

No. 19-_____

IN THE
Supreme Court of the United States

THEDRICK EDWARDS,
PETITIONER,

v.

DARREL VANNOY WARDEN, LOUISIANA STATE PENITENTIARY
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Louisiana's non-unanimous jury requirement for crimes requiring life sentences violates the Sixth Amendment and Fourteenth Amendment of the United States Constitution?

PARTIES TO THE PROCEEDING

Thedrick Edwards and the State of Louisiana are parties to this suit. To date, the State of Louisiana has been represented by the District Attorney's Office for the 19th Judicial District Court. However, due to the nature of this claim, counsel would not be surprised to learn that the Louisiana Attorney General's Office has assumed the responsibility for opposing the petition for *writ of certiorari*.

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OPINIONS BELOW

Thedrick Edwards was convicted at trial in Louisiana's 19th Judicial District Court in docket number 07-06-0032. He was convicted of five (5) counts Armed Robbery, one (1) count Attempted Armed Robbery, two (2) counts Aggravated Kidnapping, and one (1) count Aggravated Rape. Mr. Edwards was appointed counsel to handle his appeal. That appeal was denied by Louisiana's First Circuit Court of Appeal, *State v. Edwards*, 11 So.3d 1242 (La App. 1Cir. 6/12/09). Mr. Edwards was unsuccessful in having the Louisiana Supreme Court review his appeal, *State v. Edwards*, 51 So.3d 27 (La. 2010). Thereafter, Mr. Edwards sought post-conviction relief. Its application was denied by the trial court without a hearing. Petition for *writs of certiorari* to both the Louisiana Court of Appeals and State Supreme Court were denied, *State v. Edwards*, 159 So.3d 456 (2015). Mr. Edwards sought writ to this Court on a handful of issues and that request was denied.

Thereafter, Mr. Edwards filed a petition for Habeas Corpus with the United States District Court for the Middle District of Louisiana. On September 13, 2018, the district court denied relief and an appeal was lodged in The United States Fifth Circuit Court of Appeals. On May 20, 2019, the petitioner's appeal was effectively denied by the Appellate Court's refusal to issue a certificate of Appealability.

This writ of certiorari now follows.

JURISDICTIONAL STATEMENT

Edwards' petition for a *writ of certiorari* centers around Louisiana's non-unanimous jury rule. The failure to apply federal constitutional provisions to the state court proceeding makes his conviction repugnant. The attached Appendix contains Mr. Edwards' adverse rulings on his Habeas Corpus petition by the United States Middle District Court and the Fifth Circuit's denial of his certificate of appealability. As such, jurisdiction is properly vested with this Court pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides the accused the right to an impartial jury trial.

The Fourteenth Amendment of the United States Constitution affords the accused equal protection under the law.

Federal jurisprudence interpreting the Sixth Amendment requires unanimous juries for federal criminal trial. Moreover, the same jurisprudence has rejected a "selective" or "partial" incorporation of the Bill of Rights when they are applied to state constitutions and statutes.

Louisiana Code of Criminal Procedure Article 782 allows for 10 of 12 jurors to concur in reaching a valid verdict in criminal trial whose punishment requires hard labor but does not result sentence of death as a possibility.

STATEMENT OF CASE

The defendant was indicted for five counts of armed robbery, one count of aggravated rape, two counts of aggravated kidnapping and one count of attempted armed robbery. The defense filed a Motion to Suppress Statements which was litigated unsuccessfully. The defendant was sentenced to 30 years on each armed robbery count and, life imprisonment on the aggravated kidnapping and aggravated rape. These sentences are without the benefit of probation, parole or the suspension of sentence and all are consecutive to each other. An appeal was taken and the First Circuit affirmed the defendant's conviction and sentence. A writ was taken to the Louisiana Supreme Court and was denied. The defendant timely filed for post-conviction and did so within the first year. These efforts were unsuccessful and concluded when the Louisiana Supreme Court denied Edwards' writ application on February 13, 2014. The petitioner sought review by this Court and was denied prompting him to file a Writ of Habeas Corpus with the United States District Court for the Middle District of Louisiana. After that petition's denial, Mr. Edwards noticed his appeal to the United States Fifth Circuit Court of Appeals who effectively denied him any relief by failing to grant his request for a certificate of appealability.

STATEMENT OF THE FACTS

The police develop Edwards as a suspect for multiple robberies and a rape occurring from May 13, 2006 through May 15, 2006. The police obtain a warrant to

search the defendant's residence that was executed on May 15, 2006 around midnight. The defendant was not present during the execution of the warrant.

The defendant surrendered himself the following day at the First District Police station. At that time, he was interrogated by Detective Tillman Cox and denied committing the rape and robberies. This statement is not recorded.

The following day, detectives Gregory Fairbanks and John Attuso, of the Baton Rouge Police Department Sex Crimes Division, obtain a search warrant that authorizes their taking a DNA sample from Edwards. These detectives obtain Edwards' custody from the parish prison and transport him to the First District Police station to collect the DNA sample. Once at the station, the defendant is placed into an interview room equipped with audio and visual recording capabilities. He is chained to its wall. The two detectives proceed to interrogate Edwards, without counsel, for forty-five (45) minutes in an unrecorded interview. The defendant testified that he wanted an attorney but ultimately agreed to give a statement as a result of the pressures and promises of the police. According to Edwards, he was advised that he did not need a lawyer and was going to go down for the crimes unless he cooperated. However, if he cooperated, the police would talk to the district attorney, and he could get probation and then go to college someday. He further advised that the police provided him details of the crimes, which he would later confess as part of his cooperation.

Detective Fairbanks testified at motions and trial regarding this unrecorded interrogation. At motions, he denied that the defendant requested counsel and

advised that a sudden “free flow” of information from the defendant was unexpected and prevented his taping the interrogation. At trial, the detective elaborated on his interrogation technique by providing more details of the unrecorded interrogation suggesting that Edwards did not engage in a sudden “free flow” of information.

Fairbanks testified that Edwards denied committing the charged crimes but after they “got past the denial,” the defendant began his “free flow” of information. Fairbanks admits he talked with the defendant about attending college, the beneficial aspects of cooperating and how Edwards’ clean criminal history would be a factor considered in any pre-sentence investigation. He denied making specific promises of an outcome. Regrettably, Fairbanks testified to his willingness to lie and manipulate facts in an effort to extract an admission from a suspect.

At trial, the defendant testified that he agreed to the recorded interrogation in an effort to cooperate with the police. Fairbanks testified that he advised Edwards that it was “senseless” to hire an attorney and that he could conserve his family’s resources by not feigning innocence.

Absent the defendant’s inculpatory statements, this is not a “clear cut case.” The perpetrators of these crimes were young black males wearing black caps, gloves and bandannas covering their faces from the nose down to the chin. The police dusted for prints and collected DNA samples from the various crime scene locations and none of that forensic evidence implicated the accused. The police executed a search warrant at the residences of the accused and his codefendant but did not recover any stolen property, weapons or clothing involved in these crimes. In fact,

the alleged weapons and bandannas were found in a vehicle driven by three black male acquaintances of the defendant, none of whom testified at trial. The defendant's photo lineup was presented to five witnesses and only one was able to make a positive identification. This identification is best described as a "cross-racial" identification made by a victim that had only a few seconds to view his assailant's face. Another witness made a tentative cross-racial identification of the accused. Regrettably, the three individuals in possession of the weapons and bandannas were not placed into a photo lineup for viewing, although one of the victims did participate in a show up identification of these three, but that procedure failed to produce identification.

Edwards' trial was problematic in that numerous constitutional violations were noted. Edwards' trial begins with the State using its peremptory and cause challenges to exclude all but one African American from the jury. Edwards' trial concludes with his conviction by a non-unanimous jury. In this case, at least one person voted to acquit Edwards on every count. If Edwards' case was prosecuted in one of 48 other states or by the federal government he would not have been convicted. Interestingly, the sole African-American juror voted to acquit Edwards on each count.

SUMMARY OF THE ARGUMENT

Louisiana's jurisprudence allowing for criminal convictions to occur without a unanimous jury violates Edward's Sixth Amendment Rights as incorporated and applied to the States by the Fourteenth Amendment. Louisiana's Supreme Court

has repeatedly upheld this provision but those cases must be viewed in light of the Court's decision in McDonald v. Chicago, in which this Court noted that the Bill of Rights are not selectively incorporated to the States with differing standards than those binding upon the federal government. The Court further noted that those legal decisions used to justify the non-unanimous jury provisions in Oregon and Louisiana do not establish a multi-track approach to the incorporation doctrine. As such, the unanimous jury issue is again proper for inquiry. Edwards is the proper person to raise the issue because he would not be serving the rest of his life in jail if he were prosecuted in 48 other States or by the Federal Government.

REASONS FOR GRANTING A WRIT OF CERTIORARI

At the time of Edwards' conviction, Louisiana jurisprudence upheld the constitutionality of La. C.Cr.P. Art 782 allowing for less than a unanimous jury to convict persons charged with second class felonies¹. This jurisprudence relies upon the Supreme Court's ruling in Apodeca v. Oregon in which a plurality upheld Oregon's non-unanimous jury system². However, subsequent rulings by this Court calls the current application of *Apodeca* into question.

This Court's rulings in *Apodeca* and *Johnson* make clear that, at our nation's founding, unanimous juries were required in criminal trials. This belief is rooted not only in American colonial traditions but also in English common law as

¹ *State v. Bertrand*, 6 So.3d 738 (La. 2009); *State v. Jones*, 381 So.2d 416 (La. 1980); *State v. Simmons*, 414 So.2d 705 (La. 1982); *State v. Edwards*, 420 So. 2d 663 (La 1982).

² *Apodeca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628 (1972).

recognized by Blackstone in his *Commentaries on the Laws of England*³. Prior to *Apodeca*, this Court also recognized the need for unanimous juries in a series of cases arising out of Utah when it became a federal territory en route to becoming a state. *Thompson v. Utah*, 170 U.S. 343 (1898). The following sets the paradigmatic framework surrounding *Apodeca* and *Johnson* and discuss why those cases now lack any precedential value and have implicitly been overruled.

A careful reading of these *Apodeca* and *Johnson* allows one to reach the conclusion that all 9 justices agreed that unanimity was required in criminal jury trials when our nation was founded and that a majority of justices believed the Sixth Amendment was fully incorporated by the Fourteenth Amendment. These decisions have a bizarre alignment of justices to reach decisions upholding non-unanimous juries notwithstanding these two established tenants. Counsel suggests that it is Justice Powell's concurrence that makes this possible. In *Apodeca*, Justice Powell believed the Sixth Amendment required unanimity in federal trials but not in state trials. In essence, the Sixth Amendment was not fully incorporated. This belief has since been rejected by this Court and, in so doing, implicitly over rules *Apodeca* and *Johnson*.

In *McDonald v. City of Chicago*, this Court had to consider the scope of the incorporation doctrine in a case questioning whether the Second Amendment applied to the States in the same manner as the federal government⁴. This Court

³ 4. W. Blackstone, *Commentaries on the Laws of England* (1769).

⁴ *Mc Donald v. City of Chicago*, 551 U.S. 3028, 130 S.Ct. 3020 (2010)

held that it does, noting that the right to bear arms is deeply rooted in this nation's history and tradition so it is a right fully incorporated by the Due Process Clause of the Fourteenth Amendment. In discussing the issue, the Court footnoted comments pertaining to one apparent exception- the unanimous jury requirement:

¹⁴There is one exception to this general rule. The Court has held that although the Sixth Amendment right to trial by jury requires a unanimous jury verdict in federal criminal trials, it does not require a unanimous jury verdict in state criminal trials. See *Apodaca v. Oregon*, 406 U. S. 404 (1972); see also *Johnson v. Louisiana*, 406 U. S. 356 (1972) (holding that the Due Process Clause does not require unanimous jury verdicts in state criminal trials). But that ruling was the result of an unusual division among the Justices, not an endorsement of the two-track approach to incorporation. In *Apodaca*, eight Justices agreed that the Sixth Amendment applies identically to both the Federal Government and the States. See *Johnson, supra*, at 395 (Brennan, J., dissenting). Nonetheless, among those eight, four Justices took the view that the Sixth Amendment does not require unanimous jury verdicts in either federal or state criminal trials, *Apodaca*, 406 U. S., at 406 (plurality opinion), and four other Justices took the view that the Sixth Amendment requires unanimous jury verdicts in federal and state criminal trials, *id.*, at 414–415 (Stewart, J., dissenting); *Johnson, supra*, at 381–382 (Douglas, J., dissenting). Justice Powell's concurrence in the judgment broke the tie, and he concluded that the Sixth Amendment requires juror unanimity in federal, but not state, cases. *Apodaca*, therefore, does not undermine the well established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government. See *Johnson, supra*, at 395–396 (Brennan, J., dissenting) (footnote omitted) (“In any event, the affirmance must not obscure that the majority of the Court remains of the view that, as in the case of every specific of the Bill of Rights that extends to the States, the Sixth Amendment's jury trial guarantee, however it is to be construed, has identical application against both State and Federal Governments”).

According to Justice Alito's comments above, two principles are evident: first, those Bill of Rights that extend to the states have identical application and second, the right to a jury trial is one of those rights that extend to the states. The right to

a unanimous jury is a deeply rooted part of our nation's history and tradition- it's required by the federal government and is required in 48 of the 50 states at the time of this conviction. The question that needs to be addressed is by what legal authority can Louisiana create a two tier track on those provisions of the Bill of Rights incorporated to the states through the Due Process Clause of the Fourteenth Amendment?

The only answer is the perceived viability of *Apodeca* and *Johnson*. However, in light of the above principles, its time for both cases to be explicitly reversed. Modern jurists and scholars properly view plurality opinions as lacking the "true opinion of the court." ⁵ The same treatise suggests that the only precedential value to afford a plurality decision is the one that decides the case on its narrowest grounds⁶. When one combines these legal doctrines on the scope of plurality decisions with the recognition in *McDonald*, that the Bill of Rights are not selectively incorporated, one must come to the conclusion that *Apodeca* and *Johnson* can no longer stand for the proposition that non-unanimous juries are permitted by the Sixth and Fourteenth Amendments. This position finds additional moral support when one considers the racial motivations that spawned the non-unanimous jury rule in Louisiana which runs contrary to the spirit of the Civil War Amendments.

⁵ Garner, Bryan A., *The Law of Judicial Precedent*, Thomson Reuters, St. Paul, Mn (2016), page 195.

⁶ *Id* at 195

The Louisiana rule was birthed in its 1898 Constitutional Convention which made, as part of its “mission statement”, the supremacy of the white race in so much as it was constitutionally permitted. Notwithstanding this specious position, it is anticipated that the State will continue to fight to uphold non-unanimous jury convictions.

In this case, Edwards had at least one person voting for an acquittal on every prosecuted offense. Edwards would not have been convicted if his were a federal prosecution, nor would he have been convicted in 48 other states. Interestingly, an ABA study entitled, “Principles for Juries and Jury Trials”, finds that where unanimity is required, jurors evaluate evidence more thoroughly, spend more time deliberating and take more ballots. The contrary seems frightening: the marginalization of minority opinions and the power of the majority to form a coalition and, in effect, ignore dissenting views.

In Edwards’ case, the consistent vote for an acquittal came from the sole African American on the jury. Was this person’s voice heard? Federal jurisprudence prohibits excluding jurors on the basis of race. However, Louisiana’s 10-2 Rule can serve to deprive minorities of meaningful participation. Such was done in this case.

Simply put, Edwards would not be a convicted felon and serving a life sentence if Louisiana’s jury system was consistent with this nation’s tradition of requiring a unanimous jury. Sending someone to jail for life should be hard. But, this obstacle does not seem problematic for 48 other states and the federal

government. Louisiana's 10-2 Rule runs afoul of the federal constitution and it must be declared so. If done, Edwards would receive a new trial.

CONCLUSION

Edwards is feeling the full force of Louisiana's refusal to adopt a unanimous jury requirement. The lack of unanimity is a vestige of a racist justice system that disempowers minority jurors. In this case, the sole African American juror acquitted Edwards in a cross racial identification case. Compounding matters is the realization that the State combined its cause and peremptory challenges to exclude every African American but this one from having a seat on the jury. Bluntly, the State could "afford" to lose her vote and still obtain a conviction.

The precedent relied upon by Louisiana to utilize non-unanimous juries rests upon a plurality decision whose swing vote find's its rationale gutted by *McDonald's* ruling rebutting partial incorporation of the Bill of Rights. The elimination of the swing vote's viability destroys the plurality coalition and, what is left in the balance, are a majority of justices believing unanimity was required at our nation's founding and that the Bill of Rights applies with full force to state governance.

As such, Mr. Edwards' conviction runs afoul of this nation's legal tradition and it must be vacated a re-tried before an unanimous jury.

Respectfully Submitted,
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Dated: August 29, 2019

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 29th day of August 2019, 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* was 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.

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APPENDICES

- APPENDIX A: Decision of the United States District Court
- APPENDIX B: Decision of the United States Fifth Circuit Court of Appeals
- APPENDIX C: Magistrate Judge's Report and Recommendations from the United States District Court

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