Supreme Court of Florida

No. SC2024-1191

JAMES GUZMAN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

November 5, 2026

GROSSHANS, J.

James Guzman appeals his sentence of death imposed after his most recent penalty phase. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons detailed below, we affirm.

I

This case has a long and complicated history. Three times, Guzman has been tried and found guilty of David Colvin's murder, with his first trial occurring in 1992 and the most recent occurring in 2016. That 2016 conviction still stands. And regarding the punishment for Colvin's murder, Guzman has had four penalty-

phase proceedings. Each time, a judge sentenced him to death.[1] At issue in this appeal is the fourth penalty phase and the resulting death sentence.

Jury selection for Guzman's latest penalty phase began on March 11, 2024. Following the second day of jury selection, Jim Rose, the attorney who represented Guzman during his first appeal in 1994, emailed the trial judge. In this email, Mr. Rose informed the judge that his firm, Rice and Rose, had hired her in May 1994—three weeks before oral argument in Guzman's appeal but after submission of the briefs.[2] The next day, the judge disclosed this fact to the attorneys representing Guzman and the State.

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1. *See Guzman v. State*, 644 So. 2d 996, 1000 (Fla. 1994) (reversing convictions and sentences and remanding for a new trial); *Guzman v. State*, 721 So. 2d 1155, 1162 (Fla. 1998) (affirming convictions and death sentence following second trial); *Guzman v. Sec'y, Dep't of Corr.*, 663 F.3d 1336, 1356 (11th Cir. 2011) (affirming decision granting habeas relief by vacating his conviction and ordering a new trial); *Guzman v. State*, 238 So. 3d 146, 149, 157-58 (Fla. 2018) (affirming the first-degree murder conviction but vacating the death sentence pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016)).

2. The initial brief was filed in October of 1993, and the reply brief was filed in March of 1994.

One day after the disclosure, the judge notified Guzman on the record. She explained that prior to her start at Rice and Rose, Mr. Rose had completed all substantive legal work on Guzman's case, except for oral argument. While she was at the firm, she did not work on Guzman's case or any other criminal matter.

Based on this information, Guzman filed a motion to disqualify the judge and attached a supporting affidavit. In the affidavit, Guzman underscored the facts of the judge's prior employment. Though Guzman acknowledged that the judge did not work on his case, he expressed concern that the judge could not be fair and impartial because she failed to disclose the potential conflict when she was initially assigned his case. In the disqualification motion itself, the only basis for the judge's disqualification was as follows:

> The Defendant has expressed reasonable fears that he will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge based [on] her prior affiliation with Rice [and] Rose at the time [it] represented James Guzman on his appeal.

In an unelaborated order, the judge denied Guzman's motion as legally insufficient.

At the ensuing penalty phase, the State sought to establish four aggravating circumstances. To this end, the State called

several witnesses who testified to the facts surrounding Colvin's death and those leading to Guzman's arrest. The State introduced the prior testimony of Guzman's ex-girlfriend, which she had given at Guzman's 2016 retrial. She explained that Guzman had hinted at robbing Colvin and mentioned to her before the murder that "a dead witness can't talk." On the day of the murder, she saw Guzman return to their shared motel room with bloody rags and what was later determined to be Colvin's ring. Guzman sold the ring for money and drugs. The ex-girlfriend further noted that Guzman instructed her not to talk to the police about what she had seen.

The State also introduced the prior testimony of the medical examiner who performed Colvin's autopsy. According to the examiner, who had testified at Guzman's prior trial, Colvin was stabbed or hacked at least nineteen times in the head, neck, and chest with a heavy-bladed instrument. Those wounds—found on the front and back of Colvin's body—caused Colvin to go into shock and bleed to death. Another medical examiner presented live testimony, confirming that Colvin died from multiple stab and incised wounds.

Additionally, the State introduced Guzman's 1982 convictions for second-degree murder, attempted second-degree murder, kidnapping, and robbery. A retired law enforcement officer testified about the facts giving rise to the convictions, explaining that Guzman kidnapped two women, drove them to a rural area near the Everglades, and eventually shot and killed one of them. Guzman was sentenced to thirty years in prison for this murder but was released in April 1991—four months before Colvin's murder.

Following the State's case, Guzman presented evidence in mitigation. This included testimony from Dr. Hyman Eisenstein, a clinical psychologist. Based on his interviews with and testing of Guzman, Dr. Eisenstein concluded that Guzman had low verbal learning skills, experienced cognitive dysregulation, and struggled with higher executive functioning relating to judgment and reasoning, impulsivity, learning, emotional and cognitive control, and information processing.[3]

3. A prison consultant also gave testimony on the subject of mitigation. In his view, Guzman had a satisfactory attitude and was not a problem inmate.

Ultimately, the jury unanimously found the proposed aggravating factors beyond a reasonable doubt and recommended that Guzman be sentenced to death. Following a *Spencer*[4] hearing and a separate sentencing hearing, the court announced its decision to impose the death penalty. In its sentencing order, the court found four aggravating factors: (1) Guzman had six convictions for violent felonies committed in 1982 (very great weight); (2) Guzman committed Colvin's murder for financial gain and during the course of a robbery (merged; very great weight); (3) Guzman committed the murder to avoid or prevent a lawful arrest (great weight); and (4) Colvin's murder was especially heinous, atrocious, or cruel (very great weight).[5] As for mitigation, the court found twenty-two circumstances supported by the record. This included one statutory factor, namely that Guzman committed the murder while under the influence of extreme mental or

4. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

5. After accompanying Colvin on some errands, Guzman attacked Colvin in his motel room, stabbing him numerous times with a heavy-bladed instrument. Though Colvin was drunk, he attempted to defend himself and suffered a defensive wound. That wound revealed he was conscious for at least part of the attack.

emotional disturbance (very slight weight).[6] However, in the final analysis, the court agreed with the jury's recommendation of death and sentenced Guzman accordingly. This appeal follows.

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6. The twenty-one nonstatutory factors were: (1) Guzman completed his high school diploma while incarcerated (slight weight); (2) Guzman displayed appropriate courtroom behavior (moderate weight); (3) Guzman spent most of his life in the custody of the Department of Corrections (moderate weight); (4) Guzman continued to seek personal enrichment during incarceration (slight weight); (5) the effects of a life sentence on Guzman (slight weight); (6) Guzman's significant health issues (very slight weight); (7) Guzman's average intelligence (very slight weight); (8) Guzman functions well in a structured environment (very slight weight); (9) Guzman was raised without a strong parental figure (slight weight); (10) Guzman dropped out of school in the ninth grade (slight weight); (11) Guzman became a parent at age seventeen (very slight weight); (12) Guzman was exposed to substantial criminal activity at a young age (very slight weight); (13) Guzman used and abused cocaine and crack cocaine at the time of the offense (slight weight); (14) Guzman grew up in a dysfunctional family (very slight weight); (15) Guzman has the support of his family (very slight weight); (16) Guzman was exposed to violence and criminal activity as an adolescent (very slight weight); (17) Guzman may be eligible for parole if sentenced to life (very slight weight); (18) Guzman lacked a positive role model (very slight weight); (19) Guzman witnessed violence, drug use, and gun use at a young age (very slight weight); (20) Guzman was surrounded by people engaged in destructive or dysfunctional behavior (very slight weight); and (21) Guzman's age at the time of the offense (very slight weight).

II

Guzman raises three issues for our review. First, he argues that the lower court violated his right to a fair and impartial penalty phase by denying his motion for judicial disqualification. Second, he contends that the court committed constitutional error in admitting victim impact testimony without an adequate instruction. And as his final argument, Guzman claims that the death penalty violates the Eighth Amendment because it is inherently cruel and unusual. None of these arguments have merit.

A

Guzman argues that the trial judge erred in denying his motion for disqualification. We review the legal sufficiency of such motions de novo. *Chamberlain v. State*, 881 So. 2d 1087, 1097 (Fla. 2004) (citing *Barnhill v. State*, 834 So. 2d 836, 843 (Fla. 2002)).

Motions for judicial disqualification are governed substantively by section 38.10, Florida Statutes, and procedurally by Florida Rule of General Practice and Judicial Administration 2.330. Starting with the statute, section 38.10 requires disqualification when a party "makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on

account of the prejudice of the judge of that court against the applicant or in favor of the adverse party." Our rule adds that in ruling on a motion to disqualify, the judge "may determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." Fla. R. Gen. Prac. & Jud. Admin. 2.330(h).

A motion is legally insufficient if the movant fails to "allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification." Fla. R. Gen. Prac. & Jud. Admin. 2.330(c)(2); *see also Parker v. State*, 3 So. 3d 974, 982 (Fla. 2009) (explaining that a motion is legally insufficient where the party claims judicial bias "based on very general and speculative assertions about the trial judge's attitudes" (citing *McCrae v. State*, 510 So. 2d 874, 880 (Fla. 1987))). A motion is also legally insufficient if "the facts alleged, which must be assumed to be true," fail to show the movant has "a well-founded fear that he or she will not receive a fair trial at the hands of that judge." *Stein v. State*, 995 So. 2d 329, 334 (Fla. 2008) (quoting *Gore v. State*, 964 So. 2d 1257, 1268 (Fla. 2007)). Notably, "a mere 'subjective fear' . . . will not be legally sufficient; rather, the fear must be objectively reasonable." *Arbelaez v. State*, 898 So. 2d 25, 41 (Fla. 2005)

(citation modified) (quoting *Fischer v. Knuck*, 497 So. 2d 240, 242 (Fla. 1986)).

In this case, Guzman gave two reasons for his fear that he could not receive a fair trial: (1) the judge worked at Rice and Rose while Mr. Rose represented him in 1994, and (2) the judge's delay in apprising the parties of this work association.

We begin with the trial judge's affiliation with Rice and Rose, which briefly overlapped with the firm's representation of Guzman in his first appeal. The judge began working at the firm in May 1994 after submission of the briefs in Guzman's appeal. Mr. Rose argued the case before this Court three weeks after the judge joined the firm, but she did not work on Guzman's case. In fact, she did not work on any criminal matters at the firm.

Although his affidavit contained no specific allegations beyond the fact of the judge's affiliation with Rice and Rose, in his arguments before us, Guzman suggests that the judge could have learned confidential information during her time with the firm and that such information could have caused her to prejudge his case. However, these untimely assertions are purely speculative and unsupported by any specific allegations. *See Downs v. Moore*, 801

So. 2d 906, 915 (Fla. 2001) (requiring an allegation of information the judge could have learned and an explanation of how such knowledge led to a reasonable fear of bias or prejudice). Lacking any specific facts, we conclude that the judge's mere affiliation with the firm, which briefly overlapped with its handling of Guzman's first appeal, is insufficient to show that Guzman's concerns about receiving a fair trial were reasonable.[7]

Our precedent does not require us to hold otherwise. It is true that we have found an objectively reasonable fear exists if the judge previously worked for a party opposing the defendant in litigation, namely the State or victims, and had direct or supervisory input into the case. *See Maharaj v. State*, 684 So. 2d 726, 728 (Fla. 1996) (recusal required when the judge presiding over a defendant's postconviction motion supervised the assistant state attorneys who prosecuted the defendant); *Reed v. State*, 259 So. 3d 718, 721 (Fla.

7. For the first time on appeal, Guzman argues that rule 2.330(e)(3) provides grounds for categorical disqualification without regard for case-specific facts bearing on the reasonableness of a defendant's fear of prejudice. As Guzman failed to raise this argument below, we decline to consider it. *See Ault v. State*, 53 So. 3d 175, 204 (Fla. 2010) (applying preservation requirements in the disqualification context).

2018) (recusal required when judge worked in capital crimes division of State Attorney's Office that prosecuted defendant and "had input" in other prosecutors' decisions); *Steinhorst v. State*, 636 So. 2d 498, 500 (Fla. 1994) (noting that concerns arise when a judge previously advised the victim's family about a potential wrongful death suit against the defendant regarding the criminal act). Unlike the situations where we have found disqualification was warranted, the trial judge here did not work for the State in any previous prosecution of Guzman and has never represented Colvin or his estate. Instead, the firm employing her represented Guzman and advanced an argument that secured him a new trial. In view of our precedents, it is significant that the judge never took on a role adversarial to Guzman. That the judge worked at the same firm as Guzman's first appellate attorney does not give rise to a reasonable fear of receiving an unfair trial and is thus legally insufficient to support disqualification.

Guzman's second reason for disqualification fares no better. In his affidavit, Guzman faulted the judge for failing to disclose her affiliation earlier, i.e., at the time she was assigned to his case. Guzman's argument, though, assumes that the law imposes an

affirmative duty on trial judges to scour the record immediately upon assignment to discover any potential grounds for disqualification. We are aware of no such duty and decline to recognize one now.

We note that this assertion materially differs from one claiming that the judge knew of an arguable ground for disqualification but failed to disclose it. Under certain circumstances, that sort of failure could be a meaningful fact in support of an objectively reasonable fear. Nonetheless, Guzman's claim here is simply that the judge failed to discover and disclose, *soon enough*, the basis for which disqualification was sought. That, we think, falls well short of alleging the necessary level of objective fear that would require disqualification.[8]

Because Guzman's motion was legally insufficient, we affirm the court's denial of his motion to disqualify.

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8. We further note that despite his claimed fear of an unfair trial, Guzman did not seek immediate review of the denial of his disqualification motion by way of a petition for a writ of prohibition.

B

Guzman next contends that the court's failure to properly instruct the jury as to its use of victim impact testimony denied him due process.

We initially note that Guzman failed to preserve this argument. "[T]o be preserved, the issue or legal argument must be raised *and* ruled on by the trial court." *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)).

Before jury selection began, Guzman filed a motion seeking to exclude the victim impact testimony and challenging the constitutionality of the victim impact statute.[9] The trial court reserved judgment on the motion until defense counsel had an opportunity to confer with the prosecutor about the evidence. At a later status hearing, defense counsel informed the court that she and the prosecutor had agreed on the content of the victim impact statements. In light of that resolution, the court never ruled on Guzman's motion. And Guzman did not contemporaneously object

9. *See* § 921.141(8), Fla. Stat.

to any victim impact testimony during the penalty-phase trial. Because he never received a ruling, Guzman failed to preserve this argument for appeal. *See Ritchie*, 344 So. 3d at 378.

That Guzman frames his argument as a constitutional challenge does not affect our analysis. Though "a facial challenge to a statute's constitutional validity may be raised for the first time on appeal," an as-applied challenge "must be raised at the trial level." *Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002) (citing *State v. Johnson*, 616 So. 2d 1, 3 (Fla. 1993)). Guzman, in substance, brings an as-applied challenge: he admits that victim impact testimony is not per se unconstitutional and instead claims the victim impact evidence in his case was unconstitutional because the court did not properly instruct the jury on how to consider and weigh the evidence. Again, because Guzman did not present this instruction-based argument to the court or receive a ruling on the argument, it is not preserved for our review. *See Ritchie*, 344 So. 3d at 378.

Nevertheless, even if preserved, his arguments are meritless. After the court swore in the jury, the court gave the following instruction: "[V]ictim impact evidence may be presented. Such

evidence is only presented to demonstrate the victim's uniqueness as an individual and the loss to the community by the victim's death. However, victim impact evidence must not be considered by you as an aggravating factor." The court read this instruction four more times—before each of the three witness statements and once more during its final charge to the jury. We conclude that this instruction provided sufficient guidance on the proper role of victim impact testimony in the jury's decision-making process. *See Farina v. State*, 801 So. 2d 44, 53 (Fla. 2001) (holding the lower court did not err by giving an instruction substantially similar to the one given here). Thus, we deny relief on this claim.

C

Finally, Guzman claims that the death penalty is inherently cruel and unusual, rendering it facially unconstitutional. We have previously rejected comparable constitutional challenges and decline to revisit that precedent. *See Loyd v. State*, 379 So. 3d 1080, 1096-97 (Fla. 2023); *Knight v. State*, 225 So. 3d 661, 680 (Fla. 2017); *Lightbourne v. McCollum*, 969 So. 2d 326, 352-53 (Fla. 2007); *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023); *Valle v.*

State, 70 So. 3d 530, 552 (Fla. 2011); *Lambrix v. State*, 217 So. 3d 977, 988 (Fla. 2017).

III

For the reasons given above, we affirm Guzman's sentence of death.

It is so ordered.

COURIEL, C.J., and MUÑIZ, FRANCIS, BARRIOS, and TANENBAUM, JJ., concur.
LABARGA, J., concurs in result with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

LABARGA, J., concurring in result.

I acknowledge the significant aggravating factors found by the trial court in this case. However, I also continue to adhere to my dissenting opinion in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), which receded from decades of proportionality review in cases involving a direct appeal of a sentence of death. For this reason, I concur in the result.

An Appeal from the Circuit Court in and for Volusia County,
Dawn D. Nichols, Judge
Case No. 641991CF006795XXXAES

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