

No.

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS FERNANDEZ, 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

Blair Allen
Public Defender

Ronald N. Toward
*Assistant Public Defender
Counsel of Record*

Office of the Public Defender Tenth
Judicial Circuit of Florida

P.O. Box 9000-PD
Bartow, FL 33831
(863) 534-4200
rtoward@pd10.org
dholloway@pd10.org
appealfilings@pd10.org

TABLE OF CONTENTS

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

Appendix A
Decision of the Lower Court

2026 WL 2588902

Only the Westlaw citation is currently available.

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District Court of Appeal of Florida, Second
District.

Carlos FERNANDEZ, Appellant,

v.

STATE of Florida, Appellee.

No. 2D2025-1515

September 2, 2026

Appeal from the Circuit Court for Pinellas County; Keith
Meyer, Judge.

Attorneys and Law Firms

Blair Allen, Public Defender, and Megan Banfield,
Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and
Angela H. **Fernandez**, Assistant Attorney General,
Tampa, for Appellee.

Opinion

PER CURIAM.

*1 Affirmed.

BLACK, ATKINSON, and SMITH, JJ., Concur.

All Citations

--- So.3d ----, 2026 WL 2588902 (Mem)

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Appendix B
Excerpts from Initial Brief

PRELIMINARY STATEMENT

This appeal follows the conviction and sentence of Appellant, CARLOS FERNANDEZ, after a jury trial before the circuit court. The documents supplied by the clerk will be referenced by the page number appearing at the bottom of the page. The trial transcripts will be referenced by "T", followed by the page number located at the bottom of the page.

The Appellant, Mr. Fernandez, will be referred to by name. The prosecuting authority, the State of Florida, will be referred to as the State. The deceased minor victim will be referred to as "E.M."

STATEMENT OF JURISDICTION

This is an appeal of a judgment and sentence adjudicating Appellant guilty and sentencing him following a jury trial in the circuit court in the Sixth Judicial Circuit. This Court has jurisdiction pursuant to Fla. R. App. P. 9.140(b)(1)(A).

STATEMENT OF THE CASE AND FACTS

The State Attorney filed an Amended Information charging Mr. Fernandez with one count of Vehicular Homicide, contrary to Chapter

782.071(1)(a)(Count 1); one count of Reckless Driving with Serious Bodily Injury, contrary to Chapter 316.192(3)(c)(2)(Count 2); one count of Racing on a Highway, contrary to Chapter 316.191(2)(a)/26.012(Count 3); and one count of Operating a Motorcycle without Endorsement, contrary to Chapter 322.03(4)/26.012. [73-74]

Prior to trial the State filed two motions in limine seeking to exclude, among other things, any reference to the victim, E.M., contributing to his own death or being a proximate cause of his own death. [144-46, 202-05] The trial court took the first motion under advisement and ultimately granted the second one. [446-47, T17-18]

The testimony at trial is summarized as follows:

Angel Vasquez testified that on the night of January 28, 2023, she was out with her ex-boyfriend, Zach McCann. [T388, 390, T394] Mr. McCann was driving. [T394-95] They went to pick up her cousin from the airport at around 9 or 10 pm, then then went to some car meets. [T390, T395] About seven people from Zach's friend group were out with them that night, including Mr. Fernandez. [T396] She identified Mr. Fernandez in the courtroom. [T397]

The jury found Mr. Fernandez guilty as charged as to all four counts. [260-63, T1034] After trial, he filed, “Defendant’s Motion for Judgment of Acquittal or Motion for New Trial.” [264-67] The motion was denied. [475-76]

He appeared for sentencing on June 2, 2025. [465-605] His Criminal Punishment Code Scoresheet showed a lowest permissible prison sentenced of 141.825 months. [369-71] He was sentenced to 7 years prison followed by 8 years of probation as to Count 1. [361, 600-01] As to Count 2, he was sentenced to a consecutive five years of probation. [601] He was sentenced to time served as to Counts 3 and 4. [362-63, 599]

SUMMARY OF THE ARGUMENT

ISSUE I: The trial court erred in denying the motion for judgment of acquittal as to Count 1, vehicular homicide. There was no evidence that Mr. Fernandez recklessly operated the motorcycle other than the fact that he was driving at a high rate of speed, and speed alone is insufficient to prove recklessness.

ISSUE II: The trial court erred in instructing the jury that “speed

Appendix C
Excerpts from Supp. Brief

wrongly decided, and the court has recently granted certiorari in a Florida case which asked it to revisit Williams.

STATEMENT OF PRESERVATION

ISSUE IV: This issue was not raised at the trial level. However, it did not need to be preserved for appellate review, because a facial constitutional challenge can be raised for the first time on appeal. See N.B. v. Fla. Dep't of Child. & Fams., 183 So. 3d 1186, 1187 (Fla. 3d DCA 2016).

ARGUMENT

ISSUE IV

THIS COURT SHOULD REVERSE APPELLANT'S CONVICTIONS
BECAUSE HE WAS CONVICTED BY A SIX-PERSON JURY

A. Standard of Appellate Review

A challenge to the constitutionality of a statute is reviewed de novo. Crist v. Ervin, 56 So.3d 745, 747 (Fla. 2010).

B. Argument

Section 913.10, Florida Statutes, authorizes six-person juries in non-capital cases and accordingly, Appellant was convicted by a six-person jury. [T343-44] Appellant contends that Section 913.10 is

unconstitutional on its face, as it violates his right to trial by jury enshrined in the Sixth Amendment to the United States Constitution as applied to the states in the Fourteenth Amendment to the United States Constitution.

The error is fundamental and structural, as it arises from the denial of a constitutional right. Appellant acknowledges that the U.S. Supreme Court held otherwise in Williams v. Florida, but submits that Williams was wrongly decided.

For hundreds of years, a “jury” was understood to consist of twelve people. See Robert H. Miller, Six of One Is Not A Dozen of the Other: A Reexamination of Williams v. Florida and the Size of State Criminal Juries, 146 U. Pa. L. Rev. 621, 638-39 (1998)(discussing the history of the twelve-person jury and noting that the general infrastructure of the criminal jury as a twelve-member body was clearly established by the time of Edward III in 1377 and remained largely unchanged until the Williams decision). See also 4 W. Blackstone, Commentaries on the Laws of England 343 (1769) (stating that for a person to be found guilty of a serious crime, “the

truth of every accusation” was “confirmed by the unanimous suffrage of twelve of his equals and neighbors.”)

In 1898, the U.S. Supreme Court found that an eight-person jury violated the Sixth Amendment and stated that the “jury” referred to in the Sixth Amendment means a jury “of twelve persons, neither more nor less.” Thompson v. State of Utah, 170 U.S. 343, 349, 18 S. Ct. 620, 42 L. Ed. 1061 (1898), overruled on other grounds by Collins v. Youngblood, 497 U.S. 37, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990), and abrogated by Williams, 399 U.S. at 78.

In the years following Thompson, the Court continued to consistently hold that a “jury” meant a jury of twelve. See, e.g. Cap. Traction Co. v. Hof, 174 U.S. 1, 19 S. Ct. 580, 43 L. Ed. 873 (1899)(stating that “trial by jury” means “a trial by a jury of twelve men in the presence and under the superintendence of a judge); Maxwell v. Dow, 176 U.S. 581, 20 S. Ct. 448, 450, 44 L. Ed. 597(1900), abrogated by Williams, 399 U.S. at 78 (“That a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution, there can be no

doubt.”)

In Patton v. United States, 281 U.S. 276, 50 S. Ct. 253, 74 L. Ed. 854 (1930), abrogated by Williams, 399 U.S. at 78, the defendant was convicted by an eleven-person jury because one of the jurors had become unable to serve due to illness. The Court held that this violated the Sixth Amendment, even though the defendant had consented to the eleven-person jury. In so holding, the court stated:

A constitutional jury means twelve men as though that number had been specifically named, and it follows that, when reduced to eleven, it ceases to be a jury quite as effectively as though the number had been reduced to a single person.

Id. at 292.

The Patton court quoted even stronger language from a state court decision, stating:

It would be a **highly dangerous innovation**, in reference to criminal cases, upon the ancient and invaluable institution of trial by jury, and the constitution and laws establishing and securing that mode of trial, **for the court to allow of any number short of a full panel of twelve jurors**, and we think it ought not to be tolerated.

Patton, 281 U.S. at 303 (quoting Cancemi v. People, 18 N.Y. 128 (1858), superseded by Constitutional Amendment as stated in People

v. Sargeant, 45 N.Y.3d 163, 277 N.E.3d 1049 (2025))(emphasis added).

It was only 40 years after the Patton court said that an eleven-person jury “ceases to be a jury” that the Williams court abandoned its precedent and held that a six-person jury did not violate the Sixth Amendment. The Williams court acknowledged that a jury at common law was composed of twelve. Williams, 399 U.S. at 90-91. However, the Court reasoned that a six-person jury was the functional equivalent of a twelve-person jury, stating that, “the reliability of the jury as a factfinder hardly seems likely to be a function of its size.” Id. at 101.

Eight years later, in Ballew v. Georgia, 435 U.S. 233, 98 S.Ct. 1029 (1978)(plurality opinion), the Court seemed to acknowledge that this reasoning was wrong, noting that three studies conducted after Williams “raise significant doubts about the consistence and reliability of the decisions of smaller juries.” Id. at 235. In Ballew, the Court held that a five-person jury was too small and therefore unconstitutional, but declined to recede from Williams. Id. at 239.

Since it was decided, Williams has been subject to much academic criticism. See, e.g. Alisa Smith & Michael J. Saks, The Case for Overturning Williams v. Florida and the Six-Person Jury: History, Law, and Empirical Evidence, 60 Fla. L. Rev. 441 (2008); Miller, Six of One Is Not A Dozen of the Other., 146 U. Pa. L. Rev. 621.

Justice Gorsuch has dissented from denials of petitions for writ of certiorari asking the court to reconsider Williams, stating:

Williams was wrong the day it was decided, it remains wrong today, and it impairs both the integrity of the American criminal justice system and the liberties of those who come before our Nation's courts.

Khorrami v. Arizona, 598 U.S. —, 143 S. Ct. 22, 23 (2022) (Gorsuch, J., dissenting from denial of certiorari). In Khorrami, Justice Kavanaugh also voted to grant the petition for writ of certiorari. In a recent Florida case, Justice Gorsuch reiterated that, “Florida does what the constitution forbids...” Cunningham v. Fla., 144 S. Ct. 1287, 219 L. Ed. 2d 1239 (2024)(Gorsuch, J., dissenting from denial of certiorari).

On June 15, 2026, the U.S. Supreme Court granted certiorari in Kian v. State, 421 So. 3d 439 (Fla. Dist. Ct. App. 2025), cert.

granted sub nom. Kian v. Fla., No. 25-6623, 2026 WL 1718018 (U.S. June 15, 2026), to consider whether it should recede from Williams. Appellant asks this Court to find that Section 913.10 is unconstitutional and reverse his conviction.

CONCLUSION

Based on the arguments in this supplemental brief as well as the arguments raised in the Initial Brief, Appellant requests that this Court reverse his convictions.

Respectfully submitted,

/s/ Megan Banfield
MEGAN BANFIELD

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 Angela H. Fernandez, Office of the Attorney General, 3507 E. Frontage Rd., Suite 200, Tampa, FL 33607, this __6th__ day of July, 2026.