It’s Time For 12 Jurors in Florida

(By J.J. Daiak, Founder of Tough Enough On Crime .com)

*(**Updated May 17, 2021**: The United States Supreme Court is very likely to soon decide that the use of less than 12 jurors violates the United States Constitution and so will require many retrials of convictions made by only six jurors in Florida. This is a new and key reason for the Florida Legislature in the 2022 Session to pass a Bill to now require 12 jurors at every felony trial. See this discussion below.)*

It’s Time for 12 Jurors in Florida, to join 48 other states, the Federal government, and 2,500 years of Western Civilization. Florida’s Constitution requires “not less than six” jurors at felony trials, but the Florida Legislature by itself can change this to 12 jurors. (Only death penalty cases in Florida require 12 jurors.) The 1885 Florida Constitution was written when Florida’s population was only 300,000 people, of whom only white men could vote or serve on juries (no women or black men). Six jurors may have been good enough in 1885 because it was just too hard to find 12 white men who could saddle up a mule and leave their farms and ranches and ride for days along dirt roads to a county courthouse for a felony jury trial. But 137 years later, Florida still has only six jurors in felony trials.

Amend Florida Statute 913.10 now to require 12 jurors in all felony jury trials. There is no need to amend the 1885 Florida Constitution, which requires “not less than six” jurors. The votes of just 61 Florida Representatives and 21 Florida Senators will finally bring Florida from the 19th century (1885) into the 21st century (2022). While the United States Supreme Court held in 1970 that Florida’s use of only six jurors at felony trials was a choice that was constitutional, it was the wrong choice in 1885 and it is still the wrong choice in 2022; see *Williams v. Florida*, 399 U.S. 78 (1970).

When Florida prosecutors finally have to convince 12 jurors of guilt as in the rest of America, prison costs will plunge as weak cases are dropped and realistic, fiscally responsible plea deals are made. It is not soft on crime to require Florida prosecutors to prove their charges to 12 jurors at trial, as prosecutors in the other states and Federal courts do every day. The “presumption of innocence,” that long golden thread stitching together centuries of English and American jurisprudence, is dangerously frayed in Florida where the State only has to overcome the presumption of innocence before six jurors.

Furthermore, while constitutional law requires a jury pool to be a fair cross-section of a community, *the use of only six jurors at trial acts to systematically and statistically exclude or limit black citizens from actually sitting on a jury.* It’s time to stop allowing Florida prosecutors

to make the same speech they could have made for the last 136 years: “Well, Mr. Defendant, we would have just loved to have had a black juror for your trial, but as you can see — one, two, three, four, five, six — the jury box is full.”

That excuse would not work with 12 jurors. *It is statistically impossible to seat racially diverse juries when there are only six seats in a jury box; a dangerously unjust game of musical chairs. If there is room at the front of the bus, there should be room at the front of the box.* Room for 12 jurors makes room for black jurors; it’s Time for 12 jurors in Florida.

That “not less than six” jurors language in the 1885 Florida Constitution could not have foreseen Florida’s bright future as the Sunshine State; a future in which Florida’s population would increase from 300,000 to 20,000,000 citizens; a future where women could vote and serve on juries; a future where black men could vote and serve on juries; a future beyond six white men riding mules to a county courthouse to sit on a jury; an unimaginable future of telephones and automobiles and flying machines; and a world where Florida’s jury of six white men could change to a jury of 12 citizens of any race or sex.

(IMPORTANT UPDATE: Time For 12 Jurors in Florida is suddenly a logical extension of the U.S. Supreme Court’s decision in *Ramos v Louisiana*, 18-5924 (April 20, 2020) which held that it was unconstitutional to have non-unanimous juries in felony trials, as had been the law in Oregon and Louisiana. As a result, all non-final convictions there will have to be retried and the USSC is now in the process of deciding whether *Ramos* should apply retroactively, resulting in many thousands of new retrials. (**UPDATE**: On May 17, 2017, the United States Supreme Court decided that *Ramos* does not apply retroactively: see *Edwards v. Vannoy,* No. 19-5807, May 17, 2021: “HELD: *Ramos* announced a new rule of criminal procedure. It does not apply retroactively on federal collateral review.”))

But with *Ramos* now requiring unanimous jurors at all State level felony trials, that same reasoning in *Ramos* should also now apply to requiring 12 jurors at all Florida felony jury trials. As Justice Alito said in *Ramos* in dissent, “Repudiating the reasoning of *Apodaca* will almost certainly prompt calls to overrule *Williams.*” (*Williams v Florida*, 399 US 78 (1970) was the case that decided that the US Constitution did not require 12 jurors in State felony trials).

Hopefully, the Florida Legislature in the 2022 Session will see the writing now engraved into the USSC wall and finally pass a law to require 12 jurors before the USSC orders them to do so. All defendants now planning on going to a felony trial in Florida should immediately start demanding/motioning for 12 jurors on the basis or the reasoning in *Ramos*, so the issue is preserved for direct appeal.

Briefly, *Ramos* held that 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. The Sixth Amendment begins with “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State . . .” The focus in *Ramos* was defining the meaning of “an *impartial* jury” as

requiring a unanimous verdict. But surely that same reasoning in *Ramos* will soon lead the Supreme Court in another case to decide that "an impartial jury" also requires 12 jurors, no more or less:

" * * * trial by jury has been understood to require that "the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards **be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbours**…." *(Apprendi v. New Jersey*, 120 S.Ct. 2348, 2356, 530 U.S. 466 (2000))

It's Time for 12 jurors in Florida: amend Florida Statute 913.10, now.

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Other Calls For 12 Jurors in Florida

"(T)his number is no less esteemed by our own law than by holy writ. If the twelve apostles on their twelve thrones must try us in our eternal state, good reason hath the law to appoint the number twelve to try us in our temporal. The tribes of Israel were twelve, the patriarchs were twelve, and Solomon's officers were twelve.' * * * 'Twelve was not only the common number throughout Europe, but was the favorite number in every branch of the polity and jurisprudence of the Gothic nations.

"The singular unanimity in the selection of the number twelve to compose certain judicial bodies is a remarkable fact in the history of many nations. Many have sought to account for this general custom, and some have based it on religious grounds.

"One of the ancient kings of Wales, Morgan of Gla-Morgan, to whom is accredited the adoption of the trial by jury in A.D. 725, calls it the 'Apostolic Law.' **'For,' said he, 'as Christ and his twelve apostles were finally to judge the world, so human tribunals should be composed of the king and twelve wise men.'** [Quoting from Proffatt's treatise on jury trials.]" (*Williams v. Florida*, 90 S.Ct. 1893, Fn. 23, 399 U.S. 78 (1970))

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"Throughout history, there is little question that many societies and cultures have relied on groups of twelve to make reliable decisions. Whether reliance on such duodecuple [twelve] decision-making has only been based on a religious or cultural tradition of twelve or on some intuitive sense that a group of twelve is reliable is probably an unanswerable question. However, within the law, we quite reasonably give trust to solutions that have withstood the test of time, and the jury of twelve has clearly withstood that test.

"The Judicial Conference of the United States proposed that the Federal Rules of Civil Procedure be amended to require twelve-person juries in civil cases. Much has been learned since 1973 about the advantages of twelve-member juries**. Twelve-member juries**

substantially increase the representative quality of most juries, greatly improving the probability that most juries will include members of minority groups.

“On February 14, 2005, the **American Bar Association . . . called for twelve-person juries in any criminal case that might result in a penalty of confinement of over six months**. Moreover, as mentioned at the beginning of this opinion, Florida is one of only two states that now consistently allow serious felony cases to be decided by juries with as few as six members.

“[In a law review article] the author concludes: “As the *Ballew* Court admitted, we now know that six- and twelve-person juries are not functionally equivalent, as the *Williams* Court assumed. We know that recall of facts, testimony, and in-court observations are compromised significantly when a six-person jury is used in place of a twelve-person jury. We know that the rate of hung juries declines and the rate of conviction rises when smaller juries are used. We know that minority representation, community representativeness, and quality of deliberation all decrease when six-person juries are used.” (*Gonzalez v. State*, 982 So.2d 77, 82-85 (Fla. 2nd DCA 2008))