

No.

IN THE SUPREME COURT OF THE UNITED STATES

JOHNNY JACKSON, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Appendix A
Decision of the Lower Court

2026 WL 2410049

Only the Westlaw citation is currently available.

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**District Court of Appeal of Florida, Sixth
District.**

Johnny Andrus JACKSON, Appellant,
v.
STATE of Florida, Appellee.

Case No. 6D2023-1783

August 18, 2026

Appeal from the Circuit Court for Lee County. Nicholas
Thompson, Judge. Lower Tribunal No. 21-CF-015750

Attorneys and Law Firms

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Opinion

PER CURIAM.

*1 AFFIRMED.

NARDELLA, MIZE and GANNAM JJ., concur.

All Citations

--- So.3d ---, 2026 WL 2410049 (Mem)

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Appendix B
Excerpts from Initial Brief

STATEMENT OF THE CASE AND FACTS

On 30 April 2018, the State charged the defendant by information with one count (1) of tampering with a witness; one count (2) of capital sexual battery of C.S., a child less than 12 years of age by penetrating her vagina with an object; one count (3) of lewd and lascivious molestation of C.S. by touching her butt or forcing her to touch his penis between 27 and 28 July 2021. (R 34). On 13 September 2022, the State amended the information by dropping the tampering charge and renumbering the capital sexual battery as count 1, the lewd and lascivious molestation¹ of C.S. as count 2, adding resisting Detective Schilke without violence as count 3, and adding lewd and lascivious conduct² on C.S. as count 4. (R 72-73).

On 20 September 2022, the State filed a second amended information, which specified sexual battery of C.S. by penetration of her vagina with his finger. (R 80-81). On 08 September 2021, the State filed notices of Habitual Felony Offender (HFO) and Prison Releasee Reoffender (PRR). (R 39, 41).

1 Count 2 alleged that Defendant "being 18 years of age or older did intentionally touch in a lewd or lascivious manner the breasts, genitals, genital area, buttocks, clothing covering the breasts, clothing covering the genitals, clothing covering the genital area, or clothing covering the buttocks of a person, C.S. less than 12 years of age, or forced or enticed a person, C.S., under 12 years of age, to touch the genitals, genital area, buttocks, clothing covering the genitals, clothing covering the genital area, or clothing

The trial court instructed the jury that the three elements of the crime of lewd or lascivious molestation are: 1) Defendant intentionally touched C.S.'s genitals, genital area, buttocks, or enticed C.S. to touch his genitals, genital area in a lewd or lascivious manner; 2) C.S. was less than 12 years of age; and 3) Defendant was 18 years of age or older. (T 134). The three elements of the crime of lewd and lascivious conduct are: 1) Defendant intentionally touched C.S. in a lewd or lascivious manner; 2) C.S. was less than 16 years of age; and 3) Defendant was 18 years of age or older. (T 137). In addition, C.S.'s consent is not a defense to the charged crime. (T 134, 138).

The jury found the defendant guilty of count 1, sexual battery upon a victim less than 12 years of age; count 2, lewd and lascivious molestation; count 3, resisting or obstructing an officer without violence; count 4, lewd and lascivious conduct as charged. (T 157).

December 2022, the Clerk informed the trial court that the amended information cannot renumber the counts of the charges, but the trial court agreed with the State that the sentencing must reflect the second amended information and the verdict form. (R 207-08).

The trial court adjudicated the defendant guilty and sentenced him as HFO and PRR to concurrent mandatory life imprisonment on County 1 (sexual battery of a victim less than 12 years of age) and count 2 (lewd and lascivious molestation), concurrent with a mandatory term of 15 years on count 4 (lewd and lascivious conduct), and time served on count 3 (Resisting without violence). (R 213-15). The defense objected to mandatory life imprisonment on counts 1 and 2 as violative of cruel and unusual punishment under the Eight Amendment of the U.S Constitution Section 17 of the Florida Constitution and separation of powers under Article 2, Section 3 of the Florida Constitution. (R 210-11, 216).

The written judgment reflects the defendant was adjudicated guilty of count 2 (sexual battery of a victim less than 12 years of age), count 3 (lewd and lascivious molestation), count 4 (resisting an officer without violence), and count 5 (lewd and lascivious conduct), and he was sentenced as HFO and PRR to concurrent mandatory life imprisonment on count 2 and count 3,

Appendix C
Excerpts from Reply Brief

ARGUMENT

The appellant files this reply to address Appellee's argument that he is not entitled to a 12-person jury based on Williams¹; otherwise, Appellant relies on and adopts the arguments of his Amended Initial Brief as sufficient to address Appellee's Answer Brief.

ISSUE I

THE APPELLANT'S CONVICTIONS AND
MANDATORY LIFE SENTENCES FOR CAPITAL
SEXUAL BATTERY AND LEWD OR LASCIVIOUS
MOLESTION VIOLATED HIS CONSTITUTIONAL
RIGHTS TO DUE PROCESS AND AGAINST
CRUEL AND UNUSUAL PUNISHMENT.

B. Due Process

In his amended initial brief, the appellant argued in part that his trial for a capital crime by a six-person jury violated his right to a twelve-person jury under the Sixth and Fourteenth Amendments and *Section 913.10, Fla. Stat.*" (AIB 23). Appellee answered that Appellant was not entitled to a 12-person jury because Williams, which found that Florida's six-person juries to try non-capital felonies did not violate the Sixth and Fourteenth Amendments, is still good law. (AB 9-11).

¹ Williams v. Florida, 399 U.S. 78, 90, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

The Supreme Court appears to have questioned and implicitly moved away from Williams. In Ramos², the Supreme Court reversed a 10-2 verdict and held that the Sixth Amendment right to a jury trial, as incorporated for the states by the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense. The Court indicated that the right derived from the common law and quoted *Blackstone*³ as explaining that “no person could be found guilty of a serious crime unless ‘the truth of every accusation ... should ... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion.’” Ramos, 140 S.Ct. 1395; see also Guzman v. State, 350 So.3d 72, 77 (Fla. 4th DCA 2022) (Gross, J., concurring) (reasoning that although Ramos did not specifically cite Williams or address the issue of jury size, it suggested that the Sixth Amendment affords a right to a trial by jury as understood and applied at common law, which was a 12-person jury).

In Lessard⁴, Judge Makar indicated that empirical studies continue to discredit the Williams decision and cited Gonzalez⁵ as noting that Florida is

2 Ramos v. Louisiana, 140 S.Ct. 1390, 206 L. Ed. 2d 583 (2020).

3 4 W. Blackstone, Commentaries on the Laws of England 343 (1769).

4 Lessard v. State, 232 So.3d 13 (Mem) (Fla. 1st DCA 2017) (Makar, J., concurring).

5 Gonzalez v. State, 982 So.2d 77, 78 (Fla. 2d DCA 2008).

one of two states that requires six-member juries in life-felony cases, when “[t]he common-law tradition of twelve jurors for such important criminal cases is overwhelmingly recognized as the better policy throughout the United States.” Similarly, in Phillips⁶, Judge Makar concluded that Williams “may be ripe for re-evaluation” in light of Ramos. Subsequently, Justice Gorsuch opined in Khorrami⁷, where a defendant was convicted of serious crime by an 8-member jury, that Williams was wrongly decided because a criminal defendant is entitled to a twelve-person jury under the Sixth Amendment.

Even if the Supreme Court has not yet explicitly said that Williams is overruled, it is outdated and inconsistent with more recent opinions of the Court. Thus, this Court should at a minimum certify the question in view of Ramos and Khorrami. Notwithstanding Williams, which pertained to non-capital crimes, the answer brief failed to address Appellant’s argument that this case involves a capital sexual battery charge and the six-person jury

⁶ Phillips v. State, 316 So.3d 779, 787-88 (Fla. 1st DCA 2021) (Makar, J., concurring).

⁷ Khorrami v. Arizona, 143 S.Ct. 22, 23 214 L.Ed.2d 224, 225 (Mem) (2022) (Gorsuch, J. dissenting from the denial of certiorari).

violated the provision of *Section 913.10, Fla. Stat.* that "[t]welve persons shall constitute a jury to try all capital cases".

CONCLUSION

Based on the discussions of the Amended Initial Brief and the foregoing Reply, Appellant requests this Honorable Court reverse his convictions and sentences.

Respectfully submitted,
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