

STATE OF LOUISIANA

NO. 20-KA-183

VERSUS

FIFTH CIRCUIT

JANARIUS CAREY

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 18-6210, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

December 23, 2020

JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Jude G. Gravois,
Robert A. Chaisson, and Hans J. Liljeberg

CONVICTION AND SENTENCE VACATED; REMANDED

JGG

RAC

HJL

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STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.

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JANARIUS CAREY

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GRAVOIS, J.

Defendant, Janarius Carey, appeals his conviction for attempted second degree murder, a violation of La. R.S. 14:27 and La. R.S. 14:30.1. On appeal, he argues that the trial court erred in denying his pretrial motion for a unanimous jury verdict, as well as his Motion for New Trial, based upon the recent holding of the United States Supreme Court in *Ramos v. Louisiana*, - - U.S. - -, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020). Finding that defendant's argument has merit, for the following reasons, we vacate defendant's conviction and sentence for attempted second degree murder, and remand the matter to the trial court for further proceedings.

PROCEDURAL HISTORY¹

On November 19, 2018, the Jefferson Parish District Attorney filed a bill of information charging defendant, Janarius Carey, with attempted second degree murder in violation of La. R.S. 14:27 and La. R.S. 14:30.1 (count one), aggravated assault with a firearm in violation of La. R.S. 14:37.4 (count two), and illegal possession of a stolen firearm in violation of La. R.S. 14:69.1 (count three). Defendant was arraigned on November 20, 2018, and pled not guilty. On November 21, 2019, the State amended count three to charge defendant with attempted armed robbery with a firearm in violation of La. R.S. 14:27, La. R.S. 14:64, and La. R.S. 14:64.3(B).

On December 2, 2019, defendant appeared for trial. First, he was re-arraigned on the amended bill and pled not guilty. Next, he filed a Motion for Unanimous Jury Verdict that was denied. On December 4, 2019, a twelve-person jury found defendant guilty as charged on count one in an eleven to one verdict and not guilty on counts two and three. On December 6, 2019, defendant filed a

¹ Given that we herein vacate defendant's conviction and sentence and remand the matter for further proceedings on this purely legal issue, the facts surrounding the charged offense are not included.

Motion for New Trial, asserting once again that the non-unanimous verdict was not a legal verdict; on December 11, 2019, the State filed an opposition. On January 9, 2020, the trial judge denied defendant's Motion for New Trial, after which he sentenced defendant to imprisonment at hard labor for fifty years on count one without the benefit of parole, probation, or suspension of sentence. Thereafter, on that same date, defendant filed a Motion for Reconsideration of Sentence and a Motion for Appeal. The Motion for Appeal was granted on January 13, 2020, and the Motion for Reconsideration of Sentence was denied on February 4, 2020.²

ASSIGNMENT OF ERROR NUMBER ONE

Defendant argues that the trial court committed reversible error by accepting the jury's non-unanimous guilty verdict in light of *Ramos*, wherein the United States Supreme Court held that non-unanimous verdicts for serious offenses are unconstitutional. The State concedes, noting that since defendant was convicted of a serious offense by a non-unanimous jury of twelve persons, the disposition of the instant appeal should be in accordance with the *Ramos* decision. The State noted that in similar situations, this Court has vacated the convictions and sentences and remanded the matters to the trial court for further proceedings.³

In the instant case, a jury of twelve persons was required. *See* La. Const. Art. I, § 17; La. C.Cr.P. arts. 493, 493.1, 782.

Non-unanimous jury verdicts were previously allowed under both La. Const. Art. I, § 17 and La. C.Cr.P. art. 782 and the circumstances of the instant case.⁴ However, in *Ramos v. Louisiana*, - - U.S. - -, 140 S.Ct. 1390, 206 L.Ed.2d 583

² The trial court had jurisdiction to rule on defendant's properly filed Motion for Reconsideration of Sentence pursuant to La. C.Cr.P. art. 916(3).

³ It is noted that on August 28, 2020, this Court notified the Louisiana Attorney General's Office that the constitutionality of La. C.Cr.P. art. 782 and the United States Supreme Court's *Ramos* decision were raised by defendant on appeal. This Court set a briefing deadline of September 28, 2020. As of the date this case was submitted for decision, the Attorney General's Office had not filed a brief.

⁴ We note that La. C.C.P. art. 782 was amended by Acts 2018, No. 493, § 1 to require unanimous jury verdicts in cases necessarily at hard labor where the offense occurred on January 1, 2019 or thereafter.

(2020), the United States 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. The Court concluded:

There can be no question either that the Sixth Amendment’s unanimity requirement applies to state and federal criminal trials equally. This Court has long explained that the Sixth Amendment right to a jury trial is “fundamental to the American scheme of justice” and incorporated against the States under the Fourteenth Amendment. This Court has long explained, too, that incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government. 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. (Footnotes omitted.)

Id. at 1397.

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. The Sixth Amendment right to a jury trial only attaches to serious offenses. *See State v. Franklin*, 19-119 (La. App. 5 Cir. 9/9/20), 303 So.3d 379, 380 (citing *Lewis v. United States*, 518 U.S. 322, 327-28, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); *Hill v. Louisiana*, 2013 WL 486691 (E.D. La. 2013)).

Defendant was charged with three “serious” offenses as per the Sixth Amendment and federal law. On count one, defendant faced a sentence of not less than ten nor more than fifty years at hard labor without the benefit of parole, probation, or suspension of sentence. *See* La. R.S. 14:27; La. R.S. 14:30.1. On count two, defendant faced a sentence of imprisonment with or without hard labor for not more than ten years. La. R.S. 14:37.4. On count three, defendant faced a sentence of imprisonment at hard labor for not less than five years and for not more than forty-nine-and-a-half years without the benefit of parole, probation, or suspension of sentence. *See* La. R.S. 14:27; La. R.S. 14:64. Also on count three,

defendant faced a sentencing enhancement of imprisonment at hard labor for five years without the benefit of parole, probation, or suspension of sentence. *See* La. R.S. 14:27; La. R.S. 14:64.3.

Based on *Ramos* and the fact that the instant case is on direct appeal, we find that since the verdict resulting from defendant's jury trial was not unanimous⁵ for this "serious offense," in compliance with the United States Supreme Court's directive in *Ramos*, defendant's conviction and sentence are hereby vacated, and the matter is remanded to the trial court for further proceedings. *See Franklin, supra.*

CONCLUSION

For the foregoing reasons, we vacate defendant's conviction and sentence for attempted second degree murder, and remand the matter to the trial court for further proceedings.

CONVICTION AND SENTENCE VACATED; REMANDED

⁵ The verdict was eleven to one, according to the sealed polling slips.

SUSAN M. CHEHARDY
CHIEF JUDGE

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JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
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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 **DECEMBER 23, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

20-KA-183

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

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