

STATE OF LOUISIANA

*

NO. 2019-KA-0868

VERSUS

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COURT OF APPEAL

ANTIONETTE FORTUNE

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 510-610, SECTION "J"
HONORABLE DONALD T. JOHNSON, JUDGE, AD HOC

Chief Judge James F. McKay III

(Court composed of Chief Judge James F. McKay III, Judge Terri F. Love, Judge Edwin A. Lombard)

LEON A. CANNIZARO, JR.
DISTRICT ATTORNEY, ORLEANS PARISH
DONNA R. ANDRIEU
CHIEF OF APPEALS
IRENA ZAJICKOVA
ASSISTANT DISTRICT ATTORNEY
619 South White Street
New Orleans, Louisiana 70119
COUNSEL FOR THE STATE/APPELLEE

RACHEL I. CONNER
3015 Magazine Street
New Orleans, Louisiana 70115
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE VACATED; REMANDED

NOVEMBER 18, 2020

JFM
TFL
EAL

Considering the *per curiam* provided by the district court after our remand, and for the reasons set forth below, the defendant's conviction and sentence is vacated, and the matter is remanded for a new trial.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

On September 29, 2017, a jury found the defendant guilty of manslaughter. The defendant appealed her conviction and sentence to this Court, arguing that the non-unanimous jury verdict was unconstitutional.

Following the defendant's conviction, the United States Supreme Court determined in *Ramos v. Louisiana*, 590 U.S. ----, 140 S.Ct. 1390, 206 L.E.d.2d 583 (2020), that the Sixth Amendment right to a jury trial, as incorporated against the States by way of the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense. As the defendant's case was pending on direct review, we applied the holding in *Ramos*. However, because it was unclear from the record whether the jury verdict was, in fact, non-unanimous, we remanded the matter to the district court for resolution of that issue. *State v. Fortune*, 2019-0868 (La. App. 4 Cir. 8/12/20), — So.3d —, 2020 WL 4679040.

On remand, the district court issued a *per curiam* on September 17, 2020, indicating that:

[a]lthough no formal polling of the jury was taken during the sentencing of this matter, and jury slips are not available as part of the record, this Court confirms the representations of both counsel for the defense and the prosecution as found in the sentencing transcript of this Court, that the jury returned a non-unanimous verdict of 10-2. As this matter remains on direct review, and the returned verdict for the serious offense the defendant was ultimately convicted of was non-unanimous, *Ramos* applies to this matter, and a Motion for New Trial should be granted.

DECREE

Considering the record before us and the *per curiam* opinion supplied by the district court, representing that the jury verdict was non-unanimous, the defendant's conviction and sentence is vacated and the matter is remanded for a new trial.

CONVICTION AND SENTENCE VACATED; REMANDED