

No.

IN THE SUPREME COURT OF THE UNITED STATES

HENRY XAVIER WILSON, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

HENRY XAVIER WILSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-0250

[April 22, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William Loy Roby, Judge; L.T. Case No. 432022CF000918CFAXMX.

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

James Uthmeier, Attorney General, Tallahassee, and Luke Robert Napodano, Senior Assistant Attorney General, West Palm Beach, for appellee.

GROSS, J.

Henry Wilson was convicted after a jury trial of aggravated assault with a firearm, burglary of a conveyance while armed, and resisting an officer without violence. We write primarily to address one issue: whether statements of public officials concerning the right “to keep and bear arms” under the Second Amendment of the United States Constitution and Article I, Section 8 of the Florida Constitution were admissible at trial to show Wilson’s state of mind during the commission of the crimes. We hold that the statements of the public officials were not relevant to any material issue of fact at the trial and affirm the decision of the trial judge to preclude the introduction of such evidence.

Factual Background: The Prosecution’s Case

The charges stem from an incident at Wilson’s apartment complex, where he confronted a tow-truck driver with a firearm.

Before the incident, Wilson had lived at the apartment complex for eight years. He parked two vehicles at the complex: a Toyota work truck and a 1993 Mitsubishi 3000. The Mitsubishi needed repairs, so it was covered with a nylon cover and had been kept in the parking lot for the entire time Wilson lived at the complex.

The apartment complex's rules for vehicles, included in lease agreements, prohibited covered or inoperable automobiles. Signs posted throughout the community advised that the parking area was a tow-away zone and that Gary's Towing was used to remove vehicles.

A leasing agent conducted regular checks of the buildings and parking lots. She became aware that Wilson owned a vehicle that was not in compliance with community rules.

On September 16, 2022, the leasing agent placed a violation sticker on the driver's side window of the Mitsubishi on top of the cover. The sticker was brightly colored and indicated that the vehicle would be towed on September 21, 2022. She placed a separate parking violation notice on Wilson's work truck, which also had "issues with being in compliance."

On the same day the leasing agent placed the violation sticker on the Mitsubishi, Wilson called the office to request a work order for his dishwasher. During this phone call, the leasing agent mentioned the compliance issues with Wilson's vehicles, and he told her, "Don't worry about it." The leasing agent testified that she told Wilson that his vehicles were subject to being towed, and he hung up on her.

On September 21, 2022, the owner of Gary's Towing and Recovery ("Gary") went to the apartment complex to tow about five or six vehicles. His business had a towing contract with the apartment complex.

Gary wore a bright red shirt with "Gary's Towing" emblazoned on the front and back. He drove a black tow truck displaying his company's name and state license number.

When Gary got to Wilson's car, he pulled the cover up and verified that the car was one he needed to tow. Using the tow truck, he lifted the car in the air, got out of his truck, and came "around the corner to look at the car and take the cover off."

At that point, Wilson ran out of his apartment, gun in hand. Gary told Wilson that the gun was not necessary. Wilson responded with foul language. Gary put his hands up and started backing up. Wilson said,

"[P]ut my fucking car down," and Gary replied, "I can't do that." Gary testified that Wilson pointed the gun at him and threatened to kill him. Gary was in fear for his life. Wilson never asked why Gary was towing his vehicle.

Meanwhile, an upstairs neighbor stepped outside to smoke when he heard arguing. Based on Gary's shirt and truck, the neighbor recognized Gary as a tow-truck driver. The neighbor testified that Wilson had a firearm and was demanding the keys from Gary. Although Wilson was not "aiming at [Gary] as a target," Wilson was waving his hands around in a way that Gary would have been shot if a misfire had occurred. The neighbor saw that Gary was terrified.

The neighbor attempted to pacify Wilson, who was in an aggressive mood. The neighbor intervened to get Wilson's attention so that Gary could hide. The neighbor stood in front of Gary and told Wilson that if he was going to fire, he would hit two people and worsen his charges.

During the confrontation, Gary's tow truck's door was slightly ajar. The keys were in the ignition, and the truck was running. While Wilson still held the firearm in his hand, he went into Gary's truck, reached inside, and grabbed the keys from the ignition. Wilson did not have permission to enter Gary's truck.

After running away, Gary called 911 to report that a "guy's got a gun on me." During the call, Gary could be heard saying "[H]ey, sir, don't get in my car. You better get out of my car." Gary then told the 911 operator that the man had entered the tow truck and had taken the keys.

Officers responded to the 911 call in uniform and in marked patrol cars. An officer observed Wilson near the tow truck with a black firearm in his hand. This officer commanded him to drop the object in his hands, put his hands on his head, walk towards the officer, and get on his knees.

Wilson initially refused to comply with the officers' commands, including the command to put down the gun. Eventually, Wilson put his gun down and got on one knee. Officers then brought Wilson down to the ground with the assistance of a K-9 unit. A pat down search revealed two sets of keys, with one belonging to Gary. Police also secured Wilson's firearm, which was loaded and functional.

Wilson's Trial Testimony

Wilson testified that he did not recall any lease provision about parking violations and that no one had ever told him he could not keep his Mitsubishi covered in the parking lot. He denied seeing a violation tag on the Mitsubishi and claimed that the leasing agent never told him that his vehicle would be towed.

When Wilson looked out his living room window and saw his car elevated on a hook, he assumed someone was stealing his car. He was aware of prior thefts at the apartment complex and did not believe that there was any reason “for them to tow my car.” Although he admitted taking his gun to confront Gary, he sanitized his conduct by denying that he threatened Gary or pointed the gun at him.

Wilson claimed that because he had to retrieve his phone from his apartment to call the police, he reached into the open door of the tow truck and grabbed the keys so Gary could not leave with his car. When the police responded, Wilson did not think he had done anything wrong. A back problem made it difficult for him to comply with the officers' instruction to get on his knees.

Jury Instructions and Verdict

Defense counsel did not object to the jury instructions given and did not request an instruction on the justifiable use of force.

The jury found Wilson guilty as charged on all three counts.

Pretrial Proceedings Concerning Statements Made by Governor DeSantis and the Martin County Sheriff

The incident in this case occurred several days before Hurricane Ian struck Florida.

In discovery, Wilson listed Governor Ron DeSantis as a witness and disclosed a YouTube video titled “DeSantis Puts Looters On Notice After Hurricane Ian,” which depicted a news conference held on September 30, 2022, about one week after the incident. In the video, the Governor says: “Don’t even think about looting. . . . [I]n the State of Florida you never know what may be lurking behind somebody’s home and I would not want to chance that if I were you, given we’re a Second Amendment State.”

The Governor's office moved to quash a subpoena for his trial testimony and moved for a protective order.

At a hearing on the motion, defense counsel argued that Wilson's intent was a material issue of fact. Defense counsel maintained that Wilson had been "led to believe all along he has a Second Amendment Right to protect himself" and "a right to arm himself even when personal properties [are] at question or at risk of being taken." Defense counsel continued that "it's what many of our citizenry have been led to believe based on statements made by our elected officials and the Governor in particular." According to defense counsel, the video conveyed "the idea that it's certainly alright to arm yourself while defending yourself and/or protecting your personal property," which was relevant to Wilson's mindset and intent at the time of the offense. The Governor's statements were relevant, defense counsel argued, because they came from a higher authority who was in a position "to know what the laws are."

Defense counsel also referenced statements from the Martin County Sheriff to the effect that "anybody here that commits a crime must have taken the wrong exit," as well as general knowledge about people dressing up "in various service industry uniforms" to commit crime and fraud. Wilson's theory of defense was that he believed his car was being stolen and "all he wanted to do was detain that person until law enforcement actually came to sort it out."

The trial court granted the protective order and ruled that Wilson would be precluded from "taking this angle or advancing his case in this particular way."

Wilson's Arguments on Appeal

On appeal, Wilson argues that the trial court erred when it prohibited him from pursuing his theory of defense that his actions were justified because he acted in the defense of property. Emphasizing that an accused has a right to present evidence in his own defense, Wilson argues that his theory of defense went directly to his state of mind at the time of the incident—namely, that he believed his car was being stolen and that he had the right to protect his property with a firearm until the police arrived. Wilson complains that the trial court improperly precluded him from presenting evidence that his actions in the moment occurred "because he was led to believe that Florida is a pro-Second Amendment state and that our elected officials routinely promote the use of firearms for the protection of personal property against theft and looting," which Wilson viewed as "the key ingredient to his defense."

Discussion

“A party is entitled to present evidence upon the facts that are relevant to his theory of the case, so long as that theory has support in the law.” *Zamora v. State*, 361 So. 2d 776, 779 (Fla. 3d DCA 1978). “Normally under a plea of not guilty an accused may avail himself of any defense not required by law to be specifically pleaded, and all matters of justification and excuse.” *Ivory v. State*, 173 So. 2d 759, 760 (Fla. 3d DCA 1965).

Still, while evidence that tends to support the defendant’s theory of defense is generally admissible, “it is also true that ‘the admissibility of this evidence must be gauged by the same principle of relevancy as any other evidence offered by the defendant.’” *Washington v. State*, 737 So. 2d 1208, 1223 (Fla. 1st DCA 1999) (citation omitted). “Relevant evidence is evidence tending to prove or disprove a material fact.” § 90.401, Fla. Stat. (2024). “Relevancy has been defined as a tendency to establish a fact in controversy or to render a proposition in issue more or less probable. To be probable, evidence must be viewed in the light of logic, experience and accepted assumptions concerning human behavior.” *Kopsho v. State*, 84 So. 3d 204, 217 (Fla. 2012) (quoting *Zabner v. Howard Johnson’s Inc.*, 227 So. 2d 543, 545 (Fla. 4th DCA 1969)).

Wilson did not request a jury instruction on the justifiable use of force in defense of property. Section 776.031, Florida Statutes (2022), establishes the legal parameters for the use of force in the defense of property¹:

- (1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

¹ Article I, Section 8(a) of the Florida Constitution establishes a “right of the people to keep and bear arms,” but also states that “the manner of bearing arms may be regulated by law.”

- (2) A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

The justifiable use of force has both a subjective and an objective component. “When self-defense has been asserted, the defendant is entitled to have the jury consider the facts and circumstances known to the defendant (i.e., his or her subjective belief), but those facts and circumstances must be balanced against what a reasonable person would believe under the same or similar circumstances, the ultimate test of ‘reasonableness’ being objective.” *Oquendo v. State*, 420 So. 3d 466, 475 (Fla. 2025) (cleaned up).

In *Oquendo*, the Florida Supreme Court held that while “PTSD evidence may be relevant to the subjective component of a defendant’s self-defense theory,” such evidence was properly excluded in that particular case because the defendant claimed he fired the gun accidentally, and defense counsel’s arguments suggested that the central purpose of the PTSD evidence was to show diminished capacity. *Id.* at 469, 477–78.

Relevant to the instant case, the Florida Supreme Court explained that the plain text of the defense-of-person statute “requires both that ‘he or she . . . believe[d]’ that the use of force was necessary (actual subjective belief of the defendant) and that the belief was ‘reasonabl[e]’ (objective reasonable person standard).” *Id.* at 475. Thus, the defense-of-property statute, which uses the same “reasonably believes” terminology as the defense-of-person statute, requires both a subjective belief that force was necessary and an objectively reasonable basis for the belief.

Although expert testimony about a defendant’s psychological condition might be admissible under *Oquendo* to show the subjective component of self-defense or defense of property, expert opinions about the reasonableness of the defendant’s use of force are generally inadmissible because “[w]hether self-defense applies in a given case is a classic question that jurors are well equipped to handle.” *Salomon v. State*, 267 So. 3d 25, 31 (Fla. 4th DCA 2019); see also *Mitchell v. State*, 965 So. 2d 246, 251 (Fla. 4th DCA 2007) (affirming exclusion of expert’s proffered testimony that,

based upon what the defendant told him, the defendant reasonably believed that he had to defend himself, as there was nothing in the expert's testimony "which concerns a subject beyond the common understanding of the average person").

Similarly, in rejecting a claim of fundamental error in jury instructions on self-defense, we once remarked that "juries use their common experience and apply a street version of self defense that allows a defendant to use a reasonable amount of force under the circumstances, and no more." *Farmer v. State*, 975 So. 2d 1275, 1277 (Fla. 4th DCA 2008).

Here, the trial court did not abuse its discretion in excluding evidence of public statements by elected officials offered to show Wilson's state of mind.

First, the Governor's and Sheriff's statements had nothing to do with state of mind elements of the crimes with which Wilson was charged.

Wilson suggests that "he lacked the criminal intent to commit the charged crimes" because "he acted in defense of his property." But this argument conflates two different legal concepts.

On Count I, the intent element required a finding that Wilson intentionally threatened, either by word or act, to do violence to Gary. On Count II, the intent element required a finding that Wilson entered the tow truck with the intent "to commit an offense other than burglary or trespass."

Whether Wilson believed his actions were *justified* in defense of his property is a question distinct from whether the intent element was satisfied as part of the State's prima facie case for Counts I and II. The elected officials' statements were not relevant to whether Wilson had the criminal intent to commit those offenses.

Less reliable than expert opinions on whether a defendant's use of force was reasonable and therefore justifiable, tough talk by politicians about the Second Amendment or the war against crime does not tend to prove either the subjective state of mind of a given defendant or whether the defendant's belief was objectively reasonable.

Such general statements are far removed from the facts confronting a defendant who used force in a way that led to criminal charges. The proffered generalized statements of the public officials did not tend to establish Wilson's subjective belief at the time of the incident that his

conduct was necessary to prevent or terminate a tortious or criminal interference with his personal property. Nor did such statements tend to prove whether that belief was objectively reasonable. A section 776.031 analysis is tied to an evaluation of facts as they existed at the time force was used or threatened.

The admission of the public officials' statements would not have undermined the State's evidence that (1) Wilson knew or should have known that Gary was a lawful tow-truck driver with authority to tow vehicles at the apartment complex, and (2) Wilson had been given notice that his vehicles were subject to being towed. The proffered statements had nothing to do with towing disputes and had no bearing on whether Wilson subjectively or reasonably believed that his actions of confronting a tow-truck driver with a firearm, threatening him with violence, and seizing his keys were necessary to prevent the driver from tortiously or criminally interfering with Wilson's car.

Even though he did not request that the jury be instructed on the justifiable use of force in the defense of property, Wilson essentially presented a justification defense without being tethered to the requirements of section 776.031. The trial court never precluded Wilson from telling the jury that he believed his conduct was justified. He testified that he assumed his car was being stolen and that he did not believe he had done anything wrong when he confronted Gary.

As often happens in justifiable-use-of-force cases, the defense appealed to the jurors' street notion of justifiable defense of property. Under this approach, it was for the jury to decide whether Wilson's belief was genuine and reasonable under the circumstances, a question that jurors were equipped to determine based on their collective common experience.

The trial court did not abuse its discretion in excluding the statements of public officials regarding the Second Amendment and the "wrong exit" notion.

Turning to a sentencing error, we agree with Wilson's point that the trial court's written sentencing order improperly imposed a general sentence of 60 months "[a]s to Count[s] 1, 2." See *Moore v. State*, 352 So. 3d 47, 49 (Fla. 2d DCA 2022) (holding that the trial court imposed an illegal general sentence as to thirty-five counts of grand theft where, "[r]ather than imposing an individual sentence for each grand theft count, the sentencing order imposed a single sentence of forty years listing counts two through thirty-six"); *Holmes v. State*, 100 So. 3d 281, 283 (Fla. 3d DCA 2012) ("[A] trial court may not impose a single general sentence to cover

multiple counts”). The defendant raised this issue in a motion filed under Florida Rule of Criminal Procedure 3.800(b), which the trial court denied. We therefore remand to the circuit court to enter a separate written disposition as to each count, which would conform the written sentence to the court’s oral pronouncements.

Finally, we reject the argument that the six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution. See *Guzman v. State*, 350 So. 3d 72, 73 (Fla. 4th DCA 2022) (holding that six-person juries were constitutionally permissible under U.S. Supreme Court precedent), *rev. denied*, No. SC2022-1597, 2023 WL 3830251 (Fla. June 6, 2023), *cert. denied sub nom.*, *Guzman v. Florida*, 144 S. Ct. 2595 (2024).

For these reasons, we affirm the convictions and sentences, but remand to the circuit court for further proceedings consistent with this opinion.

Affirmed and remanded.

CIKLIN and CONNER, JJ., concur.

* * *

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

Supreme Court of Florida

MONDAY, JULY 13, 2026

Henry Xavier Wilson,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2026-0658

Lower Tribunal No(s).:

4D2025-0250;

432022CF000918CFAXMX

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

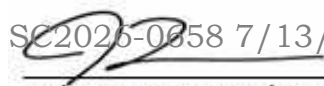
No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

COURIEL, C.J., and LABARGA, GROSSHANS, FRANCIS, and TANENBAUM, JJ., concur.

A True Copy

Test:

SC2026-0658 7/13/2026


John A. Tomasino

Clerk, Supreme Court

SC2026-0658 7/13/2026



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III. APPELLANT WAS ENTITLED TO A TWELVE-PERSON JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS AND HE DID NOT WAIVE THAT RIGHT.

A. Additional facts relevant to this point

Appellant was tried by a six-person jury with one alternate juror. R220.

B. The standard of review is de novo.

This Court reviews constitutional claims *de novo*. See *A.B. v. Fla. Dep't of Child. & Fam. Servs.*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005) (“The standard of review for the mother’s constitutional claim is de novo[,], as this issue involves a question of law.”).

C. Appellant did not waive this issue.

Appellant did not waive appellate review of this issue, because the trial court did not specifically ask him if he was waiving his Sixth Amendment right to a twelve-person jury. See T185. *Johnson v. State*, 994 So. 2d 960, 963-64 (Fla. 2008). Instead, the trial court asked Appellant if the jury consisted of the jurors that he and his attorney selected. T185. For that reason, this issue has not been waived for appeal.

D. The Sixth Amendment guarantees a defendant a twelve-person jury for all felonies.

Appellant had the constitutional right to a jury trial because his felony offense was punishable by more than six months in jail. *Baldwin v. New York*, 399 U.S. 66, 72-73 (1970). But Appellant was convicted by a jury comprised of six people. The Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with an offense punishable by more than six months in jail.

Appellant notes that this Court decided *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), which rejected a defendant’s argument “that his convictions by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution.” The defendant in *Guzman* appealed his case to the Florida Supreme Court, which denied review. *See Guzman v. State*, SC22-1597. Therefore, Appellant seeks to preserve this argument for further review to the United States Supreme Court.² Appellant recognizes the Supreme

² Appellate attorneys have the obligation to “zealously assert[] the client’s position under the rules of the adversary system.” R. Regulating Fla. Bar prmb1. As part of this obligation, “[c]ounsel has the responsibility to make such [arguments] as may be necessary to keep the

Court denied the petition on May 28, 2024, however, the issue is still being raised for preservation pending additional review in the future.

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

After the Sixth Amendment was enacted, a bevy of state courts interpreted it to require a twelve-person jury. *See Miller, Comment, Six of One Is Not A Dozen of the Other*, 146 U. Pa. L. Rev. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s). In 1898, the United States Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant’s right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898). The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal

defendant’s case in an appellate ‘pipeline.’” *Sandoval v. State*, 884 So. 2d 214, 217 n. 1 (Fla. 2d DCA 2004).

cases for seventy more years. *See, e.g., Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930); *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).

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

“currently available evidence [and] theory” suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48.

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

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

the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required. *See* 140 S. Ct. at 1395.

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

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

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

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

Appellant recognizes that the state constitution provides:

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

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

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

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

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

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

In view of the foregoing, this Court should overturn this precedent. The Supreme Court has shown that it can overturn precedent, when warranted. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Indeed, the Court will overturn precedent when that precedent is “irreconcilable with not just one, but two[] strands of constitutional precedent well established both before and after the

decision.” *Ramos*, 590 U.S. at 112 (Sotomayor, J., concurring). “Moreover, ‘[t]he force of stare decisis is at its nadir in cases concerning [criminal] procedur[e] rules that implicate fundamental constitutional protections.’” *Id.* at 113 (alterations in original) (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013)). As such, Appellant is raising this good-faith argument for a change in the law.

Because a jury of six at a criminal trial, for an offense punishable by more than six months in jail, is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution, this Court should reverse Appellant’s conviction and remand for a new trial with a twelve-person jury.