No. 21-7803

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK STRINGFELLOW -- PETITIONER

VS.

STATE OF LOUISIANA – RESPONDENT(S)

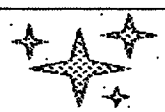
ON PETITION FOR A WRIT OF CERTIORARI TO

LOUISIANA SUPREME COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

Prepared By:

	CAMP C – LITIGATION TEAM
	DR. ERIC M. DENET, PH.D., TH.D., DIV.D., C.ED.D. #380958 CAMP C WOLF–2 CERTIFIED PARALEGAL / OFFENDER COUNSEL III

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QUESTION(S) PRESENTED

1. Whether The Louisiana Supreme Court, Louisiana Second Circuit Court Of Appeal And The Trial Court Erred In Denying Frank Stringfellow's Constitutional Rights By Not Allowing The Presentation Of Intoxication Defense?

2. Did The Louisiana Supreme Court, Louisiana Second Circuit Court Of Appeal And The Trial Court Erred In Allowing The Jurors In Frank Stringfellow's Case To Reach A Finding Of Guilty By A Non-Unanimous Verdict In Violation Of *Ramos V. Louisiana*?

3. Is The Appellant's Constitutional Right Violated When Non-Unanimous Jury Instructions Are Presented To The Jury?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Hon. John F.K. Belton, District Attorney
100 W. Texas
Ruston, Louisiana 71270

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court (Louisiana Supreme Court) to review the merits appears at Appendix "B" to the petition and is

[X] reported at **State v. Stringfellow, 329 So.3d 827 (La. 12/21/21)**; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Louisiana Third Circuit Court of Appeals appears at Appendix "D" to the petition and is

[X] reported at **State v. Stringfellow, 324 So.3d 729 (La. App. 2nd Cir)**; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was December 21, 2021. A copy of that decision appears at Appendix "B".

[ ] A timely petition for rehearing was thereafter denied on the following date: , and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLE 802

STATEMENT OF THE CASE

Frank Jauron Stringfellow was charged by bill of information filed April 5, 2019, which alleged he committed the following offenses on August 22, 2017:

R.S. 14:30.1
SECOND DEGREE MURDER

in that he committed second degree murder of Shakena Hampton;

R.S. 14:27 & 14:30.1 ATTEMPTED SECOND DEGREE MURDER

in that he attempted to kill Doris Hampton in the second degree;

R.S. 14:27 & 14:30.1 ATTEMPTED SECOND DEGREE MURDER

in that he attempted to kill Destiney Lagrange in the second degree;

R.S. 14:94(A)
ILLEGAL USE OF WEAPONS OR DANGEROUS INSTRUMENTALITIES

in that he did intentionally or with criminal negligence, discharge any firearm, where is was foreseeable that it may result in death or great bodily harm to a human being;

(Rec. P. 20, 64, 510).

Formal arraignment was waived and not guilty plea entered on April 9, 2019. (Rec. P. 1, 512). A hearing was held on the State's request to introduce other crimes evidence at trial. Over objection by the defense, the court ruled evidence in connection with prior convictions in 2010 and 2011 involving the victim Shekena Hampton was admissible pursuant to the provisions of C.Cr.P. Art. 412.4, as proof of motive, intent, absence of mistake or accident and to show the nature of the relationship between Ms. Hampton and Mr. Stringfellow. (Rec. P. 3-4, 525 *et seq.*, 591). A written ruling was filed by the court. (Rec. P. 5, 338-343).

During jury selection, the State objected to an affirmative defense of voluntary intoxication being raised at trial in the absence of prior notice given. Witness statements reflected Mr. Stringfellow's impairment on August 22, 2017. A writ was filed on behalf of Mr. Stringfellow, and this Honorable

Court denied the writ on the showing made. (Rec. P. 6, 445, 682-684, 713). Batson and reverse-Batson challenges were raised and denied. The State utilized four peremptory challenges, and the defense utilized twelve peremptory challenges. The jury was sworn and sequestered. (Rec. P. 8-9, 913-914).

The jury was instructed that a vote of at least ten jurors was required for a verdict. (Rec. P. 483). At the conclusion of the trial on November 1, 2019, the jury found Mr. Stringfellow guilty of count 1, second degree murder of Shakena Hampton; guilty of count 2, attempted second degree murder of Doris Lagrange; not guilty of count 3; and guilty of count 4, illegal use of weapons. The State utilized four peremptory challenges, and the defense utilized twelve peremptory challenges. The jury was polled and the verdict was unanimous on counts 1 and 4. The verdict on count 2, attempted murder of Doris Hampton was a non-unanimous, 11-1 verdict. Count 3, a not guilty verdict, was dismissed. (Rec. P. 14, 486-487, 1531-1532).

On December 10, 2019, Mr. Stringfellow was sentenced to serve life in prison for count 1, second degree murder of Shakena Hampton, 50 years at hard labor for attempted second degree murder of Doris Hampton, and two years at hard labor, for illegal use of weapons, with all sentences to run consecutively. All sentences were ordered to be served without benefits. (Rec. P. 15-16, 1557-1558). Counsel objected to the length of the sentences in open court. A Motion for Appeal was timely filed and granted on December 10, 2019. (Rec. P. 15, 491-492, 1559).

The State filed a Habitual Offender Bill of Information at sentencing, to which a formal response was filed by the defense. The hearing on the habitual offender bill was set for May 12, 2020, and continued until September 1, 2020. No hearing is of record herein; this appeal only involve the conviction and original sentencing in this docket number. (Rec. P. 16-18, 4889-490).

REASONS FOR GRANTING THE PETITION

Petitioner contends the Second Circuit Court of Appeal and the Trial Court has created an erroneous interpretation of the law in denying the defense's ability to present an intoxication defense. Although the State argues the requirement under La. C.Cr.P. Art. 726 that notice be given to the state no later than ten days prior to trial if intoxication was going to be used as a defense. The State makes no effect to explain as to how it was prejudiced by the defense failing to give notification. It was never discussed as to "such reasonable time as the court may permit." The Trial Court has the discretion to allow the State time to review the intoxication defense.

Even still, the State was already aware of this possible argument as the Appellant's blood was taken and tested. The State was (therefore) aware of the toxicology report of the Appellant's intoxication. There was absolutely no prejudice to the State in the untimely notice and the State cannot contend the defense attempted to ambush them at trial.

In the next claim, Petitioner further contends that the Second Circuit Court of Appeal and the Trial Court have grossly departed from proper judicial proceedings when the jury was read and instructed they had the ability to reach a non-unanimous jury verdict. Not only did that instruction undermine Petitioner's Sixth Amendment right to a jury trial, but it created the same kind of "unquantifiable and indeterminate" consequences as those occasioned by an unlawful reasonable doubt instruction.

Petitioner presents that in the *Interest Of Justice* and *Judicial Economy* this Honorable Court should remand the charged offenses of Second Degree Murder and Illegal Use of Weapons. Petitioner's Attempted Second Degree Murder conviction and sentence was already reversed as the result of a non-unanimous jury verdict. In such, Petitioner will be afforded an opportunity to bring for his *intoxication defense* during a new trial and shall be successful. This will result in a post conviction challenge on the Second Degree Murder and Illegal Use of Weapons under ineffective assistance of counsel resulting

from Defense Counsel's failure to have timely brought the constitutional defense in the previous trial.

As such, the Trial Court will be forced into granting such claim of ineffective assistance of counsel which will end in the granting of a new trial on the convictions of Second Degree Murder and Illegal Use of Weapons. Thereby creating a third and unnecessary trial.

Furthermore, it can not be judged as to the belief that an offense totally reached a unanimous verdict. Too many other factors have come into play when the jury is allow a non-unanimous verdict. First, a juror may feel there vote doesn't matter and decide to simply vote with the majority. Second, a juror may be mentally pressured into submitting to the majority. These type of pressures can be seen in an Amicus Brief filed by Jonre Taylor under the case of *Edwards v. Vannoy*, 141 S.Ct. 1547 (2021).

All convictions and sentenced should be remanded based on the jury instruction being a direct violation of the Appellant's constitutional right to due process and equal protection. There can be no dispute that faulty jury instructions were given to the jury. It has been held that jury unanimity is required in all felony case, under the United States Constitution.

ASSIGNMENTS OF ERROR

1. The Second Circuit Court of Appeal and the Trial Court Violated Frank Stringfellow's Constitutional Rights By Not Allowing The Presentation Of Intoxication Defense.

2. The Jurors In Frank Stringfellow's Case Were Permitted To Find Guilty By A Non-Unanimous Verdict In Violation Of *Ramos V. Louisiana.*

STATEMENT OF FACTS

Shakena Hampton and Frank Stringfellow has a tumultuous relationship for several years and frequently argued. (Rec. P. 1138, 1151). They had three children together: Frank, Jr., Asia and Fabian. Shakena had two other children who were not the offspring of Mr. Stringfellow: Destiny Lagrange and Isaiah Anderson.

On August 22, 2017, Frank Stringfellow was at Shakena's home located at 216 Cotton Avenue in Ruston, Louisiana. Whether he lived at that address was disputed by some witnesses, but the evidence was clear that Shakena's five children and her mother, Doris Hampton, lived at the home with her on August 22, 2017, and were present that evening. (Rec. P. 1150, 1169, 1192).

On that tragic night, Frank (Red) Stringfellow and Shakena (Kena) Hampton had an argument, and Kena was shot. (Rec. P. 1330-1331). Doris Hampton was awakened by Red and Kena's arguing, told them she was sick of it, then went back to bed. She was awakened a second time to find Kena in her room. She testified that Kena was holding the one-year-old Isaiah Anderson, then Kena fell to her knees dropping Isaiah. Kena had been shot six times and was pronounced dead at the scene. Dr. Frank Peretti, an expert in the field of forensic pathology, performed an autopsy on Shakena Hampton on August 22, 2017. The cause of death was multiple (6) gunshot wounds. (Rec. P. 1431-1432).

Doris Hampton testified that Frank came in the room behind Kena with a small gun and she asked him what he had done. (Rec. P. 1151-1152, 1157, 1205, 1267-1270). Doris testified that Frank Stringfellow then shot her three times in the right arm and left. (Rec. P. 1153). According to the hospital records, Doris sustained gunshot wounds to the right shoulder with a non-displaced fracture of the right humerus. (Rec. P. 1179-1180). Doris did not see Frank shoot Kena or point a gun at Destiny Lagrange. (Rec. P. 1161).

Frank Jr. testified that he was awakened by a gunshot, then "saw my daddy, he shot the last gunshot and he pointed at Destiny then that's when we had ran out the back door. . . ." (Rec. P. 1121).

The gun, described as a little pistol, just made a clicking noise when pointed at Destiny. (Rec. P. 1112). Frank Jr. called 911 to report the shooting. (Rec. P. 1121, 1140-1141). Frank Jr. indicated that the only shot he saw fired was to the bed, and he did not know if his mother was in there. He did not see Frank Stringfellow shoot Doris Hampton. (Rec. P. 1137).

Asia Stringfellow, who was twelve years old in August of 2017, testified that she, her grandmother (Doris Hampton) and baby brother (Isaiah) were in the room with her sleeping. She said she was awakened by the sound of a gunshot; she woke up her sister Destiny then hid in the closet. (Rec. P. 1251-1253).

Destiny Lagrange testified that Asia woke her up then she opened the door and saw her mother's body. Frank Jr. was still in the bed asleep. She saw blood everywhere and her grandmother was asleep. She testified that Frank Stringfellow was right there and pointed the gun at her and tried to shoot her but she just heard a clicking noise. (Rec. P. 1368-1370). Destiny said she then went and woke up Frank Jr. and they ran. Her testimony at trial differed in several respects from statements previously made. Destiny denied making many of the statements attributed by her to the police. (Rec. P. 1378-1379). Frank Stringfellow was acquitted of the charge brought against him for attempted second degree murder of Destiny Lagrange, count 3 of the indictment.

Investigators with Ruston Police Department located evidence in the eastern side of the house. There was blood found in the living room, and a blood trail coming through the doorway to the bedroom, with blood on the floor, mattress, and wall. (Rec. P. 1277-1278, 1323, 1330). Bullet holes in the mattress were found. The record reflects Isaiah Anderson sustained a through and through gunshot would while Kena held him. Isaiah's vital signs were normal and no major bleeding was noted prior to his transport to the hospital. (Rec. P. 1270).

Frank Stringfellow was arrested in Grambling, Louisiana, a few hours after the shooting was reported. (Rec. P. 1350). Officer Jenkins testified that he received a call that Frank Stringfellow wanted

to turn himself in. (Rec. P. 1433 *et seq.*). Some of Frank's clothing was tested and was negative for blood. (Rec. P. 1416-1417). No DNA subjected to testing matched Frank Stringfellow. (Rec. P. 1423).

LAW & ARGUMENT

ASSIGNMENT OF ERROR NO. 1:

THE TRIAL COURT VIOLATED FRANK STRINGFELLOW'S CONSTITUTIONAL RIGHTS BY NOT ALLOWING THE PRESENTATION OF INTOXICATION DEFENSE.

Appellant contends that he had a right to present a defense. Yet, the trial court violated this right by not allowing the defense of intoxication. Specifically, the trial court afforded the Defense to ask questions to witnesses involving intoxication. But would not instruct the jury as to intoxication defense in order to strike the specific intent aspect of the charged offenses.

In *McConnico v. State*, 551 So.2d 424, 426 (Ala. Cr. App. 1988) ("voluntary intoxication ... may negate the specific intent essential to a malicious killing and reduce it to manslaughter"). *Accord Ex parte Bankhead*, 585 So.2d 112, 120-21 (Ala. 1991); *Gray v. State*, 482 So.2d 1318, 1319 (Ala. Cr. App. 1985).

Accordingly, courts have consistently held that where there is *any* evidence that the accused was under the influence of alcohol or mind-altering drugs, no matter the degree of intoxication or the persuasiveness of the evidence, the trial judge must charge the jury on the lesser-included offense of reckless manslaughter. *See Peterson v. State*, 520 So.2d 238, 240 (Ala. Cr. App. 1987) ("When the crime charged involves a specific intent, such as murder, and there is evidence of intoxication, the trial judge should instruct the jury on the lesser-included offense of manslaughter"). "No matter how strongly the facts may suggest that appellant was not so intoxicated at the time he committed the offense that he was incapable of forming the necessary specific intent, the jury should have been instructed on manslaughter." *McNeill v. State*, 496 So.2d 108, 109 (Ala. Cr. App. 1986). *See McConnico v. State*, 551 So.2d 424, 426 (Ala. Cr. App. 1988) ("While this evidence does not

conclusively prove that the appellant was intoxicated when he shot the victim, it does raise the possibility. The facts of this case warranted a charge as to manslaughter, and the trial court erred in refusing to give such a charge").[1]

Louisiana C.Cr.P. Art. 802 was jurisprudentially construed to mean that the judge MUST include in his jury charge every phase of the case that is supported by evidence, whether or not accepted as true by the judge. See *State v. Phillips*, 248 La. 703, 181 So.2d 753 (1966) and cases cited therein. The judge MUST give such instructions as are pertinent to the evidence. *State v. Youngblood*, 235 La. 1087, 106 So.2d 689 (1958).

In *Youngblood*, the Louisiana Supreme Court also held that the question of whether the circumstances in a case indicated intoxication to the extent that specific criminal intent would be precluded is a question of fact for the jury. The omission of a charge relative to the evidence presented on intoxication of this defendant was therefore error on the part of the trial judge. It is incumbent upon him to include in his general charge the law applicable to intoxication as a defense, whether or not the defendant sought such a charge by means of submitting a special charge, and failure on his part to do so constituted reversible error.

Clearly, in case after case, Courts have set aside convictions where, as here, trial judges have failed to instruct the jury on the lesser-included offense of manslaughter and/or intoxication in the face of evidence of the defendant's intoxication similar to or even more minimal than Mr. Stringfellow's.

WHEREFORE, based on the foregoing, Frank Stringfellow's conviction and sentence should be reversed.

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1 *Accord Anderson v. State*, 507 So.2d 580, 584 (Ala. Cr. App. 1987); *Silvey v. State*, 485 So.2d 790, 793 (Ala. Cr. App. 1986) (trial judge must instruct on manslaughter where there is "some testimony tending to show that defendant was drunk"); *Crosslin v. State*, 446 So.2d 675, 682 (Ala. Cr. App. 1983).

ASSIGNMENT OF ERROR NO. 2:

THE JURORS IN FRANK STRINGFELLOW'S CASE WERE PERMITTED TO FIND GUILTY BY A NON-UNANIMOUS VERDICT IN VIOLATION OF *RAMOS V. LOUISIANA.*

Notably, the Appellate has filed an a Counseled argued assignment of error involving a non-unanimous jury verdict as to Count 2. Appellate now assigns as error, the trial Courts jury instructions involving the use of a non-unanimous jury verdict.

Last years decision in *Ramos v. Louisiana*, ___ U.S. ___, 140 S.Ct. 1390 (2020), the United States Supreme Court struck down Louisiana's constitutional provision allowing for non-unanimous verdicts in non-capital cases, explaining that Louisiana's 10-2 law is inconsistent with the guarantees of the Sixth Amendment:

> Wherever we might look to determine what the term "trial by an impartial jury" 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 treaties written soon afterwards – the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.

140 S.Ct. at 1393.

Further, the Court squarely acknowledged that Louisiana's non-unanimous verdict provision was the product of racial animus:

> The delegates [at the 1898 Constitutional Convention] 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."

Id. at 1392.

Recognizing that Louisiana's 10-2 provision has been in place for more than a century and, further, that a ruling finding the provision unconstitutional would have widespread effects, Justice Gorsuch nonetheless concluded that the Court had to do what is "right":

> Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetrate something we all know to be wrong only because we fear the consequences of being right.

Id. at 1403.

Pursuant to Louisiana law in effect at the time of trial. Appellate Stringfellow's jury was not required to reach a unanimous decision regarding his guilt. Following the presentation of evidence, jurors were then instructed that they could legally reach a verdict of guilty on the count[s] in the indictment, or any lesser included offenses, if 10 of the 12 jurors agreed:

> *Then you will begin your deliberations. When at least ten of you have agreed on one of the verdicts that is listed on the verdict form, you will have reached a verdict. When you reach a verdict, the foreman will write the verdict on the back of the list of responsive verdicts which will be given to you and it's on the back of the responsive verdict form I just mentioned. He or she must sign the verdict, date it and deliver the verdict to me in Open Court. At least ten members of the Jury must agree to reach a verdict in this case.*

Appellate Court Record page1525, line 13 - 23

In light of the United States Supreme Court's decision in *Ramos v. Louisiana*, it is now clear the trial judge "made a mistake" in denying Appellate's right to require the jurors to return unanimous verdicts pursuant to the Sixth Amendment. Instead, the jury was unconstitutionally permitted to find Petitioner guilty by the use of a non-unanimous verdict.

Appellant contends that a request for polling was done by the Defense. Yet, the trial court did not request for oral polling. Rather, ballots were passed out for a written polling to be had.

When the jurors returned from deliberations and announced their verdict, they were polled on polling slips, and those slips were given to the Clerk of Court. The clerk gave a breakdown of the guilty and not guilty votes with respect to each of the four counts in the indictment. The transcript reflects the court reporter's notation that "As to count one, it was unanimous. Count two, eleven yes, twelve no. Or yes, one no. Count three nine yes, three no. And count four was unanimous." Appellate Court Record

page1532, line 30 – 32. But it does not reflect the precise number of jurors who voted unanimously on the individual counts one and four in the indictment. Based on the court reporter's notation and the jury instruction indicating that the verdict "must represent the considered judgment of 10 jurors," it is quite possible that the ballots were only unanimous insofar as was required by Louisiana law at the time; in other words, "unanimous" does not necessarily mean 12-0 in the context of Mr. Stringfellow's pre-*Ramos* trial. Likewise, the minutes indicate that the verdict was declared to be "legal" but does not provide any other specifics. Accordingly, it is possible that none of the verdicts were 12-0.

Yet even if the polling slips indicate that the jurors voted 12-0 to convict with respect to counts one and four in the indictment, Mr. Stringfellow is entitled to a new trial on these offenses because the Sixth Amendment violation resulting from the 10-2 instruction given to the jurors constituted structural error in the same way that a flawed reasonable doubt instruction does.

In *Sullivan v. Louisiana*, 508 U.S. 275 (1993), the United States Supreme Court assessed whether the use of the reasonable doubt instruction previously struck down in *Cage v. Louisiana*, 498 U.S. 39 (1990), constituted structural error or was subject to harmless error analysis. In *Cage*, the Court had conducted that Louisiana's reasonable doubt instruction was unconstitutional in large part because it violated the petitioner's Sixth Amendment right to a jury trial:

> It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is *probably* guilty, and then leave it up to the judge to determine (as *Winship* requires) whether he is guilty beyond a reasonable doubt. In other words, the jury verdict required by the Sixth Amendment is a jury verdict of guilty beyond a reasonable doubt.

Sullivan, 508 U.S. at 278 (describing the holding in *Cage*).

Accordingly, where jurors have been given a flawed reasonable doubt instruction, the error is not amenable to harmless review under *Chapman v. California*, 386 U.S. 18 (1967):

> Since, for the reasons described above, there has been no jury verdict within the meaning of the Sixth Amendment, the entire premise of *Chapman* review is simply absent. There being no jury verdict of guilty-beyond-a-reasonable-doubt, the question whether the *same* verdict of guilty-beyond-a-reasonable-doubt would have been rendered absent the constitutional error is utterly meaningless. There is no *object*, so to speak, upon which harmless-error scrutiny can operate.

Id. at 280 (contrasting an instruction that improperly requires a mandatory presumption regarding an element of the offense).

Writing for a unanimous Court, Justice Scalia explained:

> The right to trial by jury reflects, we have said, "a profound judgment about the way in which law should be enforced and justice administered." *Duncan v. Louisiana*, 391 U.S. at 155. *The deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as "structural error."*

Sullivan, 508 U.S. at 281-282 (emphasis added).

Accordingly, all persons convicted after having been given the flawed instruction were entitled to new trials without a showing that the guilty verdict actually rendered was attributable to the reasonable doubt instruction.

Like *Cage*, the United States Supreme Court's decision in *Ramos* directly implicates the Sixth Amendment right to a jury trial. Accordingly, where the jury was unconstitutionally permitted to find guilt on less than unanimous agreement of all 12 jurors, that error is structural. Indeed, the majority in *Ramos* specifically noted in its ruling that "[n]o one before us suggests that the error was harmless." *Ramos*, 140 S.Ct. at 603 (responding to the arguments against reversal put forth by the dissent and the State).[2] As in both *Cage* and *Sullivan*, Mr. Stringfellow was convicted after his jury was given

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2 *Ramos* addressed a fact pattern in which the verdict was unanimous, but the dissent emphasized the State's concerns about the potentially far-reaching impact of the Court's holding:

> The State also reports that "[d]efendants are arguing that an instruction allowing for non-unanimous verdicts is a structural error that requires reversal of *all* convictions, even for those for which the jury was not polled or those for which the jury was unanimous."

Ramos, 140 S.Ct. at 1438 (dissenting opinion).

unconstitutional instructions about the burden the State was required to carry. Rather than being told that all 12 jurors must agree to find Mr. Stringfellow guilty such that every juror's vote counted, the jurors were told that, under Louisiana law, only 10 of the votes mattered, and anything beyond that initial 10 would be disregarded. Not only did that instruction undermine Petitioner's Sixth Amendment right to a jury trial, but it created the same kind of "unquantifiable and indeterminate" consequences as those occasioned by an unlawful reasonable doubt instruction. Members of a 12-person jury who are told that only 10 of their votes count would justifiably consider their votes to have less authority than the votes of the majority.[3]

In fact, diluting the votes of certain citizens – African-Americans – was precisely the goal of the Louisiana Constitutional Convention when it created the 10-2 rule. Where discriminatory motives are involved, harmless error analysis is not only impracticable, but it is an unacceptable method for remedying such a pernicious wrong. Both the United States Supreme Court and the Louisiana Supreme Court have repeatedly recognized that, where discrimination undermines the jury trial system, the remedy must be unequivocal and is not subject to harmless error analysis. Almost 75 years ago, in *Ballard v. United States*, 329 U.S. 187, 195-96 (1946), the Supreme Court addressed the deliberate exclusion of women from the grand jury, explaining that the prejudice from discrimination is systemic and not assessed in term of an individual case:

> The [] exclusion of women from jury panels may at times be highly prejudicial to the defendants. But reversible error does not depend on a showing of prejudice in an individual case. The evil lies in the admitted exclusion of an eligible class or group in the community in disregard of the prescribed standards of jury selection.
> The systemic and intentional exclusion of women, like the exclusion of a racial group, *Smith v. Texas*, 311 U.S. 128, or an economic or social

3 Put in practical terms, given the instruction that, once 10 people agree on a guilty verdict, the remaining jurors' votes have no legal consequence, many people placed in the position of the remaining jurors would simply align themselves with the super majority and vote to convict even if they personally favored an acquittal.

> class, *Thiel v. Southern Pacific Co., supra*, [4] deprives the jury system of the broad base it was designed by Congress to have in our democratic society.

329 U.S. at 195-96.

Again, in *Vasquez v. Hillery*, 474 U.S. 254 (1986), the Court addressed the deliberate exclusion of African-Americans from the grand jury and held that the difficulty of assessing the effect in a single case requires reversal without such a showing:

> Once having found discrimination in the selection of a grand jury, we simply cannot know that the need to indict would have been assessed in the same way by a grand jury properly constituted. The overriding imperative to eliminate this systemic law in the charging process, as well as the difficulty of assessing its effect on any given defendant, requires our continued adherence to a rule of mandatory reversal.

474 U.S. at 263.

The same year, in the seminal case of *Batson v. Kentucky*, 476 U.S. 70 (1986), the United States Supreme Court reached the same conclusion regarding discrimination against African-Americans during the petit jury selection process. *Accord Alex v. Rayne Concrete Service*, 2005-1457 (La. 1/26/07), 951 So.2d 138 ("Errors regarding discrimination in the composition of the grand jury or petit jury are not harmless. . . . [R]acial discrimination in petit jury selection is a structural error."); *see also J.E.B. v. Alabama*, 511 U.S. 128, 140 (1994) ("litigants are harmed by the risk that the prejudice that motivated the discriminatory selection of the jury will infect the entire proceedings"; the systemic

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4 In *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946), the Court likewise addressed the discrimination against daily wage earners in the selection of a petit jury, and the Court rejected the suggestion that prejudice had to be proven:

> It is likewise the immaterial that the jury which actually decided the factual issue in the case was found to contain at least five members of the laboring class. The evil lies in the admitted wholesale exclusion of a large class of wage earners in disregard of the high standards of jury selection. To reassert those standards, to guard against the subtle undermining of the jury system, requires a new trial by a jury drawn from a panel properly and fairly chosen.

328 U.S. at 225 ("It follows that we cannot sanction the method by which the jury panel was formed in this case. The trial court should have granted petitioner's motion to strike the panel.").

exclusion of particular groups "cannot be squared with the constitutional concept of a jury trial" (citing *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975)).

The United States Supreme Court has more recently reinforced its position that racial discrimination deserves unique treatment in the assessment of prejudice. For instance, in *Buck v. Davis*, 137 S.Ct. 759 (2017), the United States Supreme Court addressed a claim of ineffective assistance of counsel and rejected the State's argument that only a fleeting reference to a defendant's race during trial could not have caused prejudice:

> But when a jury hears expert testimony that expressly makes a defendant's race directly pertinent on the question of life or death, the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. *Some toxins can be deadly in small doses.*

Buck v. Davis, 137 S.Ct. at 777 (emphasis added).

In the same spirit, the United States Supreme Court in *Pena-Rodriguez v. Colorado*, 137 S.Ct. 855 (2017), addressed Federal Rule 606(b)'s prohibition against juror testimony: "This case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and its decisions seeking to eliminate racial bias in the jury system." Ruling that the "no-impeachment rule [must] give way in order to permit the trial court to consider the evidence of the juror's [racist] statement and any resulting denial of the jury trial guarantee," the Court explained the broader purpose of its ruling,

> The Nation must continue to make strides to overcome race-based discrimination. The progress that has already been made underlies the Court's insistence that blatant racial prejudice is antithetical to the functioning of the jury system and must be confronted in egregious cases like this one despite the general bar of the no-impeachment rule.

Pena-Rodriguez, 137 S.Ct. at 871.

Consistent with the deeply-rooted jurisprudence treating discrimination in jury trials as inherently prejudicial, the use of the unconstitutional 10-2 jury provisions in Louisiana criminal trials constitutes structural error.

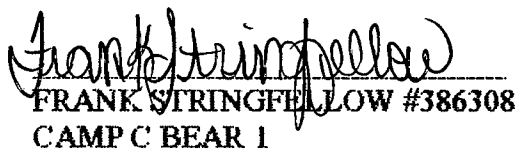
Accordingly, Mr. Stringfellow is entitled to a new trial at which the jurors are required to reach a unanimous 12-0 vote to convict, and his original trial was unconstitutionally and structurally infirm regardless of the precise vote count ultimately render.

WHEREFORE, based on the foregoing, Frank Stringfellow's conviction and sentence should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



FRANK STRINGFELLOW #386308
CAMP C BEAR 1

Date: **April 25, 2022**