

STATE OF LOUISIANA

NO. 18-KA-663

VERSUS

FIFTH CIRCUIT

JOHN SPEARS

COURT OF APPEAL

STATE OF LOUISIANA

ON REMAND FROM THE LOUISIANA SUPREME COURT
ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 16-119, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

January 13, 2021

MARC E. JOHNSON
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Robert A. Chaisson

VACATED AND REMANDED

MEJ

FHW

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JOHNSON, J.

ON REMAND FROM THE LOUISIANA SUPREME COURT

This matter comes before this Court pursuant to an order of remand from the Louisiana Supreme Court. *See, State v. Spears*, 20-23 (La. 6/3/20); 296 So.3d 1061 (*per curiam*). In its order, the supreme court instructed this Court to conduct a new errors patent review in light of the United States Supreme Court's ruling in *Ramos v. Louisiana*, 590 U.S. ---, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020). For the following reasons, we find that Defendant is entitled to a new trial. Accordingly, we vacate Defendant's conviction and sentence and remand the matter to the trial court for further proceedings.

As noted in this Court's previous opinion, a Jefferson Parish Grand Jury returned an indictment charging Defendant, John Spears, with the second degree murder of Anthony Tardo, in violation of La. R.S. 14:30.1. *See, State v. Spears*, 18-663 (La. App. 5 Cir. 12/11/19); 286 So.3d 1064, 1071, *writ granted and remanded*, 20-23 (La. 6/3/20); 296 So.3d 1061 (*per curiam*). At the conclusion of the trial on June 15, 2017, the jury returned a verdict of guilty as charged. *Id.* at 1078. The trial court sentenced Defendant to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. *Id.*

On appeal, Defendant challenged his conviction by a non-unanimous jury as one of his assigned errors. This Court found that Defendant did not properly preserve the issue for appeal. *State v. Spears*, 286 So.3d at 1095. At the time of Defendant's conviction, non-unanimous jury verdicts were permissible under La. Const. Art. I, § 17, La. C.Cr.P. art. 782, and the applicable jurisprudence. This Court affirmed Defendant's conviction and sentence. *Id.* at 1103. Thereafter, on April 20, 2020, the United States Supreme Court handed down its decision in *Ramos v. Louisiana*, *supra*, where the Supreme Court found that the Sixth Amendment right to a jury trial—as incorporated against the states by the

Fourteenth Amendment—requires a unanimous verdict to convict a defendant of a serious offense.¹ It held, “Wherever we might look to determine what the term ‘trial by an impartial jury trial’ meant at the time of the Sixth Amendment’s adoption—whether it’s the common law, state practices in the founding era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.” *Id.* at 1395. The Supreme Court concluded, “There can be no question either that the Sixth Amendment’s unanimity requirement applies to state and federal trials equally...So if the Sixth Amendment’s right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.” *Id.* at 1397.

According to *Ramos*, Louisiana will have to retry defendants who were convicted of serious offenses by non-unanimous juries, and whose cases are still pending on direct appeal. Thereafter, the Louisiana Supreme Court granted Defendant’s writ application that challenged his conviction and sentence and remanded the matter to this Court to conduct a new errors patent review in light of *Ramos*. *See, State v. Spears*, 296 So.3d at 1061.

Defendant was convicted of second degree murder by a 10-2 jury verdict. Since the punishment for this offense necessitates confinement at hard labor, a jury concurrence of all 12 persons was required to render a verdict. *See* La. Const. Art. I, § 17; La. C.Cr.P. art. 782; La. R.S. 14:30.1. Based on *Ramos* and the fact that the instant case is still on direct review and the jury verdict was not unanimous for the serious offense of second degree murder, we vacate the conviction and sentence. We also find that Defendant is entitled to a new trial and remand the matter for further proceedings.

¹ For purposes of the Sixth Amendment, federal law defines petty offenses as offenses subject to imprisonment of six months or less and serious offenses as offenses subject to imprisonment over six months. *See generally, Lewis v. United States*, 518 U.S. 322, 327-28, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); *Hill v. Louisiana*, 2013WL486691 (E.D. La. 2013).

DECREE

For the foregoing reasons, Defendant's conviction and sentence for the second degree murder offense are vacated, and the matter is remanded to the trial court for further proceedings.

VACATED AND REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JANUARY 13, 2021** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

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CLERK OF COURT

18-KA-663

E-NOTIFIED

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