No.

IN THE SUPREME COURT OF THE UNITED STATES

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LEONARDO DANIEL VALVERDE, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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

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# APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

**LEONARDO DANIEL VALVERDE,**
Appellant,

v.

**STATE OF FLORIDA,**
Appellee.

No. 4D2025-1803

[September 3, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Lawrence Michael Mirman, Judge; L.T. Case No. 562021CF001856AXXXXX.

Daniel Eisinger, Public Defender, and Mara C. Herbert, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Anesha Worthy, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

*Affirmed.*

LEVINE, KLINGENSMITH, JJ., and SIPERSTEIN, CARYN, Associate Judge, 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**

September 23, 2026

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| LEONARDO DANIEL VALVERDE,<br>Appellant(s)<br>v.<br><br>STATE OF FLORIDA,<br>Appellee(s). | **CASE NO. - 4D2025-1803**<br>L.T. No. - 562021CF001856AXXXXX |

**BY ORDER OF THE COURT:**

ORDERED that Appellant's September 15, 2026 motion for rehearing, written opinion, and/or certification is denied.

Served:
Crim App WPB Attorney General
Mara Catherine Herbert
Ronald Andersen Hurst, Jr.
Palm Beach Public Defender
Anesha Worthy

KEH

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

**LONN WEISSBLUM, Clerk**
**Fourth District Court of Appeal**
4D2025-1803 September 23, 2026

## STATEMENT OF THE CASE AND FACTS

### A. PROCEDURAL HISTORY

The State charged Appellant, Leonardo Daniel Valverde, in an amended information with one count of misdemeanor stalking (Count 1) and two counts of aggravated stalking (Counts 2 and 3). (R. 39-40). Count 3 alleged that between October 15, 2021 and December 7, 2021, Appellant committed aggravated stalking after an injunction for protection was issued in violation of Section 784.048(4), Florida Statutes. (R. 40). The case proceeded to trial, where the trial court empaneled a six-person jury.

The trial court denied Appellant's motion for judgment of acquittal. (T 531-32).

The jury found Appellant guilty of stalking on Count 1 and aggravated stalking on Counts 2 and 3. (R 483-84). The verdict form for Count 3 expressly reflected that the conviction was for "Aggravated Stalking-Injunction." (R 484):

Count 3: Aggravated Stalking-Injunction (between October 20, 2021 and December 7, 2021)

(Check Only One)

(X) Guilty of Aggravated Stalking

( ) Guilty of Stalking, a lesser included crime

( ) Guilty of Criminal Violation of a Repeat Violence Injunction, a lesser included crime

( ) Not Guilty

The trial court adjudicated Appellant guilty and sentenced him to five years' prison for Count 2; followed by a consecutive two years on community control and three years' probation on Count 3; and one year on probation for Count 1 to run concurrent with Count 3. (R 583-90). This appeal follows.

### B. The State's Case as Pertinent to Count 3

The following facts are limited to those necessary to resolve the issue raised on appeal, specifically, whether the evidence was legally sufficient to support the conviction for aggravated stalking in Count 3. Facts relevant to the other counts are omitted.

N.V. was the alleged victim in this case. The State introduced a temporary injunction for protection against repeat violence N.V. obtained against Appellant, issued on October 15, 2021. (State's

**ISSUE 2:** APPELLANT WAS ENTITLED TO A TWELVE-PERSON JURY UNDER THE SIXTH AMENDMENT AND HE DID NOT WAIVE THAT RIGHT

Appellant had the constitutional right to a jury trial before twelve jurors. *See Baldwin v. New York*, 399 U.S. 66, 72-73 (1970). Yet, a jury comprised of six people convicted Appellant. He argues that the Sixth Amendment guarantees the right to a twelve-person jury for an offense punishable by more than six months in jail.[1]

This Court reviews constitutional claims de novo. S*ee A.B. v. Fla. Dep't of Child. & Fam. Servs.*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005) ("The standard of review for the mother's constitutional claim is de novo[,] as this issue involves a question of law.").

Appellant can raise this issue for the first time on appeal because the issue is not 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. For

[1] The Supreme Court has held that the Sixth Amendment right to a jury trial applies to the states through the Fourteenth Amendment's Due Process Clause. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.").

example, even if defense counsel had no objection to a five-person jury, but the trial court did not secure the defendant's personal waiver of his or her right to a six-person jury, the case would present reversible error on appeal. *See Johnson v. State*, 994 So. 2d 960, 963-64 (Fla. 2008); *Wallace v. State*, 722 So. 2d 913, 914 (Fla. 2d DCA 1998); *Gamble v. State*, 696 So. 2d 420, 420 (Fla. 5th DCA 1997); *Blair v. State*, 698 So. 2d 1210, 1217-18 (Fla. 1997).

In short, the defendant himself must agree to be tried by a jury with fewer jurors than constitutionally required. Appellant acknowledges this Court came to a different conclusion in *Albritton v. State*, 360 So. 3d 1145 (Fla. 4th DCA 2023). But this Court may have overlooked *Wallace*, *Gamble*, *Blair*, and *Johnson*.

Previously, this Court has refused to rule on this issue because it is bound by Supreme Court precedent. *See Guzman v. State*, 350 15 So. 3d 72, 73 (Fla. 4th DCA 2022) (holding that this Court has "no authority to overrule . . . precedent from the United States Supreme Court that endorsed the use of a jury with only six members as constitutional" (quoting *Gonzalez v. State*, 982 So. 2d 77, 78 (Fla. 2d DCA 2008))).

Nonetheless, Appellant maintains, like Justice Gorsuch that "Florida does what the Constitution forbids." *See Cunningham v. Florida*, 144 S. Ct. 1287, 1287 (2024) (Gorsuch, J., dissenting from the denial of certiorari). Further, Appellant maintains that the Supreme Court has proven that it can overturn precedent when warranted. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Indeed, the Court will overturn precedent when that precedent is "irreconcilable with not just one, but two[] strands of constitutional precedent well established both before and after the decision." *Ramos v. Louisiana*, 140 S.Ct. 1390, 1409 (2020) (Sotomayor, J., concurring). "Moreover, '[t]he force of stare decisis is at its nadir in cases concerning [criminal] procedur[e] rules that implicate fundamental constitutional protections.'" *Id.* (alterations in original) (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013)). As such, Appellant continues to raise this good-faith argument for a change in the law.

Appellate attorneys have the obligation to "zealously assert[] the client's position under the rules of the adversary system." R. Regulating Fla. Bar prmbl. As part of this obligation, "[c]ounsel has

the responsibility to make such [arguments] as may be necessary to keep the defendant's case in an appellate 'pipeline.'" *Sandoval v. State*, 884 So. 2d 214, 217 n. 1 (Fla. 2d DCA 2004).

On the merits, *Williams* is ripe for being overturned as precedent because it is irreconcilable with decades of Court case law. Both the Florida and United States Constitutions protect the right to a jury trial in criminal cases. *See* amend. VI, U.S. Const. ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."); art. I, § 22, Fla. Const. ("The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.").

Although the United States Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible, *Williams* is impossible to square with the Supreme 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. This full-scale

embrace of the fixed-meaning canon, *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) ("Words must be given the meaning they had when the text was adopted."), means that Appellant's conviction by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution.

The prevalent use of twelve-person juries is not, as the Supreme Court held, an "historical accident." *Contra Williams v. Florida*, 399 U.S. 78, 89–90 (1970); *see also Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, Comment, *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, 633 (1998) (collecting cases from the late 1700s to the 1860s); *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).

Since antiquity, and contrary to Florida law, the right to a trial by jury has meant a jury consisting of twelve people. *See Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from the

denial of certiorari) ("For almost all of this Nation's history[,] and centuries before that, the right to [a] trial by jury for serious criminal offenses meant the right to a trial before [twelve] members of the community.").

In 1898, the United States Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant's right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898). The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. *See, e.g., Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930); *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).

"Acutely concerned with individuals and their liberty, the [F]ramers of our Constitution sought to preserve th[e] right [to a twelve-person jury] for future generations." *Cunningham*, 144 S. Ct. at 1287 (Gorsuch, J., dissenting from the denial of certiorari). "Yet today, a small number of States refuse to honor [that] promise." *Id.*

Florida is one of those states. In 1875, Florida amended its constitution to allow its legislature to legalize juries with less than twelve people, in direct contravention of the common law tradition

predating the Magna Carta. *See Gibson*, 16 Fla. at 300 (acknowledging that historically the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"). The Florida Legislature did so in 1877, enacting chapter 3010, which provided: "[t]welve men shall constitute a jury to try all capital cases, and six men shall constitute a jury to try all other offenses prosecuted by indictment." Ch. 3010, § 6, at 54, Laws of Fla. (1877) (codified at § 913.10, Fla. Stat.). This was, and still is, in direct violation of the Sixth Amendment.

Interestingly, when the Supreme Court gave Florida approval to continue its draconian practice of using juries with less than twelve people in felony trials, the Court used a mode of constitutional interpretation that contravenes the original meaning of the Sixth Amendment: a functionalist approach. *See Williams*, 399 U.S. at 98-103. Specifically, in *Williams*, the Court reasoned that it could find "no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury." *Id.* at 99. According to the Court, "[t]he relevant inquiry . . . must be the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.* at 99–100. "Measured

by th[at] standard," the Court held, "the [twelve-person jury] requirement [for felony trials] cannot be regarded as an indispensable component of the Sixth Amendment," because "neither currently available evidence nor theory suggests that the [twelve-person] jury is necessarily more advantageous to the defendant than a jury composed of fewer members." *Id.* at 100–02 (footnotes omitted).

Continuing down this dark road of functionalism, the Court decided *Apodaca v. Oregon*, 406 U.S. 404 (1972). There, the Court held that nonunanimous jury verdicts in state criminal trials comported with the Sixth Amendment. *Id.* at 406. "Justice White, writing for the plurality, applied a Williams-style inquiry focusing upon 'the function served by the jury in contemporary society' and concluded that the requirement of unanimity was not 'of constitutional stature.'" *Guzman*, 350 So. 3d at 73, 76 (Gross, J., concurring specially) (quoting *Apodaca*, 406 U.S. at 406, 410).

*Williams*'s ruling that the Sixth Amendment permits a six-person jury cannot stand in light of *Ramos*. There, the Supreme Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca*, a decision that it

faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." 140 S. Ct. at 1401-1402.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of "cost-benefit analysis" the Court undertook in *Williams*, observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" *Id.* at 1400-01. Ultimately, the *Ramos* Court explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required. *See id.* at 1395.

Even setting aside *Williams's* now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court "f[ou]nd little reason to think" that the goals of the jury guarantee—including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the

community"—"are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Williams*, 399 U.S. at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id.* at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams'* assumptions. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.* at 239.

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates that "reducing jury size inevitably has a drastic effect on the representation of minority group

members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); *see also* Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., *Achieving Diversity on the Jury*, supra, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Appellant recognizes that the state constitution provides:

> Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Art. I, § 22, Fla. Const. And he recognizes that section 913.10, Florida Statutes, provides for six jurors except in capital cases. *See also* Fla. R. Crim. P. 3.270.

But Florida's provision for a jury of six stems from the dawn of the Jim Crow era, one month after federal troops were withdrawn from the state. In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes

in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903).The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. 15 241.

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. See Jerrell H. Shofner, *Reconstruction and Renewal, 1865-1877, in The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018). The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

In *Ramos*, Justice Gorsuch noted 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.

Because *Williams* was wrongly decided, section 913.10 is facially unconstitutional. "As in all constitutional challenges, [a] statute comes to [this] Court clothed with the presumption of correctness and all reasonable doubts about [a] statute's validity must be resolved in favor of constitutionality." *City of Fort Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016). "[T]o overcome the presumption of constitutionality, 'the invalidity must appear beyond reasonable doubt.'" *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (quoting *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004)). "When courts consider the constitutionality of a statute that abridges a fundamental right, they are required to apply a strict scrutiny standard to determine whether the statute denies equal protection." *Dhar*, 185 So. 3d at 1234.

"A fundamental right is one [that] has its source in and is explicitly guaranteed by the federal or Florida Constitution." *State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2004). So "[t]o withstand strict scrutiny, a law must be necessary to promote a compelling

governmental interest and must be narrowly tailored to advance that interest." *Jackson v. State*, 137 So. 3d 470, 474 (Fla. 4th DCA 2014).

To "abridge" a fundamental right, a government has to "reduce" or "diminish" said right. *See Abridge*, Black's Law Dictionary (12th ed. 2024). This indicates that to abridge a fundamental right, a law must limit a person's ability to exercise their constitutional rights. This does not mean, however, that a government can substantially diminish that fundamental right. In fact, the only way for a government to do so, according to an originalist interpretation of the Constitution, is through a constitutional amendment, which was not done here. *See* Antonin Scalia, *The Essential Scalia: On the Constitution, the Courts, and the Rule of Law* 12 (Jeffrey S. Sutton & Edward Whelan eds., 2020) ("Originalists believe that the provisions of the Constitution have a fixed meaning, which does not change (except by constitutional amendment): they mean today what they meant when they were adopted, nothing more and nothing less."). Here, Appellant suggests that section 913.10 will never survive strict scrutiny, because section 913.10 does not merely abridge his Sixth Amendment right to a twelve-person jury, it effectively nullifies that fundamental right.

Nonetheless, even if this Court were to apply strict scrutiny, section 913.10 still fails because there is no compelling government interest. The history behind section 913.10 shows that Florida did not, and still does not, have a compelling government interest in limiting a defendant's Sixth Amendment right to a twelve-person jury, because Florida's reasoning for passing section 913.10 was racist to its very core. *See Wallace v. State*, 768 So. 2d 1247, 1250 (Fla. 1st DCA 2000) ("[R]acism has no place in our system of justice.").

In view of the foregoing, a jury of six at a criminal trial for any misdemeanor offense punishable by a year in jail is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution.