

Supreme Court weighs whether its ruling requiring unanimous juries should be applied retroactively

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WASHINGTON — When the Supreme Court ruled last April that state court juries must be unanimous to convict a defendant of a serious crime, the next question was obvious: What happens to those convicted under the previous system?

The justices spent 90 minutes in a teleconference hearing Wednesday trying to hash that out. The issue is whether that decision was so fundamental to constitutional rights that it had to be applied retroactively, even if it meant thousands of convictions are now suspect.

Louisiana lawyer André Bélanger, representing convicted rapist Thedrick Edwards, compared the court's unanimous-jury decision to its 1963 ruling that the accused have the right to an attorney.

"Both decisions restored bedrock Sixth Amendment principles and both decisions compelled outlier states to apply rights they previously refused to recognize," Bélanger said. "A conviction can only be legally accurate if the state proves its case beyond a reasonable doubt of all jurors."

Louisiana, Oregon and Puerto Rico allowed some convictions by split juries. They had relied on a muddled 1972 Supreme Court decision that said federal juries must be unanimous but not those in state courts.

In its 6-to-3 decision in April in *Ramos v. Louisiana*, the Supreme Court made the need for unanimous juries clear. But the state said the decision should apply only moving forward.

"There can be no doubt that declaring the *Ramos* rule retroactive unsettles thousands of cases that involve terrible crimes in all three jurisdictions," said Louisiana Solicitor General Elizabeth Murrill. "Requiring new trials in long-final criminal cases would be impossible in some, and particularly unfair to the victims of these crimes."

Edwards was convicted in 2007 of rape and multiple charges of armed robbery and kidnapping. The jury was split 10-2 on most of the robbery charges, and 11-1 on the rest, and Edwards, who police said confessed, was sentenced to life in prison without the possibility of parole.

Edwards is Black, and Bélanger told the justices that prosecutors maneuvered to keep Blacks off the jury. The lone Black juror on the case voted to acquit.

The court's ruling in Ramos scrambled the usual ideological lineups: conservatives Chief Justice John Roberts Jr. and Justice Samuel Alito Jr. dissented, along with liberal Justice Elena Kagan.

And even those in the majority split on their reasoning.

Complicating matters more in Wednesday's hearing is the standard the court uses for deciding when a decision is so important it should be applied retroactively. In general, the answer is no, but the court's precedents say an exception can be made for what it called a "watershed" rule.

Alito declared that to be something like a sighting of a "Tasmanian tiger" – meaning the possibility might be out there, but the court has never recognized one. The court's decision on the right to an attorney, *Gideon v. Wainwright*, was decided before the rule was put in place, but is always cited as one that would fit the "watershed" description.

Kagan, although a dissenter in Ramos, suggested this might be another.

"Ramos says that if you haven't been convicted by a unanimous jury, you really haven't been convicted at all," Kagan told Justice Department lawyer Christopher Michel, who was supporting Louisiana. "And so how could it be that a rule like that does not have retroactive effect?"

Justice Neil Gorsuch, who wrote the Ramos decision, said a disruption in the system, such as Murrill described, is simply a consequence of the court making an important ruling.

"Wouldn't we expect it to be difficult if, in fact, it were a watershed rule?" Gorsuch asked. "If this really were a significant change and an important one, wouldn't we expect there to be some burden for the state?"

Justice Brett Kavanaugh said he and others had pointed out that Louisiana's nonunanimous rule had racist roots – meant to keep Black jurors from complicating the conviction of Black defendants – and the facts of Edwards's case seemed to reinforce those worries.

Murrill denied that, and Michel said there were other reasons, such as avoiding hung juries, that have been advanced as a reason for nonunanimous convictions.

Roberts, the other dissenter in the Ramos case, was more difficult to read. When questioning Bélanger, he wondered how the requirement for a unanimous conviction must be retroactive, when the court's decision about the need for a jury trial in some cases was not.

But he turned that around when questioning Michel.

“Isn’t the right to a unanimous jury more important as a matter of factual accuracy than the right to a jury itself?” Roberts asked. “I mean, you would expect a judge to be at least as accurate and presumably even more than a jury.”

The case is *Edwards v. Vannoy*.