

No.

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR PEREZ, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

Appendix A:	
Decision below.....	3a
Appendix B:	
Excerpt Initial Brief, Charges.....	4a
Excerpt Initial Brief, Verdict.....	6a
Except, Initial Brief, Sentence.....	7a
Appendix C:	
Excerpt Supp. Brief, Twelve-Person Jury Issue.....	8a

Appendix A
Decision of the Lower Court

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VICTOR MARQUICE PEREZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2025-1732

August 28, 2026

Appeal from the Circuit Court for Hillsborough County; Michelle Sisco,
Judge.

Blair Allen, Public Defender, and Caroline S. Cassidy, Assistant Public
Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Taylor Anne Schell,
Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

LUCAS, C.J., and KHOUZAM and MORRIS, JJ., Concur.

Opinion subject to revision prior to official publication.

Appendix B
Excerpts from Initial Brief

PRELIMINARY STATEMENT

This appeal follows the conviction and sentence of Appellant, VICTOR PEREZ, after a jury trial before the circuit court. The appellate record consists of two sets of documents, the clerk's documents and the trial transcript. The clerk's documents will be referenced as (R _) followed by the page number appearing at the bottom of the page. The trial transcript will be referenced as (T_) followed by the page number in the top right-hand corner.

JURISDICTIONAL STATEMENT

This is an appeal of a judgment and sentence adjudicating Mr. Perez guilty and sentencing him following a jury trial. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.140(b)(1)(A).

STATEMENT OF THE CASE AND FACTS

Mr. Perez was charged by information with:

- Count 1: Felony Fleeing to Elude, in violation of section 316.1935(2);
- Count 2: No Valid Driver's License, in violation of section 322.03(1)(a) and (1)(b)1; and
- Count 3: Attaching a Tag Not Assigned, in violation of section 320.261.

(R 18-19). The crimes were alleged to have occurred on January 31, 2025. (R 18-19).

At trial, the defense accepted the jury panel and the jury was sworn without objection. (T 150-52). The State made its opening statement without objection. (T 167-71). The defense made its opening statement without objection. (171-72).

Deputy John Calmbacher testified that on January 31, 2025, he was driving his Hillsborough County Sheriff's Office marked patrol vehicle; it is a Chevy Tahoe with green and gold insignia on the left, right, and back of the car, and it is equipped with emergency lights and sirens. (T 176-77). The State entered into evidence, without objection, photos of Deputy Calmbacher's marked patrol car, his partner's marked patrol car, and Mr. Perez's car. (T 178).

Deputy Calmbacher testified that an undercover deputy observed Mr. Perez's vehicle with a stolen tag on the back. (T 180). Based on the undercover deputy's call out, Deputy Calmbacher caught up to Mr. Perez's car and saw the car fail to stop at a stop sign. (T 180). Deputy Calmbacher initiated a traffic stop by utilizing his red and blue lights. (T 181). Deputy Calmbacher testified that he heard and observed the vehicle accelerate and that Mr. Perez and the

attach as physically attaching or having knowledge of the plate being attached?" (T 365).

The court responded, without objection, to the questions as follows: (1) "the answer is no. You just are to rely upon your common understanding of what those terms mean" (T 267); (2) "you've heard all the evidence you're going to hear about the status of his license for (sic) everything you're going to hear. There is no additional evidence." (T 368); and (3) "the instruction is what it is ... I have no further definitions or anything further to add as to count three." (T 368).

The jurors returned with a fourth question, "The jurors would like to know if we have to have an agreement on all three counts." (T 370). The court responded that if the jurors had reached an agreement on one or more counts, they should table that for the time being. (T 370). As to any count that the jurors had not reached an agreement on, the court read an Allen charge. (T 370-71).

The jury returned a verdict of guilty to fleeing to elude a law enforcement officer, a lesser included offense, and guilty to no valid license and attaching a tag not assigned. (T 373-74).

The trial court held a sentencing hearing. (R 96-105). The State presented a scoresheet that reflected a lowest permissible sentence of 69.60 months. (R 97). Mr. Perez argued that the State did not have certified records of all of the prior convictions and that any uncertainty in the score should be interpreted in favor of the defendant. (T 99). The court stated that it was “not going to assume that every one [of the convictions] that they are alleging in the P.S.I. is necessarily correct.” (R 103). The court sentenced Mr. Perez to the statutory maximum on count one and time served on counts two and three, all sentences to run concurrently. (R 104).

SUMMARY OF THE ARGUMENT

ISSUE I: Mr. Perez’s conviction on count three must be reversed. The trial court erred in denying the motion for judgment of acquittal when the State presented no evidence that Mr. Perez attached a tag not assigned.

ISSUE II: The trial court erred in ruling that if Mr. Perez elicited an exculpatory hearsay statement the State could present evidence that Mr. Perez stated he had a criminal history.

ARGUMENT

Appendix C
Excerpts from Supp. Brief

STATEMENT OF THE CASE AND FACTS

As relevant to this claim, Mr. Perez was convicted by a jury of six members. (T 374-75).

SUMMARY OF THE ARGUMENT

The United States Supreme Court decision approving of the use of a six-person jury was wrongly decided. The proper inquiry in considering whether a defendant is entitled to a jury of twelve is what the term “jury” meant when the Sixth Amendment was adopted. Because the term jury meant a jury of twelve at the time the Sixth Amendment was adopted, Florida’s statute permitting a jury of only six is contrary to the Sixth Amendment and unconstitutional.

ARGUMENT

ISSUE III

SECTION 913.10, FLORIDA STATUTES VIOLATES THE SIXTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION.

A. Standard of Review

This Court should review a claim that a statute is facially unconstitutional under a de novo standard. *See generally Dubose v. State*, 75 So. 3d 383, 384 (Fla. 1st DCA 2011) (citing *Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002)); *Serrano-Delgado v. State*, 392 So. 3d 251, 253 (Fla. 2d DCA 2024) (applying de novo standard to

claim that appellant was entitled to a jury of twelve). This Court has held that that a claim that a jury should be comprised of twelve members is reviewed for fundamental error. *Serrano-Delgado*, 392 So. 3d at 253.

B. Argument

Amendment VI of the United States Constitution, applied to the States by the Fourteenth Amendment, guarantees an accused the right to a trial by jury. *See generally Duncan v. State of La.*, 391 U.S. 145 (1968). Section 913.10, Florida Statutes (2025) provides that “six persons shall constitute a jury” in all non-capital cases. Thus, as the law stands, a criminal defendant in Florida can be tried by a jury of only six people, and Mr. Perez was convicted by a jury of only six members. (T 374-75).

The United State Supreme Court had previously acknowledged that “the jury referred to in the original Constitution and in the Sixth Amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less.” *Thompson v. State of Utah*, 170 U.S. 343, 349 (1898) (overruled on other grounds by *Collins v. Youngblood*, 497 U.S. 37 (1990)); *see also Cunningham v. Florida*, 144 S. Ct. 1287 (2024) (Gorsuch, J., dissenting from the denial of certiorari).

However, in *Williams v. Florida*, 399 U.S. 78 (1970), the United States Supreme Court “turned its back on the original meaning of the Constitution, centuries of historical practice, and a ‘battery of [the] Court’s precedents.’ ” *Cunningham*, 144 S. Ct. at 1287 (Gorsuch, J., dissenting from the denial of certiorari). The court in *Williams* ultimately upheld Florida’s use of a six-person jury. 399 U.S. at 86-103. Appellant acknowledges that *Williams* is binding. See *Serrano-Delgado*, 392 So. 3d at 253.

The United States Supreme Court’s decision in *Williams* was wrongly decided and this Court should hold that Mr. Perez was entitled to be tried by a jury of twelve. The Court in *Williams* ignored the original meaning of the Sixth Amendment and employed a functionalist approach. See *Williams*, 399 U.S. at 98-103. Shortly thereafter, the court acknowledged more recent data casting doubt on the functionalist premise on which *Williams* was decided. See *Ballew v. Georgia*, 435 U.S. 223, 231-39 (1978) (finding a jury of five people was unconstitutional). Most recently, in *Ramos v. Louisiana*, 590 U.S. 83, 90 (2020), the United States Supreme Court considered “what the term ‘trial by impartial jury’ meant at the time of the Sixth Amendment’s adoption” in holding that a verdict of guilt must be

unanimous. Thus, the United States Supreme Court has signaled that the proper inquiry is not whether a jury of six would function as well as a jury of twelve, but what the term trial by jury meant at the time of the Sixth Amendment's adoption. See *Guzman v. State*, 350 So. 3d 72, 77-79 (Fla. 4th DCA 2022) (Gross, J., concurring).

“[A] mountain of evidence suggests that, both at the time of the [Sixth] Amendment's adoption and for most of our Nation's history, the right to a trial by jury for serious criminal offenses *meant* a trial before 12 members of the community—nothing less.” *Khorrami v. Arizona*, 143 S. Ct. 22, 23 (2022) (Gorsuch, J., dissenting from the denial of certiorari). And the Florida Supreme Court apparently acknowledged that the provision in the bill of rights refers to a jury, according to the common law, of twelve people. *Gibson v. State*, 16 Fla. 291, 300 (1877); see also 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (stating that juries consisting of twelve people were commonplace in the English common law).

This error was fundamental and structural, as it arises from the denial of a constitutional right. “[W]here fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of law cannot be had.” *Lindo v. State*, 283

So. 3d 867, 871 (Fla. 3d DCA 2019). “A fundamental error is defined as an error that reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Lukehart v. State*, 70 So. 3d 503, 523 (Fla. 2011) (internal quotations and citation omitted). Similarly, “structural errors are a very limited class of errors that affect the framework within which the trial proceeds . . . such that it is often difficult to assess the effect of the error.” *United States v. Marcus*, 560 U.S. 258, 263 (2010) (internal quotations and citations omitted). Structural error is not subject to harmless-error review, and fundamental error is harmful by definition. *See Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993) (noting “harmless-error analysis does not apply” to “structural defects in the constitution of the trial mechanism” as “[t]he deprivation of that right with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as ‘structural error’”); *Reed v. State*, 837 So. 2d 366, 369–70 (Fla. 2002) (noting “we take this occasion to clarify that fundamental error is not subject to harmless error review. By its very nature, fundamental error has to be considered harmful).

The United States Supreme Court recently granted a petition for writ of certiorari to answer the question of whether a Florida defendant charged with a serious felony was deprived of his rights under the Sixth and Fourteenth Amendments when he was tried by a jury of less than twelve. *Kian v. State*, 421 So. 3d 439 (Fla. 4th DCA 2025) *cert. granted Kian v. Florida*, No. SC25-6623, 2026 WL 1718018 *1 (2026).

The Sixth Amendment to the United States Constitution, as understood at the time of adoption, grants Mr. Perez the right to a trial by jury. Understanding that right at the time the amendment was adopted, that included the right to be tried by a jury of twelve. The Florida Constitutional provision to the contrary deprives Mr. Perez of his constitutional right. This Court should reverse the judgment of conviction and grant Mr. Perez a new trial before a jury of twelve, or, in the alternative, issue a written opinion with citation to *Kian v. Florida*, No. SC25-6623, 2026 WL 1718018 *1 (2026).

CONCLUSION

Mr. Perez respectfully requests this Court to reverse the judgment of conviction and grant a new trial.

Respectfully submitted,

/s/ Caroline S. Cassidy
CAROLINE S. CASSIDY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the forgoing Initial Brief has been electronically filed with the Clerk of the Courts using the e-portal system, which will send a notice of electronic filing to the Office of the Attorney General at CrimappTPA@myfloridalegal.com and Assistant Attorney General Taylor Anne Schell at Taylor.Schell@myfloridalegal.com, this 22nd day of July, 2026.