No.

IN THE SUPREME COURT OF THE UNITED STATES

ALEX ANTONIO BYNES, 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

ALEX ANTONIO BYNES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-2524

[January 8, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Caroline Shepherd, Judge; L.T. Case No. 2023CF000860AXXX.

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

James Uthmeier, Attorney General, Tallahassee, and Marcus R. Kelly, II, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, LEVINE and SHAW, 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

February 16, 2026

ALEX ANTONIO BYNES, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2024-2524** L.T. No. - 2023CF000860AXXX

BY ORDER OF THE COURT:

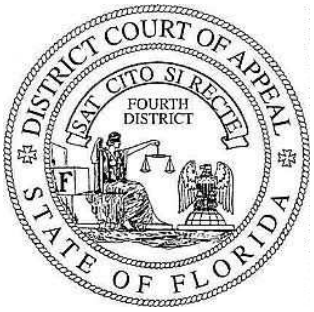
ORDERED that Appellant's January 23, 2026 motion for rehearing, issuance of written opinion, and certification is denied.

Served:
Crim App WPB Attorney General
Gary Lee Caldwell
Sean Pentley Hux
Marcus Russell Kelly, II
Virginia Jane Murphy
Palm Beach Public Defender

KEH

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

Lonn Weissblum
4D2024-2524 February 16, 2026
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-2524 February 16, 2026



persons from bearing a firearm.

Appellant understands that there may be strong policy reasons for allowing the Legislature to determine what people should be barred from possessing firearms. Many would say there are excellent policy reasons for severely limiting the right to bear arms, such as limiting it to the police or to a small class of persons deemed "fit" for the responsibility of bearing arms — but the constitution moves the power to make such policy beyond the judge's reach and the lawmaker's grasp.

The statute violates our constitution on its face because it does not regulate the manner of bearing arms and hence violates Florida's Declaration of Rights. Appellant's conviction and sentence should be reversed with instructions to dismiss the charge.

IV. SECTION 790.23, FLORIDA STATUTES, VIOLATES THE SECOND AMENDMENT OF THE FEDERAL CONSTITUTION AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Amend. II, U.S. Const.

Appellant acknowledges that section 790.23 has been held by this Court not to violate the Second Amendment. *See Fleming v. State*, No. 4D2024-0623, 2025 WL 1172339 (Fla. 4th DCA Apr. 23, 2025). *See also Nelson* and *Edenfield*.

Fleming was based on what this Court identified as "[b]inding precedent from the United States Supreme Court." *Id*. The Supreme Court cases it cites, however, did not involve a challenge to a statute like section 790.23. At most, those cases contain dicta about the present issue.

Notably, the Supreme Court has reversed decisions upholding felon-in-possession statutes for reconsideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). For instance, in *United States v. Lindsey*, No. 23-2871, 2024 WL 2207445, at *1 (8th Cir. May 16, 2024), the Eighth Circuit rejected the defendant's argument that his felon-in-possession convicted violated the Second Amendment, and wrote:

> Precedent forecloses Lindsey's contentions. "The longstanding prohibition on possession of firearms by felons is constitutional." *United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023); *see United States v. Jackson*, 69 F.4th 495, 502-06 (8th Cir. 2023) (explaining that § 922(g)(1) is consistent with the nation's history and tradition). And our cases rule out the "need for felony-by-

> felony litigation regarding the constitutionality of § 922(g)(1)." *Jackson*, 69 F.4th at 502; *Cunningham*, 70 F.4th at 506. Lindsey acknowledges as much. Accordingly, his facial and as-applied constitutional challenges to § 922(g)(1) fail.

Id. The Supreme Court vacated this decision and remanded for reconsideration in light of *Rahimi*. *Lindsey v. United States*, 145 S. Ct. 431 (2024). *See also*, *e.g.*, *Dial v. United States*, No. 24-6569 (U.S. May 19, 2025); *Morrissette v. United States*, 145 S. Ct. 1468 (2025) (same); *Canada v. United States*, 145 S. Ct. 432 (2024) (same, fourth circuit decision); *Talbot v. United States*, 145 S. Ct. 430 (2024) (same, tenth circuit decision). The Supreme Court would not have vacated these decisions if it thought the issue had already been decided in favor of such laws.

Nelson was decided in 1967, long before the emergence of a new standard for Second Amendment cases, and it has no bearing on the arguments raised here. And *Edenfield* was decided before the Supreme Court clarified the Second Amendment in *United States v. Rahimi*, 602 U.S. 680 (2024).

In *Rahimi*, the Court noted the historical evolution of surety laws allowing for the limitation of a person's right to bear arms based on an individualized determination that the person presented

a physical threat to an individual seeking the surety. *Id.* at 695–97. It also noted the parallel development of "going armed" laws forbidding arming oneself "to the Terror of the people." *Id.* at 697.

"Taken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698.

Rahimi involved a prosecution under 18 U.S.C. § 922(g)(8), which forbids possession of a firearm while under a domestic violence restraining order.

Under the statute, the prosecution must prove: (1) the restraining order was issued after notice and hearing, (2) the order contained a specific individualized prohibition that the defendant not threaten the intimate partner or a child of the defendant or the partner, and (3) either contained an individualized finding that the defendant "represents a credible threat to the physical safety" of his intimate partner or his or his partner's child, or an explicit prohibition on attempted use, or threatened use of "physical force" against those persons. *Rahimi*, 602 U.S. at 688.

At a state court hearing for a domestic violence restraining

order, the judge found Rahimi had committed family violence, the violence was "likely to occur again" and Rahimi posed "a credible threat" to the "physical safety" of the petitioner and a member of her family. *Id.* at 686–87. The judge issued a restraining order and suspended Rahimi's gun license for two years. *Id.* at 687. During this two year period, Rahimi committed other crimes of violence with a firearm. *Id.* at 687–88. After his arrest on those charges, law enforcement found firearms in his home along with a copy of the restraining order. He was then charged in federal court under 18 U.S.C. § 922(g)(8).

Rahimi challenged the statute on Second Amendment grounds.

Rejecting Rahimi's claim, the Supreme Court determined that the law's "prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition the surety and going armed laws represent." *Id.* at 688.

Unlike the narrow statute in *Rahimi* with its individualized determination of dangerousness, section 790.23(1) has broad application, covering all persons convicted of a felony with no such individualized determination. It imposes a lifetime ban on their right

to possess firearms, and does so with no individualized determination of dangerousness to another person.

Appellant recognizes that — as noted in *Fleming* — in *Rahimi*, the Court noted that *Heller* stated that felon-in-possession statutes are "presumptively lawful," *Heller*, 554 U.S. at 636, but the context was as follows:

> Rahimi argues *Heller* requires us to affirm, because Section 922(g)(8) bars individuals subject to restraining orders from possessing guns in the home, and in *Heller* we invalidated an "absolute prohibition of handguns ... in the home." 554 U.S. at 636, 128 S.Ct. 2783; Brief for Respondent 32. But *Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by "felons and the mentally ill," are "presumptively lawful." 554 U.S. at 626, 627, n. 26, 128 S.Ct. 2783.

Rahimi, 602 U.S. at 699.

Thus *Rahimi* was merely noting that *Heller* did not support Rahimi's claim. If the dicta in *Heller* were enough to dispose of the issue, the Supreme Court would not have had to go further and draw the line at whether such a statute involves an individualized determination of dangerousness.

Unlike the temporary restraining order in *Rahimi*, section

790.23 imposes a total lifetime ban on possession of firearms or ammunition.

This broad statute does not comport with the historical restrictions on the right to bear arms allowed by the Second Amendment under *Rahimi*. Hence, section 790.23(1) is facially unconstitutional.

Appellant submits that this Court should recede from *Fleming* as being contrary to *Rahimi* and rule the statute unconstitutional, reverse the conviction for count 2, and remand with instructions to discharge Appellant.

III. APPELLANT WAS DENIED HIS RIGHT TO A TWELVE-MEMBER JURY IN VIOLATION OF THE SIXTH AMENDMENT.

Appellant recognizes that Florida allows a jury of six in non-capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat. The Supreme Court held Florida's six-member jury system does not violate the Sixth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment in *Williams v. Florida*, 399 U.S. 78 (1970). He submits, however, that *Williams* was incorrectly decided and is contrary to the understanding of the Sixth Amendment at the time of the Founding. *See Cunningham v.*

State, 144 S. Ct. 1287–88 (2024) (Gorscuch, J., dissenting from denial of certiorari). Accordingly, section 913.10, which authorizes six-member juries in non-capital criminal cases, is facially unconstitutional.

Appellant also recognizes that this Court has rejected similar claims. *See, e.g.*, *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied* SC2022–1597 (Fla. June 6, 2023), *cert. denied* No. 23–5173 (U.S. May 28, 2024). Nonetheless, he maintains that the correct view is set out in Justice Gorsuch's dissent in *Cunningham*.

The error is fundamental. Waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant. *See Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid when made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his trial, after having ample time to analyze the jury and assess the prosecution's case against him. He affirmatively chose to proceed with a reduced jury as opposed to a continuance or starting

with another jury.") and *Wallace v. State*, 722 So. 2d 913 (Fla. 2d DCA 1998) (reversing on grounds of fundamental error where defendant was tried by five-member jury and judge did not inform the defendant of his right to six-person jury).

In this regard, Appellant recognizes that this Court wrote in *Albritton v. State*, 360 So. 3d 1145 (Fla. 4th DCA 2023):

> The defendant did not raise this argument in the trial court. Therefore, the defendant did not preserve this argument. *See Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005) (proper preservation requires a litigant to make a timely, contemporaneous objection to place the trial court on notice that error may have been committed and provide the trial court with an opportunity to correct the error at an early stage of the proceedings).

Id. at 1147.

Appellant respectfully submits that this statement in *Albritton* is flawed.

First, it is contrary to *Blair* and *Wallace*. Under those cases, the waiver of a constitutionally-required number of jurors must be made by the defendant personally after being informed of the right being relinquished.

Second, the *Harrell* case cited in *Albritton* involved a run-of-the-mill pleading issue. It did not involve the denial of a

constitutional right.

Third, the Sixth Amendment jury right is tightly bound with the Due Process Clause — *see Erlinger v. United States*, 602 U.S. 821, 831 (2024), and issues of due process rights and other issues of the facial constitutionality of a statute may be raised as fundamental error. *See, e.g., Edenfield v. State*, 379 So. 3d 5, 7 n.1 (Fla. 1st DCA 2023) (conviction based on facially invalid statute is fundamental error); *State v. Johnson*, 616 So. 2d 1, 3–4 (Fla. 1993) (holding a defendant may raise the constitutionality of a sentencing statute for the first time on appeal); *Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004) (same); *Chang v. State*, No. 2D2023-2090, 2025 WL 1386670, at *12 (Fla. 2d DCA May 14, 2025) ("Consideration of improper sentencing factors constitutes a due process violation that results in fundamental error."); *Reed* (erroneous jury instruction on contested element constitutes fundamental error); *Santiago-Gonzalez v. State*, 301 So. 3d 157, 175 (Fla. 2020) (fundamental error may apply where there has been "a denial of due process"); *Wallace*.

In the present case, fundamental error occurred and the convictions and sentences should be reversed with instructions to

afford Appellant a new trial.

CONCLUSION

For the foregoing reasons, the conviction and sentence should be reversed with directions as discussed above.

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CERTIFICATE OF SERVICE

I certify that on 11 June 2025 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/ Gary Lee Caldwell
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I certify this brief is submitted in Bookman Old Style 14-point font in compliance with Florida Appellate Rule 9.210(a)(2) and that the word count is 13,000 or less exclusive of the caption, cover