IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

MATIAS SERGIO QUIROGA,
Appellant, CASE NO. 3D25-0766

vs. L.T. NO. M24-022790

THE STATE OF FLORIDA,
Appellee.
_____/

NOTICE OF CONFESSION OF ERROR ON ARGUMENT ONE

Appellee, the State of Florida, by and through undersigned counsel, having further reviewed the record and the law, files this notice of confession of error with respect to Argument One based on the following grounds:

1. Appellant argues that because the arrest affidavit only alleged a violation of a municipal ordinance for the charge of disorderly intoxication for an offense that occurred on Miccosukee Indian land and because no information was filed, the trial court lacked subject matter jurisdiction over this case. In other words, where the State (mistakenly) charged and prosecuted a non-Indian found on Indian land (Miccosukee Casino & Resort) with disorderly intoxication as a violation of municipal ordinance in an arrest affidavit without filing an Information, rather than under Florida Statute § 856.011, the county court lacked subject matter jurisdiction over the case.

2. The State concedes that there were two independent defects – each individually sufficient to negate jurisdiction which combine to render the prosecution void: (1) prosecution under a municipal ordinance for conduct occurring on Indian land is impermissible because Florida's assumption of criminal jurisdiction over Indian reservations under Fla. Stat. § 285.16 is limited to state laws of statewide application, which expressly excludes local ordinances; and (2) the complete absence of a filed information or a Notice to Appear with the correct Florida Statute or municipal ordinance violation or any other valid charging document deprives the county court of the jurisdictional predicate required by Florida case law and the 1977 Fla. Op. Atty. Gen. 61. *See Vasquez v. State,* 450 So. 2d 203, 204 (Fla. 1984) (holding that "[j]urisdiction in criminal cases is determined by the charge made in the indictment or information."). Specifically, because the arrest affidavit did not reference Florida Statute § 856.011 and only referenced a municipal ordinance, even though there was no objection below to the arrest affidavit serving as a Notice to Appear which would have been permissible, the court did not have jurisdiction over this case.

3. As a result of the lack of jurisdiction to try this case, the question exists as to whether the appellate court has authority to review the sufficiency of the evidence (Argument II), for a trial for which there was no jurisdiction.

There does not appear to be a clear answer to this under Florida law, but some federal cases suggest that appellate authority remains due to potential double jeopardy concerns. *See, e.g., United States v. Wright,* 516 F. Supp. 1113 (S.D. Fla. 1981) (holding that no jurisdiction for magistrate judge to try case, but sufficiency of evidence could still be reviewed in the appeal, where the "appeal" went to the district judge, not the appellate court); *see also United States v. Bobo,* 419 F.3d 1264 (11th Cir. 2005) (holding that even where a conviction is being vacated on other grounds – including an insufficient indictment – the court is required by its own standing practice to review sufficiency of the evidence claims raised by defendants, "to avoid potential double jeopardy problems.")

4. Based upon the outcome of the sufficiency of the evidence issue in argument II, if this Court finds that there was substantial competent evidence to support the finding of guilt for disorderly intoxication, then the case should be remanded for further proceedings in the trial court. If, on the other hand, this Court determines that the evidence was insufficient to sustain the finding of guilt, then the case should be reversed and remanded to the trial court for the charges to be dismissed and to vacate the withhold of adjudication and order imposing costs on the charge of disorderly intoxication.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Confession of Error on Point One has been electronically filed on the eportal and furnished to Amy Weber, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125 at appellatedefender@pdmiami.com and ALW@pdmiami.com on April 15, 2026 and that this document complies with the font (Arial) and word-limit requirements in Florida Rule of Appellate Procedure 9.145.

/s/ Ivy R. Ginsberg
IVY R. GINSBERG