(Official Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO
APPELLANT

VS.

CENTENO, NELSON DANIEL
APPELLEE

CASE NUMBER AC-2021-0086
ORIGINAL. NSCR201600145
ON APPEAL. KLCE202100016

CIVIL APPEAL

CIVIL ACTION OR CRIMINAL OFFENSE

N O T I C E

I CERTIFY THAT, REGARDING THE PETITION FOR CERTIORARI, THE COURT ISSUED THE OPINION AND JUDGMENT ATTACHED HERETO.

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IN SAN JUAN, PUERTO RICO, THIS 9TH DAY OF SEPTEMBER 2021.

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ EVELYN RAMOS VELILLA
ASSISTANT CLERK

(Seal of the Supreme Court of Puerto Rico)

EXHIBIT A

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	Certiorari 2021 PRSC 133 207 DPR ____

Case: AC-2021-86

Date: September 9, 2021

Court of Appeals:

Panel X

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IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico

Petitioner

v. AC-2021-0086

Nelson Daniel Centeno

Respondent

JUSTICE KOLTHOFF CARABALLO delivered the Opinion of the Court.

(Rule 50)

San Juan, Puerto Rico, September 9, 2021.

Following the decision in *Ramos v. Louisiana*[1] as adopted in *Pueblo v. Torres Rivera* [*II*],[2] we are tasked with elucidating the correctness of a jury instruction specifying that a *guilty* verdict must be unanimous, but that, in contrast, a verdict *to acquit* may be rendered by a majority vote of nine jurors.

For the reasons set forth below, we hold that it shall only be valid to instruct the jury that both a *guilty* verdict and a *not-guilty* verdict must be unanimous.

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[1] 5[9]0 US __, 140 S.Ct. 1390 (2020).

[2] 204 DPR 288 [104 PR Offic. Trans. 22] (2020).

I

For events occurring on January 4, 2016, the People of Puerto Rico filed several criminal complaints against Nelson Daniel Centeno (respondent) in the Court of First Instance. Following the proper proceedings, respondent was charged with the commission of the following offenses: aggravated burglary, first degree murder, attempted murder, and infractions to the Weapons Act.

During the trial, the People filed a Motion Requesting Jury Instruction before the Court of First Instance. Specifically, and pursuant to the standard established in *Ramos* and adopted in *Torres Rivera* [*II*], the People requested that the jury receive instructions to the effect that they essentially "must all agree and vote unanimously whether to find the defendant guilty or to find him not guilty."[3]

For his part, respondent challenged the instruction suggested by the People.[4] To start, he contended that both our Constitution and the Rules of Criminal Procedure establish a majority vote and that the *Ramos* standard, which was adopted in *Torres Rivera* [*II*], limited the unanimity requirement to *guilty* verdicts. Specifically he maintained that in *Torres Rivera* [*II*] we circumscribed the controversy to determining whether, in light of *Ramos*, a conviction obtained by a majority vote in our jurisdiction infringes

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[3] Motion Requesting Jury Instructions, *Appendix*, at 79.

[4] Motion to Oppose the "Motion Requesting Jury Instruction," Appendix, at 81-86.

the procedural safeguards inherent to the fundamental right to a trial by jury as guaranteed by the Sixth Amendment to the Constitution of the United States. He therefore argued that, in accordance with *Ramos*, we ruled to institute the jury unanimity requirement to obtain a conviction.

Consequently, respondent proposed that the jury receive the following instructions:

> In order for a not-guilty verdict to be valid, at least nine (9) of you must agree to it. The verdict to find the defendant not guilty shall state if the majority vote is 9 to 3, 10 to 2, 11 to 1, or if it is unanimous. In contrast, for a guilty verdict to be valid, it must be unanimous, that is, you must all be in agreement. The outcome of the voting shall be recorded by the Foreperson in the form provided by the Court.[5]

Having evaluated the parties' arguments, the Court of First Instance issued a Resolution through which it denied the Motion Requesting Jury Instruction filed by the People. In what is relevant hereto, the decision provided as follows:

> In requiring the jury to find a defendant not guilty unanimously, we believe we would be placing defendants in a position where they would have to prove their innocence. In that sense, the defense would have the burden of proof, insofar as they would have to prove to a jury that the defendant is not guilty. However, who by legal provision has the burden of proof is the People of Puerto Rico, as this party must prove the defendant's guilty *beyond a reasonable doubt*. The People are responsible for presenting evidence that produces certainty or the moral conviction in an unprejudiced mind.
>
> Both the law and the caselaw establish that the defendant has no obligation whatsoever to bring any evidence on their behalf and that the burden of proof does not shift at any stage of the proceedings since the defendant rests on the presumption of innocence.
>
> As it is the People who bear the burden of proof, they are called upon to demonstrate the defendant's guilt to

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[5] Id. at 84.

> the jury *beyond a reasonable doubt*, which is satisfied by obtaining a unanimous verdict, as it would have convinced, appealed to the intelligence, and satisfied the reason of the 12 members of the jury. In this way, the right to a fair and impartial trial is provided, where there can be no reasonable doubt that the offense was committed.[6]

Immediately, the trial court emphasized that the standard prescribed in *Ramos* referred only to *guilty* verdicts by stating the following:

> Now then, the verdict alluded to is the guilty verdict and not the verdict to acquit. It is well-known that all persons accused of a crime have a constitutional right to be presumed innocent until proven guilty.
>
> Unanimity establishes an essential procedural protection for the defendant facing a criminal proceeding in which they may be deprived of their freedom. As it is the right of the defendant, it is the State who must convince the 12 jurors *beyond a reasonable doubt*.[7]

Thus, the Court of First Instance concluded that to require unanimity for an *acquittal* would go against the precepts of law. Therefore, it ruled to instruct the jury per respondent's request. That is, it determined that, in order to reach a verdict of *not guilty*, at least nine members of the jury had to concur; hence, the verdict must state whether the majority vote is 9 to 3, 10 to 2, 11 to 1, or whether it is unanimous.[8]

Dissatisfied, the Solicitor General appealed before the Court of Appeals through a Petition for Certiorari whereby he contended that the lower court erred in adopting the jury instruction proposed by respondent stating that

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[6] Judgment of the Court of First Instance, Appendix, at 92-94.

[7] Id. at 93.

[8] Id.

the *guilty* verdict must be unanimous, but for a *not-guilty* verdict the concurrence of at least nine jurors sufficed.[9] To summarize, the Solicitor General argued that, under the Constitution of the United States, a verdict—whether to convict or to acquit—that fails to meet the unanimity requirement is constitutionally invalid. Thus, the Solicitor General concluded that this was the applicable standard at the federal level, "and it is the prevailing standard in Puerto Rico with the activation of the institution of the jury in our jurisdiction in accordance with the Sixth Amendment and the ruling in Ramos v. Louisiana, *supra*."[10]

For his part, respondent filed a Motion to Oppose.[11] Essentially he argued that, after *Ramos*, the requirement of a majority vote for acquittal arising from our Constitution and the relevant laws had not been altered or eliminated by any constitutional or legislative amendment or by any ruling of unconstitutionality from a competent court of law. In that regard, respondent posited that:

> It is the State that should have a second chance to prove a defendant's guilt if, during the first proceeding, it was unable to obtain a unanimous guilty verdict. However, a second proceeding should not be a second chance for a defendant to prove their innocence where, during the first trial, at least nine (9) jurors found the defendant to be innocent.[12]

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[9] Petition for Certiorari, Appendix, at 42.

[10] Id. at 62.

[11] Motion to Oppose, Appendix, at 97-117.

[12] Id. at 116.

After analyzing the arguments put forward by both parties, the intermediate appellate court affirmed the ruling of the Court of First Instance. According to the reasoning of the Court of Appeals, the decision of the Supreme Court of the United States in *Ramos*, through which the unanimity requirement was established as an essential feature of the fundamental right to a trial by jury, was limited exclusively to the unanimity of *guilty* verdicts. The court added that the restrictive application of the Sixth Amendment, with no legal support, was not in order. It also emphasized that in both *Ramos* and *Torres Rivera [II]*, the courts only ruled on whether the Sixth Amendment required unanimity for a *guilty* verdict, and, in adopting such requirement, they held that jury unanimity operated as a material requirement to obtain a conviction. According to the interpretation of the Court of Appeals, unanimity was recognized as a natural corollary to the impartiality mandated under the Sixth Amendment.

The Court of Appeals added that the Solicitor General's proposal would render ineffectual the core provisions of our legal framework that establish that no less that nine of the twelve members of the jury must concur in order to return a verdict. In that context, it stated that we have recognized that, compared to the Constitution of the United States, our Constitution is of a broader scope, and therefore, to confer greater protections on defendants than

what is afforded at the federal level does not contravene recent state and federal caselaw.

Finally, the intermediate appellate court concluded that were it to accept the position of the Solicitor General, the court would be modifying our system of criminal justice, insofar as it would impose on defendants the more onerous burden of having to prove their innocence and minimize the burden of proof that the State must satisfy in criminal cases. It explained that such construal of *Ramos* is in open conflict with the presumption of innocence afforded to all defendants in our jurisdiction. In that respect, the court underscored that, in a criminal proceeding, what is adjudged is the guilt of a defendant and not their innocence; as a result, it would make no sense to have to prove something that is presumed until that presumption has been defeated beyond a reasonable doubt.

For these reasons, the Court of Appeals held that there was no margin to adopt the interpretation of the Solicitor General, since the legal source used to sustain his contention—*Ramos*—does not address the controversy at bar. That is, the standard established in *Ramos* requiring a unanimous verdict to find a defendant *guilty* cannot be extended to verdicts to acquit or to find the defendant *not guilty*.

Not satisfied, the Solicitor General filed an Appeal before this Court through which he argued the following:

> The Court of Appeals erred in concluding in this case that a guilty verdict must be unanimous, while for a

verdict of not guilty, the concurrence of nine members of the jury suffices.[13]

Due to the importance and the public interest of the case before us, we proceed to dispose of the controversy without further proceeding pursuant to our Supreme Court Rule 50, 4 LPRA App. XXI-B. Let us now lay out the applicable legal framework.

II

A. Trial by Jury

All persons accused of a felony have the right to be judged by an impartial jury. This guarantee is a fundamental right enshrined in the Sixth Amendment to the Constitution of the United States and in the Constitution of Puerto Rico.

Specifically, the Sixth Amendment to the Constitution of the United States provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.[14]

For its part, and in what is relevant hereto, Article II, Section 11 of the Constitution of Puerto Rico prescribes the following:

> In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, **who may render their verdict by a majority vote** which in no case may be less than nine. . . .[15]

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[13] Appeal, at 9.

[14] US Const. amend. VI, LPRA, tit. 1, 2016 ed. at 186.

[15] PR Const. art. II, § 11, LPRA, tit. 1. (Emphasis added.)

On several occasions, we have upheld the validity of this portion of that constitutional clause.[16] However, on this occasion, we will analyze it in light of the ruling in *Ramos*, but in the context of unanimous *not-guilty* verdicts. In other words, we will analyze the implicit effect of *Ramos* on the fragment of the constitutional provision at issue with respect to acquittals. Nevertheless, and in the interest of setting forth our reasoning in deciding this case, we must also look back to our constitutional history, farther back even than the Constitutional Convention.

As we know, in *Ramos*, the Supreme Court of the United States examined a *guilty* verdict, the proportion of which was as follows: 10 jurors found the evidence brought by the state of Louisiana against the defendant to be persuasive, while two jurors believed that the State had failed to prove that the defendant was guilty beyond a reasonable doubt, and they voted to acquit. Thus, the defendant was sentenced to life in prison without parole.[17] This decision contrasted with the law in 48 states of the Union, which prescribe

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[16] Pueblo v. Casellas Toro, 197 DPR 1003, 1018-1019 [97 PR Offic. Trans. 52, __] (2017), citing Pueblo v. Báez Cintrón, 102 DPR 30 [2 PR Offic. Trans. 42] (1974); Pueblo v. Santiago Padilla, 100 PRR 780, 782 (1972); Pueblo v. Batista Maldonado, 100 PRR 935 (1972); Pueblo v. Hernández Soto, 99 PRR 746, 756-757 (1971); Pueblo v. Aponte González, 83 PRR 491, 493 (1961); Jaca Hernández v. Delgado, 82 PRR 389, 393-396(1961); Fournier v. González, 80 DPR 254 (1958).

[17] *Ramos*, 140 S.Ct., at 1393-1394. Note that the purpose of this proportion was "to ensure that African-American juror service would be meaningless." Similarly, the state of Oregon allowed for non-unanimous verdicts following efforts by the Ku Klux Klan to dilute any racial, ethnic, and religious influence on members of the jury. Id. at 1394.

that one vote to acquit from a member of the jury suffices to declare a mistrial.[18]

These events prompted the Supreme Court of the United States to have to definitively rule on whether a unanimous verdict was necessary to convict a defendant. After hearing the parties' arguments, the Supreme Court held that the Sixth Amendment—incorporated to the states through the Fourteenth Amendment—requires a unanimous vote by the members of a jury to render a *guilty* verdict.

Thus, despite the fact that the text of the Sixth Amendment does not mention that the verdict must be unanimous, the federal Supreme Court held that the concept of a "trial by an impartial jury" included the widespread and broadly-accepted requirement of unanimity.[19] Hence, a jury must reach a unanimous verdict in order to convict.[20]

Nevertheless, it is important to point out that, although the origin of the unanimous verdict requirement as an intrinsic part of the federal criminal prosecution is not entirely correct, the requirement itself is apparently rooted in the Middle Ages.[21] Specifically, in *Ramos* the Supreme Court of the United States explained that the unanimity requirement was adopted from 14th-century England

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[18] Id.

[19] Id. at 1396. ("If the term 'trial by an impartial jury' carried any meaning at all, it surely included a requirement as long and widely accepted as unanimity.")

[20] Id. ("A jury must reach a unanimous verdict in order to convict.")

[21] Apodaca v. Oregon, 406 US 404, 407 n.2 (1972).

as a vital right protected by common law,[22] even though this was not the case in other European countries. Evidence of this is the multitude of times that the Supreme Court has recognized that unanimity in verdicts is a fundamental requirement of a trial by jury at the federal level.

Now then, that the unanimity requirement of the Sixth Amendment applies equally to both state and federal trials is unquestionable.[23] Therefore, if the right to a trial by jury that emanates from the Sixth Amendment requires a unanimous verdict to secure a conviction in federal court, by virtue of the Fourteenth Amendment, state courts must require nothing less.[24]

Subsequently, and in line with the above, we heard *Torres Rivera [II]* where we decided a controversy similar to *Ramos* and evaluated whether—in light of that opinion—a conviction handed down by way of a non-unanimous verdict transgressed the procedural safeguards inherent to the fundamental right to a trial by jury guaranteed under the Sixth Amendment. In analyzing that controversy, we reasoned that:

> A reading of the opinion of the United States Supreme Court in *Ramos v. Louisiana* shows that unanimity constitutes an additional essential procedural protection that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an

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[22] *Ramos*, 140 S.Ct., at 1395.

[23] Id. at 1397. ("There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally.").

[24] Id. ("So if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.")

> inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.[25]

Now then, although the institution of the jury originated in common law, it is also true that in Puerto Rico the figure of the jury had been instituted under the first civil government in the early 20th century, beginning with the passing of the Act to Establish Trial by Jury in Porto Rico[26] and the Act Concerning Procedure in Jury Trials. Similarly, the right to a trial by jury was recognized in Section 185 of the Puerto Rico Code of Criminal Procedure, which required a **unanimous verdict**.[27] To that effect, it prescribed that "[a] jury shall consist of twelve men **who must unanimously concur in any verdict rendered**." Nevertheless, this provision was subsequently amended through Law No. 11 of August 19, 1948 to authorize verdicts obtained by a majority of not less nine jurors, and, in 1952, the minimum vote to sustain a verdict was incorporated into the Constitution of Puerto Rico.[28]

In the following section we will analyze the rationale the delegates to the Constitutional Convention had for adopting this reasoning in our Constitution.

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[25] *Torres Rivera [II]*, 204 DPR, at 306-307 [104 PR Offic. Trans. 22, at 10].

[26] *Act to Establish Trial by Jury in Porto Rico* of January 12, 1901, 34 LPRA § 462n (repealed 1963), and the Act Concerning Procedure in Jury Trials of January 31, 1901.

[27] Pueblo v. Casellas Toro, at 1017 [97 PR Offic. Trans. 52, at __].

[28] Id. at 1017-1018.

B. The Debate on Trial by Jury within the Constitutional Convention

In our function as interpreters of constitutional clauses, it is necessary that we evaluate the intent of our Constitutional Convention.

Regarding this, we have stated that "when considering the scope of a clause of the Puerto Rico Constitution, even though it may be analogous to a clause of the United States Constitution, it is our obligation to turn to the Journal of Proceedings of the Constitutional Convention as a primary source."[29]

During the process of drafting and approving our Constitution, the Bill of Rights Committee, presided by Jaime Benítez, presented a Report on the deliberations, proposals, and on its own undertakings as to the assignment it received from the Constitutional Assembly. This draft bill also included the motivations behind the Bill of Rights, with the purpose of obtaining its eventual approval.[30] Concerning the judgment of an impartial Jury, its composition, and the number of jurors needed to render a verdict, the Report stated as follows:

> The text permanently fixes the number of jurors at twelve, as a response to the prevailing tradition in the country and the common law tradition. In contrast to that tradition, a verdict may be rendered by a majority vote, the number of which will be determined by the

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[29] Pueblo v. Serrano Morales, 201 DPR 454, 494-495 [101 PR Offic. Trans. 32, __] (2018). *See also*, Tatiana Vallescorbo Cuevas, *Interpretando la factura más ancha*, 46 Rev. Jur. UIPR 303, 327-330 (2012).

[30] 2 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* 1103 (19[61]).

> legislative power, but that shall not be less than nine. This is the system that is in effect by law. We believe that the proposed formula will allow the Legislative [Assembly] to increase the margin of the majority up to unanimity, were it to deem it fitting in the future.[31]

Regarding the above, amendments to Section 11 of the Bill of Rights were recommended during the Constitutional Convention. Specifically, there was an attempt to strike the original phrase "who may render their verdict by a majority vote which in no case may be less than nine." According to Delegate Ernesto Juan Fonfrías, once the jury had been instituted, it was incumbent upon the Legislature to determine the number of jurors who would comprise it.[32] That is, he suggested that any mention of anything related to the composition and number of jurors who must concur in order to return a verdict be stricken.[33] Thus, he believed that the Legislative Assembly could determine whether the

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[31] 4 *Diario de Sesiones de la Convención Constituyente de Puerto Rico*, Bill of Rights Committee Report, at [2570]. As we shall explain in detail and is summarized in Pueblo v. Casellas Toro, 197 DPR, at 1017-1018 [97 PR Offic. Trans. 52, at __]:

> [P]rior to the approval of our Constitution in 1952, the figure of the jury had already been instituted in Puerto Rico. Specifically, the first civil government under the United States provided for this right in criminal cases. *See*, Act of January 12, 1901, 34 LPRA § 462 (repealed 1963). While it is a tenet that verdicts rendered by juries by virtue of this law had to be unanimous, years later before the approval of our Constitution this provision was amended through Law No. 11 of August 19, 1948, 34 LPRA § 611 and § 811 (repealed 1963), to authorize that guilty verdicts may be rendered with the concurrence of nine jurors.

[32] 3 *Diario de Sesiones*, at 1588. It is worth mentioning that the School of Public Administration of the University of Puerto Rico agreed with the position that the institution of the Jury should remain -as it had theretofore- in the hands of the Legislature, and it should not be enshrined in the Constitution. Escuela de Administración Pública de la Universidad de Puerto Rico, *La Nueva Constitución de Puerto Rico* 174 (Ed. Fascsimilar 2005).

[33] 3 *Diario de Sesiones*, at 1589. *See*, III J. Trías Monge, *Historia constitucional de Puerto Rico* 195, Editorial UPR (1982).

verdict "[be by a vote of] nine, or by a majority of seven to five. . . ." Concerning this matter, Jaime Benítez confessed to fearing that federal caselaw had ruled that the expression "trial by jury" meant "trial by jury rendering a unanimous verdict."[34] He stated that to eliminate the minimum number the number of jurors that must concur would decidedly be fixed at twelve.[35] Likewise, prior to the defeat of Mr. Fonfrías proposal, Mr. Benítez stated that he opposed the suggested amendment because he believed that:

> [A] jury's verdict to convict must be by at least nine votes against the defendant, and no more. **It must have at least nine votes against or it must have nine votes in favor**, but a defendant must not be found guilty with a vote of less than three-fourths of the total number of jurors.[36]

As we can see, at no point during the debate did any of the members of the Convention even mention the possibility that the requirement of nine jurors to convict could be different than what was required to acquit. On the contrary, when the matter was raised, the intent to have a symmetry of the verdicts is shown.

In fact, in his book, José Trías Monge chronicles how, prior to the approval of the Constitution, the Foraker and Jones Acts were silent on the matter of a trial by jury.[37]

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[34] [3] *Diario de Sesiones*, at 1589.

[35] Id.

[36] Id.

[37] III J. Trías Monge, *Historia constitucional de Puerto Rico* 194, Editorial UPR (1982).

However, when the first civil government was instituted,[38] the first session of the Legislative Assembly was convened, and, among other things, it enacted the Act Concerning Procedure in Jury Trials of January 31, 1901 (Act of 1901). Immediately after Section 1 of this Act defined the jury as "a body of men selected from the citizens of a particular district, and invested with power to try questions of fact,"[39] Section 2 provided that "a jury shall consist of twelve men who must **unanimously concur in any verdict** rendered" on felony offenses.[40]

After this standard had remained in effect for 47 years, in 1948, the majority verdict was introduced in our jurisdiction. Thus, the Code of Criminal Procedure was amended to provide that the "verdict shall be by the concurrence of not less than three-fourths (¾) of the jury."[41] That is why the Bill of Rights Committee Report

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[38] Foraker Act of April 12, 1900, Historical Documents, LPRA tit. 1. *See*, III J. Trías Monge, *Historia constitucional de Puerto Rico* 195 Editorial UPR (1982).

[39] Act Concerning Procedure in Jury Trials of January 31, 1901 (Act of 1901), 1901 PR Laws 112. 3 *Diario de Sesiones*, at 1587. We underscore that the unanimous verdict was also incorporated through the Code of Criminal Procedure of March 1, 1902.

[40] Id. (Emphasis added). It is appropriate to point out that, during the Constitutional Assembly, there was a proposal to retain the language of the Act of 1901 where it prescribed that the men who would comprise the jury would be elected, thereby rejecting the suggestion of "twelve residents of the district." 3 *Diario de Sesiones*, at 1587.

[41] Section 2 of Law No. 11 of August 19, 1948 (34 LPRA § 61[2]) (repealed 1963) (Act of 1948). According to Trías Monge, the Act of 1948 was passed because Pedro Albizu Campos's return increased the presence of Puerto Rican nationalists, and so the amendment limited the right to a trial by jury as conceived of prior to the approval of the Constitutional Assembly, and it deauthorized the use of a jury in certain felony cases. III J. Trías Monge, *Historia constitucional de Puerto Rico* 194, Editorial UPR (1982). However, regarding majority verdicts, in Pueblo v. Figueroa Rosa, 112 DPR 154, 160 [12 PR Offic. Trans. 186, 194] (1982) we recognized that the adoption of the proportion of jurors in agreement to render a verdict in the referenced law was to "prevent having the isolated actions of a [single] juror

stated that the majority verdict was the current system under the law and that, at the same time, it authorized the Legislature to increase the number of jurors that needed to concur in order to render a verdict.[42] However, and as we have seen, what was amended was the minimum number of jurors necessary to reach a verdict and not the proportion between the two verdicts.

In conclusion, when the portion of Section 11 of the Bill of Rights at issue here was being discussed, neither the distinction between the two verdicts nor the number of jurors who needed to be in agreement to return a verdict *to convict* or a verdict *to acquit* was brought to the floor of the Constitutional Assembly. Moreover, the wording that was eventually approved showed that the Constitutional Assembly's nonaction in distinguishing the verdicts and the deciding proportion was not due to the naïveté or lack of awareness of our delegates since the Report and the debate guide our interpretation, and they unquestionable show a preference for the equal treatment for both verdicts. Therefore, there is but room to interpret that, pursuant to our Constitution and even to history prior to its approval, the proportion of jurors to render a verdict is the same for both a *guilty* and a *not-guilty* verdict.

It is precisely this lack of distinction between both verdicts in the clause in question and the authority that

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thwart the unanimity of the verdict and quash the efforts and team work of the jury panel."

[42] *Diario de Sesiones*, Report, at 2570.

emanates from the journal of proceedings of the Constitutional Convention to—by way of legislation—increase the proportion to render a verdict from a majority to unanimity that subjected the Legislature to the same balance for either verdict, nothing more, nothing less. Thus, as we have explained, in order for the Legislative Assembly to comply with the constitutional provision, an increase in this proportion to ten, eleven, or twelve jurors for a *guilty* verdict must also be so for a *not-guilty* verdict.

C. Broader Scope

As is well-known, "the applicability of a federal constitutional right constitutes only the minimum scope of that right."[43] That is, Puerto Rico may interpret its Constitution to broaden the scope of a right, thereby granting greater protection than that recognized under the Constitution of the United States.[44] On the basis of this principle, we have recognized that "our Bill of Rights is of a broader scope than the federal Constitution." Nevertheless, the extension of that broader scope to a right that is expressly recognized by the Constitution or Supreme Court of the United States does not apply automatically.

In *Pueblo v. Díaz, Bonano*,[45] we adopted the interpretative standard of the phrase "broader scope"

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[43] Pueblo v. Díaz, Bonano, 176 DPR 601, 621 [76 PR Offic. Trans. 37,]2(2009).

[44] Id.

[45] Id.

devised by former Associate Justice Antonio Negrón García in his Dissenting Opinion in *Pueblo v. Yip Berríos*.[46] In that case, he set forth the following:

> *the aforementioned "broader [scope]" is descriptive, not prescriptive.* It should not thoughtlessly give rise to a process through which the Puerto Rican constitutional standard is mechanically determined by using as basis the degree of protection of privacy established by Federal Supreme Court caselaw and subsequently broadening the same. That our caselaw could establish a higher degree of protection than the Federal Constitution may be predictable, but this is not, and must not be a prerequisite.
>
> **What our Constitution requires** is not that we automatically establish a broader protection than the federal protection, but that we establish **a protection grounded on the principles embodied in our own Bill of Rights.** *If the reasoning laid down in the caselaw of other jurisdictions persuades us, it is perfectly appropriate to adopt the same.*[47]

In this context, Article II, Section [1]9 of our Constitution prescribes that:

> The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy.

Nevertheless, it is important to clarify that what is established in Section [1]9 is only possible insofar as the Constitution itself provides the space in which to do so, as this Court is but an interpreter and not a creator.[48] Hence, we—not only this Court, but also the Legislative Assembly—are barred from broadening rights that, from the beginning, our framers clearly did not wish to extend.

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[46] 142 DPR 422 [42 PR Offic. Trans. 39] (1997) (Negrón García, J., dissenting).

[47] Pueblo v. Díaz, Bonano, 176 DPR, at 624 [76 PR Offic. Trans. 37 at ___].

[48] Pueblo v. Rivera Surita, 202 DPR 800, 812 [102 PR Offic. Trans. 44, ___] (2019) (citing Clínica Juliá v. Sec. de Hacienda, 76 DPR 509, 521 [76 PRR 476, 487] (1954)).

In conclusion, through the application of *Ramos* in *Torres Rivera [II]*, a *guilty* verdict rendered by a jury must be unanimous to avoid a violation of the Sixth Amendment to the Constitution of the United States. **However, in the sphere of our Supreme Law, *not-guilty* verdicts have to keep the same proportion of jurors to render a verdict so as to avoid infringing Article II, Section 11 of the Constitution of Puerto Rico.**

With this analysis, it is abundantly clear that *Ramos* invalidated the constitutional text that establishes the "verdict by a majority vote which in no case may be less than nine," and only the intention of proportional equality or symmetry regarding the types of verdicts is salvaged.

III

The Court of First Instance allowed the members of the jury to be instructed that to return a *guilty* verdict, the vote must be unanimous, but that, in contrast, a *not-guilty* verdict may be reached by a majority of nine jurors. We reason that it is not proper to impart that instruction on the jury. Thus, we conclude that the courts a quo erred in permitting this. Let us see.

Although *Ramos* was most certainly circumscribed to non-unanimous *guilty* verdicts, we have no doubt that this decision overturned our constitutional clause. **This is so insofar as our founding fathers established the same deciding proportion for both *guilty* and *not-guilty* verdicts**. To put it another way, at no time did the

delegates to Constitutional Assembly separate or distinguish the results of jury deliberations.

As we have seen, our constitutional clause does not distinguish between *guilty* and *not-guilty* verdicts, it only prescribes "verdict by a majority." It is unreasonable to believe that this was due to ignorance or a lack of awareness on the part of the drafters of our Constitution. Note that, according to the Constitutional Assembly, the Legislature was empowered to increase the number of jurors required to render a verdict up to unanimity, **but it did not authorize it to make distinctions in the deciding proportion of verdicts.**

In short, through its ruling in *Ramos*, the federal Supreme Court extended a protection that is binding for the states and for Puerto Rico regarding convictions. Nevertheless, and as the wording of our constitutional clause does not allow for the existence of disproportionality in verdicts, the binding nature of the verdict *to convict* in *Ramos* established for the benefit of the defendant also binds us, in our jurisdiction, to the unanimity of verdicts *to acquit*.

Prior to *Ramos*, a vote of less than nine jurors to find a defendant guilty was not sufficient to obtain a conviction and would result in the dissolution of the jury without having reached a verdict, or what is known as a hung jury. In other words, the outcome was a hung jury because the number of votes required for the jury to reach

a verdict had not been obtained. That principle remains unaltered. The only thing that does change is the number of votes required to render a verdict. Now, a non-unanimous vote is insufficient. Unless the twelve jurors agree, the number of votes required to return a verdict cannot be obtained. The outcome is still the same: a hung jury. In cases where the jury cannot reach a unanimous verdict, the proceedings do not necessarily come to an end, but rather the defendant may be tried a second time. We reiterate that, as is the case around the Nation, at the state and federal level, this does not place on defendants the burden of proving their innocence.

Finally, as we find that it is completely meritless, we reject the position that to require unanimity for verdicts *to acquit* would transfer onto the defendant the burden of proof or would subvert the presumption of innocence. At the federal level, the unanimity requirement operates both for *guilty* verdicts as well as for *acquittals*, leaving the presumption of innocence untouched and the burden of proof on the State.[49] To conclude otherwise would have the effect of conferring upon the presumption of innocence a scope that it simply does not have in federal

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[49] In this regard, contrary to the ruling of the Court of Appeals, the reality is that the burden of proof in a criminal proceeding is not transferred to the defendant by requiring a unanimous verdict. As established in our current legal framework, the People of Puerto Rico continue to have the burden of proving the charges filed beyond a reasonable doubt since the defendant is presumed innocent. At the federal level, where the requirement of unanimity required in *Ramos* has traditionally prevailed, this constitutional precept operates in two directions: *guilty* or *not guilty*, without requiring defendants to prove their innocence and without affecting this presumption.

jurisdiction, which is the source from which we adopted our own presumption of innocence.

IV

For the foregoing reasons, and without further proceeding pursuant to our Supreme Court Rule 50, we vacate the Judgment of the Court of Appeals and remand the case to the Court of First Instance for further proceedings consistent with this decision.

Judgment will be rendered accordingly.

Erick V. Kolthoff Caraballo
Associate Justice

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico

Petitioner

AC-2021-0086

v.

Nelson Daniel Centeno

Respondent

JUDGMENT

San Juan, Puerto Rico, September 9, 2021.

For the reasons stated in the foregoing Opinion, which is made an integral part of this judgment, and without further proceeding pursuant to our Supreme Court Rule 50, 4 LPRA App. XXI-B, we vacate the *Judgment* of the Court of Appeals and remand the case to the Court of First Instance for further proceedings consistent with this Opinion.

It was so decreed and ordered by the Court and certified by the Deputy Clerk of the Supreme Court. Justice Estrella Martínez issued a dissenting opinion. Justice Colón Pérez issued a dissenting opinion. Chief Justice Oronoz Rodriguez took no part in this decision.

Bettina Zeno González
Deputy Clerk of the Supreme Court

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	AC-2021-0086	Certiorari

JUSTICE ESTRELLA MARTÍNEZ, dissenting.

San Juan, Puerto Rico, September 9, 2021.

It is not difficult to argue that in Puerto Rico verdicts to acquit by a vote or nine or more are valid. On the one hand, our Constitution explicitly provides so: a jury shall be composed of "twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine" (Art. II, § 11). This is codified in Criminal Procedure Rule 112. *Ramos* only addressed the matter of verdicts to convict. Accordingly, a unanimous verdict to convict is required pursuant to *Ramos* and *Torres Rivera*. However, since *Ramos* is circumscribed to the constitutional right of the accused to a unanimous verdict to convict, there is no federal rule barring the enforcement of the provision that authorizes a verdict to acquit by a vote of nine or more, which is part of the Bill of Rights of the Puerto Rico Constitution. To posit that *Ramos* applies to all manner of verdicts, one would have to weave a rather tight argument to sustain

> that, after *Ramos*, the Sixth Amendment's trial-by-jury clause is an indivisible whole, and cannot be divided into parts, that demands unanimity for all manner of verdicts. The problem is that the incorporation doctrine is conceived to expand on the rights of the accused recognized under state law, not to abridge them. Which is to say, the Puerto Rico Constitution recognizes the right of the accused to be acquitted by a vote of nine or more. It is difficult to argue that the effect of *Ramos* is to take away this right from the accused.
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> Paper by Prof. Ernesto L. Chiesa Aponte, Aug. 27, 2021, *Análisis del Término 2020-2021 de Derecho Procesal Penal*, UPR School of Law, at 46.

The US Supreme Court opened the door to recognize greater guaranties for citizens in the matter of guilty verdicts, and it was left open for state courts to construe their respective constitutions on the issue of acquittals by a majority vote. So did the Oregon Supreme Court, being proactive in the defense of individual guarantees afforded to the citizens by validating a not-guilty verdict returned by a majority [of the jury]. Unfortunately, today a majority of this Supreme Court of Puerto Rico has opted to close this door.

On the contrary, this Court should have applied a harmonious reading of the autochthonous protections afforded by the Constitution of Puerto Rico together with the individual rights recognized and laid down in Ramos v. Louisiana, *infra*. By not doing so, a majority of this Court adopts a restrictive approach to individual liberties and

imposes a unanimity requirement for verdicts to **acquit**. This result is incompatible with the most basic pillars of our Penal Law and ignores other constitutional protections.

As I believe that Ramos v. Louisiana, *infra*, does not require that a jury return a unanimous verdict to acquit and, in addition, that such a requirement is in keeping with the homegrown guarantees of our constitution, I dissent from the course of action taken by a majority of this Court, and I endeavor to set forth my reasons below.

I

Several charges are pending against Mr. Nelson Daniel Centeno. As part of the proceedings before the court, the process of jury selection began on February 25, 2020. Such process was interrupted by the judicial measures adopted due to the Covid-19 pandemic. Meanwhile, on April 20, 2020 the Supreme Court of the United States issued its decision in the case of Ramos v. Louisiana, 590 US ___ [, 140 S.Ct. 1390] (2020), whereby it ruled that a unanimous **guilty** verdict is an essential feature of the constitutional right to an impartial jury and, pursuant to the right of due process of law under the Fourteenth Amendment, the states are compelled to apply it.

Consequently, within the criminal proceeding against Centeno, the State moved the court to instruct the jury specifically that the verdict must be unanimous, whether to convict or to acquit the defendant. In opposition, Centeno argued that the jury unanimity requirement only applied to

guilty verdicts but not to not-guilty verdicts, which are valid when returned by a majority.

After examining both positions, the Court of First Instance correctly ruled that it was not in order to grant the State's request. The trial court reasoned that adopting a unanimity requirement for not-guilty verdicts would infringe on the presumption of innocence that protects all persons accused of a crime and, moreover, would be contrary to Ramos v. Louisiana. Thus, it held that a valid not-guilty verdict only required a majority vote of not less than nine jurors.

In disagreement, the State, this time through the Solicitor General, sought review with the Court of Appeals, arguing that the trial court's decision distanced itself from the unanimity requirement laid down in Ramos v. Louisiana. The State added that such a requirement seeks to protect minorities in their role as jurors.

In his Brief in Opposition, Centeno argued that Ramos v. Louisiana only applied to guilty verdicts, and thus our legal framework with regards to a not-guilty verdicts by a majority vote was still in force.

Ultimately, the Court of Appeals issued the writ of certiorari filed with that court and affirmed the trial court's decision. First, it clarified that the holding in Ramos v. Louisiana, adopted by this Court in Pueblo v. Torres Rivera II, 204 DPR 288 [104 PR Offic. Trans. 22] (2020), only applied to guilty verdicts and it did not lie

to extend its application by analogy to not-guilty verdicts. It further emphasized that our criminal justice system authorizes verdicts rendered by a majority to acquit a defendant, without violating the rule laid down by the federal Supreme Court. The appellate court added that such a construction was more in line with our Constitution and with the authority to afford greater protections to defendants in our courts that that which is provided in the federal sphere.[50]

Aggrieved, the State filed a petition for appeal with this Court, which we agreed to hear and issued as a writ of certiorari.

Unlike the position of the majority of this Court, I am of the opinion that this controversy provides us with a perfect opportunity to recognize, specify, and lay down that the constitutional requirement of jury unanimity set forth in Ramos v. Louisiana is limited to guilty verdicts and not to acquittals. This Court, however, adopted a construction that is incompatible with the federal court ruling and with our constitutional framework. Let us see.

II

The Sixth Amendment to the United States Constitution expressly recognizes the right of the accused to an impartial jury. US Const., amend. VI, LPRA tit. 1.[51] The

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[50] Judge Rodríguez Casillas issued a separate concurring vote.

[51] It specifically provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been

Constitution of Puerto Rico also recognizes that right. In what is relevant here, Article II, Section 11 of the Constitution of Puerto Rico provides that:

> In all prosecutions for a felony the accused shall have the right of trial **by an impartial jury** composed of twelve residents of the district, **who may render their verdict by a majority vote which in no case may be less than nine.**

PR Const., art. II § 11, LPRA tit. 1. (Emphasis added.)

This provision was also codified in the Rules of Criminal Procedure , 34 LPRA Ap. II. Specifically, Rule 112 provides that "[j]uries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes." In addition, Criminal Procedure Rule 151 provides that:

> When a verdict is rendered, the jury may be polled at the request of either party or on the court's own motion. If as the result of this poll, it is determined that the verdict was not rendered by at least nine (9) jurors, the jury must be sent out for further deliberation or it may be discharged.

Even through in the federal jurisdiction and in many states the vote by a jury must be unanimous in order to convict, this was not deemed to be a fundamental right applicable to the states and territories because in our

committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e."

jurisdiction,[52] as in Louisiana and Oregon, verdicts returned by a majority of the jury are permissible.[53]

Last year, however, the constitutional Criminal Law landscape changed dramatically with the arrival of Ramos v. Louisiana. The crux of the issue in this case was born precisely from state laws that allowed a jury to return a nonunanimous verdict to convict a defendant in a criminal prosecution.[54] When the US Supreme Court made its pronouncements on the matter Louisiana[55] and Oregon allowed for convictions based on verdicts by a vote of 10 to 2.[56] This is similar to Puerto Rico, where a majority vote of 9 to 3 is valid.

Consequently, the petitioner in Ramos v. Louisiana was found guilty by a jury with a divided verdict of 10 to 2 and sentenced to life in prison without the possibility of

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[52] See, Pueblo v. Casellas Toro, 197 DPR 1003 [97 PR Offic. Trans. 52] (2017). In this case, this Court stated that, given that the US Supreme Court declined to recognize at that time the jury unanimity requirement as a fundamental right and absent such requirement in our legal system, "the constitutional validity of verdicts rendered by a majority of nine or more jurors in our courts is firmly established." Id. at 1019 [97 PR Offic. Trans. 52, at __]. Until early last year, "[i]t seemed as if the position adopted by our Supreme Court was correct and well grounded. On April 20, 2020, however, the Supreme Court of the United States decided a case that forced our Supreme Court to change course. This case was Ramos v. Louisiana." José A. Alicea Matías, Los derechos de confrontación y juicio por jurado en tiempos de pandemia, 60 Rev. Der PR 1, 19 (2020).

[53] See, Apodaca v. Oregon, 406 US 404 (1972); Johnson v. Louisiana, 406 US 356 (1972).

[54] K. Stanchi, The Rhetoric of Racism in the United States Supreme Court, 62 B.C. L. Rev. 1251, 1272 (2021).

[55] It is worth noting that "Louisiana voted to eliminate nonunanimous jury convictions for felony cases after 2019, leaving Oregon as the only state to retain them." Sixth Amendment-Right to Jury Trial-Nonunanimous Juries-Ramos v. Louisiana, 134 Harv. L. Rev. 520 (2020).

[56] R.C. Chandler, R.A. Enslen and P.G. Renstrom, Constitutional Law Deskbook: Jury unanimity § 5:10 (Suppl. 2021).

parole. As part of his defense on appeal, the petitioner questioned the constitutionality of a nonunanimous verdict, as permitted under Louisiana state law.

Insofar as it concerns us here, the Supreme Court of the United States unequivocally defined the controversy at bar as such: "[w]e took this case to decide whether 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." (Emphasis added.)[57] With this in mind, it concluded that "a jury must reach a unanimous verdict in order **to convict**"[58] and that "if the Sixth Amendment's right to a jury trial **requires a unanimous verdict to support a conviction** in federal court, it requires no less in state court." (Emphasis added.)[59]

In other words, the US Supreme Court held that jury unanimity for convictions was an essential feature of the constitutional right to an impartial jury, and therefore such requirement was applicable to the states through the Fourteenth Amendment due process of law guarantee. Thus, it was categorically declared that "unanimity was clearly necessary for state criminal convictions."[60] In doing so, a

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[57] Ramos v. Louisiana, [590 US __, 140 S.Ct. 1390,] 1394 [(2020)].

[58] Id. at 1395.

[59] Id. at 1397.

[60] Sixth Amendment-Right to Jury Trial-Nonunanimous Juries-Ramos v. Louisiana, *supra*, at 522.

unanimous verdict in order to convict a criminal defendant was elevated to a fundamental right.

> Writing for a majority in some sections and a plurality in others, Justice Gorsuch **ruled that the Sixth Amendment requires conviction by a unanimous jury and that this right is incorporated against the states**. The Sixth Amendment promises a trial "by an impartial jury" but contains no further textual detail. To discern its requirements, Justice Gorsuch looked to English common law history, state practices in the Founding era, and opinions and treatises written soon after the Founding. **All sources confirmed that a jury must reach a unanimous verdict to convict a criminal defendant of a felony.** And while the version of the Sixth Amendment that was ultimately ratified did not explicitly guarantee unanimity, Justice Gorsuch argued that the omission could just as likely demonstrate lawmakers' attempt to avoid surplusage as it did the desire to abandon a well-established common law right.[61]

(Emphasis added.)

It is clear, thus, that the ruling in Ramos v. Louisiana extends only to unanimous verdicts by a jury to convict a criminal defendant. There is nothing in this decision that refers to, or may be construed as referring to, jury verdicts to acquit a defendant.

In fact, in Pueblo v. Torres Rivera II, this Court recognized that jury unanimity was necessary to render a criminal conviction valid and, accordingly, applied this constitutional requirement for the first time in our jurisdiction. As in Ramos v. Louisiana, we defined the question to be resolved as follows:

> Specifically, we must decide whether, in view of this opinion, **a defendant convicted in our jurisdiction based on a nonunanimous verdict** violates the inherent procedural safeguards of the fundamental right to

[61] Id. at 521-22.

> trial by jury protected by the Sixth Amendment of the Constitution of the United States.[62]

(Emphasis added.)

Similarly, we emphasized that the reasoning in Ramos v. Louisiana laid down "how the requirement of a unanimous verdict constitutes a fundamental procedural protection for all those accused of a felony."[63] Consequently, we concluded that "this federal ruling institutes the unanimity of the jury as a substantive requisite **for obtaining a criminal conviction**." (Emphasis added.)[64]

The parameters set forth in Ramos v. Louisiana are so evident that, as a question of law, when faced with a controversy similar to the one before us today, the Oregon Supreme Court flatly declined to extend them to verdicts by a jury to acquit a criminal defendant. In State v. Ross, 367 Or. 560 (2021), a state [trial] court ruled in favor of instructing the jury that it must return a unanimous verdict, whether to acquit or to convict, in light of Ramos v. Louisiana.

The Oregon Supreme Court rejected this interpretation and held that "Ramos does not imply that the Sixth Amendment prohibits acquittals based on nonunanimous verdicts or that any other constitutional provision bars Oregon courts from accepting such acquittals."[65] This is because the

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62 Pueblo v. Torres Rivera II, [204 DPR 288,] 291 [104 PR Offic. Trans. 22, 3] [(2020)].

63 Id. at 300 [104 PR Offic. Trans. 22, at 7].

64 Id. at 301 [104 PR Offic. Trans. 22, at 7].

65 State v. Ross, [367 Or. 560,] 573 [(2021)].

discriminatory history of those provisions permitting nonunanimous verdicts by a jury was, ultimately, not the principal grounds for the federal Supreme Court's decision, but rather criticisms of the precedent set forth in Apodaca v. Oregon, [406 US 404 (1972)]. Instead, the unconstitutionality lies in that such provisions cannot be reconciled with the federal requirement that jury verdicts must be unanimous to obtain a conviction. Therefore, an inverse reasoning as to the possible discriminatory effects on the use of nonunanimous not-guilty verdicts was improper grounds for requiring unanimity in such cases.

In sum, a detailed analysis of Ramos v. Louisiana allows for only one conclusion, which was that which the Oregon Supreme Court reached. "Oregon law, in conformance with the Sixth Amendment, requires a unanimous guilty verdict for all criminal charges and permits a not-guilty verdict by a vote of eleven to one or a vote of ten to two".[66] Simply put, "[g]uilty verdicts must be unanimous, which means that each and every juror must agree on a guilty verdict. But not-guilty verdicts may be nonunanimous. At least 10 jurors must agree on a not-guilty verdict. If you are divided nine to three, for example, you do not have a not-guilty verdict."[67]

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[66] "Oregon law requires unanimous guilty verdict for all criminal charges and permits not-guilty verdict by a vote of 11 to 1 or vote of 10 to 2," West's Criminal Law News NL48, vol. 38, no. 7 (2021).

[67] Oregon Uniform Criminal Jury Instructions: Verdict—Felony Case, UCrJI No. 1015.

III

The summary of the applicable law set forth above clearly reveals the confines of Ramos v. Louisiana as to whether jury unanimity is a requirement for guilty verdicts as a fundamental right opposable to the states. To such ends, the US Supreme Court issued a decision in which it held that it affirmatively was, strictly adhering to the context of a guilty verdict returned by a jury, as provided by the current constitutional framework.

And it cannot be any other way since the right to an impartial jury under the Sixth Amendment to the United States Constitution strictly protects the **accused.** Therefore, raising this protection to the stature of a fundamental right only serves to favor criminal defendants and buttress the constitutional safeguards that apply to criminal prosecutions by the State against them. In fact, so held this Court in Pueblo v. Torres Rivera II, 204 DPR, at 306 [104 PR Offic. Trans. 22, at 10] when we stated that "[a] reading of the opinion of the United States Supreme Court in Ramos v. Louisiana shows that unanimity constitutes **an additional essential procedural protection** that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution." (Emphasis added.)

Thus, on the basis that Ramos is **not** extensible to not-guilty verdicts, Prof. Julio E. Fontanet Maldonado explains the following:

> Whoever has doubts about this must ask themselves whether, in light of the Sixth Amendment and the ruling in Ramos, it would be unconstitutional for a state to have a provision of the constitution or even a statute establishing a majority vote for not-guilty verdicts. It is evident that the answer is no. It can be no other way. The opposite would be to affirm that **"the government" has a fundamental right under the Sixth Amendment to demand unanimity. This is contrary to the basic notions of US Constitutional Law, which provides that fundamental rights are guarantees in favor of the accused that are opposable to the state, and not the other way around.**[68]

(Emphasis added.)

It is precisely the need to protect the integrity of the process while safeguarding the rights of the accused that precludes an interpretation that a not-guilty verdict must be unanimous. Let us see.

As the US Supreme Court identified the discriminatory origins of statutes such as the ones at issue in Ramos v. Louisiana, so I reviewed in my separate dissenting vote in Pueblo v. Alers De Jesús, 2021 TSPR 56, how the issue of a majority verdict in Puerto Rico has its roots discrimination on the basis of political ideology. The motivation was simple, to enable guilty verdicts against leaders and members of the Independence movement at the time. This strategy, directed to ensure convictions, clearly operated against the accused, placing them at a disadvantage in a process where they already were the weaker party. Thus, the undeniable effect of requiring jury unanimity to convict is to protect the accused from such schemes.

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[68] Julio Fontanet Maldonado, "La unanimidad y los condenados erróneamente," in Punto de Vista, El Nuevo Día 43 (Sept. 2, 2021).

The fact that a majority vote as provided in our Constitution does not favor the accused in the context of a conviction does not mean, however, that it is not favorable in the context of an acquittal. Any interpretation to the contrary, however consistently applied, defies logic and leads to an undue automatic response that takes no notice of the harmonious interpretation of the other constitutional safeguards. First, because a majority vote to acquit provides broader protection, favorable to the accused, who would not have to be subjected to a new criminal proceeding against them in the courts if a unanimous not-guilty verdict is not returned.

Second, this in turn is in keeping with our Constitution's more comprehensive vision regarding individual guarantees. **We cannot forget that the rights enshrined in the Constitution belong to the accused, and not to the State nor to the jurors.** Although the criminal judicial system recognizes and upholds the significance of each juror's vote, we are barred from construing our legal system so as to through a cloak of absolute protection over such votes at the expense of the guarantees and rights of those subject to a criminal prosecution. Moreover, as stated before, fundamental rights are not recognized to protect the State, but rather to protect the people against the State.

Therefore, even though the majority vote was introduced in our jurisdiction for both convictions and

acquittals, the discriminatory reasons that breathed life into such provisions are seen in the intent to circumvent the rights of the accused to ensure their conviction, and not their acquittal. Accordingly, to recognize the effectiveness and legality of that constitutional clause in the context of acquittals runs counter to the nefarious intentions that once served as basis for its inception since undoubtedly, perpetuating the majority vote for acquittals benefits the accused.

It is my opinion that such an interpretation is perfectly congruous with the basic principle of the presumption of innocence and the standard of proof in criminal proceedings that allows for a conviction only where a jury is convinced of the defendant's guilt beyond a reasonable doubt.

As we know, the first sentence in Section 11 of our Constitution's Bill of Rights[69] recognizes that the accused shall enjoy the right to be presumed innocent.[70] This clause,

[69] As a question of law, the United States Constitution does not have an express provision analogous to ours. In our constitutional system "the 'broader scope' expresses itself through the unequivocal incorporation of the presumption of innocence in our Bill of Rights." Ernesto L. Chiesa, Los derechos de los acusados y la factura más ancha, 65 Rev. Jur. UPR 83, 104 (1996).

[70] In his most recent publication, Prof. Farinacci Fernós states that, as opposed to the other rights recognized in this constitutional provision, the presumption of innocence "does not directly appear in the Sixth Amendment to the federal Constitution," but rather, citing the Bill of Rights Committee, reminds us that it is a legal standard previously laid down and adopted through the decisions of our courts. Jorge Farinacci Fernós, La Carta de Derechos 201 [Ed. UIPR] (2021).

whose "prescriptive power is substantial because it is a fundamental right,"[71] also seeks to:

> [C]learly provide that it falls to the prosecution to prove, with admissible evidence, the defendant's guilt beyond any reasonable doubt. Accordingly, the person's innocence is the starting point for every criminal proceeding, until the state proves otherwise, thus defeating the presumption. As expressed in the debates during the Constitutional Convention: "The most important presumption we know under the American judicial system is the presumption of innocence."
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> The **aim** of this clause is to **discharge the full burden of proof as to the defendant's guilty on the prosecution** and overrule any legal provision that is contrary to this important principle.[72]

(Some emphasis added.)

Which is to say, the legal consequences of the right to be presumed innocent are: (1) "[t]he accused is not compelled to bring evidence in their defense, as they may rest on the presumption of innocence, the effect of which is to place the burden of bringing evidence and persuading on the People," and (2) "[t]he prosecution must prove the defendant's guilt beyond a reasonable doubt; this standard of proof is required to defeat the presumption of innocence."[73] Consequently, as provided under Criminal Procedure Rule 110 (34 LPRA Ap. II): "[I]n every criminal prosecution a defendant is presumed innocent until the contrary is proved, and in case of a reasonable doubt as to his guilt he shall be acquitted". In other words, if the

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[71] Id. at 202.

[72] Id.

[73] Chiesa, supra, at 104.

State does not meet its burden of proof, the presumption of innocence prevails, and it lies to acquit the defendant.

In view of the direct link between the presumption of innocence and the State's duty to defeat this presumption with evidence of guilt beyond a reasonable doubt, why then should entire jury be convinced of the absence of guilt since this presumption already exists and it falls to the State to defeat it? Of course, if a unanimous guilty verdict is not obtained, logic dictates that the State failed to prove guilt beyond a reasonable doubt and, accordingly, the presumption of innocence prevailed, the effect of which is to acquit [the defendant] of all criminal charges. Hence, failure to convince the entire jury as to guilt necessarily implies that the not-guilty status is sustained, which requires an acquittal on all charges filed.

Through its petition before this Court, the State invites us to reshape the cornerstone of our criminal law system by imposing on every juror the requirement of being convinced of the absence of guilt—which is already presumed—while at the same time, being convinced of the existence of guilt. Moreover, the burden of proving innocence is forced upon the defendant under the same standard required of the State to prove guilt. This has the parallel effect of lessening the prosecution's evidentiary burden and dodging a not-guilty verdict. Such pretense is impermissible and destabilizes the very bedrock of our criminal law system.

Furthermore, if, for the sake of argument, we were to accept the erroneous conjecture that there is ground for such a conclusion, as we know, the parameters of a federal constitutional right merely describes the minimum ambit of such a right.

Therefore, the Supreme Court of a state, including Puerto Rico, has the authority to construe, pursuant to its own Constitution, that the right encompasses a greater scope of protection, which may lead to a more comprehensive guarantee than what is provided under the federal Constitution. Pueblo v. Díaz, Bonano, 176 DPR 601, 621 [76 PR Offic. Trans. 37, __] (2009). Thus, the scope of a federal caselaw standard, as it pertains to Puerto Rico, represents the minimum that the courts on our island are required to apply.[74]

By supplying only the minimum content, the US Supreme Court is not privy to the constitutional and statutory tenets of our legal system, which allow us to expand such guarantees and interpret the minimum content.[75] Moreover, in what pertains to this specific controversy, we must closely consider that, "[e]ven though there is a similarity between the phrasing of [the] second sentence of Section 11 and the Sixth Amendment, the specific wording is homegrown."[76]

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[74] Ernesto L. Chiesa Aponte, 1 Derecho procesal penal de Puerto Rico y Estados Unidos 39, Ed. Forum (1991)

[75] See, Pueblo v. Ferrer Maldonado, 201 DPR 974 [101 PR Offic. Trans. 64] (2019) (Estrella Martínez, J., dissenting).

[76] Farinacci Fernós, supra, at 205.

Sure enough, federal law requires jury unanimity both to convict and to acquit. Nevertheless, under the minimum content rule, we are only compelled to recognize unanimity to convict a defendant of a felony. This is to say that, given that to maintain the custom of accepting acquittals by a majority vote signifies a broader protection of the constitutional rights of the accused, the systems permits us to keep it. Conversely, adopting the unanimity requirement for not-guilty verdicts would not operate in favor of the accused, but rather it would abridge the protections that our criminal law tradition already bestows.

Therefore, considering our authority to expand the minimum content provided by the Supreme Court of the United States, I maintain that the jury unanimity requirement should not be extended to acquittals. Quite the contrary, to recognize the legality and validity of a not-guilty verdict by a majority vote would accentuate and amplify the constitutional guarantees and rights of the accused in our jurisdiction. Simply put, we should have recognized more, not less.[77] Wherefore, the more judicious conclusion is to hold that, given that the states may confer greater rights than the minimum afforded under the federal Constitution, verdicts by a majority vote are permissible where they seek to provide guarantees favorable to the accused. Unfortunately, a majority of this Court uses the **additional**

[77] See, Pueblo v. Alers De Jesús, 2021 TSPR 56, at 17 (Estrella Martínez, J., dissenting).

protections recognized by the US Supreme Court incorrectly to restrict, paradoxically, the basic guarantees contained in the Constitution of Puerto Rico in the context of acquittals.

Furthermore, it is worth noting that the jury unanimity requirement to convict, which is an essential feature of the right to trial by jury enshrined in the Sixth Amendment to the US Constitution, as recognized in Ramos v. Louisiana, was extended to the states through the Fourteenth Amendment,[78] that is to say, through the incorporation doctrine. This concept is defined as the constitutional principle through which the protections granted in the Bill of Rights of the Constitution of the United States were made applicable to the states through the Due Process Clause of the Fourteenth Amendment.[79] Prior to the Fourteenth Amendment's existence, and, consequently, the existence of the incorporation doctrine, the Bill of Rights only applied to the federal government and to federal court cases.[80]

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[78] As a question of law, "the Court [has] incorporated the various provisions of the Sixth Amendment, finding for the most part that the Fourteenth Amendment's Due Process Clause guaranteed defendants in state courts the same fundamental procedural protections guaranteed by the Framers to defendants in federal courts." S. Chhablani, Disentangling the Sixth Amendment, 11 U. Pa. J. Const. L. 487, 494 (2009).

[79] "Since the adoption of the Fourteenth Amendment to the United States Constitution, there has been a continuing debate as to whether it incorporates the Bill of Rights guarantees of the first eight amendments. While the Supreme Court has rejected the theory of absolute incorporation, it has held that through the fourteenth amendment certain of the 'fundamental rights' of the first eight amendments place limitations upon state as well as federal exercise of power." D.G. Collins, The Incorporation Doctrine: Sixth Amendment Trial by Jury, 15 Howard L.J. 164 (1968).

[80] "The first eight amendments to the federal Constitution originally applied only to the federal government, and the possibility that the

Given that the incorporation doctrine serves to limit states' rights with respect to a citizen's civil rights and liberties,[81] and bearing in mind that Ramos v. Louisiana only ruled on jury unanimity for guilty verdicts, the argument positing the incorporation of jury unanimity for acquittals lacks merit. In view of the above discussion, it is counterintuitive that the Supreme Court of Puerto Rico should forcibly incorporate a restrictive aspect on the right to a jury trial that is incompatible with the minimum content of the federal guarantees, as set forth in Ramos v. Louisiana, in addition to the homegrown guarantees afforded by our Constitution; especially considering that the incorporation doctrine is rooted in the due process guarantee which, in turn, is intrinsically linked to the presumption of innocence.

Following this line of argumentation concerning our Constitution, we must not forget that our constitutional

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Fourteenth Amendment changed this structural principle was understood to have been rejected by the Supreme Court not long after the Amendment had been ratified. The so-called incorporation doctrine reversed that result and was by any measure one of the Warren Court's major legacies." J.Y. Stern, First Amendment Lochnerism & the Origins of the Incorporation Doctrine, 2020 U. Ill. L. Rev. 1501, 1503 (2020).

[81] In the sections concerning full incorporation, " 'to make secure against invasion by the states the fundamental liberties and safeguards set out in the Bill of Rights' was how Justice Black characterized the 'incorporationist' intentions of those in both houses of Congress who authored and sponsored the fourteenth amendment. . . . Contending that the first section of the fourteenth amendment literally embodied—or was shorthand for—the totality of the wording, content and the essential procedures to implement the specific guarantees of the first eight amendments, Justice Black held that the amendment circumscribed the state authority in precisely the same manner as the Bill of Rights constrained federal authority." Robert L. Cord, The Incorporation Doctrine and Procedural Due Process under the Fourteenth Amendment: An Overview, 1987 BYU L. Rev. 867, 875-876 (1987).

delegates explicitly rejected jury unanimity when drafting the Constitution, even though unanimity existed at the federal level. Therefore, the construction most consistent with our own Constitution is the one I have put forward here.

That is to say, a careful analysis of the controversy forces us to conclude that to require unanimity to acquit a defendant would be to quash the express provisions of our Constitution, which by no means clashes with the federal Supreme Court's decision or with this Court's holding in Pueblo v. Torres II.[82]

However, I find that the debates of the members of the Constitutional Convention have bearing on this matter.[83] During the discussions that led to the adoption of Article II, Section 11 of the Constitution of Puerto Rico, an amendment was being considered—but was ultimately defeated—to strike the phrase "who may render their verdict by a majority vote which in no case may be less than nine."[84] The purpose of this amendment to allow the Legislative Assembly to determine the number of [votes] for a jury to render a verdict. The amendment was debated as follows:

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[82] As Prof. Jorge Farinacci Fernós explains, the majority vote provided in our Constitution was superseded "in part" by Ramos v. Louisiana. "For all practical purposes, the Legislative Assembly was deprived of their authority to allow nonunanimous guilty verdicts." Farinacci Fernós, supra, at 208, n.495. Thus, even though he mentions that it is not completely clear whether the majority rule still applies to acquittals, he stresses in the following footnote that, according to Ramos v. Louisiana "it is a constitutional requirement that a verdict **to convict** be unanimous." Id. at 209, n.497. (Emphasis added.)

[83] 3 Diario de Sesiones de la Convención Constituyente [1588-1590] (1961).

[84] Id. at [1588].

> Mr. BENÍTEZ: As to Delegate Fonfrías's amendment, I would like to say that our fear is that, based on the case law that touches on the expression "trial by jury" in the common law, the concept of a "trial by jury" **means "trial by jury rendering a unanimous verdict."** If perchance the amendment proposed by Delegate Fonfrías were to proceed, it would take the matter even further out of the hands of this Legislative [Assembly] because, pursuant to this case law, it would unfailingly fix at twelve the number of jurors who must concur.
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> Mr. FONFRÍAS: My idea, Mr. Committee Chairman, is to leave the matter of the number [of votes] to render a verdict to the Legislative [Assembly] rather than setting it in the constitution. Or that it be determined now, that it be fixed, if so decided. The situation presented by Mr. Benítez would not come to pass. The Legislative [Assembly] may determine that it be nine, or by a majority of seven to five. . . .
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> Mr. BENÍTEZ: Precisely, Mr. Fonfrías. What I mean is that in that case we would be discussing a different amendment. The amendment would not be to strike what is provided here in that a verdict may be rendered by a majority vote which in no case may be less that nine, but rather something else. We would also oppose any modification in this regard on the belief a jury's verdict to convict must be by at least nine votes against the defendant, and no more. It must have at least nine votes against **or it must have nine votes in favor,** but a defendant must not be found guilty with a vote of less than three-fourths of the total number of jurors.
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> Mr. FONFRÍAS: If Mr. Committee Chairman thinks that the amendment is not in order, but rather another that differs from the one we have proposed-ours was that it be stricken completely and a period [be placed] after "district"—then an amendment to such ends for the Legislative [Assembly] to set the number of jurors to render the kind of verdict presented here. That might be the amendment, to not determine in the constitution the number of jurors—in this case, nine—to render a verdict. Nevertheless, the rest of the paragraph would still be stricken in its entirety, the provision we want stricken.[85]

(Emphasis added.)

As this debate develops, it is plain to see the interest in preventing the application of the historical

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[85] Id. at [1589].

equivalence between a trial by jury and a trial by jury rendering a unanimous verdict.[86] This is to say, the intention of the framers of our Constitution was clear: the system that governs our criminal law does not require a unanimous verdict. Considering the current state of our criminal law, the only cohesive and conciliatory interpretation is that it subsists in the context of acquittals.

In sum, it is evident that the part of our Constitution affected by Ramos v. Louisiana is limited to the majority vote to convict, while a majority vote to acquit is still valid. Any interpretation to the contrary would unduly suppress the letter of our Constitution. As we was, nothing in the law warrants such a deviation.

This Court must not construe our criminal law system bases on analogies, moreover when such an interpretation is in detriment to the guarantees that protect the accused. To this I must add that legal consequences for those who are subject to a criminal prosecution, who will have to endure a new trial since, in this scenario, even though the State did not manage to prove guilt beyond a reasonable doubt, the State is given another chance to try. Contrariwise, if an acquittal by a majority vote is permitted, the weaker party is protected from enduring, for a second time, all the tribulations of a criminal proceeding when, under the

[86] Chiesa, supra, at 439 n.10.

current law, he or she should have prevailed in the first place.

And so, I believe that the instructions to the jury should be that, to render a not-guilty verdict, it may be by a majority vote of not less than nine. Therefore, verdicts by a vote of 9 to 3, 10 to 2, and 11 to 1 are permissible for an acquittal. To render a guilty verdict, and only to render a guilty verdict, it must be unanimous. This conclusion operates in favor of justice and is a harmonious interpretation that recognizes **all** the constitutional guarantees that protect the people in these processes.

IV

As the Dean of the Inter American University School of Law, Prof. Julio Fontanet Maldonado, well advises:

> If there is consensus in Puerto Rico that a unanimous not-guilty verdict is desirable, the only option is to amend the Constitution, not to apply a distorted interpretation of Ramos or of the raison d'être behind the provisions of our Constitution. Sure enough, we would be the only country to amend its Constitution to take away rights.[87]

Today, a majority of this Court weaves a misguided and automated ruling that ascribes nonexistent effects to federal caselaw leading to a paradoxical application of the law. This is so because the US Supreme Court ruling is the polar opposite of the ruling issued by a majority of this Court, **insofar as it concerns an additional guarantee and**

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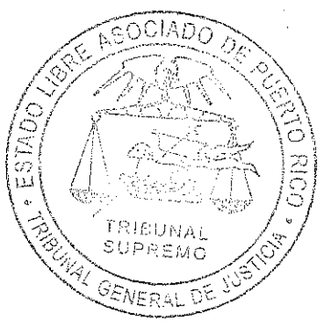
[87] J. Fontanet Maldonado, supra.

not a curtailing of the rights of the people who face a jury trial. Furthermore, the thread of the Puerto Rican constitutional scheme on the subject of indispensable individual guarantees is cut by setting aside the letter of the Puerto Rico Constitution and invalidating acquittals by majority vote. In light of such action, I DISSENT.

Luis F. Estrella Martínez
Associate Justice



People of Puerto Rico

Petitioner

v. AC-2021-0086 *Certiorari*

Nelson Daniel Centeno

Respondent

JUSTICE COLÓN PÉREZ, dissenting.

San Juan, Puerto Rico, September 9, 2021.

> The Constitution, of course, speaks only to what it takes to convict. Making it harder to convict is a standard part of constitutional criminal procedure doctrine, developed to ensure that innocent people avoid incarceration. But making it more difficult to acquit is no express part of any constitutional requirement and could, if taken to an extreme, violate the rights of an accused.[88]

Today, this Court, through an act that is far-removed from and that skews the history and plain text of our Highest Law, has amended *sub silentio* the Constitution of the Commonwealth of Puerto Rico and completely displaced the standard of verdicts by a

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[88] Sherry F. Colb, *Should Acquittals Require Unanimity*, Veredict.Justicia.com, Should Acquittals Require Unanimity? | Sherry F. Colb | Verdict | Legal Analysis and Commentary from Justia (last visited, Sept. 2, 2021). The author is a professor at Cornell Law School.

nine-vote majority in jury trials that has prevailed to date in our jurisdiction. Without any legal basis whatsoever, this Court concluded from a reading of *Ramos v. Louisiana*, [590 US ___, 140 S.Ct. 1390 (2020)], as well as a supposed rule of symmetry— presumably conceived by the delegates to our Constitutional Assembly—that the Puerto Rican criminal law framework requires unanimity for both guilty and not-guilty verdicts. Nothing could be farther from the truth; therefore, we emphatically dissent from the ruling of this Court.[89]

While it is true that the current state of the law in our jurisdiction demands that guilty verdicts in criminal proceedings be reached by the unanimous vote of the jury pursuant to the ruling in *Ramos v. Louisiana* and *Pueblo v. Torres Rivera [II]*, [204 DPR 288 [104 PR Offic. Trans. 22] (2020)], it is also true that not-guilty verdicts can be returned with the concurrence of at least nine of the twelve jurors, in accordance with the plain text of Article II, Section 11 of our Constitution, [LPRA tit. 1]. This is so, of course, until the People or the Legislative Assembly—and not this Court—provide otherwise as deemed necessary within the constitutional parameters. Let us see.

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[89] In doing so, we also distance ourselves from the unnecessarily fast-tracked process through which this Court has disposed of this controversy. This Court, motu proprio, activated the exceptional mechanism of Rule 50 of the Rules of this Court, 4 LPRA App. XXI-B, to not only hastily subvert the logic of the process, terms, and opportunities the parties ordinarily have to file their briefs, but also to shorten the time period that the Justices of this Court have to study the controversy and the record with the care and depth warranted.

I.

The core facts that gave rise to this litigation are not at issue. On January 9, 2016, the People of Puerto Rico filed several criminal complaints against Nelson Daniel Centeno who, after probable cause was found to arrest and try him for the offenses charged, opted to exercise his right to a trial by jury.

As the date scheduled for the conclusion of the trial—November 18, 2020—drew near, the Court of First Instance held a hearing to address the matter of the instructions that would be read to the jury. During said hearing, the People requested that the jury be instructed that the verdict they were to render, whether it was to find Centeno guilty or not guilty, should be unanimous. The People based their petition on the ruling of this Court in *Pueblo v. Torres Rivera* [*II*] through which the standard established by the Supreme Court of the United States in *Ramos v. Louisiana* was adopted.

Centeno's legal representative disagreed and opposed the People's proposed jury instruction. In doing so, Centeno's legal counsel argued in court that a not-guilty verdict in which at least nine of the twelve members of the jury concurred was valid in light of the provisions of our Constitution, the Rules of Criminal Procedure, and the applicable caselaw. To that end, the defense underscored

that the standard established in *Ramos* and in *Torres* was limited to requiring unanimity to convict.[90]

Having examined the parties' arguments, on December 7, 2020 the trial court issued a Resolution denying the People's motion for jury instruction. The court determined that, in light of the presumption of innocence and the rulings in *Ramos* and in *Torres*, in Puerto Rico a not-guilty verdict is valid where it has been issued by a majority of nine or more members of the jury. The People moved the trial court reconsider its decision, but that request was denied.

Dissatisfied with the ruling of the Court of First Instance, on January 4, 2021 the Solicitor General sought review with the Court of Appeals through a Petition for Certiorari. In his petition, the Solicitor General argued that the trial court erred in adopting the jury instruction as proposed by Centeno that a guilty verdict needed to be unanimous, but that for a not-guilty verdict, the concurrence of nine of the jurors sufficed. To summarize, he contended that, under the Sixth Amendment to the Constitution of the United States, [LPRA tit. 1], and the

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[90] Centeno also submitted a written motion to oppose the People's petition for jury instructions. Therein, he emphasized his arguments and proposed that the following instructions be imparted to the jury instead:

> In order for a not-guilty verdict to be valid, at least nine (9) of you must agree to it. The verdict to find the defendant not guilty shall state if the majority vote is 9 to 3, 10 to 2, 11 to 1, or if it is unanimous. In contrast, for a guilty verdict to be valid, it must be unanimous, that is, you must all be in agreement. The outcome of the voting shall be recorded by the Foreperson in the form provided by the Court.

See, Appendix to the Appeal, at 84.

ruling in *Ramos v. Louisiana* a verdict that does not meet the unanimity requirement, whether to convict or t acquit, is constitutionally invalid.

For his part, Centeno appeared before the intermediate appellate court through a Motion to Oppose. Therein, he insisted that *Ramos v. Louisiana* did not alter the requirement of a majority vote for reaching a not-guilty verdict, and that the standard prescribed in our Constitution and in the Rules of Criminal Procedure to that effect remained in force. Furthermore, he stressed that no constitutional or legislative amendment had been approved to change the provisions of the constitutional clause on not-guilty verdicts. Subsequently, Centeno also filed an Urgent Informative Motion through which he requested that the court take notice of the decision of the Oregon Supreme Court in *State v. Ross*, 367 Or. 560 (2021), where that court decided a similar controversy.[91]

Having analyzed the filings of both parties, on April 6, 2021 the Court of Appeals served notice of a Judgment through which it affirmed the ruling of the Court

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[91] The Oregon Supreme Court held that the law of that state, pursuant to the Sixth Amendment of the Constitution of the United States, [LPRA tit. 1], requires unanimity for guilty verdicts, while allowing not-guilty verdicts by a majority vote of 11 to 1 or 10 to 2. Specifically, the court concluded that:

> ***Ramos* does not imply that the Sixth Amendment prohibits acquittals based on nonunanimous verdicts or that any other constitutional provision bars Oregon courts from accepting such acquittals**. . . . The trial court erred in its determination that, in light of *Ramos*, the provisions of Oregon law permitting nonunanimous acquittals could not be applied.
>
> [367 Or. 560, 573]. (Emphasis added.)

of First Instance. It agreed that *Ramos v. Louisiana*, and *Pueblo v. Torres Rivera* [*II*] only addressed the question of whether the Sixth Amendment required a unanimous vote of the members of the jury to render a guilty verdict; thus, the court refused to expand the standard established in those cases. As a result, the intermediate appellate court ruled that to adopt the Solicitor General's proposal would "render the core provisions of the local legal framework ineffectual," since our own Constitution also allows for not-guilty verdicts of 9-3, 10-2, and 11-1, and that does not contravene the standard prescribed in *Ramos v. Louisiana*.[92]

The Court of Appeals further concluded that our Constitution is of a broader scope and that to accept the position of the State would also "have the effect of modifying our system of criminal justice to the point of imposing on the defendant the more onerous burden of having to prove their innocence and minimizing the burden of proof that the State must satisfy in criminal cases," which is clearly at odds with the presumption of innocence.[93] Finally, the intermediate appellate court specified that it was important to clarify the obvious, and therefore stated that **"in a criminal proceeding, the only thing that is adjudged is the guilt of the defendant and not their**

[92] Judgment of the Court of Appeals, delivered by the illustrious Hon. Gina Méndez Miró, at 11.

[93] *Id.* at 12.

innocence. Innocence is presumed at all times. It would make no sense to have to prove something that is presumed until it is defeated with evidence beyond a reasonable doubt."[94] The Solicitor General requested that the court reconsider its decision, but that request was denied.

Still not satisfied, the Solicitor General came before us through a petition for appeal. He argued that the Court of Appeals erred in affirming that the verdict to find the accused guilty must be unanimous, while, for a verdict of not guilty, it was sufficient to have the concurrence of at least nine of the twelve members of the jury.

As we have mentioned, a majority of this Court—after altering the terms and the procedure that is ordinarily followed in this type of litigation—erroneously opted to subscribe to the request of the Solicitor General.[95] We energetically dissent from this regrettable course of action. We explain below.

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[94] *Id.* at 14 (Some emphasis added).

[95] It is worth mentioning that the writ in above-captioned case was issued as a certiorari since that was the adequate mechanism. Now then, on June 19, 2021, a majority of this Court issued a Resolution through which it granted both parties to the litigation a period of thirty (30) days to simultaneously file their briefs. This, as we have stated, differs from the procedure through which these matters are ordinarily handled. Under these circumstances, and in compliance with orders, both the Solicitor General and Mr. Centeno filed their briefs, through which they reiterated the arguments brought before the lower courts. In this way, and citing Supreme Court Rule 50, 4 LPRA App. XXI-B, a majority disposed of the case at bar without further proceeding.

II.

A.

As is well-known, Article II, Section 11 of the Constitution of the Commonwealth of Puerto Rico provides that "[i]n all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine." PR Const. art. II, § 11, LPRA tit. 1.

That constitutional mandate was incorporated into Criminal Procedure Rule 112, 34 LPRA App. II, which reads as follows:

> RULE 112. - JURY; NUMBER OF JURORS; VERDICT
>
> Juries shall be of twelve (12) residents of the district, who shall render a verdict by the concurrence of not less than nine (9) votes.

This, however, has not always been so. Although, in our country, since the early 20th century, all persons accused of a felony—and some misdemeanors—have the right to be tried by an impartial jury, it was not until the latter part of the 1940s that the standard of a verdict by a majority of nine (9) votes was introduced. *Pueblo v. Casellas Toro*, 197 DPR 1003, 1021 [97 PR Offic. Trans. 52, ___] (2017) (Oronoz Rodríguez, C. J., concurring); *Pueblo v. Narváez Narváez*, 122 DPR 80, 84 [22 PR Offic. Trans. 74, 78] (1988); *Pueblo v. Laureano*, 115 DPR 4[4]7 [15 PR Offic. Trans. 589] (1984). Therefore, prior to stating our position regarding the case at bar, it is necessary to provide a

brief summary of the historical events that led to the institution of trial by jury in our jurisdiction.

B.

In explaining the genesis of the institution of a jury trial in Puerto Rico, the then-delegate to the Constitutional Assembly and former Chief Justice of this Court, José Trías Monge, remarks that "[t]he Foraker and Jones Acts [were] silent on trial by jury, but that it was established by legislation in 1901, limited to the prosecution of felony offenses." 3 José Trías Monge, *Historia Constitucional de Puerto Rico*, 194 (1982). It was then, following the approval by the United States Congress of a civil government for Puerto Rico, that a series of decrees—although very limited—began to be adopted to recognize certain rights to the inhabitants of the island before the State. *See*, José J. Álvarez, *La protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133, 135-138, 144-145 (1988).

In line with the above, on January 12, 1901 the Legislative Assembly of Puerto Rico enacted the Act to Establish Trial by Jury in Porto Rico, 1901 PR Laws 1-2. Through this law, local courts were vested with the jurisdiction to hear jury trials where an individual was accused of a crime for which the penalty was capital punishment or confinement for a period of two years or more in any penal institution on the island. *Id.*

Subsequently, on January 31, 1901, the Act Concerning Procedure in Jury Trials was approved. This statute organized the manner in which jury trials would operate in our jurisdiction. To that effect, the text provided that the term "jury" would mean "a body of men" that would consist of twelve persons "who must unanimously concur in any verdict rendered." 1901 PR Laws 112.

Moreover, on March 1, 1902 the Act to Establish a Code of Criminal Procedure for Porto Rico, [1902 PR Laws 621], was adopted. Section 185 of that piece of legislation read that "[a] jury shall consist of twelve men who must unanimously concur in any verdict rendered." [1902 PR Laws, at 661]. Henceforth, and for almost fifty years, that would be the standard that governed all matters related to trial by jury in our jurisdiction.

Then, on August 19, 1948, Law No. 11, known also as the Majority Verdict Act, was enacted. The purpose of this act was to amend Section 185 of the Code of Criminal Procedure to provide that "[i]n all cases in which, under the laws of Puerto Rico, a jury must render a verdict, said verdict shall be by the concurrence of not less than three-fourths (3/4) of the jury." [1948 PR Laws 212, 214].[96]

Later, and taking the above as a starting point, with the approval of our Constitution in 1952, the right to a

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[96] The records of both legislative chambers show that H.B. 2 and S.B. 76, which became Law No. 11, were approved without much debate. See, *Actas del Senado de Puerto Rico* and *Actas de la Cámara de Representante[s]* for February and July of 1948, respectively.

trial by jury, as well as the standard of a majority verdict of nine, was given to constitutional statute.[97] This standard, as we know, is presently in effect.

Regarding the scope of the above, we must point out that a reading of the debate amongst the delegates to the Constitutional Assembly makes clear that they were aware that in the common law—from which we initially adopted the trial by jury—required unanimity for guilty verdicts. Even so, the proposal that prevailed in that assembled body—which was the architect of our Constitution—was verdict by a majority of no less than nine votes, as was originally considered by the Bill of Rights Committee. In that regard, it is relevant to cite at length from the discussion on that matter as recorded in the Journal of Proceedings:

> Mr. FONFRÍAS: Mr. President and fellow delegates: An amendment: . . . Eliminate "who may render their verdict by a majority vote which in no case may be less than nine."
>
> The institution of the jury has already been enshrined in the constitution. **I believe that determining the number of jurors necessary to render a verdict must be a legislative act.** Currently, through legislation, they have been experimenting with verdicts rendered by a majority of nine. It is experimental. Up to this point, it is working. **We do not know whether this experiment will work out in the long run, and then we would be obliged to do what? To amend the constitution, which is much more difficult than any amendment made statutorily.**

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[97] In interpreting the constitutional provision on trial by jury and majority verdict, this Court has held that the practical reason behind changing the former standard of a unanimous verdict to a majority verdict of no less than nine was to "prevent having the isolated actions of a [single] juror thwart the unanimity of the verdict and quash the efforts and team work of the jury panel." *Pueblo v. Figueroa Rosa*, 112 DPR 154, 160 [12 PR Offic. Trans. 186, 194] (1982). However, Trías Monge revealed that the change was due more to "the increase in Puerto Rican nationalist activity arising from the return of Albizu[, which] motivated other limitations [to the right to trial by jury]." Trías Monge, *supra*.

. . . . . .

> Mr. FONFRÍAS: . . . **My amendment is to the effect that we eliminate everything that entails fixing in the constitution the number jurors needed to return a verdict. That should be left to the Legislative [Assembly]**. It may be that the Legislative [Assembly] considers that it should be by majority, it could be that the Legislative [Assembly] considers that the principle of verdicts by the twelve members of the jury should be retained. **As I see it, the process should be eminently legislative and not a matter for the constitution at this time.**
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> . . . . . .
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> Mr. BENÍTEZ: As to Delegate Fonfrías's amendment, I would like to say that **our fear is that, based on the case law that touches on the expression "trial by jury" in the common law, the concept of a "trial by jury" means "trial by jury rendering a unanimous verdict." If perchance the amendment proposed by Delegate Fonfrías were to proceed, it would take the matter even further out of the hands of this Legislative [Assembly] because, pursuant to this case law, it would unfailingly fix at twelve the number of jurors who must concur.**
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> . . . . . .
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> Mr. FONFRÍAS: The amendment would be as follows: On the same page, page 4, line 8, after "district," "who may render their verdict by a majority vote, as provided by law." That is the amendment.
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> . . . . . .
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> Mr. PRESIDENT: Mr. Fonfrías amendment will be submitted to a vote. All in favor say "aye"... Those opposed say "no"... **The amendment is defeated.**

3 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* 1588-1590 (1961).(Emphasis added.)

As we can see, with this vote, and as it pertains to trial by jury, the original proposal of the Bill of Rights Committee, presided by Delegate Jaime Benítez, was upheld in three aspects, to wit: 1) the right to trial by jury was given to constitutional statute; 2) the jury must render a verdict with the concurrence of no less than nine votes;

and 3) the Legislative Assembly may increase statutorily the number of votes required for a verdict, should it eventually deem it fitting to do so.

Regarding the last point, we must indicate that the Bill of Rights Committee Report addressed the concern of some members of the Constitutional Assembly regarding the formula for returning verdicts by the concurrence of no less than nine members of the jury. Specifically, the following was voiced:

> The text permanently fixes the number of jurors at twelve, as a response to the prevailing tradition in the country and the common law tradition. In contrast to that tradition, a verdict may be rendered by a majority vote, **the number of which will be determined by the legislative power**, but that shall not be less than nine. This is the system that is in effect by law. **We believe that the proposed formula will allow the Legislative [Assembly] to increase the margin of the majority up to unanimity, were it to deem it fitting in the future.**

4 *Diario de Sesiones de la Convención Constituyente de Puerto Rico*, Bill of Rights Committee Report 2570 (1961) (Emphasis added.)

Finally, and as it pertains to the matter under examination, it is also convenient to refer to the most recent publication by Professor Jorge Farinacci Fernós, *La Carta de Derechos*. Therein, through a certain analytical model,[98] Professor Farinacci Fernós explains that the **purpose** of Article II, Section 11 of our Constitution "is

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[98] The referenced model is organized into nine components: 1) text; 2) origin of the provision; 3) communicative content; 4) general prescriptive content; 5) normative structure; 6) nature; 7) operation; 8) semantic or normative link to other constitutional provisions; and 9) an integrated reformulation of law. For a more detailed explanation, we refer the reader to Chapter 2 of the book *La Carta de Derechos*. Jorge Farinacci Fernós, *La Carta de Derechos* 21-36, San Juan, Ed. UIPR (2021).

to interpose the democratic institution of the jury between the punitive power of the State and the accused." Jorge Farinacci Fernós, *La Carta de Derechos* 209, San Juan, Ed. UIPR (2021). Similarly, he remarks that the right to trial by jury, as it was drafted into the Constitution, has a **dual intention**: 1) to elevate that right to constitutional stature and 2) to distinguish ourselves from the common law tradition by ratifying the standard of a verdict by a majority vote as the legislative power may determine, which shall never be fewer than nine. *Id.* [at 209–210.] The distinguished professor adds that "the **objective** of this clause is to curb the power of the State to deprive a person of their liberty;" therefore, Section 11 of Article II—the Bill of Rights—is related to the right to liberty contained in Section 7 of that same article. *Id.* [at 210.]

Now then, having established that the rule of verdicts by a majority of nine or more has prevailed in Puerto Rico for more than half a century—a constitutional postulate that has been construed by this Court on numerous occasions[99]—is our duty to recognize that said precept was

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[99] See *Pueblo v. Casellas Toro*, 197 DPR 1003, 1019 [97 PR Offic. Trans. 52, __](2017) ("there is no doubt that in the courts of . . . Puerto Rico a guilty verdict is valid when, at least, nine members of the jury concur"); *Pueblo v. Báez Cintrón*, 102 DPR 30, 34 [2 PR Offic. Trans. 42, 47] (1974) ("we reiterate our position acknowledging autonomy to Puerto Rico within its political relationship with the United States to adopt that rule. We ratify once more the validity of verdicts by majority of 9 or more"); *Pueblo v. Batista Maldonado*, 100 PRR 935 (1972); *Fournier v. González*, 80 PRR 254, 258(1958) ("The peculiar development of the institution of trial by jury in the administration of our criminal justice was taken into account in the constitutional debates. The advantages and disadvantages of said institution were considered and only a limited

altered last year with the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, which was adopted by this Court in *Pueblo v. Torres Rivera* [*II*].

C.

Bearing the above in mind, and concerning the trial by jury in the United States, we must recall that the Sixth Amendment to the federal Constitution prescribes that:

> [I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defen[s]e.[100]

US Const. amend. VI, LPRA tit. 1.

Note that the federal Constitution, contrary to our own, does not explicitly incorporate a requirement as to the number of votes necessary to render a verdict. However, the Supreme Court of the United States has provided the contours of said protection through caselaw and historical construction.

In that regard, since *Duncan v. Louisiana*, 391 US 145 (1968), the highest federal court has held that the right to a trial by jury under the Sixth Amendment is a fundamental right that extends to the states through the Fourteenth Amendment. Having recognized this, the Court

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guarantee, which extends solely to the 'felonies' and which does not include the principle of unanimity, was adopted.")

[100] [Translator's note: This footnote quotes the original English text cited above.]

subsequently inquired into whether a unanimous vote, which historically had been required at the federal level, extended to state jury trials.

In *Apodaca v. Oregon*, 406 US 404 (1972), the Supreme Court of the United States considered whether a guilty verdict rendered by majority vote violated the fundamental right to a trial by jury under the Sixth Amendment.[101] The Court issued a plurality opinion in that case.

On the one hand, four US Supreme Court Justices agreed with the ruling that a unanimous vote was not a constitutional requirement, much as the composition of a jury of twelve members was also not a requirement. *Id.* at 406. On the other hand, four other federal Supreme Court Justices dissented, as they believed that the Sixth Amendment demanded a unanimous vote of the jury and that said requirement was applicable to the states by way of the Fourteenth Amendment.

Nevertheless, and as his concurring opinion was the deciding vote, Justice Powell indicated that the Sixth Amendment to the Constitution of the United States demanded unanimity in federal trials but not in state trials. *Id.* at 371-372 (Powell, J., concurring). *See also*, Ernesto L. Chiesa Aponte, *Procedimiento Criminal y la Constitución: etapa adjudicativa* 437-438, Puerto Rico, Ed. SITUM (2018).

[101] See also, *Johnson v. Louisiana*, 406 US 356 (1972), decided on the same date as *Apodaca v. Oregon*, 406 US 404 (1972).

As a result, this ruling laid down the standard that a unanimous verdict was not required for state jury trials.

The ruling in *Apodaca* was in force for about half a century. This is because, as recently as last year, the highest federal court was again faced with the question of whether the right to a trial by jury and the Sixth Amendment—which was extended to the states through the Fourteenth Amendment—allowed for non-unanimous guilty verdicts in criminal cases tried in state court.

Thus, in *Ramos v. Louisiana*, 590 US __ [, 140 S.Ct. 1390] (2020), following a careful and detailed historical analysis of the Sixth Amendment and the right to trial by jury guaranteed thereby, the Supreme Court of the United States overturned *Apodaca v. Oregon*. [*Ramos*, 140 S.Ct., at 1395–1397]. The Court based its decision on the fact that *Apodaca* ignored the historical background of the right to trial by an impartial jury,[102] as well as the racist and discriminatory origins of the statutes at issue, among other reasons. *Id.*, at [1394-1397].

As it pertains to the case at bar, the highest federal court concluded that, the text and structure of the federal

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[102] Regarding this historical understanding, the highest federal court recalled that the proposed text for the Sixth Amendment at one point stated that unanimity was required for a conviction. ("The trial of all crimes . . . shall be by an impartial jury of freeholders of the vicinage, with the **requisite of unanimity for conviction**, of the right of challenge, and other accustomed requisites.") 1 Annals of Cong. 435 (1789) (Emphasis added.)) However, that requirement was so plainly included in the right to a trial by an impartial jury that the senators at the time decided to eliminate it, as it was deemed unnecessary. *Ramos v. Louisiana*, [590 US __, 140 S.Ct. 1390,] 1400 [(2020)].

Constitution clearly suggested that the term "trial by an impartial jury" entailed a certain meaning with regard to its content and requirements, one of those requirements being unanimity. In other words,

> **Wherever we might look to determine what the term "trial by an impartial jury trial" meant at the time of the Sixth Amendment's adoption**—whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward—**the answer is unmistakable. A jury must reach a unanimous verdict in order to convict.**
>
> The requirement of juror unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law. **As Blackstone explained, no person could be found guilty of a serious crime unless "the truth of every accusation ... should ... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion."**

Id. at 1395, *quoting* 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769). (Emphasis added.)

In this way, the highest federal court ruled that the two contested statutes—one from Louisiana and one from Oregon, both allowing for conviction by majority verdict—were contrary to the Sixth Amendment of the Constitution of the United States. *Id.* at 14[01]. As a result, the Supreme Court of the United States held that "**if the Sixth Amendment's right to a jury trial requires a unanimous verdict to support a conviction in federal court, it requires no less in state court.**" *Id.* at [139]7. (Emphasis added.)

It is important to point out that, as we have mentioned, the standard established in *Ramos v. Louisiana* was subsequently incorporated into our own caselaw through

Pueblo v. Torres Rivera [*II*], 204 DPR 288 [104 PR Offic. Trans. 22] (2020). In that respect, this Court, in deciding that case, held that,

> A reading of the opinion of the United States Supreme Court in Ramos v. Louisiana shows that unanimity constitutes **an additional essential procedural protection [for the defendant]** that is derived from and is of the same substance as the fundamental right to a jury trial enshrined in the Sixth Amendment to the United States Constitution. The recognition of unanimity as an inherent characteristic of the fundamental right to a trial by an impartial jury is binding in our jurisdiction and obligates our courts to require unanimous verdicts in all felony criminal proceedings tried in their courtrooms.

Id. at 306-307 [104 PR Offic. Trans. 22, at 10]. (Emphasis added.)

Pursuant to the ruling of the Court at the time, in that case, we ordered a new trial and advised that, under the new standard established in *Ramos v. Louisiana*, "**in order to obtain a conviction**, the jury must return a unanimous verdict." *Id.* at 307 [104 PR Offic. Trans. 22, at 10]. (Emphasis added.)

Thus, in light of the standards set forth above, we proceed to pass on the above-captioned case from a position of dissent.

IV.

As we have mentioned, in this case, we are tasked with evaluating whether the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, adopted in our jurisdiction through *Pueblo v. Torres Rivera* [*II*], completely superseded the standard of majority verdict provided in Article II, Section 11 of our Constitution and

incorporated into Criminal Procedure Rule 112. Specifically, we must evaluate the Solicitor General's argument is correct in that the intermediate appellate court erred in affirming that a guilty verdict requires unanimity while concurrence of at least nine jurors is sufficient for a not-guilty verdict. He is mistaken.

While the analysis that we have set forth makes it glaringly clear that our constitutional clause on trial by jury in criminal cases "was displaced in part by the decision of the federal Supreme Court in *Ramos v. Louisiana*, since, for all practical purposes, the Legislative Assembly was deprived of their authority to allow nonunanimous guilty verdicts,"[103] it is also clear that the constitutional clause that permits a jury to render a not-guilty verdict by a majority vote in which no less than nine jurors must concur and the text of Criminal Procedure Rule 112 remain in full effect.[104] This is so because those provisions have not been amended, repealed, or declared entirely contrary to the Sixth Amendment to the federal Constitution. In this regard, both Article II, Section 11 of our Constitution and Criminal

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[103] Farinacci Fernós, *supra*, at 208 n.495. (Emphasis added.)

[104] Moreover, "[w]hoever has doubts about this must ask themselves whether, in light of the Sixth Amendment and the ruling in Ramos, it would be unconstitutional for a state to have a provision of the constitution or even a statute establishing a majority vote for not-guilty verdicts. It is evident that the answer is no. It can be no other way. The opposite would be to affirm that "the government" has a fundamental right under the Sixth Amendment to demand unanimity. This is contrary to the basic notions of US Constitutional Law, which provides **that fundamental rights are guarantees in favor of the accused that are opposable to the state, and not the other way around.**" *See*, Julio Fontanet, *La unanimidad y los condenados erróneamente*, elnuevodía.com, **La unanimidad y los condenados erróneamente - El Nuevo Día (elnuevodia.com)** (last visited, Sept. 2, 2021).

Procedure Rule 112 govern the above-captioned matter as it pertains to the issue of not-guilty verdicts.

As we have explained, the Legislative Branch—which the Constitutional Assembly empowered to increase the minimum number of votes required for a verdict—may lay down through legislation a unanimity requirement for not-guilty verdicts. **Nevertheless, to date, this has not happened.**

On the contrary, currently the Legislative Assembly is considering H.B. 283 to, among other things, amend Criminal Procedure Rule 112 so that it may read as follows:

> RULE 112. - JURY; NUMBER OF JURORS; VERDICT
>
> Juries shall be of twelve (12) residents of the district, **who shall render a not-guilty verdict by majority vote**, the concurrence of which shall not be less than nine (9) votes. **To issue a guilty verdict, it shall be necessary for the vote to be unanimous**.

In other words, this is a bill the sole purpose of which is to attune the Rules of Criminal Procedure to the ruling in *Ramos v. Louisiana*, and nothing else.[105] This is, without a doubt, a step in the right direction.

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[105] The Statement of Motives of the referenced bill states that:

> [A]s criminal convictions rendered by non-unanimous juries have been declared unconstitutional, the result is the invalidation of the Puerto Rican constitutional provision that allows for convictions reached by the concurrence of no less than nine (9) jurors.
>
> Therefore, we believe it is appropriate to harmonize Puerto Rican law with the decision of the Supreme Court of the United States in *Ramos v. Louisiana*, 590 US ___ (2020), by amending Rules 112 and 151 of the Rules of Criminal Procedure of 1963, as amended, for the purposes of establishing that verdicts rendered by a jury must be unanimous in order to be effective.

V.

In short, we do not see how a formula requiring unanimity for a conviction and a majority for an acquittal (although anomalous, as a majority of this Court indicates) contravenes the precepts enshrined in the Sixth Amendment of the federal Constitution and the ruling in *Ramos v. Louisiana*.[106] What is genuinely anomalous is how this Court, by judicial fiat, has subverted the state of the law on the pretext of a supposed rule or intent of symmetry of the verdicts.

The only position that may be attributed to the delegates of the Constitutional Assembly, both from the history of the trial by jury in our country and the clear

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[106] Note that this proposal is also consistent with the logic of Article II, Section 19 of our Constitution (PR Const. Art. II § 19, LPRA tit. 1), insofar as that constitutional clause that recognizes the "especially dynamic order of the law in this field" invites the Legislative Assembly to expand the rights that emanate from the Constitution, as well as to add whatever new rights may be recognized throughout the years. *See*, Farinacci Fernós, *supra*, at 358-359, *citing* Trías Monge, *supra*, at 208. Bear in mind that the intent of the Constitutional Assembly was "that the Bill of Rights not be construed as an exhaustive catalog of [the] rights [of all persons] in Puerto Rico." Trías Monge, *supra*, at 208.

Furthermore, and although we are aware that, in the context of a trial by jury in our jurisdiction, "the intent has always been to grant strictly what arises from the federal imperative and nothing more," we must point out that our Bill of Rights, when considered as a whole, is of a broader scope than what is traditionally afforded. *See*, Ernesto L. Chiesa, *Los derechos de los acusados y la factura más ancha*, 65 REV. JUR. UPR 83, 108-107 (1996). See also, *E.L.A. v. Hermandad de Empleados*, 104 DPR 436, 440 [4 PR Offic. Trans. 605, 610] (1975). *Pueblo v. [Díaz, Bonano]*, 176 DPR 601 [76 PR Offic. Trans. 37] (2009).

Along those lines, this Court and any other political power can, in fact, interpret our Constitution to grant more rights and protections to individuals than are recognized under the federal Constitution. *See*, José J. Álvarez, [*La protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133,] 174-175. For this reason, when we understand the Constitution as a living document and read it as a whole, we can see multiple instances in which the rights of the accused are of a broader scope. *See, e.g.*, Chiesa, *supra*. Thus, we believe the manner in which the state of the law on trial by jury and verdicts has been upended in the Puerto Rican legal framework is incompatible with all of this.

intent included in the wording that was ultimately drafted into the Bill of Rights, is that of a majority verdict with the concurrence of at least nine members of the jury. Thus, the supposed intent of symmetry in verdicts on which the conclusion reached by a majority of my colleagues on the bench rests **does not figure** in the discussions of the delegates or from the inner workings of the development of trial by jury in our jurisdiction. Therefore, the error assigned was not committed.[107]

VI.

For the foregoing reasons, I emphatically dissent from the outcome reached today by a majority of this Court.

Ángel Colón Pérez
Associate Justice

[107] The foregoing gains even more relevance considering the ruling of the Oregon Supreme Court in *State v. Ross* [367 Or. 560 (2021)]. Last February, said court overwhelmingly held that, pursuant to the Sixth Amendment, Oregon law required guilty verdicts for all criminal charges to be unanimous, while it accepted not-guilty verdicts by an 11-to-1 or 10-to-2 margin. The court reasoned that what the federal Supreme Court so carefully decided in *Ramos v. Louisiana* left no doubt that guilty verdicts require unanimity, but that this in no way implied that the Sixth Amendment prohibited acquittals based on nonunanimous verdicts.

I CERTIFY that this is an Official Translation made by the Bureau of Translations of the Supreme Court of Puerto Rico.

In San Juan, Puerto Rico: OCT 16 2020

Clerk of the Supreme Court

(Official Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO
APPELLANT

VS.

CENTENO, NELSON DANIEL
APPELLEE

CASE NUMBER AC-2021-0086
ORIGINAL. NSCR201600145
ON APPEAL. KLCE202100016

CIVIL APPEAL

CIVIL ACTION OR CRIMINAL OFFENSE

N O T I C E

I CERTIFY THAT, REGARDING THE MOTION TO RECONSIDER, THE COURT ISSUED THE RESOLUTION ATTACHED HERETO.

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IN SAN JUAN, PUERTO RICO, THIS 2ND DAY OF NOVEMBER 2021.

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ ROSALÍA PABÓN RIVERA
ASSISTANT CLERK

EXHIBIT B

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	AC-2021-0086

RESOLUTION

San Juan, Puerto Rico, November 1, 2021.

Examined the First Motion to Reconsider, denied. To the Motion for Amendment Nunc Pro Tunc, the Clerk of the Court is instructed to take the proper actions.

It was so agreed by the Court and certified by the Deputy Clerk of the Supreme Court. Justices Estrella Martínez and Colón Pérez would reconsider. Chief Justice Oronoz Rodriguez takes no part in this decision.

(*signature*)
Bettina Zeno González
Deputy Clerk of the Supreme Court

(Seal of the Supreme Court of Puerto Rico)
(Certificate of authentication of the Court dated December 13, 2021)

(Official Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

PAGE: 01

THE PEOPLE OF PUERTO RICO
APPELLANT

VS.

CENTENO, NELSON DANIEL
APPELLEE

CASE NUMBER AC-2021-0086
ORIGINAL. NSCR201600145
ON APPEAL. KLCE202100016

CIVIL APPEAL

CIVIL ACTION OR CRIMINAL OFFENSE

N O T I C E

I CERTIFY THAT, REGARDING THE SECOND MOTION TO RECONSIDER, THE COURT ISSUED THE RESOLUTION ATTACHED HERETO.

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IN SAN JUAN, PUERTO RICO, THIS 13TH DAY OF DECEMBER 2021.

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL SUPREMO
TRIBUNAL GENERAL DE JUSTICIA

JAVIER O SEPÚLVEDA RODRÍGUEZ, ESQ.
CLERK OF THE SUPREME COURT

By: sgd./ MILKA Y. ORTEGA CORTIJO
ASSISTANT CLERK

EXHIBIT C

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Petitioner v. Nelson Daniel Centeno Respondent	**No.** AC-2021-0086	Certiorari

RESOLUTION

San Juan, Puerto Rico, December 10, 2021.

Examined the Second Motion to Reconsider filed by respondent, denied. Movant is advised to abide by the decision of this Court.

It was so agreed by the Court and certified by the Deputy Clerk of the Supreme Court. Justices Estrella Martínez and Colón Pérez would reconsider. Chief Justice Oronoz Rodriguez takes no part in this decision.

(*signature*)
Bettina Zeno González
Deputy Clerk of the Supreme Court

(Seal of the Supreme Court of Puerto Rico)
(Certificate of authentication of the Court dated December 13, 2021)