

No. 18-5924

**In The
Supreme Court of the United States**

—◆—
EVANGELISTO RAMOS,

Petitioner,

v.

LOUISIANA,

Respondent.

—◆—
**On Writ Of Certiorari To The
Court Of Appeal Of Louisiana,
Fourth Circuit**

—◆—
**BRIEF OF INNOCENCE PROJECT NEW ORLEANS
AND THE INNOCENCE PROJECT, *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

—◆—
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INTEREST OF *AMICI CURIAE*¹

Amici, Innocence Project and Innocence Project New Orleans (IPNO) are non-profit law offices providing free legal representation to prisoners with provable claims of actual innocence. The Innocence Project represents prisoners across the country, primarily in cases where DNA testing can provide conclusive proof of innocence. IPNO focuses its work in Louisiana, and represents prisoners in cases where DNA testing is unavailable but where their innocence may still be proven with other evidence, in addition to representing prisoners in cases where DNA testing could provide conclusive proof of their innocence. Since it was founded in 1992, Innocence Project's work has led to the exoneration of 187 people nationwide. And since IPNO was founded in 2001, its work has led to the exoneration or release of 34 innocent prisoners who, combined, spent over 800 years wrongly incarcerated for crimes they did not commit.

In addition to working to exonerate and free the innocent, *amici* use the lessons from these cases to advocate for changes in laws and policies that contribute to wrongful convictions. Between them, *amici* have represented the wrongly convicted prisoners in the majority (38) of the 56 cases of exoneration in

¹ No counsel for a party authored this brief in whole or in part, and no other person or entity other than *amici curiae* has made a monetary contribution to the preparation or submission of this brief. Counsel of record for both parties received timely notice of *amici*'s intent to file this brief and both Petitioner and Respondent have consented to the filing of this brief.

Louisiana.² And *amici* represented most of those prisoners who were exonerated after being convicted by a non-unanimous jury. *Amici* have a direct interest in forever putting an end to non-unanimous jury verdicts of guilt in Louisiana, which create a high risk of wrongful convictions. *Amici's* experience suggests that unanimous juries provide an important safeguard against convicting innocent men and women. Therefore, in the interests of forever ending the risk of wrongful convictions by non-unanimous juries in this country, Innocence Project and IPNO respectfully file this *amici curiae* brief in support of the Petitioner, Evangelisto Ramos.



² In 30 cases, Innocence Project or IPNO were counsel on the collateral challenge to the conviction that resulted in exoneration. In a further eight cases, IPNO represented the exonerated person in petitioning for compensation from the Louisiana Innocence Compensation Funds. See La. R.S. § 15:572.8

SUMMARY OF ARGUMENT

Amici's role in the criminal justice system in Louisiana is to free innocent prisoners. Based on our combined 44 years of experience and knowledge of the Louisiana criminal justice system, *amici* have seen that the use of non-unanimous jury verdicts in Louisiana has made wrongful convictions too easy and too common.

Of the 56 cases of exoneration/wrongful conviction in the state of Louisiana with which *amici* are familiar, 30 were cases in which the defendant was eligible to be convicted by a non-unanimous jury. Of these 30 cases, at least 13 were wrongful convictions by verdicts handed down by a jury in which not every juror was convinced of the defendant's guilt. These 13 innocent men spent a combined 206 years and four months in Louisiana's prisons.

Amici work to put an end to wrongful convictions. Thus, *amici* are committed to assuring that the judicial process functions in such a way that only the guilty are convicted and the innocent are afforded robust protection against being wrongfully convicted. Louisiana's allowance for non-unanimous jury verdicts of guilt, including in cases where defendants face life sentences without the possibility of parole, has deprived people facing criminal charges of one major protection that 48 other states provide. Non-unanimous jury verdicts of guilt have created an unacceptable risk of convicting innocent Louisiana defendants. And in Louisiana,

those wrongly convicted defendants have overwhelmingly been young, black men.

Reviewing the evidence used to convict in these cases shows how little it has taken to convict a defendant when the jury does not need to be unanimous. These cases are all stories of young men, mostly young black men, being sent away to prison for the rest of their natural lives based on very slim evidence. In many of these cases, these men were sent away even in the face of notable evidence casting a doubt on the State's case that was known and presented to the jury at trial.

In at least seven of these cases, the entire trial took less than one day. In some of these cases, the deliberations were astonishingly short. And, in the few cases for which data on the demographic break down of the jury votes is available, it was grossly disproportionately black jurors whose opinions and votes were ignored in the deliberation and verdict. We now know those jurors were correct. But Louisiana's law permitting non-unanimous verdicts allowed the majority of jurors to ignore those correct—often black—jurors and convict the innocent defendants anyway.



ARGUMENT

I. Exonerations in Louisiana

Amici are familiar with 56 cases prosecuted in state courts in Louisiana that resulted in an exoneration as defined by the National Registry of Exonerations (hereinafter NRE).^{3 4} According to a NRE report

³ The NRE defines an exoneration as:

A person has been exonerated if he or she was convicted of a crime and later was either: (1) declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action. The official action may be: (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence; (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted; or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have been the result, at least in part, of evidence of innocence that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known to the defendant, the defense attorney and the court at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official action that exonerated the person.

⁴ The National Registry of Exonerations (NRE) counts 57 total exonerations/wrongful convictions in Louisiana state courts. See National Registry of Exonerations, List of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (last accessed June 13, 2019). IPNO is familiar with 54 of the cases identified by the NRE and so we confine our analysis to these cases because we do not have sufficient knowledge of the record in the three additional cases cited by the NRE. As noted above,

in 2015, Louisiana is second only to Illinois in its per capita rate of exonerations.⁵ And, according to the NRE, Orleans Parish, Louisiana (New Orleans) has the highest per capita rate of proven wrongful convictions of any major metropolitan county or parish in the country.⁶ In fact, New Orleans' per capita rate of proven wrongful conviction is almost ten times the national average and over 40% higher than the city (Boston, MA—Suffolk County) with the second highest rate of exoneration per capita in the country. This rate

IPNO or The Innocence Project represented the prisoner in a collateral challenge in 30 of the 56 cases and in a further eight cases, IPNO represented the exonerated prisoner in their effort to receive statutory wrongful conviction compensation from the Louisiana Innocence Compensation Fund under La. R.S. § 15:572.8. Furthermore, two full exoneration cases are not included in the NRE's list of Louisiana cases: in *State v. Robert Jones*, 357-917 and *State v. Robert Jones*, 356-745, Count 7. IPNO and Innocence Project were counsel for Mr. Jones in all ten of the charges against him, spanning three separate incidents on different days. He was exonerated of all charges. Therefore, *amici's* tally of Louisiana state court exonerations for purposes of this brief is 56; one fewer than the National Registry of Exonerations.

IPNO is familiar with the remaining 18 cases because it collects and updates information from court records on Louisiana exoneration cases in order to maintain the central repository for information on exonerations in Louisiana. Innocence Project is familiar with all of the DNA exoneration cases in Louisiana because, in the course of its operation, Innocence Project collects and updates information from such cases in order to maintain the central repository for information on DNA exonerations across the nation, including in Louisiana.

⁵ See 1600 Exonerations, A Report of The National Registry of Exonerations (2015) at p. 14. Available at http://www.law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf.

⁶ *Id.* at 15.

exists in New Orleans despite the fact that thousands of items of evidence in closed or cold cases that could have been DNA tested in post-conviction to prove innocence were lost with the flooding that followed Hurricane Katrina in 2005. See Christopher Drew, *Rust in the Wheels of Justice*, N.Y. TIMES, Nov. 21, 2006. The petitioner in this case was convicted in Orleans Parish.

Of the 56 exonerations in Louisiana since 1990, 15 were tried as capital (first degree murder or capital rape), so a non-unanimous verdict was not permitted.⁷ See *State v. Goodley*, 398 So.2d 1068, 1071 (La. 1981).

⁷ The 15 verdicts in cases tried as first-degree murders were in the following cases (individuals with the same case number were co-defendants): 1) *State v. Dan Bright*, Orleans Parish Case No. 375-994; 2) *State v. Albert Burrell*, Union Parish Case No. 28,734; 3) *State v. Rodricus Crawford*, Caddo Parish Case No. 304-048; 4) *State v. Michael Graham*, Union Parish Case No. 28,734; 5) *State v. Shareef Cousin*, Orleans Parish Case No. 376-479; 6) *State v. Glenn Ford*, Caddo Parish Case No. 126,005; 7) *State v. Roland Gibson*, Orleans Parish Case No. 203-904; 8) *State v. Isaac Knapper*, Orleans Parish Case No. 270-437; 9) *State v. Curtis Kyles*, Orleans Parish Case No. 303-970; 10) *State v. Dwight Labran*, Orleans Parish Case No. 388-287; 11) *State v. Ryan Matthews*, Jefferson Parish Case No. 97-3780; 12) *State v. Damon Thibodeaux*, Jefferson Parish Case No. 96-4522; 13) *State v. John Thompson*, Orleans Parish Case No. 305-826; 14) *State v. Calvin Williams*, Orleans Parish Case No. 259-071; 15) *State v. Wilbert Jones*, East Baton Rouge Parish Case No. 90-052.

Five were tried by a judge sitting without a jury⁸, four pled guilty⁹, one person entered a plea of not guilty by reason of insanity and was involuntarily detained for 20 years in a mental health facility¹⁰, and in the final case, the defendant was tried by a six-person jury, which requires unanimity (La. C. Cr. P. art. 782).¹¹

The remaining 30 exonerations of convicted prisoners in Louisiana were in cases in which the jury was permitted to convict by a non-unanimous vote.¹²

⁸ *State v. Allen Coco*, Calcasieu Parish Case No. 14891-95; *State v. Julio Ruano*, Orleans Parish Case No. 500-456; *State v. Calvin Willis*, Caddo Parish Case No. 118,517; *State v. Michael Williams*, Jefferson Parish Case No. 96-2599; *State v. John Floyd*, Orleans Parish Case No. 280-729.

⁹ *State v. David Lazzell*, Iberia Parish Case No. 46779; *State v. Hayes Williams*, Orleans Parish Case No. 199-523; *State v. Robert Jones*, Orleans Parish Case No. 357-917; *State v. Robert Jones*, Orleans Parish Case No. 356-745, Count 7.

¹⁰ *State v. Darrin Hill*, Orleans Parish Case No. 359-046.

¹¹ *State v. Eddie Triplett*, Orleans Parish Case No. 400-740.

¹² Those cases were: 1) *State v. Reginald Adams*, Orleans Parish Case No. 278-951; 2) *State v. Cheryl Beridon*, Terrebonne Parish Case No. 78,042; 3) *State v. Gene Bibbens*, East Baton Rouge Parish Case No. 2-87-979; 4) *State v. Gregory Bright*, Orleans Parish Case No. 252-514; 5) *State v. Earl Truvia*, Orleans Parish Case No. 252-514; 6) *State v. Dennis Brown*, St. Tammany Parish Case No. 128-634; 7) *State v. Nathan Brown*, Jefferson Parish Case No. 97-5794; 8) *State v. Gerald Burge*, St. Tammany Parish Case No. 147,175; 9) *State v. Vernon Chapman*, St. Tammany Parish Case No. 71,385; 10) *State v. Clyde Charles*, Terrebonne Parish Case No. 106,980; 11) *State v. Glenn Davis*, Jefferson Parish Case No. 92-4541; 12) *State v. Larry Delmore*, Jefferson Parish Case No. 92-4541; 13) *State v. Terrence Meyers*, Jefferson Parish Case No. 92-4541; 14) *State v. Douglas Dilosa*, Jefferson Parish Case No. 87-105; 15) *State v. Robert Hammons*, St. Tammany Parish Case No. 136-658; 16) *State v. Travis Hayes*,

¹³ At least 13 of those cases were innocent men convicted by non-unanimous juries.¹⁴ They were: Reginald

Jefferson Parish Case No. 97-3780; 17) *State v. Willie Jackson*, Jefferson Parish Case No. 87-205; 18) *State v. Henry James*, Jefferson Parish Case No. 81-4366; 19) *State v. Anthony Johnson*, Washington Parish Case No. 89-CRC-39701; 20) *State v. Craig Johnson*, Orleans Parish Case No. 380-395; 21) *State v. Rickey Johnson*, Sabine Parish Case No. 30,770; 22) *State v. Jerome Morgan*, Orleans Parish Case No. 367-809; 23) *State v. Robert Jones*, Orleans Parish Case No. 356-745; 24) *State v. Anthony Daye*, Iberia Parish Case No. 11-102; 25) *State v. Malcolm Alexander*, Jefferson Parish Case No. 80-1260; 26) *State v. Kia Stewart*, Orleans Parish Case No. 464-435; 27) *State v. John Thompson*, Orleans Parish Case No. 306-526; 28) *State v. Michael Anthony Williams*, Jackson Parish Case No. 20,387; 29) *State v. Michael Shannon*, Orleans Parish Case No. 478-693; 30) *State v. Archie Williams*, East Baton Rouge Case No. 01-83-0234.

¹³ A disproportionate number of Louisiana exonerations are in cases that were tried as first-degree murders because post-conviction counsel is provided to individuals who are sentenced to death. La. R.S. § 15:169. In every exoneration case, the defendant has required the assistance of post-conviction counsel to obtain relief. Therefore, the number of wrongly convicted people still in prison who were convicted in cases where non-unanimous jury verdicts were permitted (and who do not have the right to a state-appointed attorney following direct appeal) is likely significantly higher than those known and listed. See Samuel Gross, National Registry of Exonerations, Exonerations in the United States: 1989-2012 at 16 n. 26 (June 2012), http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf (noting that although death sentences comprise a very small percentage of all prison sentences in the U.S., they form a disproportionately high percentage of known exonerations).

¹⁴ This represents only the number of cases in which undersigned amici have been able to confirm that the jury verdict was non-unanimous. There are likely several more in this group that counsel cannot confirm. This is because complete information is not available in all of the 30 exonerations where the conviction could have been by non-unanimous jury. In some court records,

Adams, Gene Bibbins, Gerald Burge, Glenn Davis, Larry Delmore, Douglas Dilosa, Robert Hammons, Travis Hayes, Willie Jackson, Terrence Meyers, Michael Shannon, Kia Stewart, and Archie Williams.

All but two were wrongly sentenced to life in prison without the possibility of parole based on a non-unanimous jury verdict.¹⁵ Ten of the thirteen were black men, overwhelmingly young or teenagers when they were wrongly convicted.¹⁶

the court minutes reflect the breakdown of the jury if it was non-unanimous and in some non-unanimous verdict cases, the minutes do not so reflect. In some cases, the jury is polled on the record by the judge and in some, it is not. In some cases, written juror polling slips are collected by the judge, even when the minutes and the transcript do not reflect the breakdown of the vote and in some there are not. In at least one case (*State v. Nathan Brown*, Jefferson Parish Case No. 97-5794), the judge collected written polling slips and declared the verdict “legal” but then did not make the polling slips part of the record.

¹⁵ Willie Jackson received 40 years in prison for attempted aggravated rape and robbery and Robert Hammons received 40 years in prison for armed robbery.

¹⁶ Reginald Adams was a 26-year-old black man when he was wrongly arrested, Gene Bibbins was a 29-year-old black man when he was wrongly arrested, Glenn Davis was a 19-year-old black man when he was wrongly arrested, Larry Delmore was a 22-year-old black man when he was wrongly arrested, Terrence Meyers was a 21-year-old black man when he was wrongly arrested, Travis Hayes was a 17-year-old black teenager when he was wrongly arrested, Willie Jackson was a 17-year-old black teenager when he was wrongly arrested, Michael Shannon was a 41-year-old black man when he was wrongly arrested, Kia Stewart was a 17-year-old black teenager when he was arrested, Archie Williams was a 22-year-old black man when he was wrongly arrested. Gerald Burge was 29 years old, Douglas Dilosa

Reviewing the stories of these men, most sentenced to die in prison by non-unanimous juries, demonstrates how little it took for the State of Louisiana to convict them.

II. Exonerated Prisoners Convicted by Non-Unanimous Jury Verdicts

Reginald Adams, Gene Bibbins, Gerald Burge, Glenn Davis, Larry Delmore, Douglas Dilosa, Robert Hammons, Travis Hayes, Willie Jackson, Terrence Meyers, Michael Shannon, Kia Stewart and Archie Williams spent, between them, over 206 years wrongly imprisoned. *Amici* represented ten of these men.¹⁷

Glenn Davis, Larry Delmore and Terrence Meyers

Glenn Davis, Larry Delmore, and Terrence Meyers were arrested at 19, 22 and 21 years old respectively

was 35 years old and Robert Hammons was 31 years old when arrested. They are white men.

¹⁷ All of the facts contained in the descriptions of these cases are contained in district and appellate records of the cases, whether in court minutes, pleadings, opinions, or transcripts. In the longer narratives of the cases, undersigned amici were counsel of record for the post-conviction proceedings and so have personal knowledge of all of the case details. While amici have cited the most concentrated sources for the most pertinent facts, in places we cite facts contained throughout the record without pin cites. This is for ease of comprehension for the reader. All of the underlying documentation and records are contained in amici's files and the court files and further supporting documentation will be supplied immediately upon request of the Court.

and convicted based on the testimony of a single eye-witness who testified he saw the three men perpetrate a drive-by shooting of Samuel George Jr. *State v. Meyers*, 638 So.2d 1378, 1381 (La. App. 5 Cir. 1996). The witness admitted smoking crack about an hour before the crime. *Id.* The witness had a long history of arrests. The witness testified to a scenario that was physically implausible: the crime was allegedly committed by people in a two-door Cutlass in which there were no back-seat windows that opened. He claimed he could identify all perpetrators, including Glenn Davis who the witness testified was the back-seat passenger. However, in this scenario, Glenn Davis would have had to lean forward and over the top of the front-seat passenger in order to stick his head out of the front passenger window of the car to make sure the witness saw his face. *State v. Davis*, Jefferson Parish Case No. 92-4541 at 4 (Feb. 16, 2007) (opinion). After three hours of deliberation, ten of the jurors found the witness credible beyond a reasonable doubt, but—perhaps unsurprisingly—two did not. Because Louisiana allows non-unanimous guilty verdicts, the views of these two jurors were discounted and the three men were convicted and sentenced to life without parole. During their sentencing, Larry Delmore received an additional sentence of six months in prison for contempt of court after being gagged and removed from the courtroom, protesting: “What’s going to happen to the killer? What’s going to happen to the killer? You know we didn’t kill that boy. We didn’t do that, man. Regardless, you can

hold me in contempt of court all you want. We didn't do that. You know we didn't do that."¹⁸

Evidence discovered after trial demonstrates that the two jurors were right to have doubts. Several witnesses testified that the State's eyewitness was not at the crime scene when the shooting occurred. *State v. Davis*, Jefferson Parish Case No. 92-4541 at 5 (Feb. 16, 2007) (opinion). Other evidence, much of which was in the possession of the State at the time of trial, showed clearly the identity of the likely true perpetrator, Derek Richardson. Richardson owned the car undisputedly used in the shooting, had expressed the intent to retaliate for being shot himself by someone he understood to be from Mr. George's neighborhood in the weeks prior, was seen by several witnesses the police did not speak to, and confessed or made incriminating statements to numerous people, including his girlfriend. *Id.* This led to the court vacating all three defendants' convictions and the State, after re-investigating the case, dropped all charges against them.¹⁹

This case also illustrates how non-unanimous verdicts allow the views of minorities to be sidelined.²⁰

¹⁸ *State v. Davis, Delmore and Meyers*, Jefferson Parish Case No. 92-4541, Trial Tr. at p. 1033.

¹⁹ See Paul Purpura, *Murder Charges Dropped Against Three Men in 1992 Marrero Killing*, TIMES PICAYUNE, Sep. 24, 2010.

²⁰ *Amici* are unable to present complete data on this point from all of the exonerations in non-unanimous verdict cases because in many cases the races of the jurors is not discernible from

Mr. Davis, Mr. Delmore, and Mr. Meyers were tried in Jefferson Parish, where there is a long history of underrepresentation of African Americans on juries.²¹ In this case three African-American jurors were seated. Nevertheless, two of these African-American jurors had their votes nullified. These two jurors did not vote

the record or the jury was not polled and so it is not apparent which jurors' views were nullified.

²¹ See *Snyder v. Louisiana*, 552 U.S. 472 (2008) (finding *Batson* violation and noting “implausibility” of reasons offered by Jefferson Parish prosecutor for striking African-American jurors); *State v. Harris*, 820 So.2d 471, 474 (La. 2002) (finding *Batson* violation where Jefferson Parish prosecutor explained that she was striking an African-American juror because he was a “single black male on the panel with no children. . . . I don’t want him relating to the defendant more so than he would the State’s part of the case”); *State v. Jacobs*, 789 So.2d 1280 (La. 2001) (though reversing on other grounds, court rebuked the judge for the careless manner in which the judge considered the defendant’s *Batson* challenges); *State v. Myers*, 761 So.2d 498 (La. 2000) (reversing on grounds the trial court erred in failing to address the defendant’s *Batson* challenges to the State’s use of peremptory challenges to exclude six of seven African Americans). See also *State v. Bridgewater*, 823 So.2d 877 (La. 2002) (all-white jury seated after prosecutor used peremptory strikes to remove prospective black jurors); *State v. Neal*, 796 So.2d 649 (La. 2001) (prosecutor used strikes to remove three African Americans; one African American seated on jury); *State v. Taylor*, 781 So.2d 1205 (La. 2001) (prosecutor struck five African Americans, leaving one on jury); *State v. Lucky*, 755 So.2d 845 (La. 1999) (entire panel of jurors struck when juror accused prosecutor of using challenges to remove African-American women; resulting jury consisted of eleven whites and one black) (information regarding jury composition obtained from post-conviction investigator); *State v. Seals*, 684 So.2d 368 (La. 1996) (all-white jury seated after the prosecutor struck three African Americans over defendant’s *Batson* objection); *State v. Durham*, 673 So.2d 1103 (La. App. 5 Cir. 1996) (same).

to convict, but the jury was able to return a guilty verdict regardless. In the case of a particularly obvious *Batson* violation, the Louisiana Supreme Court once observed:

Because only ten votes were needed to convict defendant of armed robbery, the prosecutor could have assumed, contrary to *Batson's* admonition that it was unacceptable to do so, that all black jurors would vote on the basis of racial bias and then purposefully discriminated by limiting the number of blacks on the jury to two.

State v. Collier, 553 So.2d 815, 819-20 (La. 1989). In the case of Glenn Davis, Larry Delmore and Terrence Meyers, the two black jurors who were silenced were absolutely right: Glenn Davis, Larry Delmore and Terrence Meyers were not guilty. It was the ten jurors who overruled them who were wrong.

Kia Stewart

Kia Stewart was also convicted and sentenced to life without parole based on the testimony of a single eyewitness. Kia Stewart was mistakenly identified as the man who shot Bryant "BJ" Craig on a public street in broad daylight on the morning of July 31, 2005, just a month before Hurricane Katrina would devastate New Orleans. Bryant Craig had been driving with a friend, Mr. Alexander, to his mother's house in the Lafitte Housing Project area of New Orleans. Mr. Craig got out of his car to talk with a pedestrian, who shot him. Mr. Craig's friend, Mr. Alexander, was identified

as an eyewitness. Within hours of the shooting, police developed Mr. Stewart as a suspect based on a factually inaccurate anonymous tip. A few hours later, having done no further investigation, police included Mr. Stewart's photograph in an array for Mr. Alexander to identify.

When 17-year-old Kia Stewart heard that there was a warrant for his arrest, he turned himself in to the police. He waited in jail for the court process to begin so that he could clear his name. Instead after three weeks, Hurricane Katrina blasted into New Orleans, flooded the city and he was left with hundreds of inmates locked in a jail without power, water, or food, that had been largely abandoned by guards and with the floodwater rising.²² Even after being belatedly evacuated to an overcrowded and ill-equipped jail in Concordia Parish, he went months without an attorney and with no way to contact his family. In 2006, the Tulane School of Law Criminal Litigation Clinic was appointed to represent Mr. Stewart. In 2009, four years after his arrest, Mr. Stewart was convicted after a short trial. His defense counsel were two law students training to be lawyers. The State presented the one eyewitness. The defense presented no witnesses. The jury deliberated for one hour and thirteen minutes before finding him guilty. The vote was 10-2. Kia Stewart was sentenced to spend the rest of his life in prison without

²² See generally, ACLU National Prison Project, *Abandoned & Abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina*, August 10, 2006.

parole. *Stewart v. Cain*, Orleans Parish Case No. 464-435 at 1 (April 9, 2015) (Joint Stipulations).

IPNO later discovered at least 18 witnesses who saw the crime and knew that Mr. Stewart was not the shooter, heard the true perpetrator confess to the crime, was with the perpetrator in the immediate aftermath of the crime, or who proved Mr. Stewart's alibi. *Stewart v. Cain*, Orleans Parish Case No. 464-435 at 2 (April 13, 2015) (Order). IPNO and the Orleans Parish District Attorney's Office together continued investigation into the case and entered a series of joint stipulations concerning the breadth of this new evidence. *Stewart v. Cain*, Orleans Parish Case No. 464-435 (April 9, 2015) (Joint Stipulations). On April 13, 2015, Judge Darryl Derbigny ordered that Mr. Stewart's conviction be vacated. *Stewart v. Cain*, Orleans Parish Case No. 464-435 (April 13, 2015) (Order). The DA's office immediately dismissed all charges against Mr. Stewart for the crime and he was exonerated and released at the age of 27, having already served almost ten years of his life in prison for a murder committed by a man named Antonio Barnes.

Reginald Adams

Reginald Adams was indicted for the 1979 first degree murder of Cathy Ulfers, a New Orleans Police Department Officer's wife, who was shot and killed in her home on October 7, 1979. After his first conviction was reversed (*State v. Adams*, 550 So.2d 595 (La. 1989)), Mr. Adams was re-tried for second degree murder in 1990.

The evidence against Mr. Adams consisted exclusively of a confession to the murder, made to an NOPD detective and the District Attorney's investigator, while Mr. Adams was in jail awaiting trial on an unrelated burglary charge. The "confession" was in many ways inaccurate and inconsistent with the known facts of Cathy Ulfers' murder. The jury was told there was no physical evidence and no gun was recovered. Nevertheless after three hours and 25 minutes of deliberation, ten of the jurors found it sufficient to convict Mr. Adams of murder. Two did not. Reginald Adams was convicted and sentenced to life without parole. *Adams v. Cain*, Orleans Parish Case No. 278-951 at 1 (May 12, 2014) (Joint Motion to Vacate Conviction and Sentence).

In 2014, IPNO discovered a police report that carefully documented the initial police investigation, which included finding the weapon used to kill Ms. Ulfers and property stolen from the home apparently by a brother and sister who had absolutely no connection to Reginald Adams and who fled the area soon after the murder. *Adams v. Cain*, Orleans Parish Case No. 278-951 at 2-3 (May 12, 2014) (Joint Motion to Vacate Conviction and Sentence). Reginald Adams was exonerated on May 12, 2014 after 34 years wrongly in prison.²³

²³ See Helen Freund, *For man convicted by 'shameful' prosecution in '79 murder, freedom at last*, TIMES PICAYUNE, May 13, 2014.

Travis Hayes

Travis Hayes was six weeks past his seventeenth birthday when he was arrested and charged with being the getaway driver for a gunman who murdered a popular local corner store owner during an armed robbery. *State v. Hayes*, 806 So.2d 816, 820-21 (La. App. 5 Cir. 2001). Travis Hayes and Ryan Matthews were arrested in a traffic stop several hours after the murder and miles away. At trial the jury heard that, after around six hours of through-the-night interrogation, the 17-year-old Mr. Hayes had accepted the police's accusation that his friend, Ryan Matthews, was the murderer and he was the getaway driver. *Id.* Additionally, two witnesses to the aftermath of the crime identified Travis Hayes' car. *Id.* at 820.

The defense's main evidence was that DNA from a ski mask left at the scene by the perpetrator did not match Travis Hayes or Ryan Matthews. *Id.* at 822. The defense also presented evidence that the passenger window of Travis Hayes' car door was stuck in the up position and wouldn't go down: making it impossible to have been the waiting getaway car into which witnesses saw the gunman jump through the passenger window and from which window the witnesses saw him discard his ski mask, shirt and glove. Ten jurors heard this evidence and were certain of Mr. Hayes' guilt beyond a reasonable doubt. Two jurors, including the only African American on the jury, did not vote to convict. *Id.* at 820.

After the verdict, evidence came to light that proved the two dissenting jurors correct. Most significantly, the unaccounted-for DNA from the perpetrator's ski mask was matched to a man—Rondell Love—with no connection to Travis Hayes (or Ryan Matthews), who more closely matched the description of the perpetrator than Ryan Matthews, who had bragged repeatedly about killing the grocery store owner and had committed another murder nearby soon after. Significantly, Love knew the store and the area and, in this robbery, the perpetrator did not hold up the cash register, he went directly to the back of the store where the owner was in his office with cash in preparation for check-cashing day and demanded cash from the owner. IPNO also presented new evidence corroborating the alibi that Travis Hayes initially gave to police. *State v. Hayes*, Jefferson Parish Case No. 97-3780 (December 19, 2006) (Hearing and Ruling). As a result, Mr. Hayes' conviction was vacated in December 2006 and the State dropped charges soon after. Mr. Hayes was released at 26 years old after having spent almost ten years wrongly convicted and imprisoned.²⁴

Archie Williams

Archie Williams was tried in 1983 for the 1982 rape and stabbing of a woman in her Baton Rouge home. The attacker had forced his way into the victim's

²⁴ Henry Weinstein, *Inmate Freed 2 Years After Codefendant*, LOS ANGELES TIMES, Dec. 21, 2006 at A20; Paul Purpura, *After Nearly 10 Years Behind Bars, a Harvey Man's Murder Conviction is Thrown Out and he Gets to Go Home*, TIMES PICAYUNE, Dec. 21, 2006.

house and attacked her in an upstairs bedroom. When a neighbor came in, the assailant stabbed the victim and then fled. Williams' conviction rested almost exclusively on a single cross-racial eyewitness identification made by the victim. Serology testing—DNA testing was not available at the time—of semen in the victim's rape kit did not exclude Williams, but equally did not exclude a large segment of the population who could have been the source. *State v. Williams*, 458 So.2d 1315 (La. App. 1st Cir. 1984).

Nearly one month after the crime, the victim was shown a photo array that included Williams, but she did not select him as the assailant. She did, however, tell police officers that when they look for the assailant, they should look for an individual who resembled Williams' photo. Police showed the victim a second array and again she did not select Williams, but again told police to look for someone who resembled him. It was only after the victim was shown a third array with Williams' photo that she selected him as the assailant. Both the victim and her neighbor were shown an in-person line up with Williams. The neighbor selected a filler, not Williams. The victim, now having seen Williams a fourth time, identified him. The victim's and neighbor's description of the perpetrator also suggested that Williams had been misidentified. The victim, who was 5'7", described the perpetrator as being taller than her, about 5'9" to 5'11". The neighbor, who is 5'4" and was wearing three-inch heels, testified the assailant was a few inches taller than her. Williams is

significantly shorter than the description, standing at 5'4".

Williams had an alibi: his mother, sister and a family friend all testified that he was at home asleep at the time the attack occurred. Even more notable, numerous fingerprints were collected from the crime scene during the investigation, including from the bedroom and door leading to the room where the rape occurred. Several of these prints were found near prints in blood and blood smears on the door. At the time of trial, Williams was excluded from all identifiable prints and the victim, her husband and neighbor were excluded from several. Nevertheless, Mr. Williams was found guilty by a jury vote of 11-1. *State v. Williams*, 458 So.2d 1315 (La. App. 1st Cir. 1984).

35 years later, the unidentified prints found at the scene of the crime were run through the FBI's Next Generation Identification fingerprint database and were found to match a convicted serial rapist who committed several other home-invasion rapes in the area at the time and who exactly matched the victim's initial composite sketch of her attacker. *State v. Archie Williams*, East Baton Rouge Case No. 01-83-0234 at 1 (March 21, 2019) (Joint Motion to Vacate Conviction). Since there was no innocent explanation for the serial rapist's fingerprints next to bloody smears in the victim's bedroom, Mr. Williams was promptly exonerated by Nineteenth Judicial District Court upon the joint motion of the State and Mr. Williams' counsel (unsigned *amici*). *State v. Archie Williams*, East Baton

Rouge Case No. 01-83-0234 (March 21, 2019) (Order). He had spent 36 years wrongly imprisoned.

Gene Bibbins

Gene Bibbins was convicted by a non-unanimous jury in Baton Rouge in 1987 of rape based on a single eyewitness identification of the victim and the fact that he was found with a radio that had been stolen from the scene of the rape (despite his explanation for having just found it).²⁵ He spent almost 17 years wrongly imprisoned before DNA testing exonerated him of the rape.²⁶

Gerald Burge

Gerald Burge was convicted by a non-unanimous jury in St. Tammany Parish of a 1984 murder based on the testimony of co-accused (who later confessed to committing the crime himself) and the testimony of the victim's mother and sister who alleged he made inculpatory statements.²⁷ He was exonerated in 1992 after seven years in prison when tapes in the trunk of the detective's car revealed that he had fabricated evidence against Burge with his by-then-wife (the sister of the victim), and hidden exculpatory evidence about

²⁵ <https://www.innocenceproject.org/cases/gene-bibbins/> (last accessed June 13, 2019).

²⁶ *Id.*

²⁷ <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3071> (last accessed June 13, 2019).

Burge including confessions that Burge's co-accused had made.²⁸

Douglas Dilosa

Douglas Dilosa was convicted by a non-unanimous jury in Jefferson Parish of murdering his wife in 1987 after emergency services found him bound up in his own home. His son had called 911. Claiming they found no physical or other corroborating evidence of Dilosa's story of two black male intruders in the home and determining he had motive to kill his wife, authorities charged and convicted Dilosa. *DiLosa v. Cain*, 279 F.3d 259 (5th Cir. 2002). He was exonerated in 2003 when a supplemental police report showed unidentified fingerprints in the home, hair that could have come from an African American (the Dilosas are white) reports of a possible attempted break-in nearby and a cab driver who saw two black men driving out of the apartment complex (apparently a noteworthy sight) at 5:45 a.m. looking tense and driving slowly. *DiLosa*, 279 F.3d at 263.

Robert Hammons

Robert Hammons was convicted by a non-unanimous jury of the 1984 armed robbery of a St. Tammany Parish pharmacy based on several eyewitness identifications by the pharmacy employees. He was convicted despite evidence that witnesses

²⁸ Id.

described the perpetrator as having a short beard while Hammons had a long, bushy beard, a print found on tape used by the robber did not match Hammons and Hammons had twelve alibi witnesses who testified he was at home in Alabama when the crime occurred, including a police officer who testified Hammons drove his tow truck to the scene of an accident at a time that would have been impossible if he was driving back from committing a robbery in Slidell, Louisiana. *State v. Hammons*, 597 So.2d 990 (La. 1992). He was exonerated six years later when another man confessed to the crime.²⁹ In vacating his conviction, the Louisiana Supreme Court noted the irrationality of the jury's verdict:

Another significant factor bearing on the reliability of the original jury's verdict is the fact that the same jury also found (Hammons's) father guilty of every essential element of the crime of armed robbery, when there was absolutely no evidence presented to the jury that (his) father had anything whatsoever to do with the perpetration of the robbery three or four hours after he was inside Lakewood Pharmacy.

Hammons, 597 So.2d at 999.

²⁹ <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5471> (last accessed June 13, 2019).

Willie Jackson

Willie Jackson was convicted in 1989 by a non-unanimous jury of attempted aggravated rape and robbery in Jefferson Parish, Louisiana. He was convicted—despite strong evidence that his brother, Milton, may have been the perpetrator and alibi witnesses putting him at home in Natchez, Mississippi at the time of the crime—based on the victim’s identification of him and a forensic odontologist’s conclusion that bite marks on the victim were his. *State v. Jackson*, 570 So.2d 227, 228-29 (La. App. 5th Cir. 1990). In 2003, DNA testing excluded Willie Jackson and proved that his brother, by then serving a life sentence for another rape, was the perpetrator.³⁰ Willie Jackson was released after over 18 years in prison.³¹

Michael Shannon

Michael Shannon was convicted by a non-unanimous jury after spending 12 years in prison (six of which were awaiting trial). His conviction was based on eyewitness testimony. *State v. Shannon*, 101 So.3d 67 (La. App. 4th Cir. 2012). He was exonerated in 2017 when numerous witnesses testified he could not have been the gunman and the rationale for his becoming a

³⁰ <https://www.innocenceproject.org/cases/willie-jackson/> (last accessed June 13, 2019).

³¹ *Id.*

suspect (that he was related to the victim) was entirely undermined.³²

III. Conviction by Non-Unanimous Jury Verdicts Permits the State to Prosecute Cases on Insubstantial and Inferior Evidence

The cases above demonstrate the minimal nature of the evidence that the State needs to convict when the entire jury does not need to agree. For example in Kia Stewart's conviction, the State of Louisiana needed only one un-corroborated eyewitness to send the young Mr. Stewart away to prison for the rest of his life. The State needed only a contradictory confession to convict Reginald Adams and send him to prison for the rest of his life.

The cases above also demonstrate the ease with which the State may convict even in light of evidence that casts doubt on the guilt of the defendant. For example, in Archie Williams' conviction, where fingerprints found near blood smeared at the scene did not match Archie Williams. Or in Mr. Hammons' case, where twelve alibi witnesses—including an Alabama policeman—testified that he was out of state, over two hours away, when the crime occurred.

The records in the cases of Reginald Adams, Glenn Davis, Larry Delmore, Terrence Meyers, Travis Hayes, Kia Stewart and Michael Shannon show that the

³² <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5278> (last accessed June 13, 2019).

opening statements, closing arguments and the presentation and examination of the evidence that was used to convict them and send each of them to prison for the rest of their lives, lasted less than one day. In several cases, such as Kia Stewart and Michael Shannon, it was only a few hours. Reginald Adams, Glenn Davis, Larry Delmore, Terrence Meyers, Travis Hayes, Kia Stewart and Michael Shannon are all black men.

Deliberations in the cases of innocent men convicted by non-unanimous jury verdicts have also been short and the available records indicate that it has been black jurors whose votes or opinions have been made irrelevant in close cases by the non-unanimous jury system. The district court records in Kia Stewart's case show that the jury deliberated for one hour and thirteen minutes. In Glenn Davis, Larry Delmore and Terrence Meyer's case, the district court record shows that the jury deliberated on the fate of the three men for approximately three hours. In Robert Hammons' case, the defense's Motion for a New Trial in 1986 observed this about the cursory jury deliberation that had just led to Mr. Hammon's wrongful conviction:

Yet, the court minutes reflect that something must have gone awry in this jury. Twenty-four witnesses testified all told; the jury took less than two and a half hours to convict; this is about six minutes a witness—for 12 jurors to discuss the entire case, for 12 jurors to compare witness against witness. The verdict was not unanimous; it was 10 to 2. A majority of jurors voting to convict must

have known their minds before deliberations,
maybe even before opening statement.

State v. Hammons, St. Tammany Parish Case No. 131-658 at 1, June 12, 1986 (Memorandum in Support of Motion for New Trial).

Finally, while records are not available for the demographic breakdown of most of the juries that wrongly convicted innocent defendants by non-unanimous votes, we know the demographic composition of the juries that voted to convict Glenn Davis, Larry Delmore, Terrence Meyers, Kia Stewart and Travis Hayes and the demographic breakdown of their votes.

The jury that wrongly convicted Glenn Davis, Larry Delmore and Terrence Meyers included three black jurors, two of whom voted not guilty for Mr. Davis and for Mr. Delmore and were ignored, and one of whom voted not guilty for Mr. Meyers (who was found guilty by one more vote, 11-1) and was ignored. The jury that wrongly convicted Travis Hayes included only one black juror, who voted not guilty and was ignored, along with one other juror. In Kia Stewart's case, only three of the 12 jurors were black (despite the fact that Orleans Parish's population is over 50% black) and one voted not guilty but was ignored along with one other juror.³³

³³ In these five wrongful convictions, for which we have demographic jury data and know the vote breakdown, there were a total of 60 jury votes to be cast (three votes each in *State v. Davis*, *Delmore and Meyers* and one vote each in *State v. Hayes* and *State v. Stewart*). 13 of those were black jurors' votes and 47 of those

They show that **54% of the black juror votes cast were ignored while only 4.3% of the white juror votes cast were ignored**. Each of the ignored votes was right: none of these defendants were guilty.



CONCLUSION

Louisiana has the second highest per capita rate of proven wrongful convictions in the country. Louisiana has seen an alarming number of wrongful convictions and there are certainly many more yet to be discovered and proven. Our work has identified the tip of a tragic iceberg. These wrongful convictions have occurred, often quickly and easily, in a state that has, for generations, allowed a defendant to be convicted when some of the jurors do not believe he is guilty. A significant number of these wrongful convictions were in such cases: where not all the jurors believed the defendant was guilty. The non-unanimous jury rule is not the only cause of wrongful convictions in Louisiana. And to be sure, the 48 states that have historically required unanimity have managed to wrongly convict plenty of innocent defendants without it. But a unanimous jury is one protection against wrongful conviction. These Louisiana wrongful convictions illustrate that not requiring a unanimous jury has caused verdicts that have often been too swift and too often been

were white jurors' votes. The non-unanimous jury rule meant that white votes on those juries were ignored in two out of 47 votes (4.3%), whereas black votes were ignored in seven out of 13 votes (54%).

inaccurate. These cases should caution this Court that permitting efficiency and ease of convictions over protections for the innocent ruins lives. Efficiency is not a value that our Constitution ever tolerated, nor should it be a value that this Court tolerates today.

Respectfully submitted,

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