

No. 26-

IN THE
Supreme Court of the United States

LARRY JAY BEAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Sixth Amendment guarantees the criminally accused a trial by an impartial jury, and this Court held in *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984), that a new trial is required where a juror “failed to answer honestly a material question on *voir dire*” and “a correct response would have provided a valid basis for a challenge for cause.” The federal courts of appeals and the state courts of last resort are openly divided over how that standard governs juror concealment: whether relief turns on proof that the juror’s false answer was deliberate, and whether a defendant may obtain relief by showing implied or actual bias independent of the juror’s honesty. Here, a seated juror gave a false answer concealing that she had been a complainant, witness, and victim in a criminal matter and that her son and former husband had been accused in criminal cases, and the trial court denied a new trial solely because it could not find that the false answer was intentional.

The questions presented are:

1. Whether the Sixth Amendment right to an impartial jury is denied – and a new trial required – when a seated juror gives a false answer during *voir dire* concealing that she and members of her family were accused, complainants, witnesses, or victims in criminal cases, and whether a defendant’s entitlement to relief turns on proof that the juror’s false answer was deliberate or on the objective effect of the concealment on the defendant’s right to an impartial jury.

2. Whether a defendant charged with a serious felony is deprived of his right, under the Sixth and Fourteenth Amendments, to a trial by a twelve-person jury – the question on which this Court granted certiorari in *Kian v. Florida*, No. 25-6623 – and whether, because the Petitioner’s conviction remains pending on direct review, this petition should be held pending the decision in *Kian* and disposed of accordingly.

PARTIES TO THE PROCEEDING

Petitioner is Larry Jay Bean, the defendant-appellant below. Respondent is the State of Florida, the prosecuting authority and appellee below.

CORPORATE DISCLOSURE STATEMENT

The Petitioner is an individual. No corporate disclosure statement is required under this Court's Rule 29.6.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii):

- *Bean v. State of Florida*, No. 1D2023-1229, District Court of Appeal of Florida, First District (*per curiam* affirmed Jan. 14, 2026).
- *State of Florida v. Larry Jay Bean*, No. 2021-CF-318, Circuit Court of the First Judicial Circuit, Walton County, Florida (judgment and sentence entered Apr. 19, 2023; order denying new trial based on juror concealment entered following juror interview on June 4, 2024; written order entered on June 14, 2024).

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iii
CORPORATE DISCLOSURE STATEMENT	iv
RELATED PROCEEDINGS	v
TABLE OF CONTENTS.....	vi
TABLE OF APPENDICES	x
TABLE OF CITED AUTHORITIES	xi
OPINIONS AND ORDERS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. The Charge and Trial	2
B. The Juror's False Answer and Its Discovery ...	3
C. The Trial Court's Denial of a New Trial	4
D. The Appeal	6

Table of Contents

	<i>Page</i>
REASONS FOR GRANTING THE WRIT	6
I. The decision below implicates an entrenched and acknowledged conflict over how <i>McDonough</i> governs juror concealment	7
A. <i>McDonough</i> anchors the new-trial inquiry in the Sixth Amendment guarantee of an impartial jury	7
B. The courts are divided over whether <i>McDonough</i> requires proof that the juror's false answer was deliberate	8
C. The courts are also divided over whether implied or actual bias survives <i>McDonough</i> as an independent path to relief	10
D. State courts of last resort are divided too, and Florida's own law is internally inconsistent	12
II. The decision below rests on a legal standard this Court has rejected and conflicts with this Court's impartial-jury precedents.....	13
A. The trial court asked the wrong question.....	13

Table of Contents

	<i>Page</i>
B. The materiality standard applied below is contrary to <i>McDonough</i>	14
C. The First District’s unexplained affirmance leaves the error uncorrected and unreviewable.	15
III. This case is an ideal vehicle, the error is structural, and the Petitioner is entitled to relief under the correct standard	15
A. The case cleanly presents the question.	15
B. The error is structural and cannot be excused as harmless	16
C. The State’s contrary arguments do not withstand scrutiny.	17
IV. The Court should hold this petition for <i>Kian v. Florida</i> and, if <i>Kian</i> establishes error, grant, vacate, and remand for the Florida courts to consider the twelve- person jury claim in the first instance	18
A. The claim remains live because the Petitioner’s conviction is not yet final	19

Table of Contents

	<i>Page</i>
B. The Petitioner’s failure to object at trial is not, standing alone, an adequate state ground.....	19
C. Because the First District did not pass on the claim, a GVR – not a merits ruling in the first instance – is the proper disposition.....	20
D. Any state procedural ground the State invokes is contestable, and its adequacy is a federal question.....	21
CONCLUSION	23

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — January 14, 2026, <i>per curiam</i> decision of the District Court of Appeal of Florida, First District (No. 1D2023-1229).....	1a
Appendix B — June 23, 2026, order of the District Court of Appeal of Florida, First District, denying rehearing and written opinion	2a
Appendix C — July 13, 2026, order of the District Court of Appeal of Florida, First District, denying leave to file supplemental briefing	3a
Appendix D — Transcript of the June 4, 2024, Hearing: Juror Interview.....	4a
Trial court’s oral ruling denying the motion for new trial based on juror concealment	17a
Appendix E — June 14, 2024, trial court’s Order Denying Defendant’s Motion for New Trial	26a
Appendix F — Juror questionnaire	28a
Appendix G — April 19, 2023, Judgment and Sentence of the Florida First Judicial Circuit Court.....	31a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Adams v. Robertson</i> , 520 U.S. 83 (1997)	20
<i>Banek v. State</i> , 75 So. 3d 762 (Fla. Dist. Ct. App. 2011)	21
<i>D.H. v. Adept Cmty. Servs., Inc.</i> , 271 So. 3d 870 (Fla. 2018)	22
<i>Dyer v. Calderon</i> , 151 F.3d 970 (9th Cir. 1998)	10, 11, 14
<i>Edenfield v. State</i> , 379 So. 3d 5 (Fla. Dist. Ct. App. 2023)	20
<i>Fitzgerald v. Greene</i> , 150 F.3d 357 (4th Cir. 1998)	8, 9, 11, 16, 17
<i>Ford v. Georgia</i> , 498 U.S. 411 (1991)	22
<i>Gonzales v. Thomas</i> , 99 F.3d 978 (10th Cir. 1996)	9, 11, 14, 17
<i>Gray v. Mississippi</i> , 481 U.S. 648 (1987)	16, 18
<i>Griffith v. Kentucky</i> , 479 U.S. 314 (1987)	19

Cited Authorities

	<i>Page</i>
<i>Howell v. Mississippi</i> , 543 U.S. 440 (2005)	20
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961)	7
<i>Jenkins v. State</i> , 385 So. 2d 1356 (Fla. 1980)	1
<i>Lawrence on Behalf of Lawrence v. Chater</i> , 516 U.S. 163 (1996)	21
<i>Lee v. Kemna</i> , 534 U.S. 362 (2002)	22
<i>Martin v. State</i> , 322 So. 3d 25 (Fla. 2021)	12
<i>McDonough Power Equip., Inc. v. Greenwood</i> , 464 U.S. 548 (1984)	6–15, 17, 18
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	22
<i>Morgan v. Illinois</i> , 504 U.S. 719 (1992)	7
<i>Pena-Rodriguez v. Colorado</i> , 580 U.S. 206 (2017)	11

Cited Authorities

	<i>Page</i>
<i>Roberts ex rel. Est. of Roberts v. Tejada</i> , 814 So. 2d 334 (Fla. 2002)	12, 17
<i>Rogers v. State</i> , No. 6D2025-0883, 2026 WL 1862160 (Fla. Dist. Ct. App. June 29, 2026).	21
<i>Rosales-Lopez v. United States</i> , 451 U.S. 182 (1981)	14
<i>Rosier v. State</i> , 276 So. 3d 403 (Fla. Dist. Ct. App. 2019).	21
<i>Sampson v. United States</i> , 724 F.3d 150 (1st Cir. 2013)	9, 14
<i>Smith v. Phillips</i> , 455 U.S. 209 (1982).	7, 8, 10
<i>Trushin v. State</i> , 425 So. 2d 1126 (Fla. 1982)	20
<i>United States v. Colombo</i> , 869 F.2d 149 (2d Cir. 1989)	9
<i>United States v. Martinez-Salazar</i> , 528 U.S. 304 (2000).	14, 16, 17, 18
<i>Warger v. Shauers</i> , 574 U.S. 40 (2014)	11

Cited Authorities

	<i>Page</i>
<i>Zerka v. Green</i> , 49 F.3d 1181 (6th Cir. 1995)	9, 10, 14
Statutes and Other Authorities	
U.S. Const. amend. VI	1, 2, 6, 7, 14, 15, 19
U.S. Const. amend. XIV	1, 2, 6, 19
28 U.S.C. § 1257	1
Fla. Stat. § 913.010	19
Fla. R. Crim. P. 3.575	4
U.S. Sup. Ct. R. 10	6, 7
U.S. Sup. Ct. R. 13.1	2
U.S. Sup. Ct. R. 13.3	2
U.S. Sup. Ct. R. 13.5	2
U.S. Sup. Ct. R. 14.1(b)(iii)	v
U.S. Sup. Ct. R. 29.6	iv

Petitioner Larry Jay Bean respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, First District.

OPINIONS AND ORDERS BELOW

The decision of the District Court of Appeal of Florida, First District, affirming the Petitioner's conviction *per curiam* and without opinion, is unreported and is reproduced in the appendix. (Appendix A, page 1a). The Circuit Court's oral ruling denying the Petitioner's motion for a new trial based on juror concealment is unreported and is reproduced in the appendix. (Appendix D, pages 18a-25a).

JURISDICTION

The District Court of Appeal of Florida, First District, entered its *per curiam* decision affirming the Petitioner's conviction on January 14, 2026. Because the Supreme Court of Florida lacks jurisdiction to review a district court of appeal decision affirming without a written opinion,¹¹ the First District's decision is the judgment of the highest court of the State in which a decision could be had. This Court has jurisdiction under 28 U.S.C.A. § 1257, which authorizes review of a final judgment of the highest court of a State in which a decision could be had where, as here, the validity of the Petitioner's conviction was drawn in question as repugnant to the Constitution of the United States and the Petitioner asserted a right under the Sixth and Fourteenth Amendments.

1. See *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

A petition for a writ of certiorari is due within 90 days after entry of the judgment or, where a party timely petitions the state court for rehearing, within 90 days after the denial of rehearing. *See* Sup. Ct. R. 13.1, 13.3. The Petitioner timely moved for rehearing and a written opinion in the First District on January 29, 2026, and that court denied the motion on June 23, 2026. (Appendix B, page 2a). The 90-day period therefore ran from June 23, 2026. On August 31, 2026, a Justice of this Court granted Petitioner’s application under Rule 13.5 for a 30-day extension of time, extending the deadline to and including October 21, 2026. This petition is filed within that period and is timely.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: “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.”

The Fourteenth Amendment to the United States Constitution provides in relevant part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE

A. The Charge and Trial

Petitioner Larry Jay Bean was charged in Walton County, Florida, with one count of lewd or lascivious molestation. The State alleged that the offense occurred

on April 26, 2021, and that the victim, C.F.,²² was the young daughter of the Petitioner's longtime friends. The Petitioner's defense was that he did not touch C.F. in the manner alleged and that he had entered her bedroom, in the dark, without knowing whose room it was after a night of drinking with C.F.'s father. The evidence at trial reflected that the Petitioner and C.F.'s father had consumed alcohol at a restaurant and several bars before returning to the home. The State itself argued that the Petitioner's conduct was connected to his intoxication, and the trial court instructed the jury on voluntary intoxication over defense objection.

The jury was selected on February 6, 2023, the trial was held on February 9 and 10, 2023, and the jury found the Petitioner guilty as charged. On April 19, 2023, the trial court sentenced the Petitioner to twenty-five years' imprisonment – the mandatory minimum – followed by lifetime probation. (Appendix G, page 31a).

B. The Juror's False Answer and Its Discovery

Prospective jurors in Walton County completed a standard written questionnaire as part of jury selection. One standard question asked: "Have you or any member of your family ever been accused, complainant, or witness in a criminal case?" The question provided two boxes, "yes" and "no." Juror B.R.C.³³ marked "no." (Appendix F, page 29a).

2. In this petition, the alleged victim will be referred to using her initials.

3. In this petition, the juror will be referred to using her initials.

After the verdict, the Petitioner retained an investigator, whose report indicated that members of Juror B.R.C.'s family had in fact been accused of crimes. The Petitioner moved under Florida Rule of Criminal Procedure 3.575 for leave to interview the juror. The trial court found good cause for the timing of the motion – defense counsel had left the country to attend her daughter's wedding immediately after the verdict, delaying transmission of the questionnaires to the investigator – and, following a hearing on October 3, 2023, granted leave to interview the juror.

The interview was conducted on June 4, 2024. Under questioning, Juror B.R.C. acknowledged that her son had been arrested for driving under the influence in 1997; that she herself had called law enforcement to report her son for “trash[ing]” her camper and had thereafter had her son “trespassed” from her property; and that, during her marriage, her former husband had been arrested for driving under the influence “probably twice I think in Florida” and “a couple more in Wisconsin.” (Appendix D, pages 7a–10a). Reviewing a 2017 police report that identified her as the victim of a domestic-battery/trespass incident involving her son, she confirmed the report was “[f]or the most part” accurate. (Appendix D, pages 15a–17a).

C. The Trial Court's Denial of a New Trial

Based on the juror's answers at the interview, the Petitioner moved for a new trial, contending that Juror B.R.C.'s “no” answer on the questionnaire was false and that, had she answered truthfully, the defense would

have challenged her. The trial court denied the motion. (Appendix D, page 17a; Appendix E, page 26a).

In explaining its ruling, the trial court focused on whether the juror had testified untruthfully at the interview, rather than on whether her questionnaire answer had been false or on whether her concealed circumstances bore on her impartiality. The court stated: “The court cannot find that she was untruthful today with her testimony.” (Appendix D, page 19a). It added: “Once again, she may not have remembered it. But I cannot find that she intentionally gave false testimony.” (Appendix D, page 19a). And again: “You’re asking me whether she’s being untruthful to the court. I don’t think she was.” (Appendix D, page 21a). The court nonetheless conceded that the juror “gave something I agree that probably wouldn’t be the correct answer to that question.” (Appendix D, page 21a).

When counsel argued that the false questionnaire answer required a new trial, the court responded: “I don’t think that is sufficient grounds to order a new trial and I don’t think the appellate court would reverse a case on these little indiscrepancies. If there was some, I can’t imagine a court reversing on that. But they have the testimony and they’ll do the review and we’ll see, okay.” (Appendix D, pages 25a). The trial court did not address whether the concealed information was material to the juror’s impartiality or whether it would have supported a challenge to her service.

D. The Appeal

The Petitioner appealed, arguing among other things that the juror's false answer denied him his rights under the Sixth and Fourteenth Amendments to the United States Constitution to a fair trial and an impartial jury. On January 14, 2026, the District Court of Appeal of Florida, First District, affirmed *per curiam* and without opinion. (Appendix A, page 1a). This petition follows.

REASONS FOR GRANTING THE WRIT

This case presents a recurring and important question of federal constitutional law on which the lower courts are intractably divided: how the Sixth Amendment right to an impartial jury, as construed in *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548 (1984), governs a seated juror's concealment of material information during *voir dire*. The trial court denied the Petitioner a new trial for the sole reason that it could not find the juror's false answer to have been intentional – squarely adopting one contested side of an acknowledged split, and doing so without ever asking the question this Court has made central: whether the juror's concealed circumstances denied the Petitioner an impartial jury. The First District's unexplained affirmance leaves that error in place and beyond further review in the state system. Review is warranted under this Court's Rule 10.

I. The decision below implicates an entrenched and acknowledged conflict over how *McDonough* governs juror concealment.

A. *McDonough* anchors the new-trial inquiry in the Sixth Amendment guarantee of an impartial jury.

The touchstone of the Sixth Amendment is “an impartial trier of fact – a jury capable and willing to decide the case solely on the evidence before it.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982). *Voir dire* “serves to protect that right by exposing possible biases, both known and unknown, on the part of potential jurors,” and “[t]he necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.” *McDonough*, 464 U.S. at 554. The right guaranteed is that of “a fair trial by a panel of impartial, ‘indifferent’ jurors,” for “a juror who has formed an opinion cannot be impartial.” *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). Impartiality “is not a technical conception. It is a state of mind.” *Id.* at 724. A jury “must stand impartial and indifferent to the extent commanded by the Sixth Amendment.” *Morgan v. Illinois*, 504 U.S. 719, 727 (1992).

In *McDonough*, this Court set the standard governing when a juror’s failure to disclose information on *voir dire* entitles a party to a new trial. The Court held that the movant “must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause.” *McDonough*, 464 U.S. at 556. Critically, the Court grounded that test in impartiality, not in the mechanics of jury selection: a party

is “not entitled to a new trial unless the juror’s failure to disclose denied [him his] right to an impartial jury,” and “only those reasons that affect a juror’s impartiality can truly be said to affect the fairness of a trial.” *Id.* at 549, 556. The remedy this Court has “long held” for allegations of juror partiality is “a hearing in which the defendant has the opportunity to prove actual bias.” *Smith*, 455 U.S. at 215. And courts have recognized that in “extreme” or “exceptional” circumstances, bias may be presumed even without such proof – as where “the juror is a close relative of one of the participants in the trial or the criminal transaction, or . . . the juror was a witness or somehow involved in the criminal transaction.” *Fitzgerald v. Greene*, 150 F.3d 357, 365 (4th Cir. 1998).

B. The courts are divided over whether *McDonough* requires proof that the juror’s false answer was deliberate.

The lower courts have fractured over the threshold question whether *McDonough*’s first prong requires proof of deliberate dishonesty, or whether an honest-but-mistaken concealment can still support relief upon a showing of bias. The conflict is not latent; the courts have expressly catalogued it. In *Fitzgerald*, the Fourth Circuit collected the competing lines: “some circuits have adopted th[e] interpretation” that a “juror’s dishonesty is not a necessary predicate to obtaining a new trial, but only a factor to be considered in determining whether actual bias occurred,” while “other circuits have ruled that juror dishonesty is a threshold requirement for relief under *McDonough*.” *Fitzgerald*, 150 F.3d at 364 n.3.

On the “dishonesty-required” side, the Tenth Circuit has held that “the *McDonough* test is directed at intentionally incorrect responses,” so that a party “cannot satisfy the first part of th[e] test merely by demonstrating a juror provided a ‘mistaken, though honest, response.’” *Gonzales v. Thomas*, 99 F.3d 978, 984 (10th Cir. 1996). The Second Circuit treats deliberateness as pivotal: where a juror “deliberately failed to reveal” a disqualifying relationship, “the conviction cannot stand,” a result the court distinguished from *McDonough* precisely because *McDonough* “involved a ‘mistaken, though honest, response.’” *United States v. Colombo*, 869 F.2d 149, 151-152 (2d Cir. 1989). The First Circuit likewise holds that “in the absence of dishonesty, post-trial relief, if available at all, will require a more flagrant showing of juror bias.” *Sampson v. United States*, 724 F.3d 150, 164 n.8 (1st Cir. 2013).

On the other side, the Sixth Circuit has read *McDonough* not to “entirely foreclose a party from seeking a new trial on the basis of a prospective juror’s honest, though mistaken, response,” and has drawn the operative distinction differently: “If a juror is found to have deliberately concealed material information, bias may be inferred. If, however, information is not concealed deliberately, the movant must show actual bias.” *Zerka v. Green*, 49 F.3d 1181, 1186 & n.7 (6th Cir. 1995). Counting the votes in *McDonough*’s concurrences, these courts conclude that “a finding of dishonesty is not a prerequisite to relief.” *Fitzgerald*, 150 F.3d at 364 n.3 (citing *Zerka*).

That division is rooted in *McDonough* itself. Justice Blackmun, joined by Justices Stevens and O’Connor, wrote separately to make clear that “regardless of whether a

juror's answer is honest or dishonest, it remains within a trial court's option, in determining whether a jury was biased, to order a post-trial hearing at which the movant has the opportunity to demonstrate actual bias, or in exceptional circumstances, that the facts are such that bias is to be inferred." *Zerka*, 49 F.3d at 1186 n.7 (quoting *McDonough*, 464 U.S. at 556-557). Justice Brennan, joined by Justice Marshall, agreed that a new trial may be warranted even for an honest answer, because "[o]ne easily can imagine cases in which a prospective juror provides what he subjectively believes to be an honest answer, yet that same answer is objectively incorrect and therefore suggests that the individual would be a biased juror in the particular case." *Fitzgerald*, 150 F.3d at 364 n.3 (quoting *McDonough*, 464 U.S. at 559). Those five Justices' understanding of the impartiality inquiry has produced two decades of divergent applications in the lower courts. Only this Court can resolve the conflict.

C. The courts are also divided over whether implied or actual bias survives *McDonough* as an independent path to relief.

A second, related conflict compounds the first: whether, when the *McDonough* dishonesty inquiry does not itself yield relief, a defendant may still obtain a new trial by demonstrating actual or implied bias arising from the juror's concealed circumstances. The Ninth Circuit, sitting *en banc*, holds that implied bias remains a vital doctrine after *McDonough* and *Smith*: "Nothing in *Smith v. Phillips* . . . or *McDonough Power Equip.* . . . is to the contrary," because *McDonough* "held that . . . bias could not be implied on the facts of that case, but assumed that the doctrine does, in fact, exist." *Dyer v. Calderon*, 151

F.3d 970, 985 (9th Cir. 1998). Where a juror “lies in order to improve his chances of serving,” that juror “has too much of a stake in the matter to be considered indifferent,” and bias must be presumed. *Id.* at 982. The Tenth Circuit agrees that *McDonough* “does not provide the exclusive analysis,” and that a defendant is not “foreclose[d] [from] the normal avenue of relief available to a party who is asserting that he did not have the benefit of an impartial jury”; implied bias may be found “even though a juror denies any partiality” where the juror has “such a close connection to the circumstances at hand that bias must be presumed.” *Gonzales*, 99 F.3d at 985, 987.

Other courts have questioned whether the implied-bias doctrine survives at all, treating *McDonough*’s honesty inquiry as the governing framework and leaving the availability of presumed bias unsettled. *See Fitzgerald*, 150 F.3d at 370. This Court has never squarely resolved the question. In *Warger v. Shauers*, 574 U.S. 40, 51 n.3 (2014), the Court reserved it, observing that “[t]here may be cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged,” and that “[i]f and when such a case arises, the Court can consider whether the usual safeguards are or are not sufficient.” The Court reiterated in *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221 (2017), that the “no-impeachment rule may admit of exceptions” for “juror bias so extreme that, almost by definition, the jury trial right has been abridged,” and left open the question whether the Constitution compels exceptions to protect the impartial-jury guarantee against concealed bias. The lower courts’ persistent uncertainty about implied bias – an issue this Court has twice flagged but not decided – independently warrants review.

D. State courts of last resort are divided too, and Florida’s own law is internally inconsistent.

The conflict is not confined to the federal courts. The Florida Supreme Court, applying *McDonough* in criminal postconviction proceedings, holds that “a mistaken but honest answer to a question . . . will not warrant postconviction relief” and that a challenger “must prove actual juror bias against the defendant,” so that “not all instances of juror concealment will entitle a . . . challenger to a new trial.” *Martin v. State*, 322 So. 3d 25, 34-35 (Fla. 2021). Yet in the civil context Florida applies a materially different rule, treating nondisclosure as concealment without regard to intent and keying materiality to the loss of a peremptory challenge. *See Roberts ex rel. Est. of Roberts v. Tejada*, 814 So. 2d 334, 343 (Fla. 2002) (“[A] juror’s nondisclosure need not be intentional to constitute concealment.”). The decision below is the product of exactly this doctrinal instability: the trial court invoked Florida’s civil three-part concealment test but then denied relief on the ground that it could not find intentional dishonesty – an intent requirement drawn from the criminal line – all without ever adjudicating impartiality. The result is that whether a Florida defendant obtains relief for a juror’s false *voir dire* answer depends less on the effect of the concealment on his right to an impartial jury than on which strand of an unsettled body of law the trial court happens to apply. That is precisely the disuniformity that this Court’s review exists to correct.

II. The decision below rests on a legal standard this Court has rejected and conflicts with this Court’s impartial-jury precedents.

A. The trial court asked the wrong question.

The trial court denied a new trial because it “cannot find that she was untruthful today with her testimony” and “cannot find that she intentionally gave false testimony.” (Appendix D, pages 19a). That reasoning inverts the analysis this Court prescribed. Under *McDonough*, the dispositive inquiry is not whether the juror testified candidly after trial, nor even whether her original answer was subjectively dishonest, but whether “the juror’s failure to disclose denied [the defendant his] right to an impartial jury.” *McDonough*, 464 U.S. at 549. “The motives for concealing information may vary, but only those reasons that affect a juror’s impartiality can truly be said to affect the fairness of a trial.” *Id.* at 556. The trial court never reached that question. It conceded that the juror “gave something . . . that probably wouldn’t be the correct answer” (Appendix D, page 21a), and then dismissed the false answer as one of several “little indiscrepancies” not worth a new trial. (Appendix D, pages 25a). Whether a false answer concealing a juror’s status as a criminal complainant, witness, and victim affects her impartiality is a constitutional question the court was required to confront and did not.

By resting exclusively on the absence of intentional dishonesty, the decision below adopted the “dishonesty-required” side of the split described above – and did so in its most defendant-unfavorable form, treating the lack of proven intent as the end of the analysis rather than as

one factor bearing on bias. Under the reasoning of the Ninth, Tenth, Sixth, and First Circuits, that was error: a juror's honest-but-incorrect answer does not foreclose relief where the concealed facts themselves establish actual or implied bias. *See Dyer*, 151 F.3d at 982; *Gonzales*, 99 F.3d at 987; *Zerka*, 49 F.3d at 1186; *Sampson*, 724 F.3d at 164 n.8. The same concealment that the trial court waved off would, in those courts, have triggered the very impartiality inquiry the court skipped.

B. The materiality standard applied below is contrary to *McDonough*.

To the extent the decision below rested on Florida's rule keying materiality to the loss of a peremptory challenge, that standard is also in tension with this Court's precedents. *McDonough* keys materiality to "a valid basis for a challenge for cause," *McDonough*, 464 U.S. at 556, because the constitutional interest is impartiality, and "only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial." *Id.* Peremptory challenges, by contrast, "are auxiliary; unlike the right to an impartial jury guaranteed by the Sixth Amendment, peremptory challenges are not of federal constitutional dimension." *United States v. Martinez-Salazar*, 528 U.S. 304, 311 (2000). They exist as "one state-created means to the constitutional end of an impartial jury and a fair trial." *Id.* at 316. *Voir dire*, in turn, "plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored." *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981). The divergence between the federal impartiality standard and the peremptory-keyed standard applied in Florida is one more manifestation

of the confusion in this area – and it confirms that the courts lack a uniform understanding of what *McDonough* requires. The Petitioner prevails under either formulation, but the disagreement itself is a reason to grant review.

C. The First District’s unexplained affirmance leaves the error uncorrected and unreviewable.

The First District affirmed *per curiam* and without opinion. (Appendix A, page 1a). Because such a decision is not reviewable by the Florida Supreme Court, the affirmance places the trial court’s constitutional error beyond correction within the state system. This Court’s review is the only avenue to ensure that the Sixth Amendment standard announced in *McDonough* is applied uniformly and correctly to the recurring problem of juror concealment.

III. This case is an ideal vehicle, the error is structural, and the Petitioner is entitled to relief under the correct standard.

A. The case cleanly presents the question.

This case is an unusually clean vehicle. The federal question was pressed and preserved: the Petitioner invoked his constitutional claims in the trial court and on appeal. The relevant facts are undisputed and established through a court-ordered juror interview rather than contested affidavits. The juror’s answer was concededly incorrect. And the trial court’s stated rationale isolates the precise legal question on which the courts divide – the role of the juror’s intent – because the court denied relief on that ground and no other. There is no alternative state-

law ground that would prevent this Court from reaching the federal question.

The concealed facts, moreover, fall within the heartland of the implied-bias examples this Court's Members have identified: a juror who "was a witness or somehow involved in the criminal transaction," or who is closely connected to a criminal matter. *Fitzgerald*, 150 F.3d at 365. Juror B.R.C. concealed that she had been a complainant, witness, and victim in criminal matters and that her son and former husband had been accused of crimes – several of them *alcohol-related*. Those facts were *acutely* material here, where intoxication was *central* to the State's theory and the jury was instructed on voluntary intoxication. A juror whose family had been repeatedly accused in alcohol-related criminal cases, and who had summoned law enforcement against her own son, is precisely the juror a defendant in the Petitioner's position would have sought to examine and, in all likelihood, to challenge.

B. The error is structural and cannot be excused as harmless.

Seating a juror who should not have served is not a harmless error. This Court has explained that where a juror "who should have been dismissed for cause" sits, and the defendant preserved his challenge, "the sentence would have to be overturned." *Martinez-Salazar*, 528 U.S. at 316. The right to an impartial jury is "so basic to a fair trial that its infraction can never be treated as harmless error." *Gray v. Mississippi*, 481 U.S. 648, 668 (1987). The harm from concealment, further, resists after-the-fact reconstruction: the jury-selection process turns on "on-the-spot" decisions, and its integrity cannot be restored

by speculating about how the defense would have used its challenges had the truth been told. *Martinez-Salazar*, 528 U.S. at 316. The State cannot cure a concealed impairment of the right to an impartial jury by asking a reviewing court to assume the concealment made no difference.

C. The State’s contrary arguments do not withstand scrutiny.

The State’s principal defenses of the judgment below only underscore the need for review. First, the State contends that Juror B.R.C. did not “conceal” anything because she did not know or did not understand that the matters involving her son and former husband were “criminal cases.” But *McDonough* makes impartiality, not the juror’s subjective candor, the constitutional touchstone, *see McDonough*, 464 U.S. at 556, and this Court’s Members have recognized that bias may be implied “even though a juror denies any partiality” and even where her answer was honestly given. *Gonzales*, 99 F.3d at 987.; *See also Fitzgerald*, 150 F.3d at 370. A rule that immunizes concealment whenever the juror claims not to have understood a plainly worded question would gut the impartiality guarantee – and it is flatly inconsistent with the treatment of comparable nondisclosures as concealment regardless of intent. *See Roberts*, 814 So. 2d at 343. The juror here confirmed the accuracy of a police report identifying her as a crime victim.

Second, the State argues that the Petitioner cannot show he would have challenged the juror, noting that counsel did not strike other assertedly comparable jurors. That argument mistakes the constitutional inquiry, which asks whether the concealment denied the Petitioner an

impartial jury – a question the courts measure against a for-cause standard, *see McDonough*, 464 U.S. at 556, not against a retrospective guess about peremptory strategy. And it cannot be tested at all, because concealment forecloses the very examination that would have informed counsel’s judgment. *See Martinez-Salazar*, 528 U.S. at 316. The undisclosed facts here – a juror who was herself a criminal complainant and victim, with close family members accused in alcohol-related cases in a trial where intoxication was central – are not comparable to the matters the State points to.

Third, the State says the remedy for applying the wrong standard is a remand for reconsideration, not a new trial. But the error here is not a mere misstep in weighing facts; it is the seating of a juror whose concealment denied petitioner an impartial jury, an error this Court has treated as structural. *See Martinez-Salazar*, 528 U.S. at 316; *Gray*, 481 U.S. at 668. At a minimum, the pervasive confusion over the governing standard – the very confusion that produced the ruling below – is reason to grant certiorari and announce the correct rule.

IV. The Court should hold this petition for *Kian v. Florida* and, if *Kian* establishes error, grant, vacate, and remand for the Florida courts to consider the twelve-person jury claim in the first instance.

Independent of the juror-concealment question, this petition presents a second federal issue that warrants a different and more modest disposition. On June 15, 2026, this Court granted certiorari in *Kian v. Florida*, No. 25-6623, on the question whether a defendant charged with a serious felony “was deprived of his right, under

the Sixth and Fourteenth Amendments, to a trial by a 12-person jury.” The Petitioner was tried and convicted by a six-person jury. Because *Kian* may establish that the Petitioner’s six-person jury was unconstitutional, the appropriate course is to hold this petition pending the decision in *Kian* and, if that decision establishes error, to grant, vacate, and remand so that the Florida courts may apply it in the first instance.

A. The claim remains live because the Petitioner’s conviction is not yet final.

A new rule of federal constitutional criminal procedure “is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final.” *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). A conviction is not “final” until “the availability of appeal [is] exhausted, and the time for a petition for certiorari [has] elapsed or a petition for certiorari [has been] finally denied.” *Id.* at 328 n.6. A timely petition therefore keeps the Petitioner’s case on direct review. So long as this petition is pending, the Petitioner is entitled to the benefit of any rule *Kian* announces.

B. The Petitioner’s failure to object at trial is not, standing alone, an adequate state ground.

The claim, framed as a facial challenge to section 913.010, Florida Statutes (i.e., the Florida statute requiring 6-person juries in non-capital cases), is of a kind that Florida law permits to be “raised for the first time on appeal even though prudence dictates that it be presented at the trial court level,” because “a conviction for the violation of a facially invalid statute would constitute

fundamental error.” *Trushin v. State*, 425 So. 2d 1126, 1129 (Fla. 1982). Only an as-applied challenge “must be raised at the trial level.” *Id.* at 1129-1130. Florida’s courts continue to apply that rule, reaching unpreserved facial challenges to the statute of conviction. *See Edenfield v. State*, 379 So. 3d 5, 6 & n.1 (Fla. Dist. Ct. App. 2023). The Petitioner’s concession that the jury-size claim was not preserved at trial thus does not supply a state ground that would bar this Court’s review, because the claim was always cognizable on direct appeal.

C. Because the First District did not pass on the claim, a GVR – not a merits ruling in the first instance – is the proper disposition.

This Court ordinarily “will not consider a petitioner’s federal claim unless it was either addressed by, or properly presented to, the state court.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997). *See also Howell v. Mississippi*, 543 U.S. 440, 443 (2005). The First District did not reach the merits of the jury-size claim: it denied leave to file a supplemental brief by a one-line order (Appendix C, page 3a) and affirmed *per curiam* without opinion. (Appendix A, page 1a). The Petitioner does not ask this Court to resolve the question in the first instance. He asks instead that the Court hold the petition and, upon deciding *Kian*, grant, vacate, and remand – the established mechanism by which an intervening decision reaches a case in the certiorari pipeline. A GVR is appropriate where intervening developments “reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration,” and where “redetermination may determine the ultimate outcome of the litigation.”

Lawrence on Behalf of Lawrence v. Chater, 516 U.S. 163, 167 (1996). Both conditions are met: if *Kian* holds that a serious-felony defendant is entitled to a twelve-person jury, the premise of the affirmance below – that the Petitioner’s six-person jury was permissible – is one the First District would be obliged to reject. A remand would allow the Florida courts to apply *Kian*, and Florida’s own facial-challenge rule, in the first instance. The Court exercises the GVR power “sparingly,” *Lawrence*, 516 U.S. at 173, but this is a paradigm case for it.

D. Any state procedural ground the State invokes is contestable, and its adequacy is a federal question.

The State is likely to contend that the claim is barred because it was omitted from the Petitioner’s initial brief – a rule under which Florida treats unbriefed issues as “waived or abandoned.” *Rosier v. State*, 276 So. 3d 403, 406 (Fla. Dist. Ct. App. 2019). A Florida district court recently applied that reasoning to deny a materially identical post-*Kian* motion for supplemental briefing, holding the jury-size issue waived for omission from the initial brief and a claim resting on a mere cert grant “speculative and premature.” *Rogers v. State*, No. 6D2025-0883, 2026 WL 1862160 at *1-2 (Fla. Dist. Ct. App. June 29, 2026). That decision, however, is a Sixth District decision – persuasive only, not binding on the First District or this Court – and it is in tension with Florida authority treating the failure to seek supplemental briefing on an intervening decision as deficient performance, on the premise that the court “would have permitted counsel to file a supplemental brief.” *Banek v. State*, 75 So. 3d 762, 764-765 & n.2 (Fla. Dist. Ct. App. 2011). Florida’s initial-brief-waiver rule

itself admits an exception for issues “raising obvious fundamental errors.” *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 880 (Fla. 2018). In all events, “the adequacy of state procedural bars to the assertion of federal questions” is “itself a federal question,” *Lee v. Kemna*, 534 U.S. 362, 375 (2002), and a state ground is inadequate where the rule’s application is novel or imposed with “pointless severity.” *Ford v. Georgia*, 498 U.S. 411, 423-424 (1991). Neither the one-line denial of leave nor the unexplained affirmance contains any “plain statement” that the judgment rests on a separate, adequate, and independent state ground. *Michigan v. Long*, 463 U.S. 1032, 1040-1041 (1983). These are reasons the state procedural objection should not foreclose a hold-and-GVR disposition; they need not be resolved now, because a remand returns the questions to the Florida courts.

CONCLUSION

The petition for a writ of certiorari should be granted on the first question presented. In the alternative, and as to the second question presented, the petition should be held pending this Court's decision in *Kian v. Florida*, No. 25-6623, and then granted, vacated, and remanded to the District Court of Appeal of Florida, First District, for further consideration in light of that decision.

Respectfully submitted,

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October 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — January 14, 2026, <i>per curiam</i> decision of the District Court of Appeal of Florida, First District (No. 1D2023-1229)	1a
Appendix B — June 23, 2026, order of the District Court of Appeal of Florida, First District, denying rehearing and written opinion	2a
Appendix C — July 13, 2026, order of the District Court of Appeal of Florida, First District, denying leave to file supplemental briefing	3a
Appendix D — Transcript of the June 4, 2024, Hearing: Juror Interview.	4a
Trial court’s oral ruling denying the motion for new trial based on juror concealment	17a
Appendix E — June 14, 2024, trial court’s Order Denying Defendant’s Motion for New Trial	26a
Appendix F — Juror questionnaire	28a
Appendix G — April 19, 2023, Judgment and Sentence of the Florida First Judicial Circuit Court.	31a

1a

**Appendix A — January 14, 2026, *per curiam* decision
of the District Court of Appeal of Florida,
First District (No. 1D2023-1229)**

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2023-1229

LARRY JAY BEAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Filed January 14, 2026

On appeal from the Circuit Court for Walton County.
Kelvin C. Wells, Judge.

PER CURIAM.

AFFIRMED.

OSTERHAUS, C.J., and BILBREY and TANENBAUM, JJ. concur.

***Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330
or 9.331.***

2a

**Appendix B — June 23, 2026, order of the District
Court of Appeal of Florida, First District, denying
rehearing and written opinion**

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Case 1D2023-1229
L.T. No.: 2021-CF-318

LARRY JAY BEAN,

Appellant(s),

v.

STATE OF FLORIDA,

Appellee(s).

Filed June 23, 2026

BY ORDER OF THE COURT:

The Court denies the motion for rehearing and written
opinion docketed January 29, 2026.

I HEREBY CERTIFY that the above order is issued
at the Court's direction.

3a

**Appendix C — July 13, 2026, order of the District
Court of Appeal of Florida, First District, denying
leave to file supplemental briefing**

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Case 1D2023-1229
L.T. No.: 2021-CF-318

LARRY JAY BEAN,

Appellant(s),

v.

STATE OF FLORIDA,

Appellee(s).

Filed July 13, 2026

BY ORDER OF THE COURT:

The Court denies Appellant's motion for supplemental briefing docketed July 8, 2026.

I HEREBY CERTIFY that the above order is issued at the Court's direction.

4a

**Appendix D — Transcript of the
June 4, 2024, Hearing**

IN THE CIRCUIT COURT IN AND FOR
WALTON COUNTY, FLORIDA

CASE NO: 2021-CF-318

STATE OF FLORIDA,

vs.

LARRY JAY BEAN,

Defendant

Proceedings held in the above-styled cause before the Honorable KELVIN C. WELLS, Circuit Judge, on the 4th day of June, 2024, at the Walton County Courthouse, 571 Highway 90 East, DeFuniak Springs, Florida, 32433.

KIM SANDERS
CIRCUIT COURT REPORTER

[2]PROCEEDINGS

THE COURT: Let the record reflect we're here in the State of Florida vs. Larry Jay Bean, Case No. 21-CF-318. This matter is set for a hearing for interview of a witness and -- ma'am, I'm sorry, I'm trying to get your name.

THE WITNESS: [REDACTED]. [B.R.C.]

THE COURT: Ms. [REDACTED], raise your right hand for me.

(Witness sworn)

Appendix D

THE WITNESS: I do.

THE COURT: All right. Thank you. And I hope we didn't cause too big of an inconvenience today. I know you're nervous when you got this.

THE WITNESS: Very.

THE COURT: You're not in any trouble. The lawyers here will get to ask you some questions. It will be basically -- as I understand it, you served on the jury of State of Florida vs. Larry Bean; is that correct?

THE WITNESS: It is.

THE COURT: Okay. I did not preside over that trial. I believe Judge --

MR. MITCHELL: Judge Green.

THE COURT: -- Judge Green.

[3]MR. MITCHELL: You were here for jury selection, Your Honor. And I think Judge Green took over the trial.

THE COURT: Okay. All right. And so with that being said there was just a few questions that they wanted to ask you I believe. And State -- maybe it's the defense.

So stick on the motion, Mr. Ufferman.

Appendix D

MR. UFFERMAN: May I proceed, Your Honor?

THE COURT: Yes.

MR. UFFERMAN: Thank you again. I'm sorry to call you in here today. As Judge Wells said you're not in trouble. We just want to ask some questions to clarify some things.

WHEREUPON, [REDACTED] [B.R.C.] having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. UFFERMAN:

Q. What name do you currently go by right now?

A. [REDACTED]. [B.R.C.]

Q. And do you have a middle name?

A. [REDACTED]. [R.]

Q. How do you spell that?

A. [REDACTED].

[4]Q. Okay. Have you ever gone by any other names throughout your life?

A. I have.

Appendix D

Q. Can you tell me what those are?

A. Maiden name is -- last name was [REDACTED], [REDACTED]. First husband, [REDACTED], [REDACTED]. Second husband, [REDACTED], [REDACTED].

Q. Okay. Any others? Is that it?

A. That's it.

Q. Okay. Is your brother [REDACTED]?

A. Yes.

Q. Do you know was he ever arrested in San Diego, California?

A. I don't know.

Q. Okay. And did he use to live next door to you in DeFuniak Springs?

A. No.

Q. He never did, okay. Is [REDACTED] the father of your son [REDACTED]?

A. Yes.

Q. Do you remember when [REDACTED] was born?

Appendix D

A. 9/18/85.

Q. Was --

A. '86.

Q. Okay, that's fine. Was [REDACTED] [5]arrested for a DUI in 1997?

A. I believe so.

Q. And have you ever made a criminal complaint against your son [REDACTED]?

A. I may have.

Q. Can you tell me about that?

A. I don't know. There is -- he's troubled a lot. We've brought him into our house quite a few times and called the police quite a few times to have him removed.

Q. Okay. And that's one of the ones I was going to ask you about. Do you remember a time when you had him trespassed from your property?

A. I do. He was living in -- if this was the last time, he was living in our camper and we asked him to leave.

Q. Okay.

Appendix D

A. We asked him to leave. He wasn't going to. He trashed the camper. I had a cleaning business at the time. He trashed my name on Facebook, my company name. We tried, you know, evicting him and then my youngest son finally got him out, so yeah, there was a few years I didn't talk to him.

Q. I think you already said this, but law enforcement was involved in that process? You called law enforcement?

[6]A. They did come, yes.

Q. Okay. Do you remember which agency that was? Was it Walton County Sheriff's Office?

A. Yes.

Q. I guess you have already mentioned this, but just to clarify. You were married to [REDACTED]? Am I pronouncing that correctly?

A. Yes.

Q. And do you have a son with him?

A. I do.

Q. And what's his name?

A. (Unintelligible) [REDACTED].

THE COURT REPORTER: Say that again.

Appendix D

THE WITNESS: [REDACTED], [REDACTED].

Q (By Mr. Ufferman) While you were married to [REDACTED], do you remember him being arrested?

A. I do.

Q. Do you remember what he was arrested for?

A. There is DUI probably twice I think in Florida. I think there's a couple more in Wisconsin. He was arrested when we lived down south I think for a non-payment on -- it was his business. Something he had filed bankruptcy on. It was very strange. He filed bankruptcy on it and we just thought that under the bankruptcy he didn't have to pay it anymore, but whatever [7]happened he was arrested because of it.

Q. So he's had a couple of DUI related arrests?

A. Yes.

Q. Okay. Do you remember who the prosecutor was assigned to any of his cases in Walton County?

A. I don't.

Q. Okay. And has your son [REDACTED] been arrested?

A. I don't believe so.

Appendix D

Q. Okay. Do you know a former Walton County Sheriff's Office employee [REDACTED]? Am I pronouncing that correctly?

A. Yeah, that's my sister-in-law.

Q. Sister-in-law, okay. Do you consider her a close friend or related to you?

A. No.

Q. Tell me why is that.

A. My husband doesn't have anything to do with his extended family. Nothing.

Q. Do you know who her husband is?

A. I don't.

Q. Okay. Do you -- are you familiar with the fact that she was employed by the Walton County Sheriff's Office?

A. I do.

Q. And do you know how her employment with the [8]sheriff's office ended?

A. I do.

Q. And was that -- without getting into too many of the details, was there some type of scandal within the sheriff's office involving her?

Appendix D

A. I don't know if it was a scandal. I don't know any details. I just know there were officers involved.

Q. And she was fired, is that your understanding?

A. She was fired, yeah.

Q. And do you know whether she's reemployed with any other law enforcement agency now?

A. I have no idea.

Q. Okay. What about -- do you know [REDACTED]?

A. Yes. He is married to my husband's ex-wife.

Q. Do you consider him a friend or related to you in some way?

A. No, not really. I mean, they have been over to our house for Christmas. We had a really good relationship up until I say two years ago.

Q. Okay. And is he currently a law enforcement officer?

A. Maybe. I knew there was retirement coming. I just don't know when.

Q. Let me ask you this. I know you said you [9]hadn't talked to him or had a relationship with him over the last

Appendix D

two years, when you had a relationship with him was he a law enforcement officer then?

A. He was, yes.

Q. Okay.

MR. UFFERMAN: I have no further questions, Your Honor.

THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. MITCHELL:

Q. I think during jury selection, and the record will speak for itself, it was asked if you knew anybody in law enforcement. Do you recall that?

A. I don't.

Q. Okay. And so your testimony here is that although you know Ms. [REDACTED], she wasn't in law enforcement at the time?

A. I just never considered her in law enforcement. I don't really know what she did. I just knew that she worked for the sheriff's department and that she was fired.

Q. So just because -- if I understand you correctly, and I'm not trying to put words in your mouth, Ms.

Appendix D

[REDACTED], but if I understand you correctly, just because someone is employed by the sheriff's office, they may not be [10]in law enforcement?

A. Right.

Q. Okay. You said that you've had to -- had -- require -- or require the assistance of the Walton County Sheriff's Office with your son a time or two?

A. Yes.

Q. Okay. And in your mind, did you consider those to be big issues or the sheriff's office just doing their job in helping you regain your camper? Did you consider yourself a complainant when you called them?

A. No.

Q. Did you consider yourself a witness in a law enforcement case when you called them?

A. No.

Q. Okay. All right.

A. No. I was asked to stay in the house and not come out because me and my son just don't get along very well.

Q. All right. Were any of the questions that you have been asked here today, were they ever asked of you that you recall by the prosecutor in jury selection?

Appendix D

A. No.

Q. Were they ever asked of you by the defense attorney during jury selection?

A. No.

[11]Q. Do you feel that during voir dire you were truthful as you could be as far as the questions that were asked of you by both the State and the defense?

A. I do.

Q. Okay.

MR. MITCHELL: I don't have any other questions, Your Honor.

THE COURT: Thank you, ma'am. Have a nice day. Sorry to inconvenience you.

MR. UFFERMAN: Your Honor, can I have one follow-up? I will be very brief.

THE COURT: All right. Be brief.

REDIRECT EXAMINATION

BY MR. UFFERMAN:

Q. If I showed you a document, would this refresh your recollection? This is a 2017 document. It's a Walton County Sheriff's report.

Appendix D

MR. MITCHELL: I'm going to object. She didn't create it. She doesn't know who put her name in there or for what purpose or what they have them listed as.

THE COURT: I'll overrule the objection.

Q (By Mr. Ufferman) It lists you as a victim of that trespassing incident, battery domestic and the trespassing incident. Does that ring a bell from that date [12]back in 2017 as May 18th, 2017?

A. Was this involving [REDACTED]?

Q. This was involving -- yes, so -- hold on one second. I want to tell you for sure.

A. Because that was -- that's a different incident then.

Q. This was [REDACTED].

A. Oh. I honestly just don't remember.

Q. Is it possible that this is what happened?

A. Do you want me to read this?

Q. Sure if it will refresh your recollection.

A. (Witness complies) Vaguely.

Q. Does that look accurate though?

Appendix D

A. For the most part, yes.

MR. UFFERMAN: Very good. That's all I have, Your Honor.

THE COURT: Thank you. Now you can be excused. Have a good day, ma'am.

(Witness excused)

THE COURT: All right. Anything further?

MR. UFFERMAN: As far as argument?

THE COURT: Yeah, I'll let you go ahead and argue.

MR. UFFERMAN: Okay. I think that Ms. [REDACTED] [B.R.C.] has confirmed everything that's set forth in [13]Ms. Peterson's report as far as not disclosing these various incidents in her life that involve family members having arrests, a number of alcohol related incidents, and in particular this incident involving her son back for May of 2017 where she was clearly the complainant, clearly the victim in that incident. The police report listed it as a domestic battery incident.

Again, I think without getting into too much detail what she confirmed today, based on the questions I asked, it was right in line with everything that was said in Ms. Peterson's report. We have jury questionnaires for a reason, Your Honor.

Appendix D

THE COURT: Well, I don't doubt what she said in her report is correct but, you know, like we have talked about it down in that Bay County case, you got to go through those steps and to the court it doesn't even look like it's close.

MR. UFFERMAN: So let me back up then. If we start with is -- well, did she falsify what she said on the jury questionnaire? So let's start there.

THE COURT: The court can't find that she intentionally falsified anything.

MR. UFFERMAN: The law doesn't require that it be done intentionally.

THE COURT: Okay.

[14]MR. UFFERMAN: But she was specifically asked and I will read the question, Your Honor.

THE COURT: Why don't we go to those factors that the court has to consider.

MR. UFFERMAN: If I could we start with establishing --

THE COURT: I mean her testimony is what it is, right?

MR. UFFERMAN: If it's false, then I lose. So that's the starting point. I've got to get over the hurdle that

Appendix D

she's represented something during jury selection that's not truthful.

THE COURT: All right. The court cannot find that she was untruthful today with her testimony.

MR. UFFERMAN: I agree with you a hundred percent, Your Honor. But on this jury questionnaire she was specifically asked -- the questionnaire specifically says, have you or any member of your family ever been accused, complainant, or witness in a criminal case.

THE COURT: She explained that.

MR. UFFERMAN: She checked no.

THE COURT: Yeah, she explained that. She didn't consider herself a complainant when she was trying to have some help with her son. The court [15]cannot find that she was giving any false testimony.

MR. UFFERMAN: Have you or any member of your family ever been accused?

THE COURT: Once again, she may not have remembered it. But I cannot find that she intentionally gave false testimony.

MR. UFFERMAN: Accused. She's acknowledged today that several of her family members have been accused.

Appendix D

THE COURT: Go ahead and make your argument, Mr. Ufferman.

MR. UFFERMAN: Please, Judge. If you already have your mind made up, then --

THE COURT: I don't. I heard it just like you did. I heard her testimony today just like you did.

MR. UFFERMAN: So her testimony is I have numerous family members who have been accused and arrested. Did I hear something different than you, Your Honor?

THE COURT: She said exactly what she said. I agree with you. She said exactly what she said.

MR. UFFERMAN: That's contrary to checking no for the box on the jury questionnaire.

THE COURT: All right. Go ahead.

MR. UFFERMAN: So I have established that what [16]she said on the jury questionnaire is not true.

THE COURT: That's what you say. All right.

MR. UFFERMAN: Well, Your Honor --

THE COURT: I'm not going to argue with you. Go ahead, Mr. Ufferman.

Appendix D

MR. UFFERMAN: Your Honor, I do these hearings throughout the state and I have these hearings and I have a lot of back and forth with judges and --

THE COURT: I don't --

MR. UFFERMAN: -- judges ask me questions.

THE COURT: You're asking me whether she's being untruthful to the court. I don't think she was. She may not -- look, different people have different life experiences. Some people don't remember things that happened many years ago. Some people don't remember things that happened two years ago, one-year ago. I cannot find whether she did or not give false testimony.

MR. UFFERMAN: I'm not saying she gave false testimony today.

THE COURT: She gave something I agree that probably wouldn't be the correct answer to that question if you want me to give you that.

MR. UFFERMAN: That's a start.

THE COURT: All right. Go ahead.

[17]MR. UFFERMAN: So if we would have known -- I submit that had defense counsel known in a case that is alcohol specific, alcohol played a huge role in the allegations in this case and the evidence that came out during the trial, so if defense counsel had known that

Appendix D

this juror had all of this in her history, ex-husbands who were ex-husbands for a reason and had all these alcohol issues during the time that they were married, a son who had alcohol issues so much so that she had to have her son evicted or trespassed from the house that a reasonable defense attorney, and certainly defense counsel in case, would have said that's not a proper juror for this case.

So the standard is, is it material. It has to be material. It's a question that's asked on the jury questionnaire. So if it's not a material issue, then why is the jury questionnaire asking that question? Did she not give a truthful answer on the jury questionnaire? Again, I submit the testimony today establishes that she didn't. Whether she did it intentionally or not is irrelevant to the standard. The ultimate question is did she say -- and, you know, again defense counsel, both parties, have a right to rely upon these answers in the jury questionnaire. The whole point of asking the jury questionnaire is to make [18]so that these questions don't have to be reasked during jury selection. So defense counsel had a right to rely upon the fact that this particular juror had never had a family member arrested. She had never been a victim or complainant in a case. And therefore, there's no reason to dig deeper into any of that. Had she checked yes, then everything we talked about today would have come out during jury selection and then the ultimate question is would this have caused defense counsel to use a peremptory challenge based on the facts of this particular case.

Again, with alcohol being such a big issue in this case and with so many of these previous arrests relating to her

Appendix D

family members being alcohol related, reasonable defense counsel would have used a peremptory challenge on this juror. And that's the argument, Your Honor.

THE COURT: Okay. Mr. Mitchell.

MR. MITCHELL: Your Honor, first of all I would just like to point out there's been no testimony when she learned of these arrests. She could have learned of these arrests following the jury trial so I think that burden hasn't been met. I think it's clear that she didn't consider herself a part of a criminal complainant. Regardless of what some law enforcement [19]listed her as, she was calling to get her son off her property. That's what she said. The definition of close friend or related, that could mean a lot of things to a lot of different people. Her testimony here was it's my sister-in-law, but I don't talk to her. I don't think we're related. It's my husband's ex-wife's husband. That's how --

THE COURT: Wait, wait. Husband --

MR. MITCHELL: Ex-wife. That would be for Mr. [REDACTED]. That was the relationship there.

THE COURT: All right.

MR. MITCHELL: You know, she probably doesn't consider him a close friend or related in any way, but yeah, you can always make an argument that they are somehow inter-connected related and I just feel like in this case the witness testimony here today has provided

Appendix D

ample evidence for us to -- that she was both truthful at the time. Maybe she didn't understand. And so we think that the jury verdict should stand as issued.

THE COURT: All right. The motion for a new trial would be denied. The testimony speaks for itself. The court found that she was very forthcoming in her testimony today. That she did a good job explaining. She didn't have a lot of knowledge. She knew her -- one relative that may have been an employee [20]from the sheriff's department. It was never presented that they were a deputy sheriff, investigator, or whether they just worked out at the jail doing custodial work or dispatch, you know, the sheriff has got a ton of folks working for him, so there was nothing there. It never was shown what agency Mr. Herring may or may not have been working for. So the motion would be denied. Thank you.

MR. UFFERMAN: Just to clear the record so I'm -- I'm supposed to point out current preservation rules that when you don't make a ruling on something specific that I at least brought it to your attention. My focus is not necessarily on the law enforcement relationship. I agree today that's the more difficult issue of these two. My focus is clearly on the fact that without question she has family members who have been accused of crimes and she failed -- when she checked no in that box, she failed to reveal that. So I only say that because I don't think your ruling that you just mentioned --

THE COURT: I think --

Appendix D

MR. UFFERMAN: But if you don't want to say anything further, that's fine too.

THE COURT: I will speak to that. I don't think that is sufficient grounds to order a new trial [21]and I don't think the appellate court would reverse a case on these little indiscrepancies. If there was some, I can't imagine a court reversing on that. But they have the testimony and they'll do the review and we'll see, okay.

MR. UFFERMAN: Yes, Your Honor. Thank you.

THE COURT: Prepare me an order, Mr. Mitchell, and run it by Mr. Ufferman.

Thank you both.

MR. UFFERMAN: Thank you.

(Proceedings concluded)

**Appendix E — June 14, 2024, trial court’s Order
Denying Defendant’s Motion for New Trial**

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT IN AND FOR WALTON
COUNTY, FLORIDA

CASE NO.: 2021-CF-318

THE STATE OF FLORIDA,

Plaintiff,

v.

LARRY BEAN,

Defendant.

E-filed June 14, 2024

**ORDER DENYING DEFENDANT’S
MOTION FOR NEW TRIAL**

THIS CAUSE came before the Court on the Defendant’s Motion for New Trial filed on June 5, 2024. The Court having considered the Motion and the Court being otherwise advised of the premises; it therefore is:

ORDERED AND ADJUDGED that the Defendant’s Motion for New Trial should be, and hereby is, **DENIED**.

27a

Appendix E

DONE AND ORDERED in Chambers on this 12th day of June 2024, in DeFuniak Springs, Walton County, Florida.

/s/ Kelvin Wells

eSigned by KELVIN WELLS in
21000318CFAXMX on

06/14/2024 13:50:30 Kyrnz1fD

Appendix F — Juror questionnaire

JUROR QUESTIONNAIRE

COMPLETE THIS FORM **BEFORE REPORTING**

COMPLETE THIS FORM AND BRING IT WITH
YOU WHEN REPORTING FOR JURY DUTY.

- ☐ I am compensated by my employer while serving as a juror
- ☐ I wish to donate my compensation to a local Domestic Violence Shelter.

OR

- ☐ I wish to donate my compensation to the Guardian Ad Litem program.

NAME [REDACTED] LAST [REDACTED] [C.]
FIRST [REDACTED] [B.] MIDDLE [R.] **EXHIBIT A**

HOME ADDRESS [REDACTED] CITY [REDACTED]
ZIP CODE [REDACTED] MAILING ADDRESS
[REDACTED] CITY [REDACTED] ZIP CODE
[REDACTED]

MARITAL STATUS married AGE 57
NUMBER OF CHILDREN 3
YEARS OF RESIDENCE IN FLORIDA 16 years
YEARS OF RESIDENCE IN THIS COUNTY 16

PRESENT EMPLOYER AND ADDRESS [REDACTED]

29a

Appendix F

(CHECK HERE ☐ IF UNEMPLOYED AND LIST
LAST EMPLOYER) [REDACTED]
OCCUPATION owner

SPOUSE'S EMPLOYER AND ADDRESS [REDACTED]
SPOUSE'S OCCUPATION manager

HAVE YOU EVER SERVED AS A JUROR?
☐ YES ☒ NO IF YES, WHAT TYPE?

ARE YOU A CLOSE FRIEND OR RELATED
TO ANY LAW ENFORCEMENT OFFICER?
☐ YES ☒ NO

HAVE YOU OR ANY MEMBER OF YOUR
FAMILY EVER BEEN ACCUSED, COMPLAINANT,
OR WITNESS IN A CRIMINAL CASE?
☐ YES ☒ NO

HAVE YOU OR ANY MEMBER OF YOUR FAMILY
MADE A CLAIM FOR PERSONAL INJURY?
☐ YES ☒ NO

HAS A CLAIM FOR PERSONAL INJURY BEEN
MADE AGAINST YOU OR ANY MEMBER OF YOUR
FAMILY?
☐ YES ☐ NO

HAVE YOU OR ANY MEMBER OF YOUR
IMMEDIATE FAMILY BEEN PARTY TO ANY
LAWSUIT? ☐ YES—WHAT TYPE? ☐ NO

30a

Appendix F

SIGNATURE [REDACTED]
HOME PHONE [REDACTED]
CELL PHONE
BUSINESS PHONE

31a

**Appendix G — April 19, 2023, Judgment and Sentence
of the Florida First Judicial Circuit Court**

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY FLORIDA

UCN: 662021CF000318CFAXMX
Case Number: 21000318CFAXMX
OBTS#: [REDACTED]

STATE OF FLORIDA,

vs.

LARRY JAY BEAN

Filed April 19, 2023

JUDGMENT

- ☐ PROBATION VIOLATOR
- ☐ COMMUNITY CONTROL VIOLATOR
- ☐ MODIFICATION
- ☐ RESENTENCE
- ☐ RETRIAL
- ☐ AMENDED

The defendant LARRY JAY BEAN being personally before
the court represented by MICHAEL UFFERMAN, the

Appendix G

attorney of record and the state represented by JOSHUA MITCHELL and having

<u>CNT#</u>	<u>Statute</u>	<u>Level/ Degree</u>	<u>Statute Description</u>
1	800.04.5b	Felony/Life	LEWD LASC BEHAV MLST VIC <12 YOA OFF> 18 YOA

- ☐ The PROBATION __ COMMUNITY __ CONTROL previously ordered in this case is revoked.
- ☐ PRIOR ADJUDICATION on _____.
- ☒ It is ordered that the defendant is hereby Guilty of the above crime(s).
- ☐ It is ordered that the defendant is hereby Adjudication Withheld of the above crime(s).
- ☐ and being a qualified offender pursuant to s. 943.325, the defendant shall be required to submit DNA samples as required by law.

SENTENCE

(As to Count ALL)

The defendant, being personally before this court, accompanied by the defendants' attorney of record, MICHAEL UFFERMAN, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown.

33a

Appendix G

(Check applicable provision)

- | |
|---|
| ☐ and the court having on 04/19/2023 deferred imposition of sentence until this date 04/19/2023. |
| ☐ and the court having previously entered a judgment in this case on _____ now resentsences the defendant |
| ☐ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control |

IT IS THE SENTENCE OF THE COURT that:

- | |
|--|
| ☒ The Defendant is hereby committed to the custody of the State Prison. |
| ☐ The defendant pay a fine pursuant to section 775.083, Florida Statutes, plus a 5% surcharge pursuant to section 950.25 Florida Statutes, as indicated on the Fine/Costs/Fee Page. |
| ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, |

TO BE IMPRISONED:

☒ 25 YEARS DEPARTMENT OF CORRECTIONS
--

☒ Followed by: Life Probation

In the event the defendant is ordered to serve additional split sentences, all incarcerations portions shall be satisfied before the defendant begins service to the supervision terms.

Appendix G

FINGERPRINTS OF DEFENDANT

/s/ Larry Jay Bean
Probation Community Controlee's Signature

Appendix G

Exhibit A

\$200.00 Pursuant to Section 938.05(1)(a);	CF ADDITIONAL COURT COSTS TO CLERK. - \$200
\$342.86 Pursuant to Section 775.083;	FELONY FINES
\$49.00 Pursuant to Section 938.03(4);	CRIMES COMPENSATION TRUST FUND - \$49
\$1.00 Pursuant to Section 938.03;	CF CRIMES COMP CLERK FEE - \$1
\$17.00 Pursuant to Section 938.06;	CRIME STOPPERS TF - \$17 OF \$20
\$3.00 Pursuant to Section 938.06;	CF CRIME STOPPERS TF CLERK FEE - \$3 OF \$17
\$3.00 Pursuant to Section 938.01(1)(a);	ADDITIONAL COURT COST CLEARING TF - \$3

Appendix G

\$2.00 Pursuant to Section 318.18(11)(D),	BCC LOCAL LAW ED - \$2
\$17.14 Pursuant to Section 938.04;	5% ADDITIONAL SURCHARGE
\$65.00 Pursuant to Section 939.185(1)(a); CO.	CO. ORD. 2004-22 - \$65
\$50.00 Pursuant to Section 775.083 (2); 601100	CRIME PREVENTION \$20.00/\$50.00
\$25.00 Pursuant to Section 938.05(1)(a);	A08 ADDITIONAL COURT COSTS - \$25
\$100.00 Pursuant to Section 938.27(8);	STATE ATTORNEY COST OF PROSECUTION - \$50/\$100
\$1.00 Pursuant to Section 938.10	CRIMES AGAINST MINOR CLERK FEE - \$1
\$100.00 Pursuant to Section 938.10;	CRIMES AGAINST MINOR DOR-DCF - \$100 OF \$151
\$50.00 Pursuant to Section 938.10;	CRIMES AGAINST MINOR - \$50 OF \$151

_____ OTHER _____

Total Assessed at Judgment: \$1,026.00

Total Assessment balance: \$1,026.00

37a

Appendix G

DONE and ORDERED at Walton County, Florida this
April 19, 2023.

/s/ Kelvin Wells
eSigned by KELVIN WELLS
on 05/01/2023 08:57:30 0B0zIQGb
CIRCUIT JUDGE KELVIN C. WELLS

SPECIAL PROVISIONS

(As to Count ALL)

By appropriate notation, the following provisions apply to
the sentence imposed:

Mandatory/Minimum Provisions:

Firearm/Weapon

_____ It is further ordered that the ____-year minimum
imprisonment provisions of section 775.087, Florida
Statutes, is hereby imposed for the sentence
specified in this court.

Drug Trafficking

_____ It is further ordered that the ____-year mandatory
minimum imprisonment provisions of section
893.135(1), Florida Statutes, is hereby imposed for
the sentence specified in this court.

Appendix G

*Controlled Substance Within 1,000 Feet of School/Park/
Community Center*

_____ It is further ordered that the 3-year minimum imprisonment provisions of section 893.13, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual/Felony Offender

_____ The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender

_____ The defendant is adjudicated a habitual violent felony offender and has been sentenced to the extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of ___ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act

_____ It is further ordered that the defendant shall serve a minimum of ____-years before release in accordance with section 775.0823, Florida Statutes. (Offenses committed before January 1, 1994)

Appendix G

Capital Offense

_____ It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes. (Offenses committed before October 1, 1995)

Short-Barreled Rifle, Shotgun, Machine Gun

_____ It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this court. (Offenses committed before January 1,

Continuing Criminal Enterprise

_____ It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this court. (Offenses committed before January 1, 1994.)

Taking a Law Enforcement Officer's Firearm

_____ It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this court. (Offenses committed before January 1, 1994)

Appendix G

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Sexual Offender/Sexual Predator Determinations:

Sexual Predator

 X The defendant is adjudicated a sexual predator as set forth in section 775.21, Florida Statutes.

Sexual Offender

 The defendant meets the criteria for a sexual offender as set forth in section 943.0435(1)(a) 1a., b., c., or d, Florida Statutes.

Age of Victim

 X The victim was 8 years of age at the time of the offense.

Age of Defendant

 X The defendant was 57 years of age at the time of the offense.

Relationship to Victim

 X The defendant is not the victim's parent or guardian.

41a

Appendix G

Sexual Activity (F.S. 800.04(4))

_____ The offense ☐ did, ☐ did not involve sexual activity.

Use of Force or Coercion (F.S. 800.04(4))

_____ The sexual activity described herein ☐ did, ☐ did not involve the use of force or coercion.

Use of Force or Coercion/unclothed Genitals (Section 800.04(5), Florida Statutes)

 X The molestation ☒ did, ☐ did not involve unclothed genitals or genital area.

 X The molestation ☒ did, ☐ did not involve the use of force or coercion.

OTHER PROVISIONS

Retention of 947.16(4), Florida Jurisdiction

_____ The court retains jurisdiction over the defendant pursuant to section Statutes (1983).

Jail Credit

 X It is further ordered that the defendant shall be allowed a total of 72 /days credit for time incarcerated before imposition of this sentence.

Appendix G

Credit for Time Served in Resentencing after Violation
of Probation or Community Control

_____ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____. (Offenses committed before October 1, 1989)

_____ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count _____. (Offenses committed between October 1, 1989, and December 31, 1993)

_____ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(7).

_____ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1).

_____ It is further ordered that the defendant shall be allowed _____ days time served between date of

Appendix G

arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

Consecutive/Concurrent

_____ It is further ordered that the sentence imposed for this count _____ shall run (CHECK ONE)
 __Consecutive to __Concurrent with the sentence

As to Other Counts

_____ Set for in count _____ of this case.

Consecutive/Concurrent As to Other Convictions

_____ All Counts concurrent with each other.

_____ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (CHECK ONE)

__Consecutive to __Concurrent with the sentence

_____ any active sentence being served.

_____ specific sentences: _____

Appendix G

Criminal Gang Activity

_____ The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, Promoting, or furthering the interests of a criminal gang.

In the Event the above sentence is to the Department of Corrections, the Sheriff of Walton County, Florida is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to be assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends/orders:

DONE and ORDERED at Walton County, Florida
this April 19, 2023.

/s/ Kelvin Wells

eSigned by KELVIN WELLS

on 05/01/2023 08:57:30 0B0zIOGb

CIRCUIT JUDGE KELVIN C. WELLS