

No.

IN THE SUPREME COURT OF THE UNITED STATES

ELTA GELIN LANNIS, 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

ELTA GELIN LANNIS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-2024

[March 19, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Michael Rothschild, Judge; L.T. Case No.
062019CF001578A88810.

Daniel Eisinger, Public Defender, and Ethan Goldberg, Assistant Public
Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Mary Elizabeth
Johnson, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

KUNTZ, C.J., MAY, J., and SHERMAN, JAMES W., Associate Judge, concur.

* * *

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

case “hinged upon the believability of its witnesses,” meaning that the error cannot be considered harmless. *Davis*, 663 So. 2d at 1382. *See Freeman v. State*, 717 So. 2d 105, 106 (Fla. 5th DCA 1998) (“[T]he credibility of the State’s witnesses was crucial in determining this issue. Therefore, this court cannot find that the prosecutor’s bolstering of police witnesses was harmless.”).

II. THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION FOR A TWELVE-PERSON JURY.

Appellant had the constitutional right to a jury trial because her felony offense was punishable by more than six months in jail. *Baldwin v. New York*, 399 U.S. 66, 72-73 (1970). But Appellant was convicted by a jury comprised of six people. She argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with an offense punishable by more than six months in jail. The standard of review of constitutional claims is de novo. *See A.B. v. Florida Dept. of Children & Family Services*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

Appellant filed an objection to a six-person jury, and moved for a twelve person jury. R198. Appellant argued that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury

in felony cases. R198. The trial court denied the motion, and trial proceeded with a six-person jury. T11. This issue is therefore preserved for appeal. *Cf. Albritton v. State*, 360 So. 3d 1145, 1147 (Fla. 4th DCA 2023) (“The defendant did not raise this argument in the trial court. Therefore, the defendant did not preserve this argument.”).

Appellant notes that this Court decided *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), which rejected a defendant’s argument “that his convictions by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution.” The defendant in *Guzman* appealed his case to the Florida Supreme Court, which denied review. *See Guzman v. State*, SC22-1597. Therefore, Appellant seeks to preserve this argument for further review to the United States Supreme Court.⁸ Appellant recognizes the Supreme Court denied the petition on May 28, 2024, however, the issue is still being raised for preservation pending additional review in the future.

⁸ Appellate attorneys have the obligation to “zealously assert[] the client’s position under the rules of the adversary system.” R. Regulating Fla. Bar prmb1. As part of this obligation, “[c]ounsel has the responsibility to make such [arguments] as may be necessary to keep the defendant’s case in an appellate ‘pipeline.’” *Sandoval v. State*, 884 So. 2d 214, 217 n. 1 (Fla. 2d DCA 2004).

On the merits, although the United States Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible, *Williams* is impossible to square with the Supreme Court’s ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment’s “trial by an impartial jury” requirement encompasses what the term “meant at the Sixth Amendment’s adoption.” *Id.* at 1395.

After the Sixth Amendment was enacted, a bevy of state courts interpreted it to require a twelve-person jury. *See Miller, Comment, Six of One Is Not A Dozen of the Other*, 146 U. Pa. L. Rev. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s). In 1898, the United States Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant’s right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898). The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. *See, e.g., Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930); *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as “stripping off the livery of history from the jury trial” and ignoring both “the intent of the Framers” and the Court’s long held understanding that constitutional “provisions are framed in the language of the English common law [] and ... read in the light of its history.” *Baldwin*, 399 U.S. at 122-123 (citation omitted) (Harlan, J., concurring in the result in *Williams*). Indeed, *Williams* recognized that the Framers “may well” have had “the usual expectation” in drafting the Sixth Amendment “that the jury would consist of 12” members. *Williams*, 399 U.S. at 98-99. But *Williams* concluded that such “purely historical considerations” were not dispositive. *Id.* at 99. Rather, the Court focused on the “function” that the jury plays in the Constitution, concluding that the “essential feature” of a jury is it leaves justice to the “commonsense judgment of a group of laymen” and thus allows “guilt or innocence” to be determined via “community participation and [with] shared responsibility.” *Id.* at 100-01. According to the *Williams* Court, both “currently available evidence [and] theory” suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48.

Williams’s ruling that the Sixth Amendment (as incorporated to the States by the Fourteenth Amendment) permits a six-person jury cannot stand in light of *Ramos*. There, the Supreme Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for “subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment.” 140 S. Ct. at 1401-1402.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of “cost-benefit analysis” the Court undertook in *Williams*, observing that it is not the Court’s role to “distinguish between the historic features of common law jury trials that (we think) serve ‘important enough functions to migrate silently into the Sixth Amendment and those that don’t.’” 140 S. Ct. at 1400-01. Ultimately, the *Ramos* Court explained, the question is whether “at the time of the Sixth Amendment’s adoption, the right to trial by jury included” the particular feature at issue. *Id.* at 1402. As the history summa-

rized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required. *See* 140 S. Ct. at 1395.

Even setting aside *Williams*’s now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court “f[ou]nd little reason to think” that the goals of the jury guarantee—including, among others, “to provide a fair possibility for obtaining a representative[] cross-section of the community”—“are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12.” *Id.* at 100. The Court theorized that “in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible.” *Id.* at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that

empirical studies conducted in the handful of intervening years highlighted several problems with *Williams*' assumptions. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.* at 239.

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); see also Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., *Achieving Diversity on the Jury*, *supra*, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Appellant recognizes that the state constitution provides:

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

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

But Florida’s provision for a jury of six stems from the dawn of the Jim Crow era, one month after federal troops were withdrawn from the state. In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors “for the trial of causes in any court may be fixed by law.” *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. 15 241.

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in

January 1877. See Jerrell H. Shofner, *Reconstruction and Renewal, 1865-1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018). The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. *Id.* at 1394; see also *id.* at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted “as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service.”). The history of Florida’s jury of six arises from the same historical context.

In view of the foregoing, a jury of six at a criminal trial, for an offense punishable by more than six months in jail, is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution.