

**SUPREME COURT OF LOUISIANA**

**NO. 2016-OK-1520**

**STATE OF LOUISIANA**

**VERSUS**

**MARVIN JOHNSON**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIRST CIRCUIT, PARISH OF ASSUMPTION**

**GENOVESE, J., would grant and assigns reasons:**

Defendant was tried and convicted by a six-person jury for a felony punishable at hard labor. The Louisiana Constitution states: “A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.” La.Const. art. 1, § 17(A). Additionally, this constitutional mandate is codified in La.Code Crim.P. art. 782(A) which states: “Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.”

Thus, it is crystal clear that a felony punishable at hard labor shall be tried by a twelve-person jury, not a six-person jury. The word “shall” is mandatory. This error is structural. A constitutional and legislative mandate cannot be sluffed off as harmless error. I would grant this writ to correct the structural error.