
In The
SUPREME COURT OF THE UNITED STATES
October Term 2025

LEO LOUIS KACZMAR,
Petitioner,
V.

FLORIDA, and SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
Respondent.

CAPITAL CASE

*On Petition for Writ of Certiorari to the
Supreme Court, State of Florida*

PETITION FOR WRIT OF CERTIORARI (CORRECTED)

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QUESTION PRESENTED

CAPITAL CASE

1. Does the Sixth Amendment right to a properly instructed jury and the right to Due Process under the Fifth Amendment include the right to have the jury instructed on the prohibition against using electronic media to investigate the case when every jurisdiction in the United States, state and federal, requires this instruction?

2. Does the failure to properly instruct the jury as outlined above, coupled with the trial court's refusal to allow jury interviews about the effect of that failure to instruct the jury, obviate the need to satisfy the prejudice requirement under *Strickland* when such a regime makes an inquiry impossible?

3. Does the failure to object to a prohibited instruction regarding a prior jury's recommendation of death likewise require a finding of ineffective assistance of counsel when no inquiry on the effect of the instruction on the jury (the prejudice component of *Strickland*) is permitted?

LIST OF PARTIES AND RELATED CASES:

Leo Kaczmar – Petitioner

State of Florida – Respondent

Secretary, Florida Department of Corrections

Related Cases

Kaczmar v. Florida, 585 U.S. 1011 (2018)

Kaczmar v. State, 104 So.3d 990 (Fla. 2012)

Kaczmar v. State, 228 So.3d 1 (Fla. 2017)

Kaczmar v. State, 42 Fla. L. Weekly S851 (Fla. 2017)

State v. Kaczmar, 431 So.3d 212 (Fla. 2026)

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I. PETITION FOR WRIT OF CERTIORARI

Leo Kaczmar III petitions this Court for a writ of certiorari to review the judgment of the Florida Supreme Court in *State v. Kaczmar*, 431 So.3d 212 (Fla. 2026).

II. OPINIONS BELOW

The opinion of the Florida Supreme Court *State of Florida v. Leo Louis Kaczmar*, SC2022-1671; SC2023--0725. (Appendix B). The trial court's decision denying relief under *Fla. R. Crim. P. 3.851*, on November 4, 2022, Circuit Court for the Judicial Circuit in and for Clay County, Florida is attached as Appendix C. The Order denying rehearing on April 14, 2026 is Appendix A.

III. JURISDICTION

The jurisdiction of this Court is invoked under *28 U.S.C. 1257* as it involves a decision by the highest court of the State of Florida that is repugnant to the Constitution of the United States. The opinion at issue was filed on February 19, 2026. (A003). (A001). The Petitioner filed a timely motion for rehearing, which was denied on April 14, 2026.

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

V. STATEMENT OF THE CASE

The Florida Supreme Court, in *Kaczmar v. State*, 104 So.3d 990 (Fla. 2012) reversed the Petitioner's sentence of death and remanded for a new sentencing proceeding.

As soon as that proceeding commenced, the trial judge made two critical errors in his discussions with the prospective jurors, one of commission and one of omission. Neither of them were objected to by the "death qualified" lawyers representing him.

First, the judge informed the jury that the case is now before them because the Florida Supreme Court ordered a resentencing. Specifically, they were told

““This case has a little history to it so let me explain your duty today. It's different than most trials we ever have.

“The defendant was found guilty of murder in the first degree on 8/12/10, sentenced on 11/5/10 to life — to death in this case. Anyway, the Supreme Court always reviews any type of death case so the case went to the state Supreme

Court. Florida State Supreme Court. They affirmed his conviction, that is they confirmed his conviction for first degree murder. However, the Supreme Court sent the case back here with instructions that the defendant is to have a new' trial to decide what sentence should be imposed.

“Consequently, you will not concern yourself with the question of his guilt. The punishment for this crime is either death or life imprisonment without the possibility of parole.

“A final decision as to which punishment shall be imposed rests with me, the judge of this case. However, the law requires you the jury, render to the Court an advisory sentence as to which punishment should be imposed upon the Defendant.”

The Florida Supreme Court had long held, since its 1996 decision in *Hitchcock v. State*, 673 So.2d 859 (Fla. 1996) that the new jury is not under any circumstances to be instructed on the prior verdict of death.

Now the error of omission. In our modern world of access to information via our cell phones, laptops, etc., there is a common sense instruction that has been mandatory in Florida Courts since 2010. It reads this way:

“To have a fair and lawful trial, there are rules all jurors must follow. A basic rule is jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress this rule means you must not use electronic devices or cell phones to communicate about this case, including posting information on the internet, e-mailing, or

any other means. Do not send or accept any messages to or from anyone about this case or your jury service. In addition, your cell phone or electronic device must be turned completely off while you are in the courtroom.

You must not do any research or look up words, names, maps, or anything else that may have anything to do with this case. This includes reading newspapers, watching television, or using a computer, cell phone, the internet, any electronic device, or any other means, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

All of us are depending on you to follow these rules, so there will be a fair and lawful resolution to this case. Unlike questions you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research, or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered in this courtroom and to present argument with respect to that evidence. Non-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises. Any juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine, or both. If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the [court deputy] [bailiff].”

Florida Standard Jury Instruction 1.1 (Fla. 2010). *Florida Rule of Judicial Administration 2.451(b)* states:

“(b) Use of Electronic Devices by Jurors During Proceedings Conducted In Person. If jurors participate in a court proceeding in person, the following provisions govern:

(1) Electronic devices may be removed as directed by the presiding judge from all members of a jury panel at any time before deliberations, but such electronic devices must be removed from all members of a jury panel before jury deliberations begin. The electronic devices will be removed and appropriately secured by the bailiff or other person designated by the chief judge.

(2) Any electronic devices removed from members of a jury panel may be returned to the members of the jury panel during recesses in the trial. When jurors are sequestered, the presiding judge may determine whether the electronic devices will be removed from jurors during any portion of sequestration.

(3) From the time a person reports for jury service until the person is discharged from jury service, that person is prohibited from using electronic devices for any of the following purposes:

(A) making or transmitting still or moving photographs, audio recordings, video recordings, or images of any kind of the court proceedings;

(B) transmitting or accessing text or data during the court proceedings;

(C) transmitting or accessing text or data about the case on which the juror is serving;

(D) researching, transmitting, or accessing information about the case on which the juror is serving;

(E) otherwise communicating about the case on which the juror is serving; or

(F) otherwise communicating about the jury deliberations.

(4) Nothing in this rule is to be construed to limit or impair the authority of a chief judge or presiding judge to grant permission to a juror to retain his or her electronic device during trial proceedings.

(5) The jury summons mailed to prospective jurors should contain a notice that electronic devices will be removed from all members of a jury panel before jury deliberations begin and as directed by the presiding judge, may be removed at other stages of a trial. At the beginning of the trial, the presiding judge should advise the jury panel about the removal of electronic devices. [emphasis added]

The jury was told something they were not supposed to be told regarding a prior jury verdict, and were not informed at all about the rules prohibiting the use of electronic devices to research the case. They had no way of knowing they were prohibited from doing this. The first error would, via simple human nature, prompt the sins that were supposed to be eliminated from the realm of possible jury conduct by the prohibitions outlined in the unread jury instruction. All of these errors were missed by a death qualified judge, death qualified defense counsel, and qualified felony prosecutors.

The jury voted 11 to 1 for death, and the trial judge again sentenced Kaczmar to death. He appealed his new sentence to the Florida Supreme Court. True to form, his appellate counsel did not raise the issue of the jury being told something they were not be told and not hearing

instructions they were legally required to be told. The Florida Supreme Court issued its initial ruling. *Kaczmar v. State*, 228 So.3d 1 (2017) denying relief on direct appeal. Finally, on motion for rehearing, Kaczmar's appellate counsel, for the first time, raised the *Hitchcock* error, but not the error of omission. The Florida Supreme Court denied the motion for rehearing, but with dissents from two justices the Court indicated Kaczmar could pursue the issue through the post-conviction process. The dissenters argued the error was so obvious (despite all that preceded it) that the Court should not wait. *Kaczmar v. State*, 42 Fla. L. Weekly S851 (Fla. 2017).

Kaczmar's post-conviction attorneys commenced their work by requesting jury interviews, which are highly disfavored under Florida law and the trial court denied the motion but ultimately granted resentencing anyway based on the Hitchcock error.

The State appealed to the Florida Supreme Court and they reversed the order directing a new sentencing for the Petitioner, finding the error instructing the venire about the prior jury verdict harmless. The Florida Supreme Court further rejected Kaczmar's argument on cross appeal that the failure to object to the omission of the lengthy instruction on the

importance to avoid researching the case and using social media to obtain information was error because “we cannot say that every reasonable defense lawyer in trial counsel’s position would have insisted the court give them or object to their omission.” (App. 65). Oddly, the court omitted to specify the jury instructions at issue, referring to them simply standard preliminary injunctions. They were, in fact, much more than that. They were instructions against researching the case using social media and other like instructions. They minimized this error despite the fact the Court’s own rules prohibit “researching, transmitting, or accessing information about the case on which the juror is serving.” *Florida Rule of Judicial Administration 2.451(b)*.

This timely petition follows.

VI. REASONS FOR GRANTING WRIT

This case, at its heart, involves the age old question of what process is due a citizen accused. Florida has long held 1) a jury empaneled to decide on questions relevant to the equation of the death penalty should not hear about a prior jury’s finding on the matter and 2) jurors are to be advised they are absolutely prohibited from using social media, laptops, etc to research a case they may be asked to hear. As to the latter, the

Florida Supreme Court memorialized this in a rule of judicial administration and the standard jury instructions in criminal cases. To emphasize how important the issue was, a 2010 Report by a Joint Committee of the Florida Bar's Criminal Jury Instruction Committed and the Civil Jury Instruction Committee felt it was important to tell jurors from the outset what rules will govern their use of electronic devices during their jury service, adding that courts may want to reduce these instructions to writing for the potential jurors. JOINT REPORT (NO. 2010-01 and NO. 2010-01) OF THE COMMITTEES ON STANDARD JURY INSTRUCTIONS (CIVIL) AND (CRIMINAL), In the Matter of Standard Jury Instructions (Civil) and (Criminal), Juror's use of Electronic Devices, Committee Report 2010-01 at p. 31.

But Florida is not alone in its concerns (at least in its rules if not its decisional law) regarding the dangers of social media infecting the fairness of criminal proceedings. Long before the advent of such things, Justice Oliver Wendell Holmes stated in *Patterson v. Colorado*, “[t]he theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” *Patterson v.*

Colorado, 205 U.S. 454, 462 (1907). For better or worse, potential jurors no longer have to go to the library and look up old newspapers on microfiche to acquaint themselves with a case. Information, accurate or not, is at the touch of their fingers. As noted in a 2012 law review note, “in March 2009, a judge declared a mistrial eight weeks into a federal drug trial after learning that nine jurors had conducted research about the case on the Internet. In a South Dakota seat belt liability case, one juror researched the defendant on the Internet and informed other jurors about his research, including the fact that the defendant had not been sued previously. Likewise, a judge in Oregon dismissed a jury in the middle of deliberations after the forewoman reported that two jurors had researched the definitions of “implied consent” and “beyond a reasonable doubt” on the Internet.”¹

In response, the courts of our nation have done a creditable job of addressing the problem. In 2009, the Judicial Conference of the United States’ Committee on Court Administration and Case Management

¹ Mary Zora, *The Real Social Network: How Jurors’ Use of Social Media and Smart Phones Affects a Defendant’s Sixth Amendment Rights*, University of Illinois Law Review 2012 Ill. L. Rev. 577 (2012)

proposed changes to the model federal standard jury instructions that would include prohibitions on the misuse of “any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, or any text or instant messaging service, or any internet chat room, blog or website such as Facebook, My Space, LinkedIn, YouTube or Twitter to communicate to anyone any information about this case or to conduct any research about this case...” Judicial Conference Comm. on Court Admin. & Case Mgmt., Proposed Model Jury Instructions: The Use of Electronic Technology to Conduct Research on or Communicate About a Case (2009), <http://www.uscourts.gov/uscourts/News/2010/docs/DIR10-018-Attachment.pdf>.

In fact, in a review of the fifty states jury instructions, all of them include a prohibition against utilizing social media or doing internet research on the case they may hear. Thus, there seems to be a broad consensus at both the federal and state levels that the integrity of the civil and criminal trial process requires an instruction like the one not given in the instant case.

On top of this, the law in Florida puts Mr. Kaczmar in the untenable position of having to prove the jury was affected by the errors of

commission and omission here, but denying him the opportunity to investigate the effect the errors had, if any, on the jury hearing his case. It is the equivalent of being told you are in the field for the Indy 500 but you are not allowed to have an engine; you can't use pedals; you can't use your feet; and the emergency brake cannot be disengaged. Go get 'em champ!

The consensus on the need to instruct the jury on the use of these devices somehow escaped the death qualified defense counsel, the death qualified judge and the felony qualified prosecutor. The Florida Supreme Court's attitude toward this error (and it is clearly error) is to poo poo it by saying "we cannot say that every reasonable defense lawyer in trial counsel's position would have insisted the court give them or object to their omission." What "reasonable lawyer" would allow this instruction not to be given? In what universe could that be considered a strategic decision? But let's not forget about the improper instruction that was given—a prior jury voted for death. The Florida Supreme Court in *Hitchcock, supra.*, said courts are not to inform the jury of this fact. While acknowledging there are no court decisions post-*Hitchcock* setting aside sentencings based on a Hitchcock error, apparently because in the two

decades since *Hitchcock*, no other judge committed that error, the Court looks to a pre *Hitchcock* case, *Teffeteller v. State*, 495 So.2d 744 (Fla. 1986), to find that the error was harmless, brushing aside the fact the error was harmless by the defendant's own discussion of the fact in his resentencing. The case law in Florida demonstrates that after *Hitchcock* only one death qualified judge violated *Hitchcock* – the one in the Petitioner's case. And there appears to be only one judge who failed to instruct the jury on the use of electronic media – the one in the Petitioner's case.

At stake of course is the Petitioner's Sixth Amendment right to a fair and impartial – and properly instructed—jury and the interplay between that right and his right to the process he is due under the Fifth Amendment. Inevitably, the State of Florida will argue “well, where's the proof this made any difference here?” The answer of course is that Florida (or at least the trial judge – who likely didn't think the jury interviews were necessary because it was apparent long before his ruling he was going to order resentencing based on *Hitchcock* alone) forecloses any possibility of proving what if anything, the jury did having not been instructed in what not to do. They have no reason to report other jurors

who might have used social media or discussing what they learned via social media – facts, legal definitions, information that was to be kept from the jury for legal reasons because they wouldn’t know they did anything wrong.

But in the opinion of the Florida Supreme Court, a reasonable lawyer might have deliberately let the instruction and the non-instruction pass unobjected to, all the while knowing the damage from that decision can never be assessed. A lawyer “with a frontal lobotomy or a bottle in front of me”² might have made such a decision, but not a reasonable one. Tellingly, the Florida Supreme Court does not offer any explanation why the reasonable lawyer they imagine would make such a decision. Even more telling, and arguably disturbing, is their omission to explain in their decision exactly what was being omitted in the preliminary instruction.

No reasonable attorney would have allowed these errors, which jeopardized the Petitioner’s right to a properly instructed jury. Not only that, but under Florida law, the Petitioner was prevented from even

² Tom Waits, circa 1979

attempting to demonstrate prejudice by the denial of jury interviews. Certainly, *Strickland* does not contemplate such a result, yet the State will argue it in fact invites it. The trial judge was correct in granting a resentencing. This court should grant certiorari to explore the contours of its *Strickland* holding in situations where the government actively prohibits the accumulation of proof on the issue of prejudice in the face of clear error, or whether some errors are so grave the prejudice prong doesn't have to be reached.

VII. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays this Court grant certiorari review for the reasons outlined herein.

Respectfully submitted:

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