

Judgment rendered March 31, 2021.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

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ON REMAND

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No. 52,739-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

ROOSEVELT T. ARDISON

Appellant

* * * * *

On Remand from the
Louisiana Supreme Court

Originally Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 349995

Honorable Erin Leigh Waddell Garrett, Judge

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LOUISIANA APPELLATE PROJECT
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Before THOMPSON, ROBINSON, and BLEICH (*Pro Tempore*), JJ.

ROBINSON, J.

In this matter on remand from the Louisiana Supreme Court, this Court has been ordered to conduct a new error patent review in light of *Ramos v. Louisiana*, 590 U.S. ___, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020).

Roosevelt Ardison was convicted as charged by a Caddo Parish jury in 2018 of possession with the intent to distribute cocaine, La. R.S. 40:967(A)(1), and of possession of a firearm or carrying a concealed weapon by a convicted felon, La. R.S. 14:95.1. The jury verdict was unanimous on the weapon charge, but was not unanimous on the drug charge.

Ardison was sentenced on the weapon conviction to 20 years of imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. He was sentenced on the drug conviction to 20 years of imprisonment at hard labor, with two years to be served without the benefit of parole, probation, or suspension of sentence. The two sentences were ordered to be served concurrently.

Ardison appealed his convictions and sentences. The first assignment of error related to the trial court's denial of his motion to suppress. In the second assignment of error, Ardison's appeal counsel complained that the trial court did not adequately justify the sentences. He also complained that the sentences were constitutionally excessive. In what counsel characterized as an "error patent" argument, he argued to this Court that Ardison's rights to due process and a fair trial were violated by Louisiana not requiring unanimous juries in criminal trials at the time of his conviction.

This Court affirmed Ardison's convictions. However, this Court vacated Ardison's sentences and remanded to the trial court for resentencing

because the record did not provide an adequate basis to review the sentences for excessiveness. *State v. Ardison*, 52,739 (La. App. 2 Cir. 6/26/19), 277 So. 3d 883 (“*Ardison I*”).

Ardison filed a writ of certiorari with the Louisiana Supreme Court in July of 2019. While his writ was still pending, the trial court resentenced him. On appeal, this Court determined that the trial court lacked jurisdiction to resentence Ardison due to his pending writ application. Accordingly, this Court vacated his sentences. The matter was again remanded to the trial court, which was directed to stay any further proceedings until the Louisiana Supreme Court acted upon the pending writ. *State v. Ardison*, 53,611 (La. App. 2 Cir. 10/5/20), 304 So. 3d 579 (“*Ardison II*”).

The United States Supreme Court rendered its decision in *Ramos* on April 20, 2020. It held that the Sixth Amendment right to a jury trial, as incorporated by the 14th Amendment, requires a unanimous verdict to convict a defendant of a serious offense in both federal and state courts. In *State v. Richardson*, 20-00175 (La. 6/3/20), 296 So. 3d 1050, the Louisiana Supreme Court determined that the holding of *Ramos* applies to cases pending on direct review when *Ramos* was decided. Thus, the State of Louisiana will have to retry defendants who were convicted of serious offenses by non-unanimous juries and whose cases were still pending on direct appeal when *Ramos* was decided.

On November 24, 2020, the Louisiana Supreme Court granted Ardison’s writ in part. The matter was remanded to this Court for further proceedings and to conduct a new error patent review in light of *Ramos v. Louisiana*. The Louisiana Supreme Court noted that the remand order did not pertain to Ardison’s firearm conviction, which was by unanimous

verdict, nor did it apply to any other issue. Ardison's writ application was otherwise denied. *State v. Ardison*, 19-01210 (La. 11/24/20), 304 So. 3d 853.

When addressing Ardison's claim of "error patent" regarding his conviction by a non-unanimous jury in *Ardison I*, this Court concluded that his claim was meritless:

We recognize that on March 18, 2019, the United States Supreme Court granted certiorari in *Ramos* to consider whether the Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict. *Ramos v. Louisiana*, __ U.S. __, 139 S. Ct. 1318, 203 L. Ed. 2d 563 (2019). However, under current jurisprudence from the United States Supreme Court, non-unanimous 12-person jury verdicts remain constitutional.

Under Louisiana law, the requirement of a unanimous jury conviction specifically applies only to crimes committed after January 1, 2019. The instant crimes were committed in 2017, and thus, the amended unanimous jury requirement is inapplicable to Ardison's case. Ardison's assertion of an "error patent" is without merit.

Ardison, 52,739 at pp. 19-20, 277 So. 3d at 896-7.

We now turn to the task before us, which is to conduct a new error patent review in light of *Ramos*. An error patent is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence and can be considered on appeal. *See* La. C. Cr. P. art. 920(2). The minutes and the trial transcript show that the jury was polled regarding both guilty verdicts, and only 10 of 12 jurors affirmatively answered that the verdict for the drug conviction was their verdict. Therefore, in light of the United States Supreme Court's ruling in *Ramos v. Louisiana*, *supra*, and the fact that this matter is on direct appeal, we reverse Ardison's conviction of

possession with the intent to distribute cocaine. Ardison is entitled to a new trial on that charge.

CONCLUSION

For the foregoing reasons, Ardison's conviction of possession with intent to distribute cocaine is reversed. This matter is remanded to the trial court for further proceedings in connection with that charge. Additionally, the stay ordered in *Ardison II* is lifted, and this matter is also remanded to the trial court to resentence Ardison on his conviction of possession of a firearm or carrying a concealed weapon by a convicted felon, which should include the reasons therefor.

**CONVICTION REVERSED; STAY LIFTED FOR
RESENTENCING; REMANDED.**