

No. _____

IN THE
Supreme Court of the United States

KIRBY THOMAS,

PETITIONER,

v.

LOUISIANA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether Louisiana deprived Mr. Thomas of his right to an impartial jury trial before his peers through a petit venire selection process that effectively excluded African American participation notwithstanding the fact that African American comprise 30% of the parish's population.

PARTIES TO THE PROCEEDING

The petitioner is Kirby Thomas, defendant and defendant-appellant in the courts below. The respondent is the state of Louisiana, the plaintiff and the plaintiff-appellee in the courts below.

The case proceeded to trial in the 23rd Judicial District Court for the State of Louisiana in *State v. Thomas*, 17-CR-00123.

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OPINION BELOW

The Louisiana Supreme Court denied the petitioner's claim for post-conviction relief challenging the effectiveness of trial counsel for not properly filing a Motion To Quash the Jury venire when it became obvious that African Americans were under represented.

JURISDICTIONAL STATEMENT

Thomas' petition for a *writ of certiorari* centers around a trial proceeding that systematically excluded African Americans from the petit jury selection process in violation of the Sixth Amendments to the Constitution. Thomas unsuccessfully sought relief from the Louisiana Supreme Court and was denied. The failure to apply federal constitutional provisions to the state court proceeding makes the Louisiana Court's holding repugnant. As such, jurisdiction is properly vested with this Court pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution guarantees every citizen the right to an impartial jury trial before a fair cross section of his community.

The Fourteenth Amendment to the Constitution prohibits government exclusion during petit jury selection based on race because of race.

STATEMENT OF THE CASE

Mr. Thomas was convicted of Attempted Manslaughter, Possession of 28-200 grams of Cocaine and Possession of a Firearm by a Convicted Felon. He was sentenced to 20 years on the Attempted Manslaughter, 5 years on the Possession of Cocaine and 10 years on the Possession of a Firearm by Convicted Felon. The sentence was structured so that the gun and drug charges were concurrent to each other but consecutive to the Attempted Manslaughter conviction for a total sentence of 30 years.

The United States Supreme Court struck down Louisiana's non-unanimous jury system while Mr. Thomas' case was on direct appeal prompting a remand to this Court which would vacate his convictions for the drug and gun counts. *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020). So, as it now stands, Mr. Thomas is serving a 20-year sentence for Attempted Manslaughter.

Mr. Thomas filed a post-conviction application challenging the effectiveness of trial counsel for improperly challenging the composition of the jury venire. This application was denied without an evidentiary hearing. Through counsel, Mr. Thomas noticed an intent to seek writs and was originally given a return date in September 2022. The undersigned counsel filed a motion to enroll and his own notice of intent to seek writs and was given a return date of August 24, 2022. The First Circuit denied Mr. Thomas' writ application on September 26, 2022 and he sought review by the Louisiana Supreme Court. The Louisiana Supreme Court denied relief on March 28, 2023.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The lower courts have not properly applied the laws of the United States Constitution and the constitution of Louisiana. This writ application addresses whether Mr. Thomas received a fair trial notwithstanding an obvious underrepresentation of African Americans in the jury venire. Every citizen has the right to a trial by a jury selected and impaneled without discrimination against race because of race. *Strauder v. W.Va.*, 100 U.S. 303(1879). It is long established that racial groups can not be excluded from the venire from which a jury is selected. *Holland v. Illinois*, 493 U.S. 474 (1990). Furthermore, race based exclusion is no more permissible at the individual petit jury stage than the venire stage. *Id.* The Assumption Parish Clerk attempted to empanel a venire of approximately 250 citizens. However, the jury roll for the trial shows an exceptional amount of “not served” and “no attempts.” As it worked out, only 3 of the 56 members of the venire were African American and 33 of the 56 jurors came from a town that is 95% white. Nearly 1/3 of Assumption Parish is African American. On its face, Mr. Thomas was deprived a fair cross section of the community to judge his case calling into question the confidence of the verdict.

The Sixth Amendment entitles a defendant to a jury drawn from a fair cross-section of the community and this requirement is violated by the systematic exclusion of a group from jury service. *Taylor v. Louisiana*, 419 U.S. 522 (1975). The burden of proof is placed upon the defendant to show a prima facie violation of the fair cross-section requirement. *Duren v. Missouri* 439 U.S. 357 (1979). The elements necessary

for the defendant to establish are: 1) showing the excluded group is a distinctive group in the community; 2) representation of the group in the venire is not fair and reasonable in relation to the number of such persons in the community; and 3) under representation is due to a systemic exclusion of the group in the jury selection process. *Id.* All three elements are met here.

The allegation is simple: African Americans were disproportionately excluded from the jury venire. The cognizable group is the African American community. It is undisputed that African Americans are a distinctive group in the community. *State v. Brooks*, 807 So.2d 1090 (La. App. 5 Cir. 2002). The statistical summary provided by Chief Justice Johnson in her concurring opinion outlines the statistical disparity. She noted that 31% of registered voters in Assumption Parish are African Americans but only 3 of the 56 members of the venire were black (roughly 5.4%). Compounding matters, 33 of the 56 members lived in Pierre Part which is 95% white. This resulted in an all-white jury. The systemic exclusion is well documented in the petit jury log and court minutes. The volume of unserved jurors is staggering with only a few notations indicating multiple attempts at service were made. Since other communities within the Parish have a more diverse composition than Pierre Part, it is quite obvious that the jury venire system itself is broken in Assumption Parish.

CONCLUSION

A fundamentally fair jury trial requires the accused have his matter presented to a fair cross-section of the community for their due considered judgment. In this case, Mr. Thomas was convicted by an all-white jury, not because those were the best

jurors for this case, but because the jury selection process systematically excluded African Americans from service. African Americans comprise nearly 1/3 of the population in Assumption Parish. Yet, comprised only 5.4% of the jury venire that appeared for service the week of Mr. Thomas' trial. Why? Simply put, the court process failed to properly summons them. Here, the jury roll consisted of 257 individuals. But only 56 appeared. The overwhelming majority of potential jurors were not served. Compounding matters, those that did appear came predominantly from two communities with white super majorities. This need not happen in contemporary America. As such, we humbly ask this Court to intervene and vacate Mr. Thomas' conviction.

Respectfully Submitted,

**MANASSEH, GILL, KNIPE &
BÉLANGER, P.L.C.**

/s/ André Bélanger

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Dated: June 26, 2023

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 26th day of June, 2023, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* were served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Hon. Ricky Babin, District Attorney

23rd JDC, Assumption Parish

305 Chitiematches Street

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/s/ André Bélanger

ANDRÉ BÉLANGER

APPENDICES

APPENDIX A: Reasons for Judgment

Respectfully Submitted,

**MANASSEH, GILL, KNIPE &
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