APPENDIX

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

No. 4D25-0699

BREON BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

On Appeal from the Circuit Court of the
Seventeenth Judicial Circuit of Florida
(Case 20-1859CF10A)

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PRELIMINARY STATEMENT

Appellant, Breon Brown, was the Defendant and Appellee was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For, Broward County, Florida.

Throughout this brief, the following symbols will be used:

"**R**" Record on Appeal (458 pages); and

"**T**" Transcript (652 pages);

STATEMENT OF THE CASE AND FACTS

Appellant, Breon Brown, was charged by Information with one count of fleeing or eluding and two counts of resisting an officer without violence. R31.

Before trial, he moved to suppress evidence following law enforcement's warrantless entry into his home. R137. After a hearing, the motion was denied. R151. More information on this issue is provided in Point I.

A. The State's case in chief

The State called Fort Lauderdale police officers Victor Pires, Robert Morris, and Gina Scola. Pires testified that on February 17, 2020 at 4am, he was patrolling the 2400 block of West Sunrise Boulevard. T309, 313. He drove a marked patrol vehicle. T379. Pires saw a black BMW going westbound at a high rate of speed, faster than the 40 mile-per-hour posted speed limit. T313-14. Pires turned on his lights and sirens and attempted to conduct a traffic stop for the speeding violation. T316.

The BMW sped up faster and started making immediate turns. T316-17. Traffic was minimal, there were no pedestrians, the weather was clear, and Pires was directly behind the BMW. T316-17. There

were no obstacles between Pires' vehicle and the BMW. T376. Due to the BMW's speed, Pires was not able to get the tag number of the BMW in order to look it up to find out whether it had been involved in any crimes. T319.

Once the BMW turned onto NW 11th Street, it entered a poorly lit residential neighborhood. T322. First, Pires testified that he had his lights and sirens on for a "couple seconds" and turned them off. T318. Later he testified that his lights and sirens were on for thirty seconds to a minute, from the 2700 block to almost the 3000 block of NW 11th Street. T323-24. He was not allowed to pursue a fleeing vehicle unless it was involved in a forcible felony. T318. The BMW passed shoulders where it could have pulled over. T321.

The BMW started driving on the swale, and it came to a stop. T325. The driver's door swung open, and the driver got out and started running. T325. The person went around the vehicle, started running northbound. T326. It was a black male in his 20's, about 6'2" to 6'4", with a thin build and a brush cut, wearing a gray sweatshirt and dark-colored pants. T327, 382. Pires could not see the person's footwear. T382. The person looked directly at Pires'

police vehicle, which was about 20 feet away with its headlights pointed at the person. T343, 372-74.

Pires' vehicle did not have a dash cam, and he did not have his bodyworn camera activated at the time of these events. T328-29. He did not even turn his bodyworn camera when he saw someone bail out of the vehicle because he did not know whether the person was armed. T330, 377.

Pires did not give the person verbal commands to stop. T373. He also did not chase the person, in accordance to the police department's policies not to chase for officer safety reasons, in case of an ambush. T332-33. Pires requested apprehension K-9 assistance so he did not chase because he did not want to contaminate the suspect's track. T333.

Pires established a perimeter around the area to try to contain the subject and requested backup. T334. He relayed the physical description of the subject to other officers. T334.

As Pires waited for backup, he ran the tag of the BMW and investigated whether the vehicle had been involved in any other crimes. T335. When Pires ran the tag, it came back as a rental car. T385, 388. Inside, there were items and receipts with various people's

names on them. T385. None of them were connected to Appellant. T387. Pires did not contact the rental agency to determine who rented the car, due to the late hour. T386.

K-9 Apprehension Officers Robert Morris and Gina Scola arrived in less than ten minutes. T335-36. Scola first assisted in searching the BMW for anything related to crime or identity. T441, 470.

Morris deployed his K-9 partner Griff to track the driver's path from the driver's seat of the BMW. T414. Griff went northbound on the side of a house into a backyard and turned left. T415. Along the way, Griff stopped to sniff a credit card that was laying in the first backyard closest to the bailout. T415, 446-48. The name on the credit card was James Strong. T446.

Griff continued westbound and reached a fence, just east of 29th Avenue. T416. Griff gave an alert that on the other side of the fence was a "hotspot," which suggested the subject jumped the fence there. T416. From there, Griff continued tracking to the second property on the west side of NW 30th Avenue. T421. He reached the rear door of apartment 3, where he scratched at the door. T423-25. The quality of the track was excellent. T425-26, 444.

After the K-9 track, it was relayed over the radio that the K-9 tracked to an address and specific unit number. T337.

The officers knocked on the door to make contact with the inhabitants. T337, 449. Scola testified that a female opened answered. T449. Scola testified that the female said that only she and Brandon Davis were in the house. T450. Davis stated that there were other people there as well, including his kids and brother. T450.

Pires drove from the BMW's location to that address, which was about a block away. T337. Pires arrived when Brandon Davis was at the door. T337, 451. Pires knew that Davis was not the same person who fled from the BMW, as he was much shorter and, unlike the person who fled, had long dreads. T337-38. Pires informed Davis that he was conducting an official investigation. T338. The female came up to the door as well. T338-39. Davis and the female were stalling and not cooperating. T339.

Davis offered to let Pires see surveillance footage from the house that would show that no one left the house that evening. T392-93. Pires did not watch the video because he believed it would not have been cohesive to the investigation and would be a waste of time, given the possibility of the subject fleeing the residence. T392-93. Pires did

not view the footage even after Appellant was eventually arrested. T393.

Pires looked into the residence and saw a mattress on the floor with a blanket on top of it. T339. Pires shined his flashlight on it and saw a person's feet. T339-40. He asked the person to sit up so he could see who it was, and the person stalled. T340. Eventually, the person sat up and Pires recognized him as the person who ran from the BMW, based on his physical description, height and build. T341-42. He was also wearing the same pants as the person he had seen but a different t-shirt. T341-42. The person was later identified as Appellant. T354.

Pires asked Appellant multiple times to step outside so they could talk. T343-45, 367. The people in the residence started recording the interaction, asking for his name and badge number. T345. Appellant started recording with his phone. T363. Davis was interfering with the investigation by trying to close the door and speaking over Pires and delaying the process. T369.

In order to detain Appellant, Pires had to detain Davis. T369. As Pires tried to detain Davis, Appellant moved towards the rear door. T370, 394. Appellant fled out that door. T344. During the interaction

at the front door, Pires activated his bodyworn camera, which the State introduced into evidence. T346; State's Ex. 1.

Pires got entangled with Davis, who tried to block him. T462. Scola ran through the house to chase after Appellant. T461. Scola followed him through the kitchen and out the back door. T462.

Outside, the Broward Sheriff's Office aviation unit was flying overhead. T372. It had a view of Appellant running from the residence. T372. Scola encountered Appellant, and he was taken into custody. T466.

B. Defense case

Appellant called Brandon Davis, Appellant's brother. T488. He testified that at about 4 or 5am, the police were at the door. T489, 499. Prior to that, he heard noises outside the door. T518. Davis's niece and girlfriend answered the door. T500. Davis went to talk to the police. T500. They asked him if anyone was there and if anyone was sleeping. T489. Davis said his brother was there. T489, 500. The officer asked him to wake his brother up. T489, 500. Davis initially said he would not do that, but then went to wake Appellant up by shaking him awake. T489. Appellant put his clothes on. T490.

Davis was scared because it was very late and the officers were not telling him why they wanted him to wake Appellant up. T501. They were not answering his questions or explaining why they were there. T501-03. Davis told Pires that he was home all day with his children and brother. T503. The officers never deescalated; they just came in and rushed Davis. T519-20.

Before the police arrived, nobody had been outside. T503. Appellant had been in the house since 6pm the night before. T513. Davis had motion-sensitive surveillance cameras at the doors. T505, 509. Davis offered to show the police his camera footage five or six times, which would corroborate that no one left, but the officers would not give him a chance to speak. T504, 506. They told him no, that they did not want the surveillance footage. T522-23. The police never followed up with Davis to get the camera footage. T505-06. By the time of trial, he could not access it because he changed providers from Xfinity to AT&T since the incident. T505. However, he assumed the footage still exists. T507-08.

C. Verdict

At the conclusion of trial, the jury found Appellant guilty of each count. T641-43; R208.

D. Sentencing

Appellant was sentenced to concurrent sentences of 36 months in prison on the fleeing or eluding charge and 364 days on each of the resisting charges. R454.

This appeal follows.

SUMMARY OF THE ARGUMENT

Point I

The trial court erred in denying Appellant's motion to suppress. The warrantless entry into Appellant's home was not justified by a hot pursuit or by any other exigent circumstances. An unknown amount of time passed between the offenses and the warrantless entry; the offenses involved in this case were not serious; violent offenses; there was no evidence of the involvement of any weapons; and no emergency. This Court should reverse the denial of Appellant's motion to suppress. It should reverse Appellant's convictions because the State cannot show beyond a reasonable doubt that the denial of the motion to suppress did not contribute to the verdict.

Point II

Appellant's conviction by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution. The Supreme Court's decision in *Williams v. Florida*, 399 U.S. 78 (1970), that juries as small as six were constitutionally permissible, is impossible to square with the Court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (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."

ARGUMENT

POINT I

THE TRIAL COURT REVERSIBLY ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS

A. Additional Facts

Appellant moved to suppress evidence that followed the illegal, warrantless entry into Appellant's home. R137. Specifically, he moved to suppress evidence that he refused to follow lawful commands, resisted verbal commands and resisting by tensing, bracing and pulling away from officers, and obstructed any investigation, and statements made inside the home by Appellant or the officers. R137.

At the hearing on the motion, the parties stipulated that there was not warrant and the State called Officers Pires and Scola. R293, 337. Officer Pires testified consistently with his trial testimony. R295. At about 4:33am, Pires was patrolling the 2400 block of West Sunrise Boulevard. R314, 316. Pires was traveling the speed limit, and he saw a BMW going faster than Pires' speed-calibrated patrol unit, and therefore faster than the speed limit. R316. He did not clock or pace the BMW. R317. He activated his lights and sirens because the BMW was traveling at a high rate of speed. R297.

The BMW made evasive maneuvers, consistent with someone

trying to evade police capture. R298, 317. The BMW stopped, and the driver got out and ran away. R300, 318. It was a black male, in his 20's, 6'2" to 6'4", with a thin build and a brush cut, and wearing dark pants and a gray sweatshirt. R301, 320-21. Pires got a good look at the person. R320.

Pires set up a perimeter to contain the subject. R303, 322. He did not chase the subject because he lost sight of him and did not want to contaminate the track. R303-04. Pires ran the tag, and nothing came up connecting the car to any crimes. R333. He looked in the car and there were documents with different people's names on them. R323, 325. He talked to a witness, a resident of the apartment near where the person bailed from the BMW . R324.

Pires was advised that the K-9 officers tracked to Apartment 3, but he was not present for the tracking. R304-05. Pires was asked to go to that residence. R304-06.

Scola testified that the dog tracked to the back apartment, and Scola went to the front. R338, 342. Scola knocked on the door and first a female came to the door, followed by Brandon Davis. R327, 338. Pires arrived and joined Scola at the door. R339. Davis was being confrontational. R339.

Pires saw Appellant inside the living room, laying on a mattress, hiding under a blanket. R306-07, 309, 328. Pires was totally positive it was the same person who had run from the vehicle. R307. But he was wearing a T-shirt, not a sweatshirt. R329-30. He knew that Davis was not the person because he was shorter and had dreads. R308.

Davis and Appellant were showing resistance and were not co-operative. R308. The recorded the interaction, which Scola testified was a tactic people use to intimidate or get officers to second guess themselves. R339. Appellant as being erratic. R331.

Pires was trying to detain Appellant for the fleeing or eluding and resisting charges. R311. He did not suspect any weapons. R333. Pires asked the people in the apartment for their names and or to step out of the residence. R310, 331-32, 340. Appellant was being argumentative and delaying the process. R311. Scola called another officer over to assist. R340.

As Pires was standing by the door threshold, Davis started to close the door, which almost made contact with Pires. R312. Pires grabbed Davis by the wrist to detain him so Pires could continue the investigation. R312. He had to detain Davis because he was actively preventing the investigation. R312-13. Pires was able to conduct a

take down and detain Davis. R312. Appellant fled out the backdoor, and was ultimately found hiding underneath some bushes outside. R313, 342.

Defense counsel argued that law enforcement lacked probable cause to arrest Appellant, citing the lack of a sufficient physical description to identify him. R344-48. He also argued that this was not a hot pursuit, and there were no exigent circumstances. R351-57.

The State argued that Pires had probable cause for fleeing or eluding and resisting without violence, which justified the warrantless entry into the home after a hot pursuit. T358-66.

The trial court and parties discussed whether there was a break during the pursuit and how much time passed. R366-73. They also discussed whether the law differs whether the underlying offense was a felony or a misdemeanor. R374-78.

Ultimately, the trial court found that after the fleeing or eluding, the amount of time that passed was unknown but appeared to be a relatively brief amount of time. R381-82. It also found that Pires was positive that Appellant was the same person he had seen. R382-83. It found that the time of day, 4am, complicated things. T384. The fact that a person ran into a home and then from a home militates in

favor of the reasonableness of the police perception that might continue to happen if they did not act. T385. The trial court further found that crucial evidence that may be used to identify the driver might have been lost or destroyed—that is, the suspect could have taken off or destroyed clothing or altered his appearance. T385, 388. Brandon Davis and the woman could have caused evidence to become lost. T386-87.

The trial court found that the officers took pains to avoid entering the home unless they had to. T387. They did not do so until the potential hazards escalated and the suspect fled the house. T387.

The trial court also found that the chase began in public, and Appellant chose to be in the residence and that the offense involved was a serious felony that often results in death. T387. The trial court found that getting a warrant would be impracticable, and there was no indication that Appellant would wait for a warrant. T388.

The trial court found the weakest part of the State's case was the amount of time the hot pursuit went cold. T388.

Ultimately, it found that the State met its burden to demonstrate that the entry into the home was necessary, and the means

chose were the least burdensome to Appellant's rights. T389. Accordingly, it denied Appellant's motion to suppress.

B. Standard of Review

"This Court's review of the trial court's ruling on the motion to suppress involves a mixed question of law and fact. The trial court's findings of fact are presumed correct if competent, substantial evidence supports those findings. The trial court's application of law to those facts is reviewed de novo." *State v. Milewski*, 194 So. 3d 376, 378 (Fla. 3d DCA 2016).

C. Argument

The trial court erred in denying Appellant's motion to suppress the evidence following the warrantless entry into his home. A person's right to be secure from searches and seizures is derived from the Fourth Amendment to the United States Constitution. This right is reflected in article I, section 12 of Florida's Declaration of Rights. *State v. Markus*, 211 So. 3d 894, 902 (Fla. 2017). The Fourth Amendment proscribes unreasonable searches and seizures, and those executed without prior approval by a judge are "per se unreasonable." *Katz v. United States*, 389 U.S. 347 (1967). "

"[T]he Fourth Amendment … prohibits the police from making a

warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Payton v. New York*, 445 U.S. 573, 576 (1980) (citations omitted). The Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590.

A warrantless non-emergency arrest of a suspect in his or her own home is presumptively unlawful. *M.J.R. v. State*, 715 So. 2d 1103, 1103 (Fla. 5th DCA 1998). "The burden is on the State to demonstrate that there were exigent circumstances to overcome the presumption of unreasonableness that attaches to warrantless arrests of suspects in their own home." *V.L. v. State*, 790 So. 2d 1140, 1143 (Fla. 5th DCA 2001).

> Exigent circumstances do not necessarily involve "hot pursuit" of a fleeing criminal. Factors which indicate exigent circumstances include: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

Wike v. State, 596 So. 2d 1020, 1024 (Fla. 1992) (citation omitted).

The rationale of the hot pursuit exception is that "a suspect may not defeat an arrest which has been set in motion in a public place…by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38, 43 (1976). A key ingredient of hot pursuit is an element of danger or grave emergency. *Markus*, 211 So. 3d 894 (citations omitted). There must be a grave emergency that makes a warrantless search imperative to the safety of the police and of the community. *Id.* at 906-07. An "imperative" warrantless entry is one where "the government can show a compelling need for official action and no time to secure a warrant." *Id.* at 907 (citation omitted). Lack of time to secure a warrant is a key ingredient of exigency, but the officer must cease the search once he or she realizes the exigency no longer exists. *Id.*

The trial court erred in this case. First, the State failed to prove that the warrantless entry was justified by a "hot pursuit." The trial court's finding that only a relatively brief amount of time passed after the offense was not supported by competent, substantial evidence. R381-82. The State did not present evidence of how much time passed between the offense and the warrantless entry.

Second, there was no grave emergency. The only offenses that

Pires had probable cause for were fleeing or eluding and resisting without violence: a traffic offense and a misdemeanor. There was no compelling need for official action at that point the officers were at the apartment door.

This case is like *M.J.R.*, 715 So. 2d 1103, and *Jackson v. State*, 192 So. 3d 541 (Fla. 4th DCA 2016). In *M.J.R.*, officers showed up at an apartment to determine if a juvenile suspect lived there. 715 So. 2d at 1103. The defendant refused to allow the officers in without a warrant and attempted to close the door on them. He was arrested for resisting. The Fifth District Court of Appeal found that the officer had no authority to demand that the defendant keep the door open or to demand entry unless the officer had a warrant authorizing the entry or exigent circumstances to invade the sanctity of the home.

In *Jackson*, the officers were called to an apartment to investigate an alleged attack. The officers approached the defendant's window and tried to speak to him, and he refused. 192 So. 3d at 542. The officer grabbed through the window and tried to grab the defendant. The defendant barricaded in his apartment, but the officers entered without a warrant, and arrested him. This Court reversed his

conviction for resisting without violence because there was no evidence of an arrest warrant or any exigent circumstance, and the defendant was within his right to refuse the officer's unlawful order and stay within his home.

Here, Pires had lost sight of the subject by the time law enforcement got to the residence. It was no longer an emergency by the time they attempted to arrest Appellant.

The trial court also erred in applying the other *Wike* factors to the facts of this case. The application of these factors leads to the conclusion that the warrantless entry into the home was not justified.

First, as to the gravity or violent nature of the offense with which the suspect is to be charged, the trial court considered it to be a serious offense. However, this offense is not a serious violent offense, such as murder or aggravated assault. There was no evidence of any weapons involved. In *Gasset v. State*, 490 So. 2d 98 (Fla. 3d DCA 2012), the officers had probable cause for the offense of reckless driving and fleeing or attempting to elude a police officer. Appellant acknowledges that the District Court described those offenses as serious traffic offenses and that there was sufficient gravity to justify the intrusion of Gasset's right to privacy. However, that case differs

from this case because in that case, Gasset led the police directly to his garage, and the police never lost sight of him. The intrusion there was de minimus.

Here, there was an unknown amount of time between the offenses and the police officers showing up to the house. Pires lost sight of the subject. Additionally, the intrusion was more significant because it was of his dwelling, not his garage.

Second, there was no reasonable belief that Appellant was armed. Piles testified that he did not suspect any weapons. R333.

Third, Appellant takes no position on whether Pires had probable cause to believe that the suspect committed the crime or had a strong reason to believe that the suspect is in the premises being entered. The K-9 team tracked the subject to that apartment, Pires recognized Appellant when standing at the doorway, and Pires saw Appellant before the warrantless entry occurred.

However, as to the fifth factor, the trial court erred in applying the factor that the likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public. The trial court reasoned that Appellant could change his appearance. Appellant may have been able to alter

his appearance or change his clothing, but Pires likely would have still recognized his face, as he stated that he saw the subject's face as he ran away. The weight of this factor is reduced on the grounds that delaying obtaining a warrant would not jeopardize the safety of officers.

When an officer illegally enters a home, "everything that occurred after the deputy stepped inside the home becomes tainted." *Wheeler v. State*, 956 So. 2d 517, 522 (Fla.2d DCA 2007). This requires suppression of evidence discovered after said entry because "but for the illegal entry," such evidence, including a Defendant's identity, would not have been discovered. *Id.* at 522. It is for this reason the inevitable discovery doctrine cannot preclude suppression of evidence. *Id.*

The erroneous admission of this evidence is subject to a harmless error analysis. Pursuant to *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986), the harmless error test requires the State "to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction."

In analyzing the impact the error had on the verdict, this Court

must examine both the permissible evidence presented to the jury for consideration and the impermissible evidence that may have influenced the jury. *Id.* In this case, all the evidence obtained following the warrantless entry into the residence was the only evidence connecting Appellant's identity as the perpetrator of the fleeing or eluding and one of the resisting charges. It was the only evidence of the second resisting charge. Thus, this Court cannot conclude that the erroneous admission of this evidence did not contribute to the convictions in this case. This Court should reverse Appellant's convictions and remand for a new trial.

POINT II

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

A. Background

Appellant was convicted of fleeing or eluding and resisting without violence. R208; T641. Fleeing or eluding is a third-degree felony, punishable by up to five years in prison. §§ 316.1935(2), 775.082(3)(e), Fla. Stat. (2020). Appellant argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with a felony. U.S. Const. amend. VI; U.S. Const. amend. XIV.

B. Standard of Review

The standard of review of constitutional claims is de novo. *See A.B. v. Fla. Dept. of Children & Family Services*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

Appellant can raise this issue for the first time on appeal because the issue isn't whether he preserved this issue by objecting in the trial court; the issue is whether he personally waived his constitutional right to a twelve-person jury, and he did not. *See Johnson v. State*, 994 So. 2d 960, 963-64 (Fla. 2008) (holding that defendant must personally waive constitutional right to have jury decide prior-

convictions element in felony DUI case; defense counsel's stipulation that trial court act as factfinder is insufficient).

C. Analysis

The Supreme Court held in *Williams v. Florida*, 399 U.S. at 86, that juries as small as six were constitutionally permissible. But *Williams* is impossible to square with the 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.

Prior to 1970, subjecting Appellant to a trial with only six jurors would have indisputably violated his Sixth Amendment rights. As the *Ramos* Court observed, even Blackstone recognized that under the common law, "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[.]' " *Id.* "A 'verdict, taken from eleven, was no verdict' at all." *Id.*

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, a jury of six at a criminal trial for a crime punishable by up to fifteen years in prison is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution. Appellant maintains, like Justice Gorsuch, that "Florida does what the Constitution forbids...." *Cunningham v. Florida*, 144 S. Ct. 1287 (2024) (Gorsuch, J., dissenting).

Appellant acknowledges that this Court rejected this argument in *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022). In rejecting Guzman's argument, this Court cited *State v. Khorrami*, 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021). *Guzman*, 350 So. 3d at 73. Khorrami's petition for writ of certiorari in the United States Supreme Court was subsequently denied, over dissents by Justices Kavanaugh and Gorsuch. *Khorrami v. Arizona*, 21-1553, 2022 WL 16726030 (U.S. Nov. 7, 2022).

Appellant also acknowledges that the United States Supreme Court denied review of the same 12-person jury argument in *Cunningham* as well as several other cases. *See Cunningham*, 144 S. Ct. 1287. Appellant raises this issue to seek further review.

CONCLUSION

This Court should reverse Appellant's convictions and sentences and remand with appropriate instructions.

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CERTIFICATE OF SERVICE

I certify that on this 12th day of December, 2025, a copy hereof has been electronically filed with this Court and furnished to Celia Terenzio, Esq., Assistant Attorney General, Counsel for Appellee, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401-3432, by email to: CrimAppWPB@MyFloridaLegal.com

/s/ Erika Follmer
Erika Follmer
Attorney for Appellant

CERTIFICATE OF FONT SIZE

I certify this brief is submitted in Bookman Old Style 14-point font in compliance with Florida Appellate Rule 9.210(a)(2) and that the word count is 13,000 or less exclusive of the caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block.

/s/ Erika Follmer
Erika Follmer
Attorney for Appellant

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

August 4, 2026

BREON BROWN, Appellant(s), v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2025-0699** L.T. No. - 062020CF001859A88810

BY ORDER OF THE COURT:

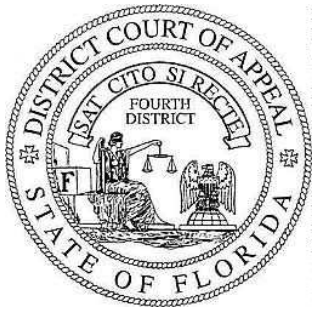
ORDERED that Appellant's July 10, 2026 motion for rehearing and motion to certify a question of great public importance is denied.

Served:
Crim App WPB Attorney General
Erika Elizabeth Follmer
Mary Elizabeth Johnson

AM

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

Lonn Weissblum
4D2025-0699 August 4, 2026
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-0699 August 4, 2026



DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

BREON BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-0699

[July 8, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Lorena V. Mastrarrigo, Judge; L.T. Case No. 062020CF001859A88810.

Daniel Eisinger, Public Defender, and Erika Follmer, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Mary Elizabeth Johnson, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed. See Guzman v. State, 350 So. 3d 72, 73 (Fla. 4th DCA 2022), *rev. denied*, No. SC2022-1597, 2023 WL 3830251 (Fla. June 6, 2023), *cert. denied*, 144 S. Ct. 2595, 219 L. Ed. 2d 1247 (U.S. May 28, 2024).

GROSS, MAY and LEVINE, JJ., concur.

* * *

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