No.

IN THE SUPREME COURT OF THE UNITED STATES

GARY EDWARD CLANTON, 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

GARY EDWARD CLANTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-0104

[June 24, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Michael C. Heisey, Judge; L.T. Case No. 562022CF000556AXXXXX.

Daniel Eisinger, Public Defender, and Summer Ivy Hill, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Briana Paige Reed, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed. See Guzman v. State, 350 So. 3d 72 (Fla. 4th DCA 2022).

KLINGENSMITH, SHAW and LOTT, 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

August 5, 2026

GARY EDWARD CLANTON, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2025-0104** L.T. No. - 562022CF000556AXXXXX

BY ORDER OF THE COURT:

ORDERED that Appellant's July 9, 2026 motion for rehearing, certification, and/or to stay the mandate is denied.

Served:
Crim App WPB Attorney General
Summer Ivy Hill
Joseph Mollica
Palm Beach Public Defender
Briana Paige Reed
J. Renee Wilkins

KEH

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

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-0104 August 5, 2026

ISSUE VI

APPELLANT WAS ENTITLED TO A TWELVE-PERSON JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS AND HE DID NOT WAIVE THAT RIGHT

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 this does not violate the Sixth 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).

Appellant 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."). Further, section 913.10, Florida Statutes, is unconstitutional on its face. A defendant may raise the facial constitutionality of a statute for the first time on appeal. In *State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Mincey v. State*, 889 So. 2d 211, 212 (Fla. 4th DCA 2004).

The convictions and sentence should be reversed with instructions to afford Appellant a new trial.

CONCLUSION

Based on the foregoing arguments and authorities, this Court should discharge Appellant based on Stand Your Ground or reverse and remand for a new trial on the charge of Attempted Second Degree Murder before a twelve-person jury with directions to provide the proper jury instructions. In the alternative, Appellant requests a