recognized by its Supreme Court apply." *Casellas Toro*, 197 DPR, at 1019 [97 PR Offic. Trans. 52, at ___]. Given that the size of a jury or the unanimity requirement were not explicitly recognized by the federal Supreme Court as essential elements of the fundamental right to a trial by jury, we held then that the unanimity requirement provided in the Sixth Amendment of the United States Constitution did not apply to Puerto Rico.

III.

The prevailing standard in our legal framework and in the United States regarding the substance of

the right to a trial by jury changed significantly with the United States Supreme Court decision in *Ramos v. Louisiana*, 590 US ___ (2020) No. 18-5924 (slip op.) issued on April 20, 2020. In that case, the federal Supreme Court concluded that the fundamental right to a trial by jury under the Sixth Amendment, as incorporated throughout the states by way of the Fourteenth Amendment, does not admit nonunanimous verdicts in criminal cases tried in state courts. See, *Ramos v. Louisiana*, at 7. ("[I]f Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.")

To summarize, in *Ramos v. Louisiana*, a defendant questioned a judgment issued in the state of Louisiana through which he was found guilty of committing a felony by way of a guilty verdict of a majority of 10 out of 12 jurors. As a result of this verdict, he was sentenced to life in prison without the possibility of parole. The argument posed before the United States Supreme Court was that unanimity was an essential requirement of the right to a trial by jury in criminal matters, and that any provision of state law allowing nonunanimous verdicts for felony convictions was unconstitutional.

The United States Supreme Court agreed with the defendant and vacated the judgment against him. In so doing, it concluded that the right to a trial by jury enshrined in the Sixth Amendment requires a unanimous verdict in criminal proceedings where the defendant is accused of a felony. The Court's reasoning in *Ramos v. Louisiana* dispels all doubt with respect to

how the requirement of a unanimous verdict constitutes a fundamental procedural protection for all those accused of a felony. As a result, a unanimous jury represents an immanent quality of the fundamental right to a trial by jury under the Sixth Amendment.

In short, the analysis of the highest court in the United States scrutinized the phrase "impartial jury" included in the Sixth Amendment to construe the substantive content and procedural requirements of a criminal jury trial. After examining the history of this concept and its inclusion in the Constitution, the Court concluded that an impartial trial inexorably requires a unanimous verdict of the jury. See, *Ramos*, at 4. ("The text and structure of the Constitution clearly suggest that the term 'trial by an impartial jury' carried with it some meaning about the content and requirements of a jury trial. One of these requirements was unanimity. Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption – whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward – the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.")

IV.

Insofar as the right to a trial by jury in a felony criminal proceeding constitutes a fundamental right,[15] the United States Supreme Court decision in *Ramos v.*

[15] See, *Duncan*; Section II of this Opinion.

Louisiana serves to delimit the content and the scope of this right. In that sense, this federal ruling institutes the unanimity of the jury as a substantive requisite for obtaining a criminal conviction. Thus, unanimity is recognized as a natural corollary to the impartiality demanded by the Sixth Amendment.

Prior to this decision, the precise contours of the right to a trial by jury had not been specifically defined. Moreover, an analysis of the caselaw concerning the procedural guarantees contained in the Sixth Amendment reveals that it was not incorporated until the 1960s, when the Warren Court sought to extend to state courts the same protections that apply in federal court.[16] It was not until 1968 in *Duncan* that the United States Supreme Court recognized the right to a trial by jury in felony cases as a fundamental right applicable to the states by virtue of the Fourteenth Amendment.

In the case of Puerto Rico, the judicial benchmark for the right to a trial by jury under the Sixth Amendment had been decided prior to its recognition as a fundamental right in *Duncan*. In *Balzac v. Porto Rico*, 258 US 298 (1922), the United States Supreme Court concluded that some provisions of the United States Constitution did not apply to Puerto Rico as an unincorporated territory. *Id.* at 304-306. According to the Court's reasoning, the right to a trial by jury was not

[16] For a compendium of the development of the Sixth Amendment, its complexities, and the incorporation of its procedural guarantees to the states, *see*, Sanjay Chhablani, *Disentangling* the *Sixth Amendment*, 11 U. Pa. J. Coast. L. 487 (2009).

fundamental in nature and thus did not extend to all the territories under the jurisdiction of the United States. *Id.* at 309. Specifically, the federal court resorted to an earlier decision to conclude the following:

> If the right to trial by jury were a fundamental right which goes wherever the jurisdiction of the United States extends, or if Congress, in framing laws for outlying territory, was obliged to establish that system by affirmative legislation, it would follow that, no matter what the needs or capacities of the people, trial by jury, and in no other way, must be forthwith established.

Id. (citing *Dorr v. United States*, 195 US 138, 148 (1904)).

These statements, however, served to reaffirm the controversial theory of territorial incorporation initially articulated by Justice White in his Concurring Opinion in *Downes v. Bidwell*, 182 US 244 (1901). According to this theory, only the rights recognized as fundamental would extend to unincorporated territories of the United States. *See*, [David] Helfeld, [*How Much of the United States Constitution and Statutes are Applicable to the Commonwealth of Puerto Rico?*, 110 F.R.D. 449], 458] [(1985)].

Almost a century after the ruling of the United States Supreme Court in *Balzac*, it is evident that the passage of time has modified the law of the land, to the point where what was decided therein with respect to the right to a trial by jury has become dead letter. By

expressly recognizing in *Duncan* that right as fundamental, it was automatically made extensive to Puerto Rico. This occurred at the margins of the inextricable historical interweaving of the theory of territorial incorporation outlined in *Balzac.* After all, regardless of the legal doctrine cited, the protections and guarantees that emanate from the rights designated as fundamental by the United States Supreme Court extend to Puerto Rico. See, *Casellas Toro*, 197 DPR, at 1019 [97 PR Offic. Trans. 52, at ___].

Regarding the application of fundamental rights to Puerto Rico, the United States Supreme Court has accepted that "[i]t is clear now, however, that the protections accorded by either the Due Process Clause of the Fifth Amendment or the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico." *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 US 572, 600 (1976). See also, *Torres v. Com. of Puerto Rico*, 442 US 465, 471 (1979). ("As in *Examining Board v. Flores de Otero* . . . we have no occasion to determine whether the Fourth Amendment applies to Puerto Rico directly or by operation of the Fourteenth Amendment.")

The extension to Puerto Rico of the right to trial by jury as a fundamental right was tacitly recognized by this Court in *Pueblo v. Laureano*, 115 DPR 447 [15 PR Offic. Trans. 589](1984), when it held that the governing standard when determining whether a person had a right to a trial by jury in Puerto Rico must be the severity of the maximum sentence that could be

imposed for the offense of which the individual stood accused. In so doing, the Court applied the ruling of the United States Supreme Court in *Baldwin v. New York*, 399 US 66 (1970), to the effect that a jury trial would extend to crimes punishable [by imprisonment] for a term greater than six months, regardless of the classification or seriousness of the offense.

Subsequently, in *Pueblo v. Santana Velez*, 177 DPR 61 [77 PR Offic. Trans. 5] (2009), this Court, without ambages, effectuated the theory that "[t]he right to a trial by jury under the Sixth Amendment is a fundamental right that applies to the states through the due process clause of the Fourteenth Amendment and, therefore, to Puerto Rico." *Id.* at 65 [77 PR Offic. Trans. 5, at ___]. That conclusion was the basis for the analysis outlined in *Casellas Toro*, which underscored that "through the process of selective incorporation, the right to a trial by jury in criminal cases was acknowledged as fundamental" and that "in Puerto Rico, only those fundamental rights of the United States Constitution recognized by the United States Supreme Court are applicable." *Casellas Toro*, 197 DPR, at 1014, 1019. [97 PR Offic. Trans. 52, at ___]. Thus, it cannot be denied that the right to a trial by jury applies fully to Puerto Rico.

V.

In the case at hand, Torres Rivera requested that we vacate the judgments entered against him for three counts of lewd acts on grounds that the decision of the

United States Supreme Court applies to Puerto Rico and, consequently, requires the unanimity of verdicts returned in our jurisdiction. As we have indicated, the Solicitor General did not oppose this contention and acknowledged that, in Torres Rivera's specific case, it is proper for the Court to vacate the judgments issued for three of the eleven offenses of which he was convicted by way of nonunanimous verdicts, and order a new trial.[17] *See*, Motion in Compliance with Order,

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[17] The members of the Constituent Assembly discussed the very situation considered herein. The text of Section 11 admits unanimous verdicts, although it grants the legislature flexibility to establish the number of votes necessary to obtain a conviction that would satisfy the demands of Section 11. It is thus recorded in the Journal of the Constitutional Assembly when acknowledging the possibility that using the phrase "no less than nine" would allow for different variations through legislation. See, *Diario de Sesiones de la Canvancion Constituyente de Puerto Rico* [Journal of the Constitutional Assembly of Puerto Rico], at 1939-1941 (digital version). Similarly, the Report of the Commission for the Bill of Rights explains that "the formula proposed would allow the [Legislative] Assembly to increase the margin of the majority up to unanimity, if it were to deem it convenient in the future." *Informe de la Comision de la Carta de Derechos* [Report of the Commission for the Bill of Rights], at 3184 (digital version). *See also*, 3 Jose Trias Monge, *Historia Constitucional de Puerto Rico*, Rio Piedras, Ed. UPR, 1982, at 194-195.

The legislative authority to require that every conviction be decided by all twelve jurors has always been included in the constitutional constraint of "no less than nine." Although the Legislative Assembly has never increased the number of votes required to obtain a conviction, as the Constitutional Assembly foresaw, the decision in *Ramos v. Louisiana* and our reading of Section 11 as ordered by *Ramos* would require the legislature to amend the Rules of Criminal Procedure to clearly and unambiguously order the unanimity requirement in guilty verdicts in accordance with this legal precedent. Hence, the practical effect of the ruling in

at 24-25 ("the annulment of the verdicts in cases GIS2015G0002, GIS2015G003 y GIS2014G0011 and a new trial to that effect are in order".) (Emphasis added.)

Nevertheless, the Solicitor General advises that his position is in response to the fact that this case "is pending direct review before this Court." Motion in Compliance with Order, at 2.[18] At the same time, he

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Ramos v. Louisiana is to suppress the flexibility that the text of the Constitution afforded the legislature to increase the minimum of nine by way of statute.

[18] Regarding this, we highlight that the ruling in *Ramos v. Louisiana* specifically refers to the applicability of the standard established to cases that are pending review and are therefore not final and unappealable. Thus, in addressing the concerns of the dissenting judges as to the effects of the decision, the United States Supreme Court explains that "[t]he first concerns the fact Louisiana and Oregon may need to retry defendants convicted of felonies by nonunanimous verdicts whose cases are still pending on direct appeal." *Ramos v. Louisiana*, at 22. These statements are in line with previous rulings of this Court concerning the retroactive application of caselaw standards to cases pending before our courts. Specifically, in *Pueblo v. Torres Irizarry*, 199 DPR 11 [99 PR Offic. Trans. 3] (2017), we affirmed our decision in *Pueblo v. Gonzalez Cardona*, 153 DPR 765 [53 PR Offic. Trans. 51] (2001), regarding how a standard adopted through caselaw providing a constitutional defense to a defendant would apply retroactively "so long as at the time this standard is adopted the judgment from which relief is sought is not final and unappealable." *Torres Irizarry*, 199 DPR, at 27 [99 PR Offic. Trans. 3, at ___]. See also, *Pueblo v. Thompson FaberIle*, 180 DPR 497 [80 PR Offic. Trans. 22] (2010) (citing *Gonzalez Cardona*, 153 DPR, at 770-771 [53 PR Offic. Trans. 51, at ___] (2001)). We reiterate, however, that the issue of retroactivity is not under the consideration of this Court and, as we have indicated, the retroactive application of the unanimity requirement is currently before the United States Supreme Court in the case of *Edwards v. Vannoy*, No. 19-5807 (5th

requests that the validity of the unanimous verdicts returned for the remaining eight offenses and for which the defendant was convicted be affirmed. Regarding the validity of these convictions, the Solicitor General emphasizes that Torres Rivera must not be released from custody and must continue to serve the sentence imposed for those eight offenses. Note, however, that the relief sought by Torres Rivera's legal representation through Urgent Motion is circumscribed precisely to "vacating the conviction as it pertains to Torres Rivera's guilt for the three infractions of Section 133[] of the Penal Code, since the verdict was not unanimous." Urgent Motion, at 6.[19] Regarding the remaining errors assigned in the petition for certiorari, we decline to exercise our jurisdiction to review the decision rendered by the Court of Appeals.

Cir.), issued May 4, 2020. Regarding this, in the Opinion of the Court as delivered by Justice Gorsuch, the Court acknowledged that the ruling and the analysis on which its decision is based does not include cases where a final and unappealable judgment has been rendered since the retroactive application of the standard was not before the Court in this case. *Id.* at 24. (Gorsuch, J.) ("Whether the right to jury unanimity applies to cases on collateral review is a question for a future case where the parties will have a chance to brief the issue and we will benefit from their adversarial presentation. That litigation is sure to come, and will rightly take into account the States' interest in the finality of their criminal convictions.")

[19] Regarding the remaining errors assigned in the petition for certiorari, we decline to exercise our jurisdiction to review them, as we believe that the Court of Appeals did not err in affirming the judgments entered by the Court of First Instance for the eight offenses for which the jury returned a unanimous verdict.

A reading of the Opinion of the United States Supreme Court in *Ramos v. Louisiana* shows that unanimity constitutes an additional essential procedural protection that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.[20]

By virtue of the change in the law as regards to recognition of the unanimity requirement as an essential component of the right to a trial by jury, it is proper for us to vacate the judgments entered against Torres Rivera for the three counts of lewd acts under Section 133[1 of the Penal Code for which a unanimous verdict was not returned. Pursuant to the petition for relief contained in Solicitor General's Motion in Compliance with Order, we order a new trial be held for these three counts. We advise that, pursuant to the standard established in *Ramos v. Louisiana*, in order to obtain a conviction, the jury must return a unanimous verdict.

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[20] It can be no other way. To not apply the *Ramos v. Louisiana* ruling in our jurisdiction would result in the absurdity of allowing Puerto Rico to deny its citizens the full exercise of a fundamental right that all states are bound to recognize. In the words of Professor Helfeld, "[n]ot to do so would require a justification, explaining why Puerto Rico could deny a fundamental right which no state can deny." Helfeld, *supra*, at 458.

VI.

For the foregoing reasons, we vacate the judgments entered by the Court of First Instance against Torres Rivera for the three counts of lewd acts as typified in Section 133[ ] of the Puerto Rico Penal Code, and we order a new trial be held in accordance with our ruling hereunder. The convictions for the surviving charges shall remain unaltered.

(*illegible signature*)
Anabelle Rodriguez Rodriguez
Associate Justice

IN THE SUPREME COURT OF PUERTO RICO

People of Puerto Rico Respondent v. Tomas Torres Rivera Petitioner	**No.** CC-2019-0916

JUDGMENT

San Juan, Puerto Rico, May 8, 2020

For the arguments itemized in the previous Opinion, we vacate the judgments entered by the Court of First Instance against Torres Rivera for the three counts of lewd acts typified in Section 133[] of the Penal Code of Puerto Rico, and we order a new trial be held in accordance with this decision. The convictions for the surviving charges remain unaltered.

It was so agreed by the Court and certified by the Clerk of the Supreme Court. Justice Estrella Martinez agrees with the Opinion issued by this Court, except for the content of note 18, with which he concurs, and made the following pronouncement:

> Today come upon a new rule of law, laid down by the Supreme Court of the United States in matters of the administration of the jury as an institution. Specifically, the verdict unanimity requirement, as an individual

guarantee required to be found guilty. In said decision, the highest-ranking federal court clarified its application to the states of the Union. Now, just like many other legal controversies that the courts have examined historically, today we must determine the effects of this decision in Puerto RICO.

Today we analyze a constitutional standard that applies to Puerto Rico, as it has been recognized as a fundamental right, even though the United States Supreme Court has not expressly identified the concrete basis for such application. It often does not suffice to know that a certain claim is tenable, but it must come with a solid reason supporting it, given the legal consequences derived from the absence or presence of this ground. Some sectors aim to minimize that reality, but I believe that the lack of coherence, clarity, and obliteration of discriminatory visions in judicial decisions is a significant part of the seed that maintains Puerto Rico in a legal limbo in multiple controversies that are constitutional in nature and of compelling public interest. Therefore, along with the conclusion that *Ramos v. Louisiana*, 590 US ___ (2020) applies to our jurisdiction, I must draw attention to that reality which, ultimately, frames the context in which we must resolve controversies related to the relations between Puerto Rico and the United States. With this in mind, I shall exposit two motivating factors behind this pronouncement.

First and foremost, Puerto Rico deserves a more coherent, democratic, and unambiguous treatment regarding constitutional questions brought before the United States Supreme Court. In not every constitutional question is the treatment afforded to Puerto Rico clear and fair. As I have mentioned before, "a colonial relationship creates inequalities and controversies in many ambits of society. In all those dimensions, there is space for legal contentions, grounds, arguments, and solutions. By reason thereof, the members of the federal and local Judiciary are not exempt, as jurists, from addressing civil and criminal controversies or other matters where inequalities, social tensions and, even more importantly, who has the power to do a certain thing, are challenged." Luis. F. Estrella Martinez, *Puerto Rico:* 1a *revolucion* de un *apartheid territorial*, 52 Rev. Jur. UIPR 425, 425 (2017). Today, we cannot even concretely affirm the guarantee recognized here stems from, as a result of the precedents that currently continue to haunt us and which Judge Torruella of the First Circuit of Appeals denominates as "the doctrine of separate and unequal [people]." *See*, Juan R. Torruella, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal*, Rio Piedras, Ed. UPR (1985). This unleashes what has been coined as a juridical apartheid in the Caribbean. It is high time that the legal treatment afforded the citizens of Puerto Rico be grounded on ideas that dispense with case-law born from discriminatory and unequal principles. "[T]he humiliating constitutional

reaction chain brought on by the Insular Cases continues today to enforce a separate and unequal treatment for the U.S. citizens [who live in Puerto Rico]." Gustavo A. Gelpi, *Los Casos Insulares: Un Estudio Histórico Comparativo de Puerto Rico, Hawaii y las Islas Filipinas*, 45 Rev. Jur. UIPR 215, 218 (2011).

In such a scenario, the law of the land provides that not all the guarantees and rights recognized in the Federal Constitution necessarily apply to the citizens of Puerto Rico, due to a territorial apartheid. The result is a half-baked democracy that tarnishes the United States' standing to preach human rights elsewhere.

Today, despite the complexities of this legal limbo, I state once again that we are examining a constitutional rule that applies to Puerto Rico because it has been recognized as a fundamental right, even though the United States Supreme Court has not expressly identified the concrete grounds for such application. In this context, the second motivating factor for these pronouncements lies in fully discussing the rules of retroactivity that might apply. On many occasions, footnotes have equal or greater relevance in the development of the law. In fact, there are important decisions that are known more for a simple footnote, such as *United States v. Carolene Prods. Co.*, 304 US 144, 152 n.4 (1938). Incidentally, in that footnote elements germane to these expressions are discussed, as Judge Stone conveyed that prejudice against certain

discreet and insular minorities may be a special condition and which may call for require greater judicial inquiry.

This is precisely that sort of Opinion, where a footnote is particularly relevant for the future of the administration of the criminal justice system and constitutional law. Since footnotes also lay down precedent and are part of the decision, I am forced to concur in this regard. I specifically refer to footnote 18. I am certainly in favor of recognizing the **general rule** that a decision that sets a new criminal constitutional standard applies retroactively to cases pending in courts, that is, cases that are not yet final and unappealable. *Pueblo v. Thompson*, 180 DPR 497, 508 [80 PR Offic. Trans., ___, ___] (2010) ("Thus, we restate the rule we set forth in *Pueblo v. Gonzalez Cardona*, [153 DPR 765 (2001)], where we adopted the federal practice of extending judicial interpretation of criminal procedural rules that implicate constitutional protections to cases that were not already final and unappealable at the time the opinion was issued.")

Now, the retroactivity doctrine includes other aspects not mentioned in said footnote. Moreover, *Ramos v. Louisiana*, as delivered by Justice Gorsuch, recognizes an exception to the general principle that the retroactivity of new constitutional criminal rules laid down by caselaw extends only to cases pending before the courts, thus recognizing the possibility that the new constitutional rule may extend to final and unappealable cases. *Id.* at

24 (Gorsuch, J.) ("Under *Teague v. Lane*, [489 US 288 (1989),] newly recognized rules of criminal procedure do not normally apply in collateral review. True, *Teague* left open the possibility of an exception for "watershed rules" "implicat[ing] the fundamental fairness [and accuracy] of the trial."). Conversely, in *Teague v. Lane*, it was resolved that if the new rule adopted is substantive, retroactivity will also apply to final and unappealable cases. *Id.* at 307 ("if it places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe"); *Whorton v. Bockting*, 549 US 406 (2007) ("A new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a "`watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding."); *Schriro v. Summerlin*, 542 US 348 (2004).

Consequently, for the purposes of examining the retroactivity of a new constitutional rule, its contents must be evaluated rather than the procedural stage of the case. If the rule is substantive or watershed, it will apply to all cases, regardless of whether they became final and unappealable. Contrariwise, if this were a procedural rule, it would only apply to cases pending for review before the different courts. "The challenge for the courts, thus, lies in recognizing which type of new rule has been laid down before determining the scope of its retroactive application." Iris Y. Rosario Nieves, *Alcance de la retroactividad*

de las normas constitucionales enunciadas jurisprudencial – mente: una replica al profesor Ernesto Chiesa, In Rev (April 19, 2019). To such effects:

> When the Supreme Court of the United States effectuates a new constitutional rule, the states are forced to determine, before deciding the scope of its retroactive application, whether it is a procedural, substantive, or watershed rule. The result of said exercise may lead to the conclusion, in accordance with the *Teague* exceptions, whether the retroactive application of the rule extends to cases that are already final and unappealable. In doing so, the states are free to decide whether to broaden the scope of the retroactive application of a mere procedural rule, for instance, whether to apply it to cases that had already become final and unappealable. This decision, however, must not be confused with the fact that when dealing with a substantive rule, it must be applied retroactively, as the states have no discretion to do otherwise, even in final and unappealable cases.

Id.

As for the retroactive application of the new constitutional rule adopted in *Ramos v. Louisiana*, the United States Supreme Court

limited its analysis to expressly recognize the application of the new constitutional rule to active cases, including those pending at the appellate stage, as it was the factual situation under its consideration. However, a definitive majority standpoint as to the retroactive application of the new rule to final and unappealable cases was not disclosed, thus leaving open the possibility of a retroactive application in those scenarios. *Id.* at 24 (Gorsuch, J.) ("Whether the right to jury unanimity applies to cases on collateral review is a question for a future case where the parties will have a chance to brief the issue and we will benefit from their adversarial presentation. That litigation is sure to come, and will rightly take into account the States' interest in the finality of their criminal convictions").

In this case, there must be no doubt as to the application of the new constitutional rule discussed in the opinion, as the case is active and pending review at the appellate stage. Now, it seems misguided to reference only the retroactive application to pending cases and sidestep the range of possibilities mentioned herein. It also bears pointing out that we make an isolated mention that the United States Supreme Court will hear a case related to the retroactivity of the constitutional rule without recognizing that the states and Puerto Rico are at liberty to determine the scope of said retroactivity. This clarification, in my opinion, is important. Therefore, for the foregoing reasons, I consider that the Opinion should have included said legal rules, which

are omitted in the footnote. The way the footnote is drafted, even though it advises that the retroactivity issue is not being resolved, sends the wrong message that the only possibility of applying the new constitutional rule is to pending cases. Regardless of the course of action that we may adopt in a future controversy, I believe that we should have stated the full scope of the law that may be applicable to this issue and to other controversies on the matter of retroactivity.

(*illegible signature*)
Jose Ignacio Campos Pérez
Clerk of the Supreme Court

I CERTIFY that this is an Official Translation made by the Bureau of Translations of the Supreme Court of Puerto Rico.

In San Juan Puerto Rico: MAY 20 2020

/s/ Sonnya I. Ramos Zeno, Esq.
Chief Deputy

Clerk of the Supreme Court /s/ [Illegible]