No.

IN THE SUPREME COURT OF THE UNITED STATES

JONATHAN KING, 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

JONATHAN KING,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-2384

[June 11, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ernest Albert Kollra, Jr., Judge; L.T. Case No. 062019CF010942A88810.

Daniel Eisinger, Public Defender, and Gary Lee Caldwell, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Deborah Gail Koenig, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, CONNER and FORST, JJ., concur.

* * *

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

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

July 23, 2026

JONATHAN KING, Appellant(s), v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2024-2384** L.T. No. - 062019CF010942A88810

BY ORDER OF THE COURT:

ORDERED that Appellant's June 26, 2026 motion for rehearing, issuance of written opinion, and certification is denied.

Served:
Crim App WPB Attorney General
Gary Lee Caldwell
Deborah Gail Koenig

AM

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
4D2024-2384 7/23/2026 [illegible]
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-2384 July 23, 2026

non-deadly force under *Wagers* where victim approached defendant after defendant argued with victim's sister and victim took took a squat stance but did not make any statements, did not raise his arm as though to strike defendant, and displayed no weapon).

At bar, the court erred in denying the instruction under the foregoing cases. The convictions and sentences should be reversed with instructions to afford Appellant a new trial.

V. APPELLANT WAS DEPRIVED OF HIS RIGHT TO A TWELVE-MEMBER JURY.

Appellant recognizes that Florida allows a jury of six in non-capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat. The Supreme Court held Florida's six-member jury system does not violate the Sixth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment in *Williams v. Florida*, 399 U.S. 78 (1970). He submits, however, that *Williams* was incorrectly decided and is contrary to the understanding of the Sixth Amendment at the time of the Founding. *See Cunningham v. State*, 144 S. Ct. 1287–88 (2024) (Gorscuch, J., dissenting from denial of certiorari). Accordingly, section 913.10, which authorizes six-member juries in non-capital criminal cases, is facially

unconstitutional.

Appellant also recognizes that this Court has rejected similar claims. *See, e.g.*, *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied* SC2022–1597 (Fla. June 6, 2023), *cert. denied* No. 23–5173 (U.S. May 28, 2024). Nonetheless, he maintains that the correct view is set out in Justice Gorsuch's dissent in *Cunningham*.

The error is fundamental. Waiver of the constitutional right of trial by the proper number of jurors must be made personally by the defendant. *See Blair v. State*, 698 So. 2d 1210, 1217 (Fla. 1997) (finding valid defendant's agreement to verdict by five-member jury valid when made "in a colloquy at issue here, including a personal on-the-record waiver," and sufficient to pass muster under the federal and state constitutions," and his decision was made "toward the end of his trial, after having ample time to analyze the jury and assess the prosecution's case against him. He affirmatively chose to proceed with a reduced jury as opposed to a continuance or starting with another jury.") and *Wallace v. State*, 722 So. 2d 913 (Fla. 2d DCA 1998) (reversing on grounds of fundamental error where defendant was tried by five-member jury and judge did not inform

the defendant of his right to six-person jury).

In this regard, Appellant recognizes that this Court wrote in *Albritton v. State*, 360 So. 3d 1145 (Fla. 4th DCA 2023):

> The defendant did not raise this argument in the trial court. Therefore, the defendant did not preserve this argument. *See Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005) (proper preservation requires a litigant to make a timely, contemporaneous objection to place the trial court on notice that error may have been committed and provide the trial court with an opportunity to correct the error at an early stage of the proceedings).

Id. at 1147.

Appellant respectfully submits that this statement in *Albritton* is flawed.

First, it is contrary to *Blair* and *Wallace*. Under those cases, the waiver of a constitutionally-required number of jurors must be made by the defendant personally after being informed of the right being relinquished.

Second, the *Harrell* case cited in *Albritton* involved a run-of-the-mill pleading issue. It did not involve the denial of a constitutional right.

Third, the Sixth Amendment jury right is tightly bound with the Due Process Clause — *see Erlinger v. United States*, 602 U.S.

821, 831 (2024), and issues of due process rights and other issues of the facial constitutionality of a statute may be raised as fundamental error. *See, e.g., Edenfield v. State*, 379 So. 3d 5, 7 n.1 (Fla. 1st DCA 2023) (conviction based on facially invalid statute is fundamental error); *State v. Johnson*, 616 So. 2d 1, 3–4 (Fla. 1993) (holding a defendant may raise the constitutionality of a sentencing statute for the first time on appeal); *Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004) (same); *Chang v. State*, 50 Fla. Law Weekly D1073, D1079 (Fla. 2d DCA May 14, 2025) ("Consideration of improper sentencing factors constitutes a due process violation that results in fundamental error."); *Reed* (erroneous jury instruction on contested element constitutes fundamental error); *Santiago-Gonzalez v. State*, 301 So. 3d 157, 175 (Fla. 2020) (fundamental error may apply where there has been "a denial of due process"); *Wallace*.

In the present case, fundamental error occurred and the convictions and sentences should be reversed.