

No. 26-

IN THE
Supreme Court of the United States

JOHNNY FORD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JACK A. FLEISCHMAN

Counsel of Record

FLEISCHMAN & FLEISCHMAN, P.A.

2161 Palm Beach Lakes Boulevard,

Suite 403

West Palm Beach, FL 33409

(561) 585-3666

jf@ffjustice.com

Counsel for Petitioner

QUESTIONS PRESENTED

1. WHETHER F.S. 921.1425 WHICH ALLOWS FOR THE DEATH PENALTY IN A NON-HOMICIDE CASE IS UNCONSTITUTIONAL .
2. WHETHER THE DEFENDANT IS ENTITLED PRETRIAL TO SEEK A RULING THAT THE STATUTE AT ISSUE IS UNCONSTITUTIONAL THEREFORE PROHIBITING THE STATE FROM SEEKING THE DEATH PENALTY SHOULD THERE BE A CONVICTION.

RELATED CASES

State v. Ford, Johnny, 2025CF005655AWB, Circuit Court of the Fifteen Judicial Circuit, Palm Beach County, Florida (case open)

Ford, Johnny v. State, 4D2026-0784, District Court of Appeal, Fourth District, State of Florida, Judgment Entered May 6, 2026

PARTIES TO PROCEEDINGS

Jack A. Fleischman, Esq., attorney for Petitioner, 2161
Palm Beach Lakes Blvd., Suite 403, West Palm Beach,
Florida 33409, Email: jf@ffjustice.com

State of Florida, Assistant State Attorney Amanda
McCabe, Palm Beach County State Attorney's Office,
401 N. Dixie Highway, West Palm Beach, Florida 33401,
Email: Amccabe@sa15.org

Johnny Ford, #0081090, Petitioner, Palm Beach
County Detention Center, P.O. Box 24716, West Palm
Beach, Florida 33406

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Petitioner, Johnny Ford, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Fourth District Court of Appeal, filed on May 6, 2026.

OPINION BELOW

The opinion of the Fourth District Court of Appeal, was issued on May 6, 2026, and is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The order denying relief was issued by the Fourth District Court of Appeal on May 6, 2026. This petition is filed within 90 days of that order. Review is not available in the Florida Supreme court because Florida's Constitution does not grant the Florida Supreme Court any general power to issue common law writs of certiorari. See *Vetric v. Hollander*, 464 So.2d 552, 553 (Fla.1985); *Williams v. State*, 913 So. 2d 541, 543 (Fla. 2005) (The "all writs" provision in article V, section 3(b)(7) is not a "separate source of original or appellate jurisdiction."); Article V, § 3(b) of the Florida Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment 5

No one will be deprived of liberty without “due process of law.”

United States Constitution, Amendment 8

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

United States Constitution, Amendment 6

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

STATEMENT OF CASE

Petitioner is charged in Palm Beach County, State of Florida by indictment returned on August 2, 2025. Count 1, 2, 3, and 7, all capital felony offenses, charge Ford with Sexual Battery on person less than 12 years of age. All allege that “Johnny David Ford ... a person eighteen years of age or older, did unlawfully commit sexual battery upon or injure the sexual organs during an attempt to commit

sexual battery upon (alleged victim – redacted) a person less than twelve years of age ...” by causing either his mouth and or penis to penetrate or have union with the female genitals contrary to Florida Statute.

The State seeks to impose the death penalty on Ford pursuant to F.S. 921.1425, which reads:

“Sentence of death or life imprisonment for capital sexual battery; further proceedings to determine sentence.—

(1) INTENT.—

(a) The Legislature finds that a person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state. Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society. The Legislature further finds that *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and that *Kennedy v. Louisiana*, 554 U.S. 407 (2008), was wrongly decided and an egregious infringement of the states’ power to punish the most heinous of crimes.”

Subsequent to indictment, the State filed Notice of Intent to Seek the Death Penalty, pursuant to F.S. 921.1425(7) (2023). The notice states that:

“Pursuant to Rule 3.181 of the Florida Rules of Criminal Procedure, the State of Florida files this Notice of Intent to Seek the Death Penalty in the above styled case. The State hereby puts the Defendant on notice in accordance with Florida Statutes 794.011(2)(a) (2023) that the State intends to prove the following aggravators, beyond a reasonable doubt, in a sentencing proceeding, pursuant to Florida Statute 921.1425(7) (2023):

1. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. Fla. Stat. 921.1425(7)(b).
2. The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant stood in a position of familial or custodial authority over the victim. Fla. Stat. 921.1425(7)(i).
3. The capital felony was especially heinous, atrocious, or cruel. Fla. Stat. 921.1425(7)(h).”

Petitioner filed a motion to strike the notice and to have the trial court declare F.S. 921.1425 unconstitutional. Relevant to the instant petition, the petitioner argued that the Conformity Clause of the Florida Constitution control, pleading that “While true that in the absence of a controlling U.S. Supreme Court decision, Florida courts are still “free to provide its citizens with a higher standard of protection from governmental intrusion than that afforded by the Federal Constitution.” *State v. Lavazzoli*,

434 So.2d 321, 323 (Fla. 1983), the Florida Constitution's conformity clause controls the issue in the instant case. The U.S. Supreme court held in *Kennedy v. Louisiana*, 554 U.S. 407 (2008), that the Eighth Amendment prohibits the death penalty for the rape of a child where the crime did not result, and was not intended to result, in death of the victim. The court wrote that "The National Government and, beyond it, the separate States are bound by the proscriptive mandates of the Eighth Amendment to the Constitution of the United States, and all persons within those respective jurisdictions may invoke its protection. See Amdts. 8 and 14, § 1; *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962)." *Id.* at 412." In short, imposition of the death penalty as promulgated in F.S. 921.1425 is unconstitutional in violation of the Eighth Amendment.

The petitioner also argued that he has Sixth Amendment right as well as his Due Process right, guaranteed under both the Florida and United States Constitution, to prohibit the government from prosecuting him under a statute that is unconstitutional because it is in violation of the Eighth Amendment and prohibitions against cruel and unusual punishment and cruel or unusual punishment. That the Constitution grants him the right to challenge an unconstitutional statute pretrial.

The State argued that the trial court need not rule on the merits of Petitioner's constitutional challenge to Section 921.1425 because Section 921.1425(10) recognizes that a sentencing court can enter a judgment of death even if the Eighth Amendment prevents that judgment from being enforced. That the statute provides that this Court should impose a sentence of death-regardless of the

Court's views on whether the Constitution will ultimately allow the defendant to be executed-if, after applying the procedures in Section 921.1425, the Court concludes that a judgment of death is appropriate. The State opined that is supported by the Legislature expressly leaving it to the "Florida Supreme Court or the United States Supreme Court" to decide whether a child rapist's death sentence may be carried out. The State acknowledged in the Legislature taking this position, they acknowledged that those appellate courts might conclude that *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (declaring Louisiana's capital child-rape statute unconstitutional), is either distinguishable or bad law. Whether or not the judgment would ultimately be unenforceable, the Legislature has mandated that the seriousness of the most heinous child sexual batteries be reflected in a formal judgment of death. The State also argued that *Kennedy* was not controlling because of safeguards in Florida's new law which the law in *Kennedy* did not have, as well as Florida's application of the Statute to only the very worst of child rapists. Finally the State argued that the legal landscape has changed since *Kennedy* was decided with numerous State's having authorized the death penalty for child rape, rendering the *Kennedy* holding about national consensus outdated and irrelevant.

The trial court entered a written order holding denying the Petitioner's motion to declare the Statute unconstitutional. The Court found "Defendant's argument is at best premature, if not unavailing and misplaced. Even with the possible imposition of the death penalty, Defendant still is afforded each and every protection and provision as articulated in the Sixth Amendment." The court finds that it is bound by Section 921.1425(10)

which specifically requires the court to impose a sentence of death in accordance with Section 921.1425, Florida Statutes, “notwithstanding existing case law which holds such a sentence is unconstitutional under the State Constitution and the United States Constitution.” the avenue to challenge the constitutionality of this statute on review by the Florida Supreme Court after imposition of a sentence of death. *Id.* This provision then provides Defendant the avenue to challenge the constitutionality of this statute on review by the Florida Supreme Court after imposition of a sentence of death. *Id.*”

The petitioner timely filed a petition for writ of prohibition and or certiorari. The Fourth District Court of Appeals, State of Florida denied the Petitioner relief by denying prohibition and dismissing petitioner’s request certiorari review. This petition follows.

REASONS FOR GRANTING THE PETITION

It is clear that F.S. 921.1425 is unconstitutional. It allows for the death penalty when a defendant’s criminal behavior “carries a great ***risk*** of death” to the child victim. (emphasis added) In *Kennedy v. Louisiana*, 554 U.S. 407 (2008), the U.S. Supreme court held that the Eighth Amendment prohibits the death penalty for the rape of a child ***where the crime did not result, and was not intended to result, in death of the victim.*** (emphasis added) Carrying a great risk of death is not the same as or equivalent of an actual intent to kill, or death itself of a child victim. The instant court should also take notice that nothing in the Petitioner’s Indictment even alleges that he intended to kill or did actually kill the listed child victim. F.S. 921.1425 is absolutely unconstitutional and

violates the Eighth Amendment. Importantly, the Florida Constitution's conformity clause controls the issue in the instant case. "The conformity clause of article I, section 17 of the Florida Constitution provides that "[t]he prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution." This means that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida ..." *Gudinas v. State*, 412 So.3d 701, 713 (Fla. 2025)

The U.S. Supreme Court's ruling in *Kennedy* controls pursuant to the conformity clause of the Florida Constitution. F.S. 921.1425 is unconstitutional. The State is prohibited from seeking the death penalty in the Petitioner's case. The Courts below erred in ruling that the State's notice of intent to seek the death penalty should not be stricken. Additionally, the Petitioner should be entitled to challenge this unconstitutional statute pretrial. Denying the Petitioner the ability to challenge this unconstitutional pretrial violates his Fifth and Sixth Amendment rights as guaranteed him in the United States Constitution. The Petitioner has a constitutional right pretrial, to challenge this unlawful statute and to obtain dismissal of the death penalty portion of the case without having to place himself at risk of trial and expend the time as well as the extensive resources necessary to defend himself against a statute that is void. Petitioner should not have to place himself in jeopardy first before a jury, where the statute under which the state seeks to prosecute and

thereafter punish the defendant is unconstitutional and can be challenged as such in court prior to trial.

CONCLUSION

For all of the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: August 4, 2026

Respectfully submitted,

JACK A. FLEISCHMAN

Counsel of Record

FLEISCHMAN & FLEISCHMAN, P.A.

2161 Palm Beach Lakes Boulevard,

Suite 403

West Palm Beach, FL 33409

(561) 585-3666

jf@ffjustice.com

Counsel for Petitioner

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**APPENDIX A — ORDER DENYING MOTION OF
THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA, FILED FEBRUARY 17, 2026**

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

FELONY DIVISION: U
CASE NO.: 50-2025-CF-005655-AXXX-WB

STATE OF FLORIDA,

vs.

JOHNNY DAVID FORD,

Defendant.

**ORDER ON DEFENDANT’S MOTION FOR
THE COURT TO PROHIBIT THE STATE
FROM SEEKING THE DEATH PENALTY
AND FOR THE COURT TO FIND F.S. 921.1425
UNCONSTITUTIONAL**

THIS CAUSE came before the court concerning Defendant’s, John David Ford, “Motion for the Court to Prohibit the Death Penalty and for the Court to Find F.S. 921.1425 Unconstitutional” (“Motion”), filed on October 9, 2025. (DE # 120). The State filed a Response to the Motion on December 5, 2025. (DE # 141). The court held a hearing on the Motion on December 10, 2025. The hearing

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was continued until January 7, 2026 with a status check set for December 15, 2025. The State filed an Amended Response to the Motion on January 6, 2026 (DE # 178), and Defendant filed two addenda to the Motion (DE # 177 and 188). The court held the continued hearing on January 7, 2026. After careful consideration, the court denies the Motion. The court's reasoning follows.

PROCEDURAL HISTORY

On July 30, 2025, the State filed an Information charging Defendant with five (5) counts of Lewd or Lascivious Molestation. (DE # 54). The arraignment was originally scheduled to occur on August 11, 2025, and then was rescheduled to August 7, 2025. (DE # 52, 65). Defendant ultimately waived arraignment on the Information and filed a written plea of not guilty. (DE # 66). On August 21, 2025, the State charged Defendant via Indictment with four (4) counts of Sexual Battery on a Person Less Than Twelve (12) Years of Age, one count of Attempted Sexual Battery on a Person Less Than Twelve (12) Years of Age, and two (2) counts of Lewd or Lascivious Molestation. (DE # 102). In addition, on August 21, 2025, the State filed a nolle prosequere on three counts of lewd and lascivious molestation. (DE # 98 -100).

On October 3, 2025, the State filed a Notice of Intent to Seek Death Penalty ("First Notice of Intent"). (DE # 119). At the first hearing on the instant Motion on December 10, 2025, the State notified the court that Defendant had not been arraigned on the Indictment. The court arraigned Defendant on the Indictment and the parties agreed to

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continue the hearing on the instant motion. On December 23, 2025, the State filed a second Notice of Intent to Seek the Death Penalty (“Second Notice of Intent”). (DE # 173 – 176)¹. The First Notice of Intent and the Second Notice of Intent are identical as to the aggravators the State intends to prove. (DE # 119, 173-176).

LEGAL ANALYSIS AND RULING

Defendant seeks to prohibit the State from seeking the death penalty as a possible sentence in this case on the grounds that: (1) the State failed to comply with the mandatory statutory prerequisites pursuant to Florida Statute Section 782.04(1)(b), and (2) Florida Statute Section 921.1425, allowing for imposition of the death penalty in a non-homicide case, is unconstitutional.

Ground One – Notice of Intent to Seek Death Penalty

The court will first address whether the State complied with Florida Statutes Section 782.04(1)(b). That starts with the premise that “[t]he state attorney has complete discretion in making the decision to charge and prosecute.” *Cleveland v. State*, 417 So.2d 653, 654 (Fla. 1982). In Florida, if the state intends to seek the death

1. The State filed four (4) separate Notices of Intent to Seek Death Penalty on December 23, 2025, which appears to be one for each count of Sexual Battery on a Person Less Than Twelve (12) Years of Age filed in the Indictment. The four separate filings are identical. The Court refers to the four filings collectively as the Second Notice of Intent.

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penalty, the state must give notice to the defendant and file the notice with the court within 45 days after arraignment. § 782.04(1)(b), Fla. Stat. Rule 3.050, Florida Rules of Criminal Procedure, provides authority for the court to extend the deadline to file a notice of intent to seek the death penalty but only upon a showing of good cause and excusable neglect. *State v. Chantiloupe*, 248 So. 3d 1191, 1199 (Fla. 4th DCA 2018).

In the instant case, the State did not originally file an indictment and Defendant waived arraignment on the Information. At the time of the original Information and waived arraignment, the State could not file a notice of intent to seek the death penalty, as the State had not charged Defendant with a capital offense *at that time*. The State *indicted* Defendant of a capital crime – Sexual Battery on a Person Less Than Twelve (12) Years of Age, on August 21, 2025. However, Defendant was not *arraigned* on the Indictment until December 10, 2025. Section 782.04(1)(b), which sets the 45-day requirement, specifically requires that the notice of intent to seek the death penalty be filed within 45 days of a defendant’s *arraignment*. § 782.04(1)(b), Fla. Stat. The First Notice of Intent was filed on October 3, 2025, prior to the arraignment on the Indictment. The State also filed a Second Notice of Intent on December 23, 2025, well within 45 days of the December 10 arraignment.

Defendant argues that the court should count the 45 day requirement from either of the dates that the arraignment on the Information was scheduled, August 7, 2025 or August 11, 2025. In either case, both the First

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Notice of Intent and the Second Notice of Intent would be outside of the 45-day time period. Defendant relies on *Chantiloupe*, 248 So.3d at 1191, and argues that the State has not presented evidence of good cause or excusable neglect.

The court finds Defendant's reliance on *Chantiloupe* unavailing and misplaced because in *Chantiloupe*, the state charged the defendant with a capital crime with the original indictment, enabling the state to seek the death penalty at the time of the original arraignment. Here, while the State did not present evidence of good cause or excusable neglect, the court finds that good cause and excusable neglect are not required to be presented because both the First Notice of Intent and the Second Notice of Intent were timely under Florida Statute Section 782.04(1)(b).

Ground Two – Constitutionality of Section 794.011(2)(a), Florida Statutes

The State first argues that the Eighth Amendment is not a proper basis to strike a notice of intent to seek the death penalty. The State argues that Section 921.1425(10) is clear: “[A] sentence of death shall be imposed under this section notwithstanding existing case law which holds such a sentence is unconstitutional under the State Constitution and the United States Constitution.” § 921.1425-(10), Fla. Stat. The statute further provides that, in any case in which the Florida Supreme Court or U.S. Supreme Court reviews a death sentence imposed under that section and finds it unconstitutional, the defendant shall

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be resentenced to life in prison. *Id.* The State argues that the Eighth Amendment does not forbid the *imposition* of a death sentence; rather, it forbids the *execution* of a death sentence, as merely sentencing a defendant to death causes no constitutional harm. The State posits that the court could determine (with the assistance of a death-qualified jury if Defendant is found guilty as charged) whether the death penalty is warranted in this case, and then on appellate review, Section 921.1425(10) requires the Florida Supreme Court to consider whether Section 921.1425 is constitutional. In response, Defendant argues that requiring him to proceed with his case without a determination as to the constitutionality of the potential death penalty would violate his Sixth Amendment rights as well as his due process rights under both the Florida Constitution and the United States Constitution. Again, and at this time, Defendant's argument is at best premature, if not unavailing and misplaced. Even with the *possible* imposition of the death penalty, Defendant still is afforded each and every protection and provision as articulated in the Sixth Amendment.²

2. The Sixth Amendment to the Constitution states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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The court finds that it is bound by Section 921.1425(10) which specifically requires the court to impose a sentence of death in accordance with Section 921.1425, Florida Statutes, “notwithstanding existing case law which holds such a sentence is unconstitutional under the State Constitution and the United States Constitution.” § 921.1425 (10), Fla. Stat. This provision then provides Defendant the avenue to challenge the constitutionality of this statute on review by the Florida Supreme Court *after* imposition of a sentence of death. *Id.*

The court compares this procedure with other constitutionality challenges that a defendant may make to the death penalty. Section 921.137, Florida Statutes, prohibits the execution of intellectually disabled defendants based on the United States Supreme Court precedent that executions of intellectually disabled defendants constitutes cruel and unusual punishment in violation of the Eighth Amendment. *See Atkins v. Virginia*, 536 U.S. 304 (2002) (citing to *Ford v. Wainwright*, 477 U.S. 399, 405 (1986)). Florida Statute Section 921.137(2), specifically authorizes a challenge to the imposition of the death penalty on the basis of intellectual disability. § 921.137(2), Fla. Stat. Additionally, Florida Rule of Criminal Procedure 3.203 delineates the procedure for a defendant to raise intellectual disability as a bar to execution prior to imposition of the sentence. Fla. R. Crim. P. 3.203. In the instant case, there is no corresponding statute or rule authorizing a challenge to the constitutionality of the death penalty at the trial court level. In fact, the statutory provision proscribes an alternate route to challenge this issue—that of review by the Florida Supreme Court after imposition of the sentence. § 921.1425(10), Fla. Stat.

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Finally, the Florida Legislature has further evidenced their intent of how a defendant’s challenge on this basis should proceed by providing a basis for the State to seek a direct appeal of a “sentence in a case of capital sexual battery on the ground that it resulted from the circuit court’s failure to comply with sentencing procedures under s. 921.1425, including by striking a notice of intent to seek the death penalty.” § 924.07(1)(n), Fla. Stat.

Even assuming *arguendo* that the court was authorized to determine the constitutionality of Section 794.011(2)(a), Florida Statutes, the court finds that it is constitutional. *Bartels v. State*, 410 So. 3d 21, 24 (Fla. 4th DCA 2025), reh’g denied (July 22, 2025) (Artau, J., concurring).

The court finds that the Legislature, when enacting Section 794.011(2)(a), sought to correct any constitutional deficiencies articulated in *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981). The court finds that the current statute also addresses the United States Supreme Court’s analysis as expressed in *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008). *See State v. Smith*, 547 So. 2d 613, 616 (Fla. 1989) (explaining that when determining whether a case has been superseded by statute, courts must examine “the nature and effect of the court decisions and the statutory amendment”).

In 2023, the Florida Legislature amended Florida Statutes Section 794.011, and created Section 921.1425, Florida Statutes. No comparable statutes have been considered by either the Florida Supreme Court or the

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United States Supreme Court. Section 794.011 is therefore presumed constitutional. *Gregg v. Georgia*, 428 U.S. 153, 176, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (opinion of Stewart, Powell, and Stevens, JJ.) (“[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.”); *State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007) (“If it is reasonably possible to do so, a court is obligated to interpret statutes in such a manner as to uphold their constitutionality; this is the case even when an appellate court is asked to review a trial court’s ruling regarding the constitutionality of a statute.”)

Presently, section 921.1425 provides the procedure to follow in sentencing for the specific crime of sexual battery. For a defendant to be eligible for a sentence of death under section 921.1425, a jury must unanimously find the presence of at least two aggravating factors. § 921.1425(3), Fla. Stat. Furthermore, section 921.1425 provides an exclusive list of eleven aggravating factors for the crime of sexual battery. § 921.1425(7), Fla. Stat.

Previously, the 1977 version of section 921.141, at issue in *Buford*, provided the procedure to follow for sentencing any capital felony. That version of section 921.141 allowed the sentence of death to be imposed for any capital felony in which the aggravating circumstances outweighed the

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mitigating circumstances. § 921.141(2)-(3), Fla. Stat. The 1977 version of the statute also provided an exclusive list of fourteen aggravating factors generic to any capital felony. § 921.141(5), Fla. Stat (1977).

Because the imposition of the death penalty for a violation of section 794.011(2)(a) is now governed by section 921.1425, demanding more stringent requirements to be met for the sentence of death to be imposed for rape or sexual battery of a child than if the crime were a generic capital felony, section 794.011(2)(a) has been amended in such a way that the decision in *Buford* has been superseded by statute. *Bartels*, 410 So. 3d at 31 (Artau, J., concurring).

The United States Supreme Court decision in *Kennedy* did not exclude the possibility that the imposition of the death penalty for a crime against an individual that does not take the victim's life could be found constitutional if the penalty could be imposed in a way that was not "arbitrary and capricious." See *Kennedy*, 554 U.S. at 447) ("Difficulties in administering the [death] penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this time . . . and in cases of crimes against individuals, for crimes that take the life of the victim.")

Thus, *Kennedy* struck down Louisiana's statute because the statute allowed for blanket use of the death penalty in cases of rape or sexual battery on a child instead of restraining the use of the death penalty to only the most egregious facts involving the commission of that specific offense. *Bartels*, 410 So.3d at 31 (Artau, J., concurring).

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Section 794.011(2)(a) has been amended to correct the deficiencies found in *Kennedy. Id.* As stated previously, a jury must unanimously find at least two aggravating factors from an exclusive list of eleven, specifically developed for the crime of rape or sexual battery on a child before a defendant is even eligible for the death penalty. *See* § 921.1425(3), (7), Fla. Stat. This requirement is more stringent than when a defendant is charged with any other capital felony. *Compare* § 921.1425(3), (7), Fla. Stat. (2023), with § 921.141(2)(a)-(b), Fla. Stat. (requiring the presence of at least one aggravating factor before a defendant is eligible for the death penalty when charged with any other capital felony). As a result, section 921.1425 prevents arbitrary and capricious application of the death penalty for violations of section 794.011(2)(a). *See Bartels*, 410 So. 3d at 32 (Artau, J., concurring).

Accordingly, neither *Buford* nor *Kennedy* prevents section 794.011(2)(a) from being determined constitutional. The court finds that section 794.011(2)(a) does not violate the Eighth Amendment, and the State may seek the death penalty for violations of it, such as in the instant case.

Accordingly, it is hereby:

ORDERED that the Defendant's "Motion for the Court to Prohibit the Death Penalty and for the Court to Find F.S. 921.1425 Unconstitutional," filed on October 9, 2025, is **DENIED**.

12a

Appendix A

DONE AND ORDERED in Chambers, West Palm
Beach, Palm Beach County, Florida.

/s/ Cymonie S. Rowe

502025CF005655AXXXWB 02/17/2026

Cymonie S. Rowe

Circuit Judge

13a

**APPENDIX B — ORDER DENYING PETITION
OF THE DISTRICT COURT OF APPEAL FOR
THE STATE OF FLORIDA, FOURTH DISTRICT,
FILED MAY 6, 2026**

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FOURTH DISTRICT

CASE NO. – 4D2026-0784
L.T. No. – 502025CF005655AXXXWB

JOHNNY FORD,

Petitioner(s),

v.

STATE OF FLORIDA,

Respondent(s).

May 6, 2026

BY ORDER OF THE COURT:

ORDERED that the petition for writ of prohibition is denied. *See English v. McCrary*, 348 So. 2d 293, 296-97 (Fla. 1977). Further,

ORDERED that the petition for writ of certiorari is dismissed for failure to establish irreparable harm. *See Bd. of Trs. of Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC*, 99 So. 3d 450, 454 (Fla. 2012);

Appendix B

Citizens Prop. Ins. Corp. v. San Perdido Ass’n, Inc., 104 So. 3d 344, 351 (Fla. 2012); *Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011).

LEVINE, FORST and LOTT, JJ., concur.