No.

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA TERREL BROWN, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOSHUA TERREL BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2022-1488

[November 29, 2023]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; William L. Roby, Judge; L.T. Case No. 562021CF001955A.

Carey Haughwout, Public Defender, and Mara Herbert, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, Alexandra A. Folley, Assistant Attorney General, West Palm Beach, for appellee.

GROSS, J.

Joshua Terrel Brown appeals his convictions for two counts of lewd or lascivious exhibition in the presence of a correctional facility employee, entered after a jury trial. We reject his double jeopardy argument and affirm the convictions, but we reverse certain costs imposed at sentencing. We affirm on all other issues.[1]

The evidence at trial demonstrated that Brown intentionally masturbated in his cell within the clear view of two members of the correctional facility's mental health staff.

[1] As to appellant's contention that he was entitled to a twelve-person jury, we affirm. *See Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied*, No. SC2022-1597, 2023 WL 3830251 (Fla. June 6, 2023), *cert. pending*, No. 23-5173 (U.S. July 21, 2023). Additionally, without further discussion, we affirm as to appellant's argument regarding fundamental error in the sentencing process.

On appeal, Brown argues that his two convictions for lewd or lascivious exhibition violate the prohibition against double jeopardy. He argues that the statute does not allow for multiple convictions "for a single act of lewd behavior when it is done in the presence of multiple employees."

In pertinent part, section 800.09(2)(a), Florida Statutes (2021), is directed at a person who "intentionally masturbate[s] . . . in the presence of a person he or she knows or reasonably should know is an employee." Subsection (1) defines "employee" to include "[a]ny person employed at or performing contractual services for a county detention facility." § 800.09(1)(a)4., Fla. Stat. (2021).

"The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction . . . ." § 775.021(4)(b), Fla. Stat. (2021). One exception to this rule of construction is for "offenses which require identical elements of proof." § 775.021(4)(b)1., Fla. Stat. (2021). If a defendant is charged with two counts of the same statutory offense, the "allowable unit of prosecution" standard applies to the double jeopardy analysis. *Mauldin v. State*, 9 So. 3d 25, 27 (Fla. 4th DCA 2009). The "unit of prosecution" means "the aspect of criminal activity that the Legislature intended to punish." *McKnight v. State*, 906 So. 2d 368, 371 (Fla. 5th DCA 2005). Determining the unit of prosecution "is a task of statutory construction." *Id.* "Double jeopardy is not violated if the legislature intended separate punishments." *Mauldin*, 9 So. 3d at 28.

To determine the unit of prosecution, courts look first to the statute's actual language. *State v. Losada*, 175 So. 3d 911, 913 (Fla. 4th DCA 2015). "If the statutory language is unclear, we apply rules of statutory construction and explore legislative history to determine legislative intent." *Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003). "In performing this analysis, a court must consider the statute as a whole, including the evil to be corrected and the language, title, and history of its enactment to decipher the statute's intent." *Losada*, 175 So. 3d at 913 (internal quotation marks and citation omitted). Finally, if the statute is still ambiguous, a court will apply the rule of lenity and construe the statute in favor of the accused. *Id.*

"[A]bsent clear legislative intent to the contrary, the a/any test serves as a valuable but nonexclusive means to assist courts in determining the intended unit of prosecution." *Bautista*, 863 So. 2d at 1188. Under this test, "when the article 'a' precedes the item described in a statute, it is the intent of the Legislature to make each separate item subject to a separate prosecution." *Allen v. State*, 82 So. 3d 118, 121 (Fla. 4th DCA 2012). By

contrast, "when the word 'any' precedes the item, an ambiguity may arise as to the intended unit of prosecution." *Losada*, 175 So. 3d at 914. Still, the unit of prosecution is not "automatically rendered ambiguous whenever a statute uses the word 'any.'" *Bautista*, 863 So. 2d at 1188.

Here, appellant's two convictions under section 800.09 for a single lewd act in the presence of two correctional facility employees did not violate double jeopardy. Section 800.09 is unambiguous and allows for separate convictions for each employee present during the lewd act.

Section 800.09(2)'s use of the word "a" in the phrase "presence of a person" indicates that each victim present at an exposure will support a separate charge. Applying the "a/any test," we conclude that the allowable unit of prosecution is the number of employees, not the number of lewd acts.

This interpretation is consistent with cases allowing multiple convictions for a single act where the statutory language reflected an intent to punish on a per-victim basis. *See Suggs v. State*, 72 So. 3d 145, 149 (Fla. 4th DCA 2011) ("[T]he statute's plain focus is on 'the person' to whom such letter or communication is sent. Thus, we hold that, under section 836.10, the unit of allowable prosecution is determined by the number of persons to whom a letter or communication is sent, and not the number of letters or communications sent.") (internal citation omitted); *Mauldin*, 9 So. 3d at 28 ("It is clear from the assault statute that the legislature intended to punish the criminal defendant separately for each victim the defendant placed in fear by his or her threat.").

We reject Brown's focuses on the word "any" in the section 800.09(1)(a)4. definition of "employee." To determine the unit of prosecution, the crucial provision of section 800.09(2)(a) is the subsection prohibiting the behavior, not the statute's definition of an "employee."

Brown's reliance upon section 775.021(4)(b)1., Florida Statutes (2021), is similarly misplaced. Under section 775.021(4)(b)1., an exception to the legislature's intent to convict for "each criminal offense committed in the course of one criminal episode" applies where the "offenses require identical elements of proof." *Id.* Here, Count I required proof that the lewd act was committed in the presence of victim A.D., while Count II required proof that the lewd act was committed in the presence of victim K.J. Each count involved a different victim, so the counts did not require identical elements of proof. *See Simon v. State*, 615 So. 2d 236, 238 (Fla. 3d DCA 1993) (holding that "[w]ithout dispute, each of the six false imprisonment

offense involved a different victim and therefore did not require identical elements of proof").

We distinguish the Florida Supreme Court's decision in *State v. Hernandez*, 596 So. 2d 671 (Fla. 1992). There, the supreme court held that a single lewd act, though seen by more than one child, was subject to only one conviction under section 800.04(3), Florida Statutes (1987). *Id.* at 672. However, the statute at issue in *Hernandez* proscribed the knowing commission of lewd act in the presence of "any child." The court reasoned that the statute's focus was not on the number of victims, but rather was "on the commission of the lewd act whether in the presence of one or more children[.]" *Id.* (quoting *Lifka v. State*, 530 So. 2d 371, 373 n.1 (Fla. 1st DCA 1988)). The court explained: "The size of the audience or the number of witnesses should not determine the number of allowable convictions under subsection 800.04(3); rather, the number of distinct lewd acts should be determinative." *Id.* By contrast, because of the use of the article "a" instead of "any," section 800.09(2)'s focus is on the number of employees present during the commission of a lewd act, not the number of distinct lewd acts committed.

As the State concedes, certain costs were imposed in error. We reverse and remand with instructions to impose a $100 cost of prosecution instead of $200 and to strike the $50 cost of investigation, the $151 cost for the Rape Crisis Trust Fund on each count, and the $201 for the Domestic Violence Surcharge on each count. Brown preserved these issues for appeal by filing a post-trial motion.

Affirmed in part, reversed in part and remanded.

GERBER and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

POINT IV -- APPELLANT WAS ENTITLED TO A TWELVE PERSON JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

Appellant was convicted by a jury comprised of a mere six people. He asserts that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury.

Standard of Review

The standard of review of constitutional claims is de novo. *See A.B. v. Florida Dept. of Children & Family Services*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

Appellant notes that this Court recently decided *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), which rejected a defendant's argument "that his convictions by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution." *Id.* at 73. The majority opinion in *Guzman* found this Court was bound by the United States Supreme Court's holding in *Williams* that six-person juries are constitutionally permissible until the high court expressly revisited that holding. *Id.* Although acknowledging this Court is bound by *Guzman*, Appellant seeks to preserve this argument for further review.

Legal Analysis

Although the Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible, *Williams* is impossible to square with the Supreme Court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the time of the Sixth Amendment's adoption," *id.* at 1395; U.S. Const. amend. VI.

Prior to 1970, subjecting Appellant to a trial with only six jurors would have indisputably violated his Sixth Amendment rights. As the *Ramos* Court observed, even Blackstone recognized that under the common law, "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[.]" *Ramos*, 140 S. Ct. at 1395. "A 'verdict, taken from eleven, was no verdict' at all." *Id.*

After the Sixth Amendment was enacted, a bevy of state courts—ranging from Alabama to Missouri to New Hampshire—interpreted it to require a twelve-person jury. *See Miller*, *Comment, Six of One Is Not A Dozen of the Other*, 146 U. PA. L. REV. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s).

In 1898, the U.S. Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant's right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898) *overruled on other grounds* by *Collins v. Youngblood*, 497 U.S. 37, 51-52 (1990). As the *Thompson* Court explained, since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve people. *Id.* Given that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.* at 350.

The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. For example, in 1900, the Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). Thirty years later, the Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in

this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).[2]

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as "stripping off the livery of history from the jury trial" and ignoring both "the intent of the Framers" and the Court's long held understanding that constitutional "provisions are framed in the language of the English common law [] and … read in the light of its history." *Baldwin v. New York*, 399 U.S. 117, 122-24 (1970) (citation omitted) (Harlan, J.,

[2] *See also*, *e.g.*, *Capital Traction Co v. Hof*, 174 U.S. 1, 13 (1899) ("'Trial by jury,' in the primary and usual sense of the term at the common law and in the American constitutions, is not merely a trial by a jury of 12 men" but also contains other requirements); *Rassmussen v. United States*, 197 U.S. 516, 529 (1905) ("The constitutional requirement that 'the trial of all crimes, except in cases of impeachment, shall be by jury,' means, as this court has adjudged, a trial by the historical, common-law jury of twelve persons").

concurring in the result in *Williams*). Indeed, *Williams* recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Williams*, 399 U.S. at 98-99. But *Williams* concluded that such "purely historical considerations" were not dispositive. *Id.* at 99.

Rather, the Court focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.* at 100-01. According to the *Williams* Court, both "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

The ruling in *Williams* that the Sixth Amendment (as incorporated to the States by the Fourteenth Amendment) permits a six-person jury cannot stand in light of *Ramos*. There, the Supreme Court held that the Sixth Amendment requires a unanimous verdict

to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." *Ramos*, 140 S. Ct. at 1401-02.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of "cost-benefit analysis" the Court undertook in *Williams*, observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" *Ramos*, 140 S. Ct. at 1400-01. Ultimately, the *Ramos* Court explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required—"[a] verdict, taken from eleven, was no verdict at all." *See id.* at 1395 (quotation marks omitted).

Even setting aside *Williams's* now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued.

Specifically, the *Williams* Court "f[ou]nd little reason to think" that the goals of the jury guarantee—including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the community"—"are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Williams*, 399 U.S. at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id.* at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams'* assumptions. For example, *Ballew* noted that more recent research

showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.* at 232, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.* at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.* at 236; and (4) decreasing jury sizes "foretell[] problems … for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.* at 236-37.

Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.* at 239; *see also id.* at 245-46 (Powell, J., concurring) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates that "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. OF EMPIRICAL LEGAL

STUD. 425, 427 (Sept. 2009); *see also* Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. … In reality, cutting the size of the jury dramatically increases the chance of excluding minorities."). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Other important considerations also weigh in favor of the twelve-member jury. For instance, studies indicate that twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. *See* Smith & Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury*, 60 FLA. L. REV. 441, 465 (2008). Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is

greater on a twelve-person jury." *Id.* at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., at 52.

Appellant recognizes that the state constitution provides:

> SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Art. I, § 22, Fla. Const. And he recognizes that section 913.10, Florida Statutes, provides for six jurors except in capital cases. *See also* Fla. R. Crim. P. 3.270.

But Florida's provision for a jury of six stems from the dawn of the Jim Crow era, one month after federal troops were withdrawn from the state. The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903).

The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for

a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877) (quoting and discussing Chapter 3010, section 6, Laws of Florida (1877)); *Florida Fertilizer*, 34 So. at 241 (noting that previously all juries had twelve members).

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. at 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* JERRELL H. SHOFNER, *Reconstruction and Renewal, 1865-1877*, in THE HISTORY OF FLORIDA 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no] federal troops" in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent Blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to Black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of Black citizens. The constitution was the product of a remarkable

series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5-6 (1972); SHOFNER, at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume at 15.

The racist purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar Blacks from legislative office:

> Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature.

Hume, at 15-16. *See also* SHOFNER, at 266.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. *Ramos*, 140 So. Ct. at 1394; *see also id.* at 1417

(Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context.

In view of the foregoing, a jury of six at a criminal trial for a crime punishable up to life imprisonment is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution. *See* U.S. Const. amend. VI, U.S. Const. amend. XIV.

Finally, Appellant did not waive his Sixth Amendment right to a twelve-person jury. A defendant may waive his right to a constitutional jury, but the "express and intelligent consent of the defendant" is required. *Patton*, 281 U.S. at 312. *See also Johnson v. State*, 994 So. 2d 960, 964 (Fla. 2008) (holding Johnson's general silence "did not constitute a valid waiver" to "his right to a jury trial").

This Court should reverse the judgment and sentence and remand for a new trial with a twelve-person jury, as required by the Sixth and Fourteenth Amendments to the United States Constitution.

IN THE CIRCUIT/COUNTY COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST LUCIE COUNTY, FLORIDA

___ Modified
___ Resentence
___ Amended
___ Corrected
___ Mitigated
___ Community Control Violator
___ Probation Violator

Case Number: 562021CF001955AXXXXX

STATE OF FLORIDA
- vs -
JOSHUA TERREL BROWN AKA JOSHUA T BROWN
Defendant

___ Sexual Predator
___ Sex Offender
___ Minor Victim
___ Sentenced in Absentia

JUDGMENT

The Defendant, JOSHUA TERREL BROWN being personally before this Court represented by Attorney STEPHEN CHARLES HOOPER, the Attorney of record, and the State represented by JUSTIN THOMAS MILLER, and having:

X **been tried and found guilty by Jury of the following crime(s).**
___ entered a plea of guilty to the following crime(s).
___ entered a plea of nolo contendere to the following crime(s)
___ Admitted Violation of Probation
___ Found Guilty of Violation of Probation
___ Admitted a Violation of Community Control
___ Found Guilty of Violation of Community Control

Count	Crime	Offense Statute Number(s)	Level / Degree	OBTS Number
1	**LEWD OR LASCIVIOUS EXHIBITION IN THE PRESENCE OF A CORRECTIONAL FACILITY EMPLOYEE**	**800.09(2)**	**F-3**	**N/A**
2	**LEWD OR LASCIVIOUS EXHIBITION IN THE PRESENCE OF A CORRECTIONAL FACILITY EMPLOYEE**	**800.09(2)**	**F-3**	**N/A**

X **and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s). ; AS TO COUNT(s) 1, 2**

X **and being a qualified offender pursuant to Florida Statute 943.325 - defendant shall be required to submit DNA samples as required by law**

___ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

KEB/DC **DOC**

CASE NUMBER 2021CF001955 A

The Defendant in open Court was advised of the right to appeal from this Sentence by filing notice of appeal within 30 days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

Circuit Judge WILLIAM L ROBY

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	**7. Left Index**	**8. Left Middle**	**9. Left Ring**	**10. Left Little**
				

Fingerprints taken by: D/S T. HANLEY #9449 SLSO — DEPUTY SHERIFF
Name — Title

I HEARBY CERTIFY that the above and forgoing fingerprints are the fingerprints of the Defendant _____

JOSHUA TERREL BROWN and that they were placed thereon by said Defendant in my presence in open Court this date.

DONE AND ORDERED in Open Court at St. Lucie County, Florida, on Monday, May 23, 2022

Nunc Pro Tunc To:

_____

Circuit Judge WILLIAM L ROBY

___ Violation of Probation, Previously Adjudged Guilty
___ Violation of Community Control, Previously Adjudged Guilty
___ Resentenced
___ Modified
___ Amended
___ Mitigated
___ Corrected

Case Number 562021CF001955AXXXXX

OBTS Number N/A

Defendant **JOSHUA TERREL BROWN AKA JOSHUA T BROWN**

SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record STEPHEN CHARLES HOOPER and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

___ and the Court having on _____ deferred imposition of sentence until this date.

___ and the Court having previously entered a judgment in this case on _____ now resentence the Defendant.

___ and the Court having placed the Defendant on _____ and having subsequently revoked the Defendant's _____.

It Is The Sentence Of Court that:

___ The defendant pay a fine of _____ pursuant to section 775.083, Florida Statutes, plus _____ as the 5% surcharge required on 938.04, Florida Statutes.

X The Defendant is hereby committed to the custody of the Department of Corrections.

___ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

___ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

___ For a term of Natural Life.

___ For a term of Natural Life with a 25 year mandatory minimum

X For a term of 52.00 MONTH(S)

___ The SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

___ Followed by a period of _____ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

___ Followed by a period of _____ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

___ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562021CF001955AXXXXX

SPECIAL PROVISIONS
(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

Firearm	___	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	___	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this court, and that the Defendant pay a fine of $___, pursuant to section 893.135, Florida Statutes, plus $___ as a 5% surcharge.
Law Enforcement	___	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	___	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
Habitual Felony Offender	___	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony	___	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
Violent Career Criminal	___	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes, A minimum of _____ must be served prior to release. The requisite findings of the Court as set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
Capital Offense	___	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
Prison Releasee	___	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
Sexual Predator	___	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions: Jail Credit	X	**It is further ordered that the Defendant shall be allowed a total of 293 DAY(S) as credit for time incarcerated before imposition of this sentence.**
Credit for Time Served in Resentencing After Violation of Probation or Community Control		It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
		It is further ordered that the Defendant be allowed _____ days time served between date or arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count (Offenses committed between October 1, 1989, and December 31, 1993)
		_ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
		_ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
		It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
Consecutive/ Concurrent As To Other Counts	___	It is further ordered that the sentence imposed for this count shall run _____ with the sentence set forth in count _____ of this case.

___ Violation of Probation, Previously Adjudged Guilty
___ Violation of Community Control, Previously Adjudged Guilty
___ Resentenced
___ Modified
___ Amended
___ Mitigated
___ Corrected

Case Number 562021CF001955AXXXXX

OBTS Number N/A

Defendant **JOSHUA TERREL BROWN AKA JOSHUA T BROWN**

SENTENCE

(As to Count 2)

The Defendant, being personally before this Court, accompanied by the Defendant's Attorney of record STEPHEN CHARLES HOOPER and having been adjudicated guilty, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defense should not be sentenced as provided by law, and no cause being shown

___ and the Court having on _____ deferred imposition of sentence until this date.

___ and the Court having previously entered a judgment in this case on _____ now resentence the Defendant.

___ and the Court having placed the Defendant on _____ and having subsequently revoked the Defendant's _____.

It Is The Sentence Of Court that:

___ The defendant pay a fine of _____ pursuant to section 775.083, Florida Statutes, plus _____ as the 5% surcharge required on 938.04, Florida Statutes.

X The Defendant is hereby committed to the custody of the Department of Corrections.

___ The Defendant is hereby committed to the custody of the Sheriff of St. Lucie County Florida.

___ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable.):

__ For a term of Natural Life.

__ For a term of Natural Life with a 25 year mandatory minimum

X For a term of 52.00 MONTH(S)

___ The SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If 'split' sentence complete the appropriate Paragraph.

___ Followed by a period of _____ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

___ Followed by a period of _____ probation under the supervision of the Department of Corrections according to the terms and conditions of supervision as set forth in a separate order.

___ However, after serving a period of imprisonment in PRISON, the balance of the sentence will be suspended and the Defendant will be on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control as set forth in a separate order.

In the event the Defendant is ordered to serve additional, split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

562021CF001955AXXXXX

SPECIAL PROVISIONS
(As to Count 2)

By appropriate notation, the following provisions apply to the sentence imposed
Mandatory/ Minimum Provisions:

Firearm	___	It is further ordered that the _____ minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	___	It is further ordered that the _____ minimum imprisonment provisions of section 893.135, Florida Statutes, is hereby imposed for the sentence specified in this court, and that the Defendant pay a fine of $___, pursuant to section 893.135, Florida Statutes, plus $___ as a 5% surcharge.
Law Enforcement	___	It is further ordered that the _____ minimum mandatory imprisonment provision of section 784.07, Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	___	It is further ordered that the 3 year minimum imprisonment provision of section 893.13(1)(c), Florida Statutes, is hereby imposed for the sentence in this count.
Habitual Felony Offender	___	The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony	___	The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of sections 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order as stated on the record in open court.
Violent Career Criminal	___	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes, A minimum of _____ must be served prior to release. The requisite findings of the Court as set forth in a separate order or stated on the record in open court. (For crimes committed on or after May 24, 1997.)
Capital Offense	___	It is further that the Defendant shall serve no less than 25 years in accordance with provisions of section 775.082(1), Florida Statutes. (For first degree murder committed prior to May 25, 1994, and for any other capital felony committed prior to October 1, 1995.)
Prison Releasee	___	Defendant is adjudged a prison releasee reoffender in accordance with the provision of section 775.082(9), FL Statutes.
Sexual Predator	___	Defendant is adjudged a sexual predator in accordance with provision of section 775.21, Florida Statutes.
Other Provisions: Jail Credit	X	**It is further ordered that the Defendant shall be allowed a total of ZERO DAYS as credit for time incarcerated before imposition of this sentence.**
Credit for Time Served in Resentencing After Violation of Probation or Community Control		It is further ordered that the Defendant be allowed _____ days time served between date of arrest as a violator following Release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____ (Offenses committed before October 1, 1989)
		It is further ordered that the Defendant be allowed _____ days time served between date or arrest as a violator following release from prison to the date of resentencing. The Department of Correction shall apply original jail time credit and shall compute and apply credit for time served on case/count (Offenses committed between October 1, 1989, and December 31, 1993)
		_ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6), Florida Statutes.
		_ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)), Florida Statutes.
		It is further ordered that the Defendant be allowed _____ time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/ count . (Offenses committed on or after January 1, 1994)
Consecutive/ Concurrent As To Other Counts	X	**It is further ordered that the sentence imposed for this count shall run CONSECUTIVE with the sentence set forth in count 1 of this case.**

____ Violation of Probation, Previously Adjudged Guilty
____ Violation of Community Control, Previously Adjudged Guilty
____ Resentenced
____ Modified
____ Amended
____ Mitigated
____ Corrected

Case Number: 562021CF001955AXXXXX

Defendant: JOSHUA TERREL BROWN AKA JOSHUA T BROWN

Other provisions, continued:

Consecutive/Concurrent
To Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order will run
(check one) [ ] Consecutive To [ ] Concurrent To

Concurrent with the following:

(check one)

[ ] any active sentence being served.
[ ] specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of St. Lucie County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections and the facility designated by the department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statute.

The Defendant in open court was advised of the right to appeal from this Sentence by filing notice of appeal within 30 days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the state upon a showing of indigency.

In imposing the above sentence, the Court further recommends / orders

DONE AND ORDERED in Open Court at St. Lucie County, Florida, on May, 23 2022.

Nunc Pro Tunc to: _____

Circuit/County Judge WILLIAM L ROBY