No.

IN THE SUPREME COURT OF THE UNITED STATES

ELLANCER ALLEN MCGRADY, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

DANIEL EISINBGER
Public Defender

Jeffrey L. Anderson*
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421Third Street
West Palm Beach, FL 33401
(561) 355–7600

janderson@pd15.org
jcwalsh@pd15.org
appeals@pd15.org

* Member of the United States Supreme Court Bar

QUESTIONS PRESENTED

1. Whether the trial court's performing its gatekeeping function of questioning the child in order to determine competency in the presence of the jury violates Petitioner's right to a fair trial as guaranteed under the Sixth and Fourteenth Amendments?

2. Whether Petitioner was derived of his right, under the Sixth and Fourteenth Amendments, to a trial by a 12-person jury when the defendant is charged with a serious felony?

RELATED PROCEEDINGS

The proceeding listed below is directly related to the above-captioned case in this Court: *McGrady v. State*, 395 So. 3d 539 (Fla. 4th DCA 2024).

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Ellancer Allen McGrady respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida in this case.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal is reported as *McGrady v. State*, 395 So. 3d 539 (Fla. 4th DCA 2024). It is reprinted in the appendix. a1-6.

JURISDICTION

Florida's Fourth District Court of Appeal issued its opinion on October 6, 2024. a1-6. The court affirmed Petitioner's convictions and sentences. a6. The Court denied Petitioner's motion for rehearing and certification on November 1, 2024. a7.

Petitioner sought review in the state's highest court – the Supreme Court of Florida. On January 15, 2025 the Supreme Court of Florida declined to review the case. a8. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury … ."

Section 1 of the Fourteenth Amendment of the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, section 22 of the Florida Constitution provides:

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.

Section 913.10, Florida Statutes, provides:

Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

STATEMENT OF THE CASE

The State charged Petitioner with: three counts of sexual battery of a child and one count of lewd or lascivious molestation. a2.

Petitioner was convicted by a six-member jury of : unnatural lascivious act(a lesser offense of sexual battery); battery (a lesser included offense of sexual battery); and lewd or lascivious molestation--and he was acquitted of one count of sexual battery. a3.

Petitioner was sentenced to twenty five years in prison followed by lifetime probation on the lewd or lascivious conviction R215-218. Petitioner timely filed a notice of appeal.

Petitioner then filed his brief in the appellate court-the Fourth District of Appeal. Among other issues, he argued that: his rights were violated by the trial court performing its gatekeeping function as to the child victim's competency in front of the jury; and he was denied his right to a twelve-member jury under the Sixth Amendment. a9-a16.

The Fourth District Court of Appeal addressed the gatekeeping issue in relevant part as follows:

> We affirm on all issues without further comment and write only to discuss whether the trial court erred by performing its gatekeeping function as to the child victim's competency in front of the jury instead of outside the presence of the jury….

a1.

The appellate court then recognized the defense objection to the judge's gatekeeping questioning of the child in the presence of the jury and the state's response that this would help the jury weigh the child's credibility:

> Defense counsel objected, arguing that inquiry into the victim's competency to testify needed to take place outside the presence of the jury. Defense counsel was concerned that these inquiries would "bolster" the child victim's testimony. The state responded that it was appropriate to conduct the competency evaluation in front of the jury, so the jury could weigh the victim's credibility and ability to tell the truth.

a2.

The judge continued the competency examination and when finished turned the witness over to the state. a2.

The appellate court recognized it was better practice not to conduct the gatekeeping function in the presence of the jury but affirmed holding there was no error and any error would be harmless because the questioning was merely cumulative to that of

a CPT interviewer:

> Conducting the competency determination in the presence of the jury was not error, but even if it was determined to be error, at most it was harmless error because the victim's answers were cumulative to statements she made in the CPT interview, which was admitted into evidence.
>
> However, we believe the better practice is to conduct this examination outside the presence of the jury. We share this view, of that being the better practice, with courts in other jurisdictions. In sum, we find no reversible error present in this case. While the better practice is to conduct a competency determination outside the presence of the jury, appellant was not prejudiced in this case. As such, we affirm

a4-6. Petitioner also argued he was denied his right to a twelve-member jury under the Sixth Amendment a13-16.

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences. a6. The Court denied Petitioner's motion for rehearing and certification on November 1, 2024. a7.

Petitioner sought review in the state's highest court – the Supreme Court of Florida. On January 15, 2025 the Supreme Court of Florida declined to review the case. a8.

REASONS FOR GRANTING THE PETITION

I. THE TRIAL COURT'S PERFORMING ITS GATEKEEPING FUNCTION OF QUESTIONING THE CHILD IN ORDER TO DETERMINE COMPETENCY IN THE PRESENCE OF THE JURY VIOLATED PETITIONER'S RIGHT TO A FAIR TRIAL AS GUARANTEED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

The trial court performed its gatekeeping function of determining and ensuring that a child was competent to testify by questioning the child.

This was done in front of the jury.

Petitioner objected to the gatekeeping function being done in the presence of the jury. a2, T39 lines 17-20.

The trial court's response to the objection was that case law did not prohibit it from performing this gatekeeping function in front of the jury T40.

The prosecutor argued that it was appropriate to do this in front of the jury so they could weigh the child's credibility. a2, T40 lines 7-10.

Jurisdictions are divided on whether the gatekeeping function should be done in the presence of the jury. In *State v. Chappell*, 987 P.2d 1114, 1119 (Kan. Ct. App. 1999) the court ruled the

defendant's constitutional right to a fair trial was infringed upon by conducting the gatekeeping function concerning the credibility of a child in the presence of the jury:

> In those instances where the qualification of a child witness to testify is in issue, the voir dire, whether conducted by court or counsel, **should occur outside the presence of the jury**. The failure to adopt this procedure in conducting the voir dire of B.C. allowed the jury to hear the improper comments of the trial court and prosecutor. This compels us to find that Chappell was seriously prejudiced and **his constitutional right to a fair trial was, accordingly, denied**. Chappell's convictions are, therefore, reversed, and this matter is remanded for a new trial. In view of this determination, other issues raised on appeal need not be addressed.
> Reversed and remanded for a new trial.

987 P.2d at 1119 (emphasis added.

Other jurisdictions also hold this gatekeeping function should be done outside the presence of the jury when requested or objected to. See e.g. *State v. Gantt*, 644 S.W.2d 656, 658 (Mo. App. 1982); *Commonwealth v. Washington*, 722 A.2d 643, 647 (Pa. 1998); *English v. State*, 982 P.2d 139, 147, n.2 (Wy. 1999); *Matthews v. State*, 666 A.2d 912 (Md. 1995) (when the issue is raised, the trial judge should conduct an examination out of the presence of the jury to develop the factual basis for a competency determination); *State v. Kelly*, 876 P.2d 298 (Mont. 1994); *Hildreth v. Key*, 341

S.W.2d 601 (Mo. 1960).

As noted by the appellate court in this case, not all jurisdictions require this gatekeeping function be done outside the presence of the jury. *See State v. Orlando*, 163 A. 256, 258 (Conn. 1932); *State v. Manlove*, 441 P.2d 229, 233 (N.M. Ct. App. 1968); *Ex parte Brown*, 74 So. 3d 1039, 1044-45 (Ala. 2011). Those jurisdictions indicate the decision is up to the discretion of the trial judge. a4.

A trial court's gatekeeping function is to determine whether the jury should be exposed to certain evidence or witnesses. It makes no sense to expose jurors to the evidence/witness while deciding if they should be exposed to such evidence/witness.

Regardless of the result of the gatekeeping, if done in the presence of the jury it results in prejudice to the defendant. For example, if the judge holds the inquiry into the voluntariness of a confession in front of the jury and decides it is voluntary – this infringes upon a defendant's right to have the jury independently determine whether it is voluntary. Also, if the judge rules it is not voluntary there is still prejudice because the jury knows of the confession.

The same applies to competency of a prosecution witness. The result of the gatekeeping will be known to the jury. If found not competent the witness will not testify but the jury will know there was an additional witness for the prosecution it would not hear from. If, as in this case, after the gatekeeping function the judge passes the witness to the prosecutor to begins its case – the jury has been made aware of the judge's approval of the competency to understand and tell the truth. While the defense may still question the witness on this, its effort will be severely hampered by the jury knowing the trial court's position.

Gatekeeping functions in front of the jury have no legitimate purpose, they only result in prejudice to a defendant's right to a fair trial.

In this case after the defense objection to this procedure, the only explanation by the judge was that case law did not prohibit the procedure. This is hardly an exercise of discretion.

Defense counsel was concerned the inquiry by the judge in front of the jury would "bolster" the child victim's testimony. The state's response seemed to agree to the judge questioning –"so the jury could **weigh the victim's credibility** and ability to tell the

truth." a2. (emphasis added). There is no problem with the advocates establishing or challenging the witnesses credibility. But this should not be done through the judge.

The appellate court relied on the judge's words being neutral and thus there was no prejudice. However, the judge did not have to make direct comments for the jury to infer credibility. As the prosecutor indicated the judge's questioning and participation in front of the jury was done so the jury could weigh credibility.

Words were not needed it. The action of accepting the witness and passing the witness to the prosecution inferred credibility which the prosecution wanted. It was the judge's prominence and position that would speak to the jury.

As far as impact on the jury, the appellate court compared the words and acts of the judge to a CPT interviewer. They are different. The interviewer is seen as a witness and advocate. The judge is not an advocate and has a much greater impact on the jury. See *Flicker v. State*, 374 So.2d 1141, 1142 (Fla. 5th DCA 1979) ("Because of the trial judge's position in the courtroom, the jury hangs on his every word and is most attentive to any indication of his view of the proceedings"); *Hamilton v. State*, 109 So.2d 422, 424 (Fla. 3d DCA

1959)(due to the dominant position occupied by a judge his actions "overshadow those of the litigants, witnesses and other court officers").

Conducting the gatekeeping function in the presence of the jury served no legitimate purpose and could be misapplied by the jury (as stated by the prosecutor) to weigh the credibility of the witness. As such, the gatekeeping in the presence of the jury deprived Petitioner of his Sixth and Fourteenth Amendment rights.

II. THE REASONING OF *WILLIAMS v. FLORIDA* HAS BEEN REJECTED, AND THE CASE SHOULD BE OVERRULED.

In *Thompson v. Utah*, 170 U.S. 343 (1898), the Court considered "whether the jury referred to in the original constitution and in the sixth amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less," and concluded that "[t]his question must be answered in the affirmative." *Id.* at 349. It noted that since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve. *Id.* at 349–50. Because 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.

In addition to the citations as to this point in *Thompson*, one may note that Blackstone indicated that the right to a jury of twelve is even older, and more firmly established, than the unqualified right to counsel in criminal cases. 4 William Blackstone, *Commentaries on the Laws of England*, ch. 27 ("Of Trial and Conviction"). Blackstone traced the right back to the ancient feudal

system of trial by "a tribunal composed of twelve good men and true," and wrote that "it is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals." 3 Blackstone, ch. 23 ("Of the Trial by Jury").

After *Thompson*, the Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for another seventy years. 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, this 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 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).

In *Williams v. Florida*, 399 U.S. 78 (1970), however, the Court retreated from this line of precedent, holding that trial by a jury of six does not violate the Sixth Amendment.

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. *Id.*, 399 U.S. at 98–99. But it concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. Rather, it 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. It wrote that "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").

Petitioner submits that *Williams* is contrary to the history and precedents discussed above, and cannot be squared with the subsequent ruling in *Ramos v. Louisiana*, 590 U. S. 83 (2020), that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption," *id.* at 90. That term meant trial by a jury of twelve whose verdict must be unanimous. As the Court noted in *Ramos*, 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[.]" *Ibid.* (emphasis added). "A 'verdict, taken from eleven, was no verdict' at all." *Ibid.*

Ramos held that the Sixth Amendment requires a unanimous verdict to convict a person of a serious offense. In reaching that conclusion, it 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." 509 U.S. at 100.

The reasoning of *Ramos* undermines the reasoning on which

Williams rests. *Ramos* rejected the same kind of "cost-benefit analysis" undertaken in *Williams*, observing that it is not for the Court 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.'" 590 U.S. at 98. The Court wrote that the Sixth Amendment right to a jury trial must be restored to its original meaning, which included the right to jury unanimity:

> Our real objection here isn't that the *Apodaca* plurality's cost-benefit analysis was too skimpy. The deeper problem is that the plurality subjected the ancient guarantee of a unanimous jury verdict to its own functionalist assessment in the first place. And Louisiana asks us to repeat the error today, just replacing *Apodaca*'s functionalist assessment with our own updated version. All this overlooks the fact that, at the time of the Sixth Amendment's adoption, the right to trial by jury *included* a right to a unanimous verdict. When the American people chose to enshrine that right in the Constitution, they weren't suggesting fruitful topics for future cost-benefit analyses. They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed. As judges, it is not our role to reassess whether the right to a unanimous jury is "important enough" to retain. With humility, we must accept that this right may serve purposes evading our current notice. We are entrusted to preserve and protect that liberty, not balance it away aided by no more than social statistics.

Ramos, 590 U.S. at 100 (emphasis in original; footnote omitted).

The same reasoning applies to the historical right to a jury of twelve: When the People enshrined the jury trial right in the Constitution, they did not attach a rider that future judges could adapt it based on latter-day social science views.

Further, even if one were to accept the functionalist logic of *Williams* — that the Sixth Amendment is subject to reinterpretation on the basis of social science — it invites, nay demands, that it be periodically revisted to determine whether the social science holds up. And here we encounter a serious problem: it was based on research that was out of date shortly after the opinion issued.

Williams "f[ou]nd little reason to think" that the goals of the jury guarantee, which included providing "a fair possibility for obtaining a representative[] cross-section of the community," were "in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Id.* 399 U.S. at 100. It 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.

Since *Williams*, that determination has proven incorrect. This 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*, it observed that empirical studies conducted in the intervening years highlighted several problems with its assumptions. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.* at 233, (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.) (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*. As already noted, *Williams* itself identified the "function" of the Sixth Amendment as leaving justice to the "commonsense judgment of a group of laymen" and thus allowing "guilt or innocence" to be determined via "community participation and [with] shared responsibility." 399 U.S. at 100–01. That function is thwarted by reducing the number of jurors to six. Smaller juries are perforce less representative of the community, and they are less consistent than larger juries. *See, e.g.,* Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants"); Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009) ("reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury"); 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.").

Other important considerations also weigh in favor of the twelve-member jury. 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." Smith & Saks, 60 Fla. L. Rev. 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., 104 Judicature at 52.

Importantly, the history of Florida's rule can be traced to the Jim Crow era. Justice Gorsuch has observed that "[d]uring the Jim Crow era, some States restricted the size of juries and abandoned

the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from denial of certiorari) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Id*. But Florida's jury of six did arise in that Jim Crow era of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id*. 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, Laws of Florida (1877). *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 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 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, 15–16. *See also* Shofner 266.

Smaller juries and non-unanimous verdicts were part of a Jim Crow era effort "to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from denial of certiorari); *see also Ramos*, 590 U.S. at 126–27 (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.

And this history casts into relief another negative consequence of having small juries: it denies a great number of citizens the

"duty, honor, and privilege of jury service." *Powers v. Ohio*, 499 U.S. 400, 415 (1991). Many consider jury service an "amazing and powerful opportunity and experience—one that will strengthen your sense of humanity and your own responsibility." United States Courts, *Juror Experiences*.[1] Jury service, like civic deliberation in general, "not only resolves conflicts in a way that yields improved policy outcomes, it also transforms the participants in the deliberation in important ways—altering how they think of themselves and their fellow citizens." John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Values of Institutionalized Deliberation*, 34 Pol'y Stud. J. 605, 606 (2006).

In view of the foregoing, this Court should grant the petition, recede from *Williams*, restore the ancient right to a jury of twelve and reverse Petitioner's conviction.

[1] Available at: https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service/juror-experiences

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL EISINGER
Public Defender

JEFFREY L. ANDERSON *
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421Third Street
West Palm Beach, FL 33401
(561) 355–7600
gcaldwel@pd15.org
jcwalsh@pd15.org
appeals@pd15.org

* Member of the United States Supreme Court Bar