

No.

IN THE SUPREME COURT OF THE UNITED STATES

NEAL LEE MINTON, 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

NEAL LEE MINTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-2701

[December 4, 2025]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Michael J. Linn, Judge; L.T. Case No. 2022CF003172 A.

Daniel Eisinger, Public Defender, West Palm Beach, and Gary L. Caldwell, Assistant Public Defender, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

GERBER, LEVINE and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

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

December 17, 2025

NEAL LEE MINTON,
Appellant(s)

v.

STATE OF FLORIDA,
Appellee(s).

CASE NO. - 4D2024-2701
L.T. No. - 2022CF003172 A

BY ORDER OF THE COURT:

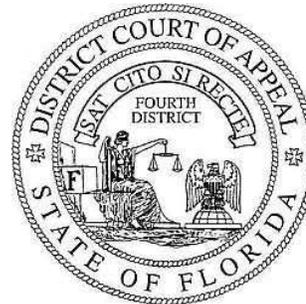
ORDERED that Appellant's December 11, 2025 motion for rehearing, issuance of written opinion and certification, and stay of mandate is denied.

Served:
Crim App WPB Attorney General
Gary Lee Caldwell
Melynda Layne Melear
Palm Beach Public Defender
James Regan

KEH

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


LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-2701 December 17, 2025



SUMMARY OF THE ARGUMENT

I. The fines and surcharges were illegally imposed.

First, section 893.135(f)(1) and the surcharge provisions of section 938.04 are unconstitutional facially and as applied as they do not provide for the individualized proportionality and ability-to-pay assessments required by the Excessive Fine Clauses of the state and federal constitutions.

Second, even if the statutes were constitutional, the \$50,000 and \$100,000 fines as well as the surcharges on them in the present case in this case violate the Excessive Fines Clauses of the state and federal constitutions.

Third, the court violated Appellant's due process rights by imposing surcharges as to which he had no notice when he entered his plea or at sentencing.

Fourth, the statutory scheme is such that the court had discretion not to impose the fines, but it was unaware of its discretion in this regard.

II. The Criminal Punishment Code and Appellant's scoresheet and sentence under it violate the Due Process and Jury Clauses of the state and federal constitutions.

III. The convictions and sentences must be reversed due to the trial court's failure to honor Appellant's unqualified invocation of his right to self-representation and failed to comply with the requirements of *Faretta v. California*, 422 U.S. 806 (1975).

ARGUMENT

I. THE FINES AND THE SURCHARGES WERE ILLEGALLY IMPOSED.

Pursuant to the court's oral pronouncement, R 268–69, the written sentence included fines of \$100,000 for count two and \$50,000 for count four. R 226, 228. The written sentence also included surcharges on those fines, which had not been orally pronounced. R 226, 228.

While this appeal was pending, Appellant filed a rule 3.800(b)(2) motion objecting to the fines and surcharges. R 275–315. The state filed a response. R 320–23. The court denied the motion based on the state's response. R 324–25.

Objections to costs and fines are properly raised in a motion to correct sentencing error pursuant to rule 3.800(b)(2). *Thomas v. State*, 276 So.3d 360 (Fla. 1st DCA 2011); *Dabel v. State*, 79 So.3d 873, 874 (Fla. 4th DCA 2012); *Nix v. State*, 84 So.3d 424, 425 (Fla.

1 DCA 2012). Review is *de novo* *R.J. Reynolds Tobacco Co. v. Coates*, 308 So. 3d 1068, 1074 (Fla. 5th DCA 2020); *State v. Jones*, 180 So. 3d 1085, 1088 (Fla. 4th DCA 2015).

Further, a sentence imposed pursuant to an unconstitutional sentencing provision constitutes fundamental error. In *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), the defendant contended for the first time on appeal that amendments to the habitual offender statute violated the state constitution’s single subject rule for legislative enactments. The supreme court rejected the state’s argument that the defendant was “prohibited from challenging the constitutionality of chapter 89–280’s amendments for the first time on appeal because the issue does not constitute fundamental error,” and held the amendment violated the state constitution. *Id.* at 3–4. *See also Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004).

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

The fine provisions of section 893.135(f)(1) and the surcharge provisions of section 938.04 are unconstitutional facially and as applied as they do not provide for the individualized proportionality and ability-to-pay assessments required by the Excessive Fine Clauses of the state and federal constitutions.

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed” Amend. VIII. U.S. Const. The Florida constitution likewise forbids excessive fines: “Excessive fines ... are forbidden.” Fla. Const. Art. I, § 17.

The Excessive Fines Clauses arise from the common law. See *U.S. v. Bajakajian*, 524 U.S. 321, 335–36 (1998) (discussing common law background of Excessive Fines Clause); *City of Seattle v. Long*, 493 P.3d 94, 111–13 (Wash. 2021) (detailing common law leading up to adoption of Excessive Fines Clause).

The fine provisions of section 893.135(f)(1) are unconstitutional under the state and federal Excessive Fines Clauses.

The statute provides:

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of ... methamphetamine, as described in s. 893.03(2)(c)5. ... commits a felony of the first degree, which felony shall be known as “trafficking in

amphetamine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

- a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.

Further, section 938.04, Florida Statutes, adds a 5% surcharge.

These fine provisions are unconstitutional under the Excessive Fines Clauses of the state and federal constitutions because they provide for no individualized assessment of whether the fine is disproportionate to the defendant’s crime and do not provide for any consideration of the defendant’s ability to pay. (The question of whether the fines are in fact mandatory is raised in a separate section of this issue.)

There must be individualized determination of the proportionality of the fine

In *U.S. v. Bajakajian*, 524 U.S. 321 (1998), the defendant was arrested while trying to leave the country with \$357,144 in cash. He was charged with, and plead guilty to, the federal crime of failure to report exported currency. *Id.* at 327.

The relevant statute provided that the sentencing court “shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.” *Id.* at 325 (quoting 18 U.S.C. § 982(a)(1)).

The federal trial court ruled that the amount violated the Excessive Fines Clause and reduced the forfeiture amount to \$15,000. *Id.* at 326. On appeal by the government, the judge’s ruling was affirmed by the Court of Appeals. *Id.* at 326-27. The Supreme Court granted review and also ruled for the defendant.

The Supreme Court made clear that, although the sanction was termed a “forfeiture,” it operated as a fine for purposes of the Excessive Fines Clause because it was imposed as a punishment:

The Excessive Fines Clause thus “limits the government's power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’” *Austin v. United States*, 509 U.S. 602, 609–610 (1993) (emphasis deleted). Forfeitures—payments in kind—are thus “fines” if they constitute punishment for an offense.

Id. at 328. *See also Austin v. United States*, 509 U.S. 602, 623–24 (1993) (Scalia, J., concurring) (noting that “forfeiture” and “fine” were treated as synonyms as the time of adoption of the Eighth Amendment).

Although the forfeiture was required by statute, the Supreme Court held that requiring the defendant to pay the entire \$357,144 violated the Excessive Fines Clause: “The question in this case is whether forfeiture of the entire \$357,144 that respondent failed to declare would violate the Excessive Fines Clause of the Eighth Amendment. We hold that it would, because full forfeiture of respondent’s currency would be grossly disproportional to the gravity of his offense.” *Bajakajian*, 524 U.S. at 324. (Bajakajian did not contest imposition of the \$15,000 forfeiture actually imposed. Hence, the Court stated, “Our holding ... reflects no judgment” as to the constitutionality of \$15,000 assessment actually imposed. *Id.* at 337 n.11.)

Justice Thomas wrote for the Court that it was “irrelevant whether respondent’s currency is an instrumentality; the forfeiture is punitive, and the test for the excessiveness of a punitive forfeiture involves solely a proportionality determination.” *Id.* at 333–34.

“In applying this standard, the district courts in the first instance, and the courts of appeals, reviewing the proportionality determination *de novo*, must compare the amount of the forfeiture to the gravity of the defendant’s offense. If the amount of the

forfeiture is grossly disproportional to the gravity of the defendant’s offense, it is unconstitutional.” *Id.* at 336–37.

Thus, under *Bajakajian* a forfeiture or fine may be disproportionate and excessive even though the defendant violated the statute authorizing it. A court may not merely mechanically apply the statute —the constitution requires an individualized determination in each case.

There must be individualized determination of the defendant’s ability to pay.

Ability to pay was not at issue in *Bajakajian* — the defendant obviously had that ability since he had the money when he was arrested.

Further, *Bajakajian* never raised the issue of ability to pay: “Respondent does not argue that his wealth or income are relevant to the proportionality determination or that full forfeiture would deprive him of his livelihood, and the District Court made no factual findings in this respect.” *Id.* at 340 n.15 (internal citation omitted).

The Court noted, however, that the Excessive Fines Clause arose from the common law requirement that a fine or forfeiture “should not deprive a wrongdoer of his livelihood.” *Id.* at 335.

Moreover, the Supreme Court subsequently determined that the Excessive Fines Clause incorporates the common law rule that economic sanctions must both “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood” in *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (quoting *Browning-Ferris v. Kelco*, 492 U.S. 257, 271 (1989)) (emphasis added).

Thus, Blackstone wrote that at common law no one “shall have a larger amercement imposed ... than his circumstances or personal estate will bear.” 4 William Blackstone, Commentaries on the Laws of England *372 (1769). (An “amercement” was “a fine or penalty.” AMERCEMENT, Black’s Law Dictionary (12th ed. 2024).)

Hence, a large number of courts have determined that under, *Timbs* and *Browning-Ferris* and the common law background of the Excessive Fines Clause, the court must consider the defendant’s ability to pay. *See City of Seattle v. Long*, 493 P.3d 94, 112 (Wash. 2021) (“A number of modern state and federal courts have joined the chorus of legal scholars to conclude that the history of the clause and the reasoning of the Supreme Court strongly suggest that considering ability to pay is constitutionally required.”).

The Washington Supreme Court explained:

¶63 Critical to the present case is whether this proportionality inquiry can or should include consideration of a person’s ability to pay. *Timbs* notes that *Bajakajian* took “no position on ... whether a person’s income and wealth are relevant considerations in judging the excessiveness of a fine,” 139 S. Ct at 688, yet *Bajakajian* also observed that no argument was presented on the issue: “[r]espondent does not argue that his wealth or income are relevant to the proportionality determination or that full forfeiture would deprive him of his livelihood and the District Court made no factual findings in this respect.” 524 U.S. at 340 n.15, 118 S.Ct. 2028 (citation omitted). While the Court has not yet decided whether ability to pay is required, the history of the Eighth Amendment suggests it is.

¶64 The Magna Carta—from which the Eighth Amendment descended—limited the government’s power to impose punitive fines by, in part, forbidding penalties “so large as to deprive [a person] of his livelihood.” *Browning-Ferris*, 492 U.S. at 271, 109 S.Ct. 2909. English freemen could be amerced only in such a way as to save “ ‘to him his contenment,’ ” a merchant “his merchandise,’ ” and a serf his “wainage.”¹³ *Bajakajian*, 524 U.S. at 335-36, 118 S.Ct. 2028 (quoting Magna Carta); see also *Timbs*, 139 S. Ct. at 694 (Thomas, J., concurring in judgment) (quoting 2 Henry Hallam, *The Constitutional History of England: From the Accession of Henry VII To the Death of George II* 34 (8th ed. 1867) (noting the Magna Carta’s provision that no person be amerced to the “ ‘full extent of his means’ ”)). *Blackstone’s Commentaries* echo this notion: no one “shall have a larger amercement imposed ... than his circumstances or personal estate will bear.” 4 William Blackstone, *Commentaries on the Laws of England* *372 (1769).

¶65 Across the pond, the Virginia Supreme Court of Appeals explained that its excessive fines clause reflected

the traditional understanding that any “fine or amercement ought to be according to the degree of the fault *and the estate* of the defendant.” *Jones v. Commonwealth*, 5 Va. 555, 558 (1799) (emphasis added). Thomas Cooley’s esteemed constitutional treatise stated that the excessive fines provision requires a fine to “have some reference to the party’s ability to pay it.” Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 328 (1868).

¶66 Nineteenth century lawmakers appear to have accepted this traditional understanding. See Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 *Hastings Const. L.Q.* 833, 883-84 (2013). In an 1864 speech to the United States Senate, one Pennsylvania Republican noted that an excessive fine “ ‘is a technical term’ ” and must “ ‘be determined from the condition of the man how much he could pay without touching the sustenance of his wife and children.’ ” *Id.* at 884 (quoting *Cong. Globe*, 38th Cong., 1st Sess. 561 (1864) (statement of Sen. Edgar Cowan)). Though not uniformly accepted, many state courts applied this understanding of the excessive fines clause.¹⁴ For example, the Florida Supreme Court concluded that “[t]he duration and quantity of each [fine]” depends on the “aggravation, or otherwise, of the offense, [and] *the quality and condition of the parties* ... the quantum, in particular, of pecuniary fines neither can nor ought to be ascertained by an invariable.” *Id.* (second alteration in original) (citing *Frese v. State*, 23 Fla. 267, 270-71, 2 So. 1 (1887)).

¶67 A number of modern state and federal courts have joined the chorus of legal scholars to conclude that the history of the clause and the reasoning of the Supreme Court strongly suggest that considering ability to pay is constitutionally required. *E.g.*, *Oregon v. Goodenow*, 251 Or. App. 139, 153, 282 P.3d 8 (2012) (“When assessing

the severity of a defendant's forfeiture, courts consider the amount of the forfeiture and the effect of the forfeiture on the defendant." (citing *United States v. Levesque*, 546 F.3d 78 (1st Cir. 2008); *Browning-Ferris*, 492 U.S. at 266-67, 109 S.Ct. 2909)); *Commonwealth v. 1997 Chevrolet*, 106 A.3d 836, 871 (Pa. Cmwlth.2014) ("the excessive fines analysis ... requires ... a thorough examination of every property owner's circumstances"); Rachel J. Weiss, *The Forfeiture Forecast After Timbs: Cloudy with a Chance of Offender Ability to Pay*, 61 B.C. L. Rev. 3073, 3108 (2020); Suppl. Br. of Long at 9 n.19 (citing law review articles in support). Federal circuit courts are split on the issue. *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998) ("[I]n the case of fines, as opposed to forfeitures, the defendant's ability to pay is a factor under the Excessive Fines Clause."). *But see United States v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011) (deeming a " 'defendant's inability to satisfy a forfeiture at the time of conviction' " is not relevant to constitutional analysis (quoting *Levesque*, 546 F.3d 78, 85 (1st. Cir. 2008))); *accord United States v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009).

¶68 The Colorado Supreme Court recently observed that history and precedent constitute "persuasive evidence that a fine that is more than a person can pay may be 'excessive' within the meaning of the Eighth Amendment." *Dep't of Labor & Emp't v. Dami Hosp., LLC*, 2019 CO 47M, ¶ 30, 442 P.3d 94, 101. In addition to historical considerations, the Colorado court found that the "concept of 'proportionality' itself" supported considering ability to pay. *Id.* ¶ 31. A fine that would bankrupt one person would be a substantially more burdensome fine than one that did not. *Id.*

¶69 The weight of history and the reasoning of the Supreme Court demonstrate that excessiveness concerns more than just an offense itself; it also includes consideration of an offender's circumstances. The central

tenet of the excessive fines clause is to protect individuals against fines so oppressive as to deprive them of their livelihood. *Timbs*, 139 S. Ct. at 688. Inherent in this safeguard is the recognition that “ ‘what is ruin to one man’s fortune, may be a matter of indifference to another’s.’ ” *Browning-Ferris*, 492 U.S. at 300, 109 S.Ct. 2909 (O’Connor, J., concurring in part and dissenting in part) (quoting 4 Blackstone, *supra*, at *371). As one Pennsylvania court astutely noted, “[T]he excessive fines analysis under the Eighth Amendment requires more than ‘lip service.’ ... This requires a thorough examination of every property owner’s circumstances.” *1997 Chevrolet*, 106 A.3d at 871.

¹³ For the definition of “contenement,” see *supra* note 8. *Black*’s defines “wainage” as “[t]he plow, team, and other implements used by a person ([especially] a villein) to cultivate the soil” or the “[c]ultivated land or the profits from it.” *Black*’s, *supra*, at 1894.

¹⁴ See *McLean*, *supra*, at 885 & n.195 (citing *State v. Staub*, 182 La. 1040, 1044-45, 162 So. 766 (1935) (“What constitutes an excessive fine for the violation of a penal statute depends in part ... upon the ability of the defendant to pay. A fine which in one case would be only slight punishment, because easily paid, might in another case be excessive, because its payment would be ruinous to the convict.”); *People v. Hershey Farms, Inc.*, 175 Misc. 641, 643, 24 N.Y.S.2d 163 (N.Y.Gen.Sess. 1941) (quoting 15 Am. Jur. *Criminal Law* § 551 (1938)) (“ ‘A fine is excessive if it seriously impairs his ability to gain a livelihood.’ ”) (quoting 15 Am. Jur. *Criminal Law* § 551 (1938))); *Cohen v. State*, 173 Md. 216, 232, 195 A. 532 (Ct. App. 1937) (“[W]hen a fine is imposed, it should be done with due regard to the ability of the defendant to pay.”); *cf. State v. Ross*, 55 Or. 450, 474, 104 P. 596, 106 P. 1022 (1909) (“[I]mprisonment ... for life, for the nonpayment of [a] fine, ... is a cruel and unusual punishment.”). Not all

state courts, however, agreed on this point. *See, e.g., Poindexter v. State*, 137 Tenn. 386, 392, 193 S.W. 126 (1917) (“A fine is proportioned to the gravity of the offense punished, and the financial ability of a defendant to pay is not ordinarily considered.”); *Conley v. State*, 85 Ga. 348, 11 S.E. 659 (1890); *State v. Little*, 42 Iowa 51, 56 (1875) (“It seems to us that this is one of the cases which call for severe punishment. In view of the fact that the extent of the punishment in such cases is fixed by law at one thousand dollars, we think a fine of half that sum is far from being excessive in this case.”)).

City of Seattle v. Long, 493 P.3d at 111–13.

Furthermore, the determination must involve a realistic assessment of the individual defendant’s ability to pay — simply to say the defendant might win the lottery or suddenly fall heir to an unexpected fortune would completely eliminate the need for an individualized determination since such an unlikely event could occur to anyone.

The fines and surcharges should be stricken because they were imposed under an unconstitutional statute.

In view of the foregoing, the fine provisions of section 893.135(f)(1) are unconstitutional on their face and as applied to the indigent Appellant in this case. As a result, there is no constitutional statutory basis for imposition of the fines in this case and they must be stricken.

Where, as here, a statute is unconstitutional, a court does not have the power to modify the statute to make it constitutional. “The judiciary ... is without power to rewrite a plainly written statute, even if it is to avoid an unconstitutional result.” *Westphal v. City of St. Petersburg*, 194 So. 3d 311, 313–14 (Fla. 2016) (emphasis added). The courts must remain faithful to the rule that the Legislature alone has the power to enact and amend the Criminal Code. Art. II, § 3, Fla. Const. Hence, the fines and surcharges in this case should be stricken.

Even if the statutes were constitutional, the \$50,000 and \$100,000 fines as well as the surcharges on them in the present case must be stricken under the Excessive Fines Clauses of the state and federal constitutions.

Setting aside the question of whether the statute is facially constitutional, the statute is unconstitutional as applied to Appellant so that the Excessive Fines Clauses of the state and federal constitutions were violated by the fines and surcharges imposed in this case.

As already noted the federal Excessive Fines Clause incorporates the common law rule that economic sanctions must “be proportioned to the wrong” and “not be so large as to deprive

[an offender] of his livelihood.” *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (quoting *Browning-Ferris v. Kelco*, 492 U.S. 257, 271 (1989)).

Further, the constitutionality of a fine must be determined on a case-specific individualized basis. See *U.S. v. Bajakajian*, 524 U.S. 321 (1998). The common law did not allow a fine “larger ... than [the defendant’s] circumstances or personal estate will bear.” *City of Seattle v. Long*, 493 P.3d at 112 (quoting 4 William Blackstone, *Commentaries on the Laws of England* *372 (1769)).

The fines and surcharges are constitutionally disproportionate

Under *Bajakajian* a forfeiture or fine may be disproportionate and excessive even though the defendant violated the statute authorizing it. A court may not merely mechanically apply the statute — there must be an individualized determination in each case.

Before the 2019 decision in *Timbs*, the First Circuit Court of Appeal derived three considerations to use in applying *Bajakajian* in determining whether the fine is disproportionate: “(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by

the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant.” *United States v. Heldeman*, 402 F.3d 220, 223 (1st Cir. 2005). Notably, the three *Heldeman* considerations do not take into account the subsequent requirement of *Timbs* that the amount may “not be so large as to deprive [an offender] of his livelihood.” See *United States v. Viloski*, 814 F.3d 104, 111–12 (2d Cir. 2016) (noting *Heldeman* considerations but adding: “Whether a forfeiture would destroy a defendant’s livelihood is a component of the proportionality analysis, not a separate inquiry.”).

Further, as already noted, a large number of courts have determined that under *Timbs* and *Browning-Ferris* the court must consider the defendant’s ability to pay. See *City of Seattle v. Long*, 493 P.3d 94, 112-14 (Wash. 2021) (surveying history of Excessive Fines Clause and contemporary case law).

(1) Appellant does not fall into the class of persons at which the fine is principally directed — he was a common dealer rather than a kingpin or even a middleman.

In *Gordon v. State*, 139 So. 3d 958 (Fla. 2d DCA 2014), — which was decided before the 2019 decision in *Timbs* — the court considered application of the *Heldeman* considerations to fines of \$500,000 and \$100,000 under section 893.135(1)(c)(1)(c) and

893.135(5), Florida Statutes (2011), for one count of conspiracy to traffic in oxycodone and one count of trafficking in oxycodone.

Gordon was a significant drug dealer, trafficking in an amount “four-to-twelve times as much as the majority of traffickers of oxycodone and hydrocodone.” *Id.* at 961. She “specifically sought to obtain a high-volume prescription through deception in order to take advantage of what law enforcement might refer to as a pill mill—those establishments which routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.” *Ibid.* Gordon’s crime was sophisticated as it involved elaborate preparation and deception: “For example, Gordon sought out the confidential informant in order to commit the crime, and provided the informant with everything she would need. This included cash to pay for the pills, a cover story, a false MRI, and a false prescription history. This only aggravates the harm caused and the gravity of the offense.” *Id.* at 964.

Although Gordon argued on appeal that the fine provisions were facially unconstitutional, *id.* at 960, the Second District did not directly address that issue and instead concluded that the fines imposed on Gordon were not constitutionally excessive under the

circumstances of her individual case. *Id.* at 964.

The Second District wrote as to the purpose for the assessment of fines under the drug trafficking statute:

While the original meaning of this provision appears to be directed at penalizing drug kingpins and those involved in cartels it is also clear that the legislature saw the offense Gordon committed, that of being a middleman, as a significant crime. Thus, it follows that the legislature would assign a significant fiscal penalty to the crime in order to further disincentivize it. And Gordon's conduct falls into what was the maximum offense at the time of its creation.

Id. at 961 (emphasis added). The court wrote that Gordon was a member of the class at which the statute was directed because her actions were consistent with that of "a middleman rather than a common dealer":

The facts surrounding the offenses Gordon committed are more like those of a middleman than a common dealer. Gordon and her codefendant schemed to commit their crime: they obtained prescriptions for controlled substances through false means and would likely have sold them to persons illegally—both to people without a prescription and without the authority to distribute such pills—had they not been caught. In this case, Gordon's greater conviction was for conspiracy to traffic in oxycodone, 28 grams to 30 kilograms, based mostly on the 360 pills found with her—an amount it appears is four-to-twelve times as much as the majority of traffickers of oxycodone and hydrocodone. See Off. of Prog. Pol'y Anal. & Gov't Acct., *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking* 4 (Fla. Jan.

2012), *available at* <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf> [hereinafter *OPPAGA Report*]. She specifically sought to obtain a high-volume prescription through deception in order to take advantage of what law enforcement might refer to as a “pill mill”—those establishments which “routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.” See Fla. H.R. Comm. on Judiciary, HB 99 (2014) Staff Analysis 4 n. 21 (Mar. 3, 2014) (quoting *OPPAGA Report* 4 n. 7). The evidence at trial indicated a street value of ten dollars per pill for a potential total in this case of \$3600. While a gross total of \$3600 does not rise to the level of a kingpin, it certainly fits within the idea of a middleman. Simply put, the statutory schema indicates the legislature meant to punish both middlemen and kingpins harshly, a policy decision we do not second-guess. We conclude that Gordon’s conduct fits within the statute’s principal direction. Accordingly, this factor militates in favor of not finding the greater fine to be grossly disproportional and thus constitutional.

Id. at 961–62 (emphasis added). The court then repeated that the \$100,000 fine was also “directed at the middleman” rather than a “street-corner dealer or kingpin.” *Id.* at 962.

The present case is different. As detailed in the warrant affidavits, the record shows count 2 (trafficking in 28 grams or more) was based on a sale of only 29 grams for only \$350. R 23. And count 3 was based on the sale of 15 grams for only \$20. R 26. Appellant acted only as a common dealer and user rather than a significant middleman like Gordon. R 22-26. Unlike Gordon, he did

not act as part of a pill mill operation.

(2) Other penalties by law.

In *Gordon*, the Second District noted that Gordon’s convictions carried substantial mandatory minimum prison terms, forfeiture, and “mandatory and discretionary court costs imposed by chapter 938 of the Florida statutes, which can amount to a significant sum in their own right,” as well as the fines. *Id.* at 962. It wrote that the “same analysis applies to the \$100,000 fine,” and concluded that “the aggregation of the penalties weighs in favor of both fines being grossly disproportional to the offenses committed.” *Ibid.* (emphasis added).

In the present case, Appellant’s conviction carried a seven year mandatory minimum, and his 10-yr sentence went well beyond the 79.875 month lowest permissible sentence under the CPC scoresheet. As in *Gordon*, the \$100,000 and \$50,000 fines — plus surcharges — are grossly disproportional to the gravity of his offense. Appellant’s CPC lowest permissible sentence was less than 80 months, only three-fourths of the 120-month sentence imposed.

Under section 775.083(1)(b), Florida Statutes, the maximum fine a court can impose for a first degree felony is \$10,000. Unlike

its mandatory imprisonment term, the \$100,000 and \$50,000 fines for drug trafficking is five times the maximum fine that could have been assessed for a host of far more egregious first-degree felonies.

Thus if Appellant had committed second degree murder, home invasion robbery with a firearm, kidnapping causing bodily harm, or aggravated manslaughter of a child, \$10,000 would have been the maximum fine a court could impose; or in its discretion, no fine.

Indeed, even for a life felony the maximum fine is \$15,000. § 775.083(1)(a). This category of crimes includes such grave crimes as kidnapping a child coupled with sexual abuse of the child, human trafficking of a child, and attempted first degree murder with a firearm.

Even though the lowest permissible sentence for these crimes under the CPC for someone with no criminal history, and not taking into account likely enhancements, will be a term of years in prison, a court could legally impose a fine of one dollar (or one cent, or no fine), making the \$150,000 in fines here imposed grossly excessive.

Adding to the irrationality of the mandatory fines is that the most serious crimes — capital felonies — carry no fine at all.

The difference between imprisonment and a fine must also be

considered. Both involve some punishment. Imprisonment specifically relates to culpability whereas fines are not specifically related to culpability—otherwise there would be a scoresheet for fines. By not having a scoresheet for fines excessive fines result. Again, the fines were grossly excessive relative to the any profits made by Appellant in the drug deal.

(3) The harm caused was minimal and disproportionate to the fine.

Proportionality should focus on the gravity of the crime and harshness of its penalties, and sentences for other defendants in the jurisdiction. *Solem v. Helm*, 463 U.S. 277, 292 (1983).

Here, Appellant sold small amounts of drugs for a total of \$370. R 22-26.

If he had committed two life felonies attempted first degree murders, or committed two acts of trafficking in minors, the maximum fine would have been a total of \$30,000 under section 775.083(1)(a), which allows for a maximum fine of \$15,000 for a life felony.

If he had committed two counts of a first degree felony such as aggravated manslaughter of a child or a disabled adult, or sale of prescription drugs resulting in death, he could be fined a maximum

total of only \$20,000 for the two crimes.

In sum, the fines in this case were based on a statute allowing no individualized assessment as required by *Bajakajian* and are grossly disproportionate under the Excessive Fines Clauses of the state and federal constitutions.

The fines and surcharges are unconstitutional as they are in excess of the defendant's ability to pay.

Notably, the Second District did not address the question of the defendant's ability to pay in *Gordon*.¹ But ability to pay must be considered under *Timbs*, *Browning-Ferris*, and the extensive history and case law set out in *Long*.

In the present case, Appellant is indigent. The two fines totaling \$150,000 — plus surcharges — will destroy any economic future he has. What is supposed to be a 10 year sentence is in reality a lifetime of indebtedness with such a fine.

¹ In *Stephenson v. State*, 368 So. 3d 5 (Fla. 4th DCA 2023), this Court followed *Gordon* in upholding the assessment of fines under section 893.135. *Stephenson* dispenses with the issue in a few sentences, and the opinion contains no individualized determination of the constitutionally required factors discussed in *Gordon*, contains no discussion of the defendant's ability to pay under *Timbs* and *Long*, and does not address the constitutionality of the statute itself. Hence, it offers no guide to the issues raised in this motion.

Under *Timbs*, a fine may not be so great as to destroy the defendant's economic future, and the ability to pay must be taken into consideration.

The \$100,000 and \$50,000 fines are intended to take the profits of drug activity away from the individuals who profit from the activity — not from an indigent defendant. The record shows no present ability to pay and no future ability to pay. Appellant was born in 1979, is without economic prospects.

The unannounced surcharge should be stricken.

The court did not orally announce imposition of the surcharge imposed on the fines, and it was not addressed in Appellant's plea. Moreover, the information contained no reference to section 938.04, Florida Statutes, under which the surcharge was imposed.

As such the surcharge was imposed in violation of the Due Process Clauses of the state and federal constitutions. Art. I, § 9, Fla. Const.; Amend. XIV, U.S. Const.

Due process "at a minimum" requires notice and the opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950); *Woods v. State*, 314 So. 3d 683, 685 (Fla. 3d DCA 2021) (quoting *Mullane*). To fulfill the requirements of due

process, a party is entitled to both “notice and a meaningful opportunity to be heard.” *Pena v. Rodriguez*, 273 So. 3d 237, 240 (Fla. 3d DCA 2019). “Basic due process requires a party be provided notice and a meaningful opportunity to be heard, the denial of which constitutes fundamental error.” *Ibid.*

Due process also requires that the charging document properly allege the grounds for any sentencing enhancement. *Erlinger v. United States*, 602 U.S. 821, 831 (2024). See also *Weatherspoon v. State*, 214 So. 3d 578, 583–84 (Fla. 2017); *Bienaimé v. State*, 213 So. 3d 927, 929 (Fla. 4th DCA 2017) Art. I, §§ 9, 16, 22, Fla. Const.; Amend. V, VI, XIV, U.S. Const.

The undersigned recognizes that this Court upheld imposition of a mandatory surcharge which had not been orally announced in *Altman v. State*, 36 So. 3d 894, 895 (Fla. 4th DCA 2010).

That opinion does not reflect, however, that there was a complete lack of notice of the surcharge such as in the present case.

Further, *Altman* noted the contrary holding of *Benton v. State*, 708 So. 2d 1002, 1003 (Fla. 2d DCA 1998) (striking surcharge that was imposed without oral pronouncement). In the present

circumstance, where there was a complete denial of due process, *Altman* is not controlling so that the surcharge should be stricken.

The court had discretion to impose fines of up to \$10,000 rather than \$50,000 and \$100,000, and the section 893.135(1)(f) fines were erroneously imposed as a mandatory cost.

Where a court is unaware of its sentencing discretion, the sentence should be remanded for reconsideration.

At sentencing, the court orally imposed a \$100,000 fine for count 2 and a \$50,000 fine for count 3 under section 893.135(1)(f). The written sentencing documents impose additional 5% surcharges on those fines.

It erroneously believed it was compelled by law to impose the fines. A careful review of relevant statutes and case law shows the fines were not mandatory.

Although the statute says the fines “shall” be imposed, there is a conflict with section 775.083, Florida Statutes, and in such circumstances, “shall” may be treated as permissive rather than mandatory.

Specifically, although section 893.135(f)(1) says the court “shall” impose fines of \$50,000 and \$100,000, it also provides that

the offense is “punishable as provided in . . . s.775.083.” § 893.135(1)(f)1. (Emphasis added).

Section 775.083, Florida Statutes, allows a court in its discretion to impose a fine up to \$10,000 for a first degree felony. Thus, a trial court has authority to assess a much lower fine under section 893.135(1)(f)1.

The verb “shall” ordinarily carries a mandatory connotation. See *Pecchia v. Wayside Estates Home Owners Ass'n, Inc.*, 388 So. 3d 1136, 1141–42 (Fla. 5th DCA 2024). This is especially so in civil cases such as *Pecchia* and the cases cited in it.

But our supreme court has determined that this normal usage may fall to the wayside when considering conflicting penal statutes.

The Florida Supreme Court is the supreme voice of what the law is in Florida. Its decisions take precedence over lower court decisions even though the lower courts may disagree: “the courts of this state are bound to follow the decisions and rules of this Court, and only this Court can void or modify a rule it has adopted.” *Reiter v. Gross*, 599 So. 2d 1275 (Fla. 1992).

In *Scates v. State*, 603 So. 2d 504 (Fla. 1992), the Florida Supreme Court ruled that if a statute provides two paths for

sentencing for a certain offense, the statutory use of the word “shall” does not necessarily make a provision mandatory — the trial court may still have discretion in deciding which path to follow.

In *Scates* the defendant was convicted of purchasing cocaine within 1000 feet of a school. At the time of the crime, section 893.13(1)(e)(1), Florida Statutes (1989), provided that one convicted of that offense “shall be sentenced to a minimum term of imprisonment of 3 calendar years.” *Id.* at 505 (emphasis added).

But at that time, a separate statute allowed a court to impose a non-prison sentence in its discretion “in lieu of, or in addition to, imposition of criminal penalties.” *Id.* (quoting section 397.10, Florida Statutes (1989)). Further, section 397.12 (1989) provided:

When any person, including any juvenile, has been charged with or convicted of a violation of any provision of chapter 893 or of a violation of any law committed under the influence of a controlled substance, the court ... may in its discretion require the person charged or convicted to participate in a drug treatment program licensed by the department [of Health and Rehabilitative Services].... If referred by the court, the referral may be in lieu of or in addition to final adjudication, imposition of any penalty or sentence, or any other similar action.

Scates, 603 So. 2d at 505 (quoting section 397.12 (1989)).

The court wrote as to these statutes that the conflict in the

statutory provisions must be construed in favor of the defendant, and, under that analysis, section 893.13(1) “[did] not absolutely preclude trial judges from exercising their discretion to reduce the sentence”:

In construing these statutes, we begin with the principle that, where criminal statutes are susceptible to differing constructions, they must be construed in favor of the accused. See § 775.021, Fla.Stat. (1989); *Lambert v. State*, 545 So.2d 838, 841 (Fla.1989). On its face, section 397.12 applies to chapter 893, and this application is not limited by any other provision of chapter 397. Also, while section 893.13(1)(e) does call for a minimum three-year sentence, when read in conjunction with the other sentencing provisions of chapter 893, it does not absolutely preclude trial judges from exercising their discretion to reduce the sentence.

603 So. 2d at 505 (emphasis added).

The court compared the use of “shall be” in section 893.13(1)(e)(1) to other provisions of chapter 893, and concluded that the use of different language indicated the legislature intended to “allow[] trial judges greater discretion in sentencing decisions under section 893.13(1)(e)”:

Two other sections in chapter 893 contain mandatory minimum sentences. Sections 893.135 and 893.20, Florida Statutes (1989), provide that the minimum sentences contained therein shall “not be suspended, deferred, or withheld.” Also, sections 893.135 and 893.20 expressly refer to their sentences as “mandatory.” There

is no similar restriction in section 893.13(1)(e), and the word mandatory is not used. The omission of this language implies that the legislature intended a different construction, allowing trial judges greater discretion in sentencing decisions under section 893.13(1)(e).

(Emphasis added.) *See also Burdick v. State*, 594 So. 2d 267, 270

(Fla. 1992) (construing word “shall” to be permissive in then-current habitual offender statute); *State v. Washington*, 594 So. 2d 291 (Fla. 1992) (following *Burdick*); *Simmons v. State*, 36 So. 2d 207, 209 (Fla. 1948) (holding that, although statute provided that jury instructions “must include in said charge the penalty fixed by law for the offense for which the accused is then on trial” was “merely directory and not mandatory”).

Thus, *Scates* noted a distinction between trafficking offenses under section 893.135 as to use of the word “mandatory,” which was not used under the then-applicable version of section 893.13. *Id.* at 506. The court concluded the statute’s “punishment provisions are alternatives to be applied by trial judges according to the facts of each case.” *Id.*

Accordingly, the supreme court affirmed the trial court’s imposition of probation in lieu of the required prison sentence.

The reasoning of *Scates* applies here. The trafficking statute

has separate provisions for fines, both applicable to Appellant: one stating the court “shall” impose fines of \$50,000 and \$100,000, the other stating the offense is “punishable as provided in . . . s. 775.083.” Section 775.083, Florida Statutes, provides the court may in its discretion impose a fine up to \$10,000 for a first degree felony.

Moreover, the distinction noted in *Scates* regarding trafficking offenses as to use of the word “mandatory” applies here. In this case, the word “mandatory” was not attached to the portion imposing a fine.

Also as in *Scates*, one statute incorporates the other by cross-reference. Section 893.135 explicitly incorporates section 775.083 as an authorized form of punishment regarding fines. Under *Scates*, this reference must be construed as providing two options: either \$50,000 or a fine of up to \$10,000.

Appellant is aware that in *State v. Bazil*, 703 So. 2d 1151 (Fla. 4th DCA 1997), the Fourth District held that a court erred in not imposing a mandatory minimum sentence for selling cocaine within 1000 feet of a school. The mandatory minimum statute there provided that anyone convicted of that crime “must be sentenced to

a minimum term of imprisonment of 3 calendar years.” *Id.* at 1152 (quoting section 893.13(1)(c)1, Florida Statutes (1995) (emphasis in *Bazil*).

Thus, the statute in *Bazil* was different from the “shall be” language in the present statute and in the statute involved in *Scates*. Further, there was no cross-referencing in the statutes in question in *Bazil* — again unlike in the present case and in *Scates*.

Appellant is also aware of *State v. Crews*, 884 So. 2d 1139 (Fla. 2d DCA 2004). Like *Bazil*, *Crews* was convicted of delivery of cocaine within 1000 feet of a school. Again, the sentence was imposed under a statute providing that upon conviction one “must” be sentenced to a minimum term of three years. *Id.* at 1140. The Second District also noted that section 397.705 had been rewritten to provide that when the court referred one to a treatment program “the referral shall be *in addition to* final adjudication, imposition of penalty or sentence, or other action.” *Id.* at 1141 (emphasis in *Crews*).

Thus *Crews* does not involve the present statute with the “shall be” language, and the specific cross-reference to punishment under section 775.083, which makes any fines discretionary and

much smaller.

Thus, the \$50,000 and \$100,000 fines were discretionary in this case. At sentencing, everyone seemed to believe that this Court has no choice but to impose the fines. Where, as here, there is a misapprehension of the court's discretion as to sentencing or a failure to exercise its discretion, resentencing is required. See *Colletta v. State*, 126 So. 3d 1090, 1091 (Fla. 4th DCA 2012) ("this court has remanded for resentencing where the defendant received a legal sentence but the trial court failed to exercise the discretion it had under the statutes"); *Pitts v. State*, 202 So. 3d 882, 884 (Fla. 4th DCA 2016) ("Resentencing is warranted where the defendant received a legal sentence, but the trial court misapprehended its sentencing discretion under the relevant statutes.").

II. THE CRIMINAL PUNISHMENT CODE AND THE SENTENCING SCORESHEET ARE UNCONSTITUTIONAL FACIALLY AND AS APPLIED.

The Criminal Punishment Code provides for calculation of a lowest permissible sentence based on the trial court's findings as to the defendant's prior convictions, which are not alleged in the charging document, and are not determined by the jury upon proof beyond a reasonable doubt. Hence, the statute and the resulting

ARGUMENT

I. THE FINES AND THE SURCHARGES WERE ILLEGALLY IMPOSED.

The answer brief contends that Florida can legislate away the right to be free of excessive fines by making a fine mandatory for policy reasons.

Contrary to this argument, the state and federal constitutions are supreme to any legislative enactment. Art. VI, cl. 2, U.S. Const.; *Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) (“Moreover, the Florida Constitution is the supreme law of Florida, and, as such, it takes precedence over any contrary provisions of the common law or statutes.”).

Hence, “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

An as-applied challenge to a sentencing statute may be raised by a motion to vacate the plea.

Appellee says that Appellant raises his claims for the first time on appeal. AB 5. Not so: Appellant raised his issues at the trial court level under rule 3.800(b)(2). R 275–317.

The answer brief apparently agrees that there is no bar to Appellant's raising facial unconstitutionality of the statute.

As to as-applied unconstitutionality, page 6 of the answer brief says: "In *Hughbanks v. State*, 190 So. 3d 1122, (Fla. 2d DCA 2016), the court recognized that the defendant had failed to preserve for appellate review his as-applied constitutional challenge to the penalty statute because he entered a guilty plea and did not argue the issue in the motion to withdraw plea."

So far as this may be interpreted as an argument that one must move to vacate a plea in order to challenge a sentencing statute, it is based on a misreading of *Hughbanks*. That case involved a motion to vacate a plea in order to make an as-applied challenge to the statute Hughbanks was charged under. It did not involve a challenge to the his sentence for that crime.

Hughbanks was charged with failure to properly register as a sex offender. He entered an open plea to the charge and at the plea hearing counsel told the judge that Hughbanks reserved the right to appeal an as-applied challenge to the statute to the sex offender registration statute — the statute Hughbanks was charged under. The prosecution said it did not object and the court said

Hughbanks did not waive anything by entering the plea. *Id.* at 1122–23.

Counsel “subsequently moved to withdraw the plea, pursuant to rule 3.170(l), in order to file a motion to dismiss and thereby put the constitutional issue before the trial court,” but the court denied the motion to vacate because a motion to dismiss could not be entertained after entry of a plea. *Id.* at 1123.

The Second DCA affirmed the denial of the motion to vacate because “Hughbanks failed to allege a cognizable ground on which to withdraw a plea under rule 3.170(l).” *Id.* at 1123.

So *Hughbanks* has nothing to do with making an as-applied challenge to a sentencing statute on appeal where — as in the present case — the argument has been made at the trial court level via a rule 3.800(b) motion to vacate. *See Booker v. State*, 244 So. 3d 1151 (Fla. 1st DCA 2018) (holding trial court erred in denying motion to correct sentence that argued sentencing statute was unconstitutional as applied to him). *See also Scott v. State*, 50 Fla. Law Weekly D1246, 2025 WL 1598260 (Fla. 5th DCA June 6, 2025) (rejecting on the merits as-applied challenge to sentencing statute raised in 3.800(b)(2) motion); *Chang v. State*, 50 Fla. L. Weekly

D1073, D1080 n.4, 2025 WL 1386670, at *6 (Fla. 2d DCA May 14, 2025) (holding defendant could not raise as-applied challenge to sentence where he did not file rule 3.800(b) motion to correct). Regardless, the facial constitutionality of the statute is properly before this Court. *See Chang*, 50 Fla. L. Weekly at D1080 n.4 (holding facial unconstitutionality of sentencing statute may be raised as fundamental error).

Contrary to the Appellee's argument, the present challenge to the statute has not been previously decided.

Appellee cites various decisions in arguing the constitutionality of the fines in question has already been decided.

First, it cites decisions of this Court and the state supreme court from the 1980s. AB 10. Those cases predate *U.S. v. Bajakajian*, 524 U.S. 321 (1998) and *Timbs v. Indiana*, 586 U.S. 146 (2019). Hence, regardless whether those decisions were correct under constitutional case law as it stood forty years ago, they do not resolve the present issue.

Next, Appellee cites *Gordon v. State*, 139 So. 3d 958 (Fla. 2d DCA 2014), and *Stephenson v. State*, 368 So. 3d 5 (Fla. 4th DCA 2023). AB 10.

As noted in the initial brief, *Gordon* was decided before *Timbs*. Hence, it did not consider whether the statute is unconstitutional because it does not provide for consideration of the defendant's ability to pay. As also noted in the initial brief, *Stephenson* also followed *Gordon*'s analysis and also did not consider this constitutional defect.

Although the Second District wrote in *Gordon* that the defendant raised a facial constitutionality argument, but its decision is focused on constitutionality as applied to Gordon.

It held: "We conclude that Gordon's conduct fits within the statute's principal direction." *Id.* 139 So. 3d at 961–62 (emphasis added). It based this on the sophistication of her criminal operation:

The facts surrounding the offenses Gordon committed are more like those of a middleman than a common dealer. Gordon and her codefendant schemed to commit their crime: they obtained prescriptions for controlled substances through false means and would likely have sold them to persons illegally—both to people without a prescription and without the authority to distribute such pills—had they not been caught. In this case, Gordon's greater conviction was for conspiracy to traffic in oxycodone, 28 grams to 30 kilograms, based mostly on the 360 pills found with her—an amount it appears is four-to-twelve times as much as the majority of traffickers of oxycodone and hydrocodone. See Off. of Prog. Pol'y Anal. & Gov't Acct., *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking* 4 (Fla. Jan.

2012), *available at* <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf> [hereinafter *OPPAGA Report*]. She specifically sought to obtain a high-volume prescription through deception in order to take advantage of what law enforcement might refer to as a “pill mill”—those establishments which “routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.” See Fla. H.R. Comm. on Judiciary, HB 99 (2014) Staff Analysis 4 n. 21 (Mar. 3, 2014) (quoting *OPPAGA Report* 4 n. 7). The evidence at trial indicated a street value of ten dollars per pill for a potential total in this case of \$3600. While a gross total of \$3600 does not rise to the level of a kingpin, it certainly fits within the idea of a middleman. Simply put, the statutory schema indicates the legislature meant to punish both middlemen and kingpins harshly, a policy decision we do not second-guess. We conclude that Gordon’s conduct fits within the statute’s principal direction. Accordingly, this factor militates in favor of not finding the greater fine to be grossly disproportional and thus constitutional.

Id. at 961–62 (emphasis added).

And like Heldeman, Gordon’s offense was also a crime of deception. For example, Gordon sought out the confidential informant in order to commit the crime, and provided the informant with everything she would need. This included cash to pay for the pills, a cover story, a false MRI, and a false prescription history. This only aggravates the harm caused and the gravity of the offense. Therefore this factor, too, militates a determination of the fines not being grossly disproportional.

Id. at 964.

Notably, the Second District’s only mention of the issue of

facial constitutionality was that to say: Gordon argued facial unconstitutionality so that the issue could be reviewed without a rule 3.800(b) motion to correct. *Id.* at 960. And (with no citation of authority) that a facial challenge requires consideration of “potential harm as well as actual harm caused” by the criminal activity. *Id.* at 963–64.

In *Stephenson*, there was no claim that Stephenson’s fines were imposed under an unconstitutional statute, and this Court wrote only that the fines were not unconstitutional under *Gordon*.

Neither *Gordon* nor *Stephenson* considers the core constitutional problem with the statute: It makes no provision at all authorizing consideration of the criteria set out in *Bajakajian* and *Timbs*.

“The judiciary ... is without power to rewrite a plainly written statute, even if it is to avoid an unconstitutional result.” *Westphal v. City of St. Petersburg*, 194 So. 3d 311, 313–14 (Fla. 2016) (emphasis added).

If — as vigorously argued by Appellee (AB 9, 12–13, 15–17) — the statutory fines are mandatory, a court may not consider those factors. It has no option but to impose them regardless of the

United States Supreme Court’s rulings. Indeed, Appellee asserts that out that our supreme court “has held that ‘a trial court is not required to determine a convicted criminal defendant’s ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination.’ *State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991).” AB 13. Hence, Appellee is limited to arguing, in essence, that Florida can legislate away the right to be free from excessive fines by making a fine mandatory.

Appellee makes no argument as to the ability-to-pay requirement of *Timbs*

As pointed out in the initial brief, a fine is unconstitutional if it does not take into account the defendant’s ability to pay. The statute is facially unconstitutional as it affords no possibility of consideration of this constitutional criterion.

Even if the statute complied with the criteria of *Bajakajian* and *Timbs*, those criteria do not support the fines in this case

Appellee says the fines in this case were properly imposed under *Gordon*. AB 10–15. For the reasons discussed in the initial brief and above, *Gordon* is unlike this case.

The Second District wrote that fines were properly imposed on Gordon because she was engaged in a sophisticated scheme. “She specifically sought to obtain a high-volume prescription through deception in order to take advantage of what law enforcement might refer to as a pill mill—those establishments which routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.” *Id.* at 961. Further, she provided the informant “cash to pay for the pills, a cover story, a false MRI, and a false prescription history.” *Id.* at 964.

The present case shows no such facts, as discussed in the initial brief and not disputed in the answer brief.

In seeking to justify *Gordon*, Appellee says “trafficking in illegal drugs causes significant harm to society, and that the legislature’s intent is to combat that harm.” AB 14.

But the seriousness of a crime does not trump the requirements imposed by the Supreme Court. *Bajakajian* and *Timbs* involved no less serious crimes than the present case.

In *Bajakajian*, the defendant was caught smuggling over \$300,000 in cash out of the country.

Such bulk cash smuggling is a vital component of

international terrorism and criminal activity. It “fuels criminal enterprises that traffic in illicit drugs, engage in violent crime against persons and property, fund terrorism and extremist groups, engage in human trafficking and smuggling and commit commercial fraud.”¹ ICE, “FAQ: Bulk Cash Smuggling” (updated 05/29/2025).

Terrorist organizations and international criminal organizations are financed by smuggling money, including smuggling money in and out of the United States. See U.S. Dept. of State, *Money Laundering and Terrorist Financing - A Global Threat* (March 2005).² “To avoid the scrutiny of law enforcement, these criminal organizations increasingly employ non-traditional methods to move funds, including the smuggling of bulk cash into, out of and through the United States.” U.S. Dept. of Homeland Security, *Disrupt Terrorist Financing* (March 2005).³

“Cash, and in particular, U.S. dollars, continues to be a fixture

¹ <https://www.ice.gov/about-ice/hsi/centers-labs/bcsc/faq>

² <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2005/vol2/html/42380.htm#:~:text=In%20addition%20to%20the%20continued,trade%20manipulation%20to%20move%20funds.>

³ <https://www.dhs.gov/topic/disrupt-terrorist-financing> (last updated 03/17/2025).

for terrorists raising, moving, and using funds, particularly when transferring funds across borders. While using cash is slower, bulkier, and less efficient than other mechanisms of moving funds, the anonymity, liquidity, and lack of electronic footprint mean that a cash-based money trail is more difficult to track and avoids the scrutiny that comes with transactions executed through a regulated financial institution.” U.S. Dept. of Treasury, *2024 National Terrorist Financing Risk Assessment*, p. 17. In enacting the Patriot Act, Congress found: “The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.” The Patriot Act, Pub. L. 107–56, § 371(3).

“Criminal material and logistics activities are at the heart of many operational terrorist groups, as they often require the illicit capability to procure weapons on the black market, to hide assets through money laundering techniques, smuggle personnel across borders, maintain communications systems that evade detection, and establish a security infrastructure to protect operations.”

Congressional Research Service, *International Terrorism and Transnational Crime: Security Threats, U.S. Policy, and Considerations for Congress* (Jan. 5, 2010).

Further, in *Timbs* the defendant engaged in drug dealing on a level similar to Appellant. As stated by the state supreme court on remand, he was arrested after he sold heroin in two transactions for a total amount of \$435. *See State v. Timbs*, 134 N.E.3d 12, 21 (Ind. 2019) (opinion on remand) (stating Timbs' first sale was for \$275 and second was for \$160). In the present case, the total of the two transactions was \$370 (one sale for \$350 and one for \$20). R 23, 26. Thus, the fact that one engages in such low level drug trafficking does not per se authorize enormous forfeitures or fines without consideration of the ability to pay.

And as already noted, *Gordon* and *Stephenson* did not consider the requirement of *Timbs* that a fine must be proportionate to the defendant's ability to pay. *Timbs* involved the forfeiture of a \$40,000 Land Rover, whereas the present case involves over \$150,000 in fines and surcharges. Further, while *Timbs* was sentenced to home detention and probation, 586 U.S. at 148–49, Appellant was sentenced to 10 years in prison, R 223–31, with no ability to pay

these assessments.

Agency Case # 2213715

Warrant Affidavit 562022CF003172A

Use separate forms for each defendant and for multiple offenses occurring at different time, date or location Juvenile
 Court Case # Copy To: Clerk of Court / State Attorney / Jail / Arresting Agency / Defendants Warrant

Defendant Data

Minton	Neal	Lee		(863) 447-8603	04/05/1979	43		Male
Last Name	First Name	Middle Name	Aliases (A.K.A.)	Phone Number	Date of Birth	Age	SSN	Gender
302 Ne 8th Ave	Okeechobee	FL	34972	M535632791250	FL			
Permanent Address	City	State	Zip	Drivers License #	State	Citizenship		
White	Bald	Brown	6'01	170				
Race	Hair Color	Eye Color	Height	Weight	Distinguishing Marks	Occupation / Employer / School		

Offense Information

2213715	Oliveira, Israel	2027	St. Lucie County Sheriff's Office	FL0560000	No	
Agency Case #	Officer	Officer ID #	Agency	Agency ORI #	Domestic Related	
12/06/2022	1054	3236-228 S Us Highway 1	Fort Pierce	FL	34982	Probable Cause
Offense Date	Offense Time	Offense Street Address	Offense City	State	Zip	Charge Status
Warrant(s) #	Alcohol Influence	BAL	Drug Influence	Weapon(s) Seized	Weapon(s) Type	

Charge Information

Add	Statute #	Statute Subsection & Definition	Counts	Type	Activity
X	893.13 (1A1) FS5056	Drugs-sell-sell Methamphetamine	1	Felony	Committed
X	893.135 (1F1) FF3756	Amphetamine-traffic-or Methamphetamine 14 Grams Or Over	1	Felony	Committed

Additional Party Information - (Codefendants & Victims)

Add	Party Type	Name	Address	City	State	Zip	Phone
X	Victim	State Of Florida					

Warrant Information - Property and Injuries

Property Status	Property Value	Injury Sustained	Injury Type	Injury Severity

Details of Offense as Stated by the Victim

On December 06, 2022, in the morning hours Detective Mondragon #414 and I met with a confidential informant, hereinafter referred to as C.I. #1, in Fort Pierce, St. Lucie County Florida. This was in furtherance of an ongoing criminal investigation into the sale and distribution of Crystal Methamphetamine within St. Lucie County. C.I. #1 is currently on suspended community control and has conducted no less than five controlled buys.

C.I. #1 said he/she was able to purchase an ounce of Crystal Meth for \$350.00 from a male subject known to C.I. #1 as Neal Lee Minton. C.I. #1 told us Neal had agreed to sell him/her an ounce of Crystal Meth for \$350.00 prior to meeting us. C.I. #1 was able to positively identify Neal from a picture that was provided to him/her by NCIC/FCIC. C.I. #1 said he/she would meet with Neal at the Red Roof Inn located on 3236 South US Highway 1, Fort Pierce, FL 34982. C.I. #1 informed me the meeting would take place inside room 228.

Prior to leaving for the drug transaction, we searched C.I. #1 and his/her vehicle for drugs, money, and other contraband; none were found. C.I. #1 was provided with an audio / video monitoring recording device and \$350.00 of prerecorded investigative funds to make a purchase of an ounce of Crystal Meth from Neal. The surveillance team consisting of Detective Mondragon and myself followed C.I. #1 to the Red Roof Inn from the pre-determined meet location.

Detective Osteen #416, Deputy Herrera #224, and Detective Favale #454 established physical surveillance at the Red Roof Inn. C.I. #1 was observed driving from the pre-determined meet location to the Red Roof Inn located on 3236 South US Highway 1, Fort Pierce, FL 34982.

Detectives Favale, Detective Osteen, and Deputy Herrera observed C.I. #1 pulling into the Red Roof Inn parking lot and parking his/her vehicle. C.I. #1 exited the vehicle and walked to room 228. C.I. #1 knocked on the door and was let inside the room.

Through the audio/visual device I observed C.I. #1 walking to the hotel room and knocking on the door. C.I. #1 was let inside the room and walked towards a nightstand that had an open drawer. Through the audio/visual device, I observed a white male with tattoos on his arms that I was able to positively identify as Neal Lee Minton through the previous inquiry of NCIC/FCIC and DAVID. Still through the audio/visual device, I observed C.I. #1 and Neal talking about purchasing more Crystal Meth. Neal was then observed making a phone call while utilizing the speaker. He was also observed utilizing a pipe to smoke what appears to be crystal meth. The person Neal was attempting to call did not answer the phone at that time. Neal left a

message and informed the C.I. that he would be able to get another 2 ounces of crystal meth "for sure" and was trying to get more. Upon conclusion of the conversation I observed C.I. #1 exit the room, walking to his/her vehicle. C.I. #1 then proceeded to drive back to the pre-determined meet location under constant surveillance.

Upon arrival at the pre-determined meet location, C.I. #1 provided me with a small clear plastic bag contained a Crystal like substance inside. The bag was sealed and had a metal clip tying up the end. The Crystal like substance was field tested and resulted positive for Crystal Meth, and weighed approximately 29 grams in the bag. C.I. #1 and his/her vehicle was searched for any additional drugs, money, and other contraband; none were found.

I spoke with C.I. #1 who said he/she arrived at the hotel and walked to room 228. C.I. #1 knocked on the door and was let in by Neal. C.I. #1 told me Neal was the only person inside the room. C.I. #1 told me Neal pointed in the direction of the nightstand where a scale and the narcotics were located. C.I. #1 told me he/she picked up the scale to weigh the narcotics and Neal assisted him/her. C.I. #1 told me the narcotic weighted approximately 29 grams. C.I. #1 told us that after he/she took possession of the narcotics he/she gave Neal the agreed amount of \$350.00. C.I. #1 told us he/she talked to Neal about purchasing more narcotics and after the conversation was over, C.I. #1 left the hotel room and drove back to the pre-determined meet location.

Based on the above information, Neal Lee Minton was found to be in violation of the following F.S.S.

893.13 (1A1) - DRUGS-SELL-SELL METHAMPHETAMINE

893.135 (1F1) - AMPHETAMINE-TRAFFIC-OR METHAMPHETAMINE 14 GRAMS OR OVER

A warrant was submitted.

Agency Case # 2213745

Warrant Affidavit *562022CF003173Axxxxx*

Use separate forms for each defendant and for multiple offenses occurring at different time, date or location
 Court Case # Copy To: Clerk of Court / State Attorney / Jail / Arresting Agency / Defendants Juvenile Warrant

Defendant Data

Minton	Neal	Lee		(863) 447-8603	04/05/1979	43		Male
Last Name	First Name	Middle Name	Aliases (A.K.A.)	Phone Number	Date of Birth	Age	SSN	Gender
302 Ne 8th Ave	Okeechobee	FL	34972	M535632791250	FL			
Permanent Address	City	State	Zip	Drivers License #	State	Citizenship		
White	Bald	Brown	6'01	170				
Race	Hair Color	Eye Color	Height	Weight	Distinguishing Marks	Occupation / Employer / School		

Offense Information

2213745	Oliveira, Israel	2027	St. Lucie County Sheriff's Office	FL0560000	No	
Agency Case #	Officer	Officer ID #	Agency	Agency ORI #	Domestic Related	
12/06/2022	2131	3236-228 S Us Highway 1	Fort Pierce	FL	34982	Probable Cause
Offense Date	Offense Time	Offense Street Address	Offense City	State	Zip	Charge Status
Warrant(s) #	Alcohol Influence	BAL	Drug Influence	Weapon(s) Seized	Weapon(s) Type	

Charge Information

Add	Statute #	Statute Subsection & Definition	Counts	Type	Activity
X	893.13 (1A1) FS5056	Drugs-sell-sell Methamphetamine	1	Felony	Committed
X	893.135 (1F1) FF3756	Amphetamine-traffic-or Methamphetamine 14 Grams Or Over	1	Felony	Committed

Additional Party Information - (Codefendants & Victims)

Add	Party Type	Name	Address	City	State	Zip	Phone
X	Victim	State Of Florida					

Warrant Information - Property and Injuries

Property Status	Property Value	Injury Sustained	Injury Type	Injury Severity

Details of Offense as Stated by the Victim

On December 06, 2022, in the evening hours C.I. #1 Detective Mondragon #414 and I met with a confidential informant, hereinafter referred to as C.I. #1, in Fort Pierce, St. Lucie County Florida. This was in furtherance of an ongoing criminal investigation into the sale and distribution of Crystal Methamphetamine within St. Lucie County. C.I. #1 is currently on suspended community control and has conducted no less than five controlled buys.

C.I. #1 told us he/she would be able to buy 2 ounces of crystal meth from a male previously identified by C.I. #1 through a picture from NCIC/FCIC as Neal Lee Minton. C.I. #1 told us Neal had agreed to sell him/her two ounces of Crystal Meth for \$600.00. C.I. #1 said he/she would meet up with Neal at the Red Roof Inn located on 3236 South US Highway 1, Fort Pierce, FL 34982. C.I. #1 informed me the meeting would take place inside room 228, which was the same location where C.I. #1 had met Neal earlier in the day to conduct a drug deal for one ounce of crystal meth.

Prior to leaving for the drug transaction, we searched C.I. #1 and his/her vehicle for drugs, money, and other contraband; none were found. C.I. #1 was provided with an audio / video monitoring recording device and \$600.00 of prerecorded investigative funds to make a purchase of two ounces of Crystal Meth from Neal. The surveillance team consisting of Detective Mondragon, Myself, Deputy Sheelar #284, and Okeechobee Detective J. Lacerte followed C.I. #1 to the Red Roof Inn.

The surveillance team observed C.I. #1 arriving at the Red Roof Inn parking lot and parking his/her vehicle. C.I. #1 exited the vehicle and walked to the second floor. C.I. #1 stopped in front of door number 228 and knocked. C.I. #1 was allowed into the room and out of our view.

Through the audio/visual device I observed C.I. #1 walking to the hotel room and knocking on the door. C.I. #1 was let inside the room by a male previously identified and confirmed by C.I. #1 from a picture that was provided to him/her by NCIC/FCIC as Joshua David Roach. C.I. #1 was observed walking in between the beds towards a nightstand. Neal was observed sitting on the bed to the east of the room holding a small plastic bag containing a Crystal like substance inside, while Joshua was near the bed to the west of the room. Neal transferred the substance to a dollar bill and placed on top of a scale and advised C.I. #1 that he did not have the two ounces of crystal meth. Neal told C.I. #1 that he had to go back to Okeechobee and get another two ounces. Neal agreed to sell the amount of narcotics he had at this time for \$20.00 and placed the substance back inside the plastic bag. Neal handed the bag to C.I. #1 and C.I. #1 gave Neal the \$20.00. C.I. #1 then spoke with Neal about purchasing firearms, Joshua interjected and told C.I. #1 he would have several firearms including rifles, and pistols available for sale. Upon conclusion of the conversation,

I observed C.I. #1 exit the room, walking to his/her vehicle. C.I. #1 then proceeded to drive back to the pre-determined meet location under constant surveillance.

Upon arrival at the pre-determined meet location, C.I. #1 provided me with a small clear plastic bag contained a Crystal substance inside. The Crystal substance was field tested and resulted positive for Crystal Meth, and weighed approximately 15 grams in the bag. C.I. #1 and his/her vehicle was searched for any additional drugs, money, and other contraband; none were found.

I spoke with C.I. #1 who said he/she arrived at the hotel and walked to room 228. C.I. #1 knocked on the door and was let in by Joshua. C.I. #1 told me he/she spoke with Neal and was informed that he did not have the previously agreed amount of two ounces. C.I. #1 told us Neal weighed the narcotics and added some from his own personal stash to a total amount of approximately 15 grams. C.I. #1 told us Neal agreed to sell him/her the 15 grams for \$20.00. C.I. #1 told us Neal informed him/her that he was going back to get the two ounces that night, and would call him/her back when he returned to the hotel. C.I. #1 told us after Neal handed him/her the bag with the narcotics, he/she gave him the \$20.00. C.I. #1 then talked to Neal and Joshua about purchasing more narcotics and firearms. After the conversation was over, he/she left the hotel room and drove back to the pre-determined meet location.

Based on the above information, Neal Lee Minton was found to be in violation of the following F.S.S.

893.13 (1A1) - DRUGS-SELL-SELL METHAMPHETAMINE

893.135 (1F1) - AMPHETAMINE-TRAFFIC-OR METHAMPHETAMINE 14 GRAMS OR OVER

A warrant was submitted.