

Judgment rendered September 1, 2021.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

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ON REMAND

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No. 53,321-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

JOSEPH M. BRYANT

Appellant

* * * * *

On Remand from the
United States Supreme Court

Originally Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 327055

Honorable Brady D. O'Callaghan, Judge

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LOUISIANA APPELLATE PROJECT

Counsel for Appellant

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JOSEPH BRYANT

Pro Se

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Before STEPHENS, ROBINSON and HUNTER, JJ.

ROBINSON, J.

Joseph Bryant was charged in Caddo Parish by bill of information with armed robbery in violation of La. R.S. 14:64 and attempted aggravated rape in violation of La. R.S. 14:27 and 14:42.¹ On November 8, 2017, Joseph Bryant was convicted as charged. When the jurors were polled by written vote, only 10 of the 12 jurors affirmatively answered that was their verdict as to each count. Bryant was subsequently adjudicated a third-felony habitual offender and sentenced to life imprisonment without benefit of probation, parole, or suspension of sentence. Bryant appealed, contending that the trial court erred in finding him competent to proceed to trial and in adjudicating him a third-felony offender. His armed robbery and attempted aggravated rape convictions were affirmed. However, this Court vacated his habitual offender adjudication and sentence and remanded the matter for resentencing. *State v. Bryant*, 52,743 (La. App. 2 Cir. 6/26/19), 277 So. 3d 874, *writ denied*, 19-01320 (La. 10/8/19), 280 So. 3d 171.

Upon remand, Bryant was adjudicated a second-felony habitual offender and sentenced on each count to 65 years at hard labor without benefit of probation, parole, or suspension of sentence. The sentences were ordered to be served concurrently. Bryant appealed his sentences, contending they were unconstitutionally excessive. This Court affirmed his sentences. *State v. Bryant*, 53,321 (La. App. 2 Cir. 3/4/20), 293 So. 3d 701, *writ denied*, 20-00611 (La. 11/10/20), 303 So. 3d 1044.

On April 20, 2020, the United States Supreme Court held in *Ramos v. Louisiana*, 590 U.S. ___, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020), that the

¹ Aggravated rape is now designated as first degree rape in La. R.S. 14:42.

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. *State v. Ardison*, 52,739 (La. App. 2 Cir. 3/31/21), 314 So. 3d 1158. If the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should, nonetheless, consider the issue as part of its error patent review. *State v. Corn*, 19-01892 (La. 6/3/20), 296 So. 3d 1043.

Bryant petitioned the United State Supreme Court for a writ of certiorari. He maintained that his case was not final when *Ramos* was rendered. In response, the Caddo Parish District Attorney conceded that Bryant was entitled to a new trial because each conviction was rendered by a 10-2 vote and his case remained on direct appeal when *Ramos* was rendered. On June 28, 2021, the Supreme Court granted Bryant's petition, vacated the judgment, and remanded the matter to this Court for further consideration in light of *Ramos*. *Bryant v. Louisiana*, __ S. Ct. __, 2021 WL 2637825 (2021).

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 Bryant was convicted by a non-unanimous jury on

both charges. Furthermore, this matter was still on direct review when *Ramos* was rendered. Accordingly, in light of *Ramos*, we vacate Bryant's armed robbery and attempted aggravated rape convictions. Bryant is entitled to a new trial on both charges. Because the underlying convictions are vacated, we further vacate his habitual offender adjudication and sentences.

CONCLUSION

For the foregoing reasons, Bryant's armed robbery and attempted aggravated rape convictions are vacated. This matter is remanded to the trial court for further proceedings in connection with those charges. His habitual offender adjudication and sentences are also vacated.

**CONVICTIONS VACATED; HABITUAL OFFENDER
ADJUDICATION AND SENTENCES VACATED; REMANDED.**