No.

IN THE SUPREME COURT OF THE UNITED STATES

MAXO CASSEUS, 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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APPENDIX A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MAXO CASSEUS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-1600

[August 7, 2025]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Michael C. Heisey, Judge; L.T. Case No. 2022CF002867A.

Daniel Eisinger, Public Defender, and Benjamin Nathaniel Paley, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Anesha Worthy, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, LEVINE, JJ., and DEPRIMO, NATASHA, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

October 9, 2025

MAXO CASSEUS, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2024-1600** L.T. No. - 562022CF002867

BY ORDER OF THE COURT:

ORDERED that Appellant's August 18, 2025 motion for rehearing and to certify a question of great public importance is denied.

Served:
Crim App WPB Attorney General
Benjamin Paley
Palm Beach Public Defender
Anesha Worthy

KEH

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

4D2024-1600 October 9, 2025

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

4D2024-1600 October 9, 2025

II. THE SIXTH AND FOURTEENTH AMENDMENTS ENTITLED APPELLANT TO A TWELVE-PERSON JURY, AND HE DID NOT WAIVE THAT RIGHT.

a. Standard of review

This Court reviews constitutional claims de novo. *See A.B. v. Fla. Dep't of Child. & Fam. Servs.*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005) ("The standard of review for the mother's constitutional claim is de novo[,] as this issue involves a question of law.").

b. Preservation

Preliminarily, Appellant contends that he did not waive appellate review of this issue, because the trial court did not ask Appellant if he himself (not his defense counsel) was waving his Sixth Amendment right to a twelve-person jury. *See Johnson v. State*, 994 So. 2d 960, 963–64 (Fla. 2008). For that reason, this issue is proper on appeal.

c. Twelve-person jury

A six-person jury heard the testimony, reviewed the evidence, and convicted Appellant. On appeal, Appellant argues that his conviction by a six-person jury, *see* T. 166, 308–09, violated his Sixth

Amendment right to a jury trial. *See* amend. VI, U.S. Const.; amend XIV, U.S. Const.[3]

Appellant acknowledges that this Court has refused to rule on this issue because it is bound by Supreme Court precedent. *See Guzman v. State*, 350 So. 3d 72, 73 (Fla. 4th DCA 2022) (holding that this Court has "no authority to overrule . . . precedent from the United States Supreme Court that endorsed the use of a jury with only six members as constitutional" (quoting *Gonzalez v. State*, 982 So. 2d 77, 78 (Fla. 2d DCA 2008))). Nonetheless, Appellant maintains, like Justice Gorsuch, that "Florida does what the Constitution forbids." *See Cunningham v. Florida*, 144 S. Ct. 1287, 1287 (2024) (Gorsuch, J., dissenting from the denial of certiorari).

Further, Appellant maintains that the Supreme Court has proven that it can overturn precedent when warranted. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson*

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[3] The Supreme Court held that the Sixth Amendment right to a jury trial applies to the states. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.").

Women's Health Org., 597 U.S. 215 (2022). Indeed, the Court will overturn precedent when that precedent is "irreconcilable with not just one, but two, strands of constitutional precedent well established both before and after the decision." *Ramos v. Louisiana*, 590 U.S. 83, 112 (2020) (Sotomayor, J., concurring). "Moreover, '[t]he force of stare decisis is at its nadir in cases concerning [criminal] procedur[e] rules that implicate fundamental constitutional protections.'" *Id.* at 113 (alterations in original) (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013)). As such, Appellant continues to raise this good-faith argument for a change in the law.

Here, *Williams* is ripe for being overturned as precedent because it is irreconcilable with decades of Court case law. Both the Florida and United States Constitutions protect the right to a jury trial in criminal cases. *See* amend. VI, U.S. Const. ("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 . . . ."); art. I, § 22, Fla. Const. ("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**." (emphasis added)). Since antiquity, the right to a trial

by jury has meant a jury consisting of twelve people.[4] *See Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from the denial of certiorari) ("For almost all of this Nation's history[,] and centuries before that, the right to [a] trial by jury for serious criminal offenses meant the right to a trial before [twelve] members of the community."). "Acutely concerned with individuals and their liberty, the [F]ramers of our Constitution sought to preserve th[e] right [to a

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[4] Thus, the prevalent use of twelve-person juries is not, as the Supreme Court held, an "historical accident." *But see Williams v. Florida*, 399 U.S. 78, 89–90 (1970). *See also Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, Comment, *Six of One Is Not a Dozen of the Other: A Reexamination of* Williams v. Florida *and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)); 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (stating that juries consisting of twelve people was commonplace in the English common law).

Interestingly, the number twelve was chosen for its religious significance. *See* 1 Edward Coke, *The First Part of the Institutes of the Lawes of England* 155 (photo. reprint 1979) (1628) ("And that number of twelve is much respected in holy Writ, as 12 apostles, 12 stones, 12 tribes, etc."); John Proffatt, *Trial by Jury* 112 n.4 (San Francisco, Sumner Whitney & Co. 1877) ("[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.").

twelve-person jury] for future generations." *Cunningham*, 144 S. Ct. at 1287 (Gorsuch, J., dissenting from the denial of certiorari). "Yet today, a small number of States refuse to honor [that] promise." *Id.*

Florida is one of those states. In 1875, Florida amended its constitution to allow its legislature to legalize juries with less than twelve people, in direct contravention of the common law tradition predating Magna Carta. *See Gibson*, 16 Fla. at 300 (acknowledging that historically the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); *see also id.* ("The number of jurors for the trial of causes in any court may be fixed by law."). The Florida Legislature did so in 1877, enacting Chapter 3010, which provided: "[t]welve men shall constitute a jury to try all capital cases, and six men shall constitute a jury to try all other offenses prosecuted by indictment." Ch. 3010, § 6, Laws of Fla. (1877) (codified at § 913.10, Fla. Stat. (1970)). This was, and still is, in direct violation of the Sixth Amendment.

Interestingly, when the Supreme Court gave Florida the thumbs up to continue its draconian practice of using juries with less than twelve people in felony trials, the Court used a mode of constitutional interpretation that contravenes the original meaning of the Sixth

Amendment: a functionalist approach.[5] *See Williams*, 399 U.S. at 98–103. Specifically, in *Williams*, the Court reasoned that it could find "no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury." *Id.* at 99. According to the Court, "[t]he relevant inquiry . . . must be the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.* at 99–100. "Measured by th[at] standard," the Court held, "the [twelve-person jury] requirement [for felony trials] cannot be regarded as an indispensable component of the Sixth Amendment," because "neither currently available evidence nor theory suggests that the [twelve-person] jury is necessarily more advantageous to the defendant than a jury composed of fewer members." *Id.* at 100–02 (footnotes omitted).

Continuing down this dark road of functionalism, the Court decided *Apodaca v. Oregon*, 406 U.S. 404 (1972). There, the Court held that nonunanimous jury verdicts in state criminal trials comported

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[5] "Originalists believe that the provisions of the Constitution have a fixed meaning, which does not change (except by constitutional amendment): they mean today what they meant when they were adopted, nothing more and nothing less." Antonin Scalia, *The Essential Scalia: On the Constitution, the Courts, and the Rule of Law* 12 (Jeffrey S. Sutton & Edward Whelan eds., 2020).

with the Sixth Amendment. *Id.* at 406. "Justice White, writing for the plurality, applied a *Williams*-style inquiry focusing upon 'the function served by the jury in contemporary society' and concluded that the requirement of unanimity was not 'of constitutional stature.'" *Guzman*, 350 So. 3d at 76 (Gross, J., concurring specially) (quoting *Apodaca*, 406 U.S. at 406, 410).

But then, in *Ramos*, the tide changed: the light of originalism began to peak out from the darkness of functionalism. The Supreme Court held 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." *Ramos*, 590 U.S. at 90. The Court wrote that the functionalist analysis relied on in *Apodaca* was flawed, and held that a nonunanimous jury verdict did not comport with the Sixth Amendment's guarantees. *Id.* at 93, 100, 106.

Judge Gross, in a special concurrence in *Guzman*, noted that although the Supreme Court never explicitly questioned the *Williams* decision in *Ramos*, the Court's functionalist reasoning in *Williams* is on shaky ground because of the Court's decision in *Ramos*. *See Guzman*, 350 So. 3d at 78 ("It is a stretch to say that *Ramos* 'effectively overruled' *Williams*. Yet, if applied to the issue of jury size, the

originalist analysis in *Ramos* would undercut *Williams*'s functionalist underpinnings.").

Appellant acknowledges that the Supreme Court recently denied review of this twelve-person jury argument in *Albritton* (No. 23-7272), *Croce* (No. 23-7503), *Rodgers* (23-7521), *Mendezsales* (23-7588), *Davis* (23-7685), *Mantecon* (24-5113), *Terrell* (24-5284), and *Valle* (24-5431). Nonetheless, Appellant maintains that the Court's ruling in *Williams* is impossible to square with the Court's ruling in *Ramos*. So this Court should reverse Appellant's conviction by a six-person jury.

III. SECTION 913.10 IS FACIALLY UNCONSTITUTIONAL BECAUSE IT VIOLATES APPELLANT'S SIXTH AMENDMENT RIGHT TO A TWELVE-PERSON JURY.

a. Standard of review

"The constitutionality of a statute is a pure question of law subject to de novo review." *City of Ft. Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016).

b. Preservation

Appellant contends this issue does not need to be preserved for appellate review, because a challenge to the facial constitutionality of a statute may be raised for the first time on appeal. *See N.B. v. Fla.*

Dep't of Child. & Fams., 183 So. 3d 1186, 1187 (Fla. 3d DCA 2016). Because Appellant is arguing that section 913.10, Florida Statutes (2022), is facially unconstitutional, he did not need to raise this issue at the trial court to preserve it for appellate review.

c. Constitutionality

Because *Williams* is wrong, Appellant argues that section 913.10 (which legislatively permits juries of less than twelve people in felony trials), is facially unconstitutional.

"As in all constitutional challenges, [a] statute comes to [this] Court clothed with the presumption of correctness and all reasonable doubts about [a] statute's validity must be resolved in favor of constitutionality." *Dhar*, 185 So. 3d at 1234. "[T]o overcome the presumption of constitutionality, 'the invalidity must appear beyond reasonable doubt.'" *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (quoting *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004)).

"When courts consider the constitutionality of a statute that abridges a fundamental right, they are required to apply a strict scrutiny standard to determine whether the statute denies equal protection." *Dhar*, 185 So. 3d at 1234. "A fundamental right is one [that]

has its source in and is explicitly guaranteed by the federal or Florida Constitution." *State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2004). So "[t]o withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest." *Jackson v. State*, 137 So. 3d 470, 474 (Fla. 4th DCA 2014).

To "abridge" a fundamental right, a government has to "reduce" or "diminish" said right. *See Abridge*, Black's Law Dictionary (12th ed. 2024). This indicates that to abridge a fundamental right, a law must limit a person's ability to exercise their constitutional rights—but this does not mean that a government can gut that fundamental right. In fact, the only way for a fundamental right to be gutted, according to an originalist interpretation of the Constitution, is through a constitutional amendment, which was not done here. *See* art. V, U.S. Const.; Scalia, *supra*, at 12 ("Originalists believe that the provisions of the Constitution have a fixed meaning, which does not change (except by constitutional amendment): they mean today what they meant when they were adopted, nothing more and nothing less."). Here, Appellant suggests that a strict scrutiny analysis would never be met, because section 913.10 does not merely abridge his

Sixth Amendment right to a twelve-person jury in a felony trial, it guts that fundamental right entirely.

Nonetheless, even if this Court were to apply strict scrutiny, section 913.10 still fails because there is no compelling government interest. The history behind section 913.10 shows that Florida did not, and still does not, have a compelling government interest in limiting a defendant's Sixth Amendment right to a twelve-person jury in a felony trial, because Florida's reasoning for passing section 913.10 was racist to its very core. *See Wallace v. State*, 768 So. 2d 1247, 1250 (Fla. 1st DCA 2000) ("[R]acism has no place in our system of justice.").

Florida's six-person jury law arose in the Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami*, 143 S. Ct. at 27 (Gorsuch, J., dissenting from the denial of certiorari). Although, at the time of passing the precursor to section 913.10, section 6 of Chapter 3010 of the Laws of Florida (1877), this is never explicitly stated by the Florida Legislature, historical evidence points in that direction. Namely, during Reconstruction, when federal troops were stationed in Florida, a jury trial in a felony trial consisted of twelve people. But, on February 17,

1877, approximately one month after federal troops left (at the birth of the Jim Crow era), Florida changed its laws, permitting a felony trial with a six-person jury. *See* ch. 3010, § 6, Laws of Fla. (1877). Thus, the six-person jury 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.

Because there is no compelling government interest to promote racism, section 913.10 fails to meet strict scrutiny, and it is facially unconstitutional. This Court should reverse Appellant's conviction and sentence.

CONCLUSION

For the foregoing reasons, this Court should reverse Appellant's conviction and sentence and remand for further proceedings, including a new trial.

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CERTIFICATE OF SERVICE

I certify that on November 15, 2024, a copy hereof has been electronically filed with this Court and furnished to Celia Terenzio, Esq., Assistant Attorney General, Counsel for Appellee, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401-3432, by email to: CrimAppWPB@MyFloridaLegal.com.

/s/ Benjamin Nathaniel Paley
Attorney for Appellant

CERTIFICATE OF FONT SIZE

I certify this brief is submitted in compliance with Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2) and that the font is Bookman Old Style 14-point and that the word count is 13,000 or less exclusive of the caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block.

/s/ Benjamin Nathaniel Paley
Attorney for Appellant