



Precedential Departures & the new Roberts Court



Edwards v. Vannoy & Ramos v. LA

- Prior to the 2020 decision in *Ramos v. LA*, Louisiana and Oregon allowed felony convictions based on non-unanimous jury votes.
- A badly fractured Court had previously upheld those laws based on J. Powell's view that: (a) the Sixth Amendment requires juror unanimity, but (b) this part of the Sixth Amendment is not incorporated against the States.



Ramos v. Louisiana

- ▶ The *Ramos* Court, after thorough briefing and analysis, found a special justification for overruling that precedent. *Ramos* held juror unanimity is required for felony convictions.
- ▶ In concurring opinions, JJ. Sotomayor & Kavanaugh emphasized the racist origins of Louisiana's non-unanimous jury rule.



Ramos v. Louisiana

- ▶ J. Kavanaugh: “[A]t its 1898 state constitutional convention, Louisiana enshrined non-unanimous juries into the state constitution. . . . The State wanted to diminish the influence of black jurors . . . [T]he convention approved nonunanimous juries as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African Americans, especially in voting and jury service.”



Ramos

- ▶ And Louisiana's non-unanimous jury rule was continuing to work as intended.
- ▶ As recently as 2017, Black jurors were disproportionately likely to vote not guilty but have their votes overridden, and Black defendants were more likely to be convicted by non-unanimous juries.



Edwards v. Vannoy

- Thedrick Edwards's case exemplified this persistent discrimination.
- He is a Black man convicted of serious charges, and sentenced to life imprisonment, based on sharply contested evidence. The only Black person on the jury voted to acquit.



Edwards v. Vannoy

- Under *Ramos*, the verdict against Mr. Edwards should be “no verdict at all” because it was non-unanimous.
- But Mr. Edwards was convicted in 2007, and his direct appeal process was completed in 2011.



Edwards v. Vannoy

- So Mr. Edwards, like many other people convicted by non-unanimous juries pre-*Ramos*, could have his constitutional rights honored only if *Ramos* applies retroactively.
- Ordinarily, new rules of criminal procedure do not apply retroactively.



Edwards v. Vannoy

- But, over 30 years ago, the Court recognized an exception: a new rule must apply retroactively if it is a “watershed” rule “essential to” a fair trial.
- A key issue in *Edwards* was supposed to be whether *Ramos* met that standard.



Edwards v. Vannoy

- As the dissent explains, *Ramos* is watershed under *Teague*: unanimity is essential to a fair trial.
- Yet, the majority, speaking through J. Kavanaugh, overrules the *Teague* watershed exception. No new rule of constitutional procedure—no matter how important—can ever apply retroactively.



Edwards v. Vannoy

- The majority overrules *Teague* even though no one asked it to.
- J. Kagan: “We are supposed to (fairly) apply the prevailing law until a party asks us to change it. And when a party does make that request, we are supposed to attend to countervailing arguments—which no one here had a chance to make. That orderly process, skipped today, is what enables a court to arrive at a considered decision about whether to overthrow precedent.”



Jones v. Mississippi

- In *Miller v. AL* and *Montgomery v. LA*, the Court held that children may not be sentenced to LWOP except in those rare cases where their “crimes reflect irreparable corruption.”
- Brett Jones does not appear to fit that description.



Jones v. Mississippi

- When he was 15, his grandfather found out Brett's girlfriend was staying in his home, became angry, and tried to hit Brett. Brett stabbed his grandfather to death, and then tried to administer CPR to save him.



Jones v. Mississippi

- ▶ Prior to the crime, Brett endured severe abuse and neglect.
- ▶ In the years after the crime, he demonstrated remorse, earned his GED, and had a strong conduct record in prison.



Jones v. Mississippi

- He was sentenced to mandatory LWOP pre-*Miller & Montgomery*.
- At a post-*Miller* resentencing hearing, the trial judge reaffirms LWOP without ever even addressing whether Brett is one of the rare children whose crimes reflect permanent incorrigibility.



Jones v. Mississippi

- ▶ Supreme Court affirms with J. Kavanaugh speaking for 5 justices.
- ▶ J. Kavanaugh insists the Court is not overruling precedent, but says *Miller* and *Montgomery* are satisfied so long as the sentencer has discretion to impose a less than LWOP sentence.



Jones v. Mississippi

- J. Thomas concurs in the judgment, but acknowledges the Court had “overrule[d] *Montgomery* in substance but not in name.”



Jones v. Mississippi

- ▶ J. Sotomayor, in dissent, writes:
“Now, it seems, the Court is willing to overrule precedent without even acknowledging it is doing so, much less providing any special justification. It is hard to see how that approach is ‘founded in the law rather than in the proclivities of individuals.’” (quoting J. Kavanaugh in *Ramos*).