Filing # 238555019 E-Filed 12/30/2025 01:03:29 PM

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 2025-0766

MATIAS SERGIO QUIROGA,

Appellant

-vs.-

THE STATE OF FLORIDA,

Appellee.

REPLY BRIEF OF APPELLANT

APPEAL FROM THE COUNTY COURT
IN AND FOR MIAMI-DADE COUNTY

CARLOS J. MARTINEZ
Office of the Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1600

AMY WEBER
Assistant Public Defender
Florida Bar No. 662151
AppellateDefender@pdmiami.com
ALW@pdmiami.com

Counsel for Appellant

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 2025-0766

MATIAS SERGIO QUIROGA,

Appellant

-vs.-

THE STATE OF FLORIDA,

Appellee.

APPEAL FROM THE COUNTY COURT
IN AND FOR MIAMI-DADE COUNTY

REPLY BRIEF OF APPELLANT

INTRODUCTION

This is a direct appeal from the withhold of adjudication and sentence entered by the Honorable Lisset Martinez, County Court Judge in the Eleventh Judicial Circuit, by and for Miami-Dade County. In this brief, "R." refers to the Record on Appeal, "S." refers to the Appellant's Supplemental Record on Appeal, "IB" refers to the

Initial Brief of Appellant, and "AB" refers to the Answer Brief of Appellee.

ARGUMENT

I. Quiroga may raise the lack of subject matter jurisdiction on direct appeal, and the arrest affidavit did not allege, nor did it confer jurisdiction on the county court to adjudicate, any violation of Florida state law.

A. Quiroga may raise the lack of subject matter jurisdiction for the first time on appeal.

Appellee's preservation argument hinges on its assertion that the complete absence of a valid charging document is a "technical deficiency," like a typographical error or a few missing words in an otherwise valid information. AB at 15. But no charging document over which the county court had jurisdiction was ever filed here, and Quiroga is not complaining about an isolated missing word or citation. *See* IB at 7-10. Appellee's claim that "the issue here is not in fact a lack of subject matter jurisdiction, but a deficiency in the charging document" is entirely incorrect. While a minor error in an otherwise valid information or indictment may require a contemporaneous objection, the absence of subject matter jurisdiction does not. *See Izquierdo v. State*, 890 So. 2d 1263, 1266

(Fla. 5th DCA 2005)(lack of subject matter jurisdiction cannot be waived); *Sclafani v. Dade Cnty.*, 323 So. 2d 675, 676 (Fla. 3d DCA 1975)(defense counsel's agreement that the court had jurisdiction over the charge did not constitute a waiver of the challenge to jurisdiction on appeal). When a court entirely lacks authority to adjudicate a criminal accusation, that error is not a "deficiency in the charging document." Quiroga alleges a lack of subject matter jurisdiction here. A lack of subject matter jurisdiction cannot be waived, either by agreement or a failure to object, and Quiroga may raise at any time. *See Izquierdo*; *Sclafani*.

B. Quiroga was charged with a violation of Miccosukee law, not a violation of Florida State law, and the county court lacked jurisdiction over that offense.

To avoid Quiroga's jurisdictional challenge, Appellee's Answer Brief asserts, without any factual or legal basis, that the State charged Quiroga with committing the misdemeanor offense of disorderly intoxication, in violation of section 856.011 of the Florida Statutes. AB at 13-14. But the record clearly refutes that claim, and there is no dispute that the county court lacked jurisdiction to adjudicate an alleged violation of Miccosukee tribal law.

1. The record shows Quiroga was purportedly charged with an "ordinance violation," not a state law misdemeanor.

There is simply no record support for Appellee's conclusion that Quiroga was charged and found guilty of a state law misdemeanor. The court file does not include any document or notation alleging a state law misdemeanor. (R. 2-54). Neither did the trial court nor the parties ever mention or suggest that a misdemeanor offense was at issue. (R. 84-299). On the contrary, the record contains repeated, consistent, references to an "ordinance violation," including:

- The arrest form lists the charge as a municipal ordinance violation, "L/O – DISORDERLY INTOXICATION/MUNICIPAL ORDINANCE" (R. 13).

- Under the "Charged As" column on the arrest affidavit, the notation "ORD" appears. (R. 13).

- Quiroga's surety appearance bond paperwork twice lists his charge as "Disorderly Intoxication / Mun Ord." (R. 17-18).

- During voir dire, the trial court informed the jury that Quiroga was charged with "Disorderly intoxication by municipal ordinance." (S. 24).

- The court's preliminary instructions informed the jury that Quiroga was charged with "disorderly intoxication by Municipal Ordinance." (R. 106).

- The court's final jury instructions indicated that Quiroga was accused of "Disorderly Intoxication / Municipal Ordinance." (R. 41, 266).

- The verdict form states, "We, the jury, at Miami-Dade County, Florida, this 26th day or February 2025, find the Defendant, MATIAS SERGIO QUIROGA GUILTY OF THE OFFENSE OF DISORDERLY INTOXICATION In violation of MUNICIPAL ORDINANCE." (R. 53).

There is simply no question that Quiroga was charged with a violation of some municipal ordinance, not a misdemeanor under Florida state law.[1]

2. Appellee admits in its answer brief that the only charging document alleged violations of Miccosukee law.

Appellee admits in its Answer Brief that the arresting officer cited "the Miccosukee Tribe of Indians of Florida Criminal and Civil Code" in the arrest affidavit. AB at 17.[2] The arrest affidavit is the only charging document filed in this case. The only "municipal

[1] Even if the arrest affidavit had alleged a misdemeanor, it did not specify the date, time, and location where Quiroga was required to appear, was not a valid Notice to Appear under Rule 3.125, and the State needed to file an information to charge that offense. *See* Fla. R. Crim. P. 3.140 (misdemeanors must be charged by information or notice to appear under 3.125); *Hampton v. State*, 103 So. 3d 98 (Fla. 2012)(arrest affidavit was not a valid Notice to Appear and did not charge a violation of state law).

[2] Appellee also concedes that the "Miami-Dade County Ordinance on disorderly intoxication" is not applicable here. AB at 11.

ordinance" Quiroga could have violated while on tribal land is that of the Miccosukee Tribe, the same allegation made in the arrest affidavit.

3. Appellee does not dispute that the county court lacks jurisdiction over violations of Miccosukee Tribal Law.

Importantly, Appellee does not dispute that the county court lacks jurisdiction to adjudicate matters of Miccosukee law. AB at 12-13. It specifically noted that Florida courts only have jurisdiction over violations of **Florida law** that occur on tribal land. AB at 13. Its admission that a violation of Miccosukee law was alleged on the arrest affidavit, coupled with the undeniable conclusion that Quiroga was **not** charged with a state law misdemeanor, demonstrates that (a) this case involved an alleged violation of Miccosukee tribal law, and (b) the county court lacked jurisdiction over Quiroga's case.

Because the county court lacked jurisdiction over these allegations against Quiroga, the withhold of adjudication and order imposing costs are void, and this Court should vacate them and reverse with an order that the county court dismiss this case.

II. Quiroga's speech, which temporarily attracted the attention of a handful of people, did not create a "public disturbance" and was not criminal.

If this Court finds that the trial court had jurisdiction and that Quiroga was properly charged and found guilty of disorderly intoxication, a misdemeanor violation of Florida state law, it must nevertheless reverse his withhold of adjudication and court costs because there was no "competent, substantial evidence to support the verdict." *Bush v. State*, 295 So. 3d 179, 200 (Fla. 2020). Appellee's Answer Brief fails to distinguish persuasive precedent and urges an interpretation of the disorderly intoxication statute that would render it unconstitutional. This Court should decline to adopt it.

Because a statute criminalizing protected speech is constitutionally invalid, Florida courts have taken great care to limit the disorderly conduct statute to "fighting words" and those that create "a clear and present danger of bodily harm to others." *State v. Saunders*, 339 So. 2d 641, 644 (Fla. 1976). Similar constitutional concerns arise when the State seeks a criminal conviction for mere words under the disorderly intoxication statute. *See Cross v. State*, 374 So. 2d 519, 521 (Fla. 1979)(Cross's conviction for disorderly

intoxication did not violate the First Amendment where, in addition to loudly and profanely abusing an officer, Cross threatened the officer and his family, threw a bag into the officer's cruiser, hitting him in the face, and created a disturbance in which several members of the public were drawn to the scene). Therefore, there are only limited circumstances in which speech alone, whether uttered by a sober or intoxicated person, can support criminal liability. Speech cannot be criminal unless "the words invade the right of others to pursue their lawful activities." *Id.* at 521, quoting *S.H.B. v. State*, 355 So. 2d 1176, 1179 (Fla. 1978). In the context of the disorderly intoxication statute, this invasion of rights occurs when there is a "public disturbance." § 856.011(1), Fla. Stat. (2024).

Appellee asks this Court to hold that, because several employees engaged with Quiroga and a handful of people glanced over at him without gathering or otherwise changing what they were doing, Quiroga's verbal complaints were criminal. AB at 23. It cites no case that approves such an expansive interpretation of the disorderly intoxication statute. However, there are a host of cases applying disorderly intoxication and disorderly conduct statutes

that hold the opposite. Appellee failed to distinguish these cases, cited Appellant's initial brief.

For example, in *Palancar v. State*, the complaining officer "testified that there were other people in the area when the incident occurred and that Palancar 'was yelling and did cause a disturbance where we had onlookers.'" 204 So. 3d 473, 475 (Fla. 4th DCA 2016). Similarly, in *Jernigan v. State*, 566 So. 2d 39, 40 (Fla. 1st DCA 1990), a police dispatcher went to the police station, "threw down his keys then took off his sunglasses, crumpled them, and threw them down," engaged in profanity, and "upset the entire police department." *Id.* Although other people were present at both scenes, neither court found the defendant's conduct was criminal. *Id.*; *Palancar*, 204 So. 3d at 475.

The same is true here. The only people who were drawn to this scene were hotel and casino employees whose job it was to address Quiroga's complaints. While it is true that other patrons were in the casino while Quiroga engaged with hotel staff, they did not gather in response to Quiroga's conduct. They may have briefly looked over towards Quiroga, but there was simply no "public disturbance." § 856.011, Fla. Stat. (2024); *Palancar*; *Jernigan*; *see also Fields v.*

State, 24 So. 3d 646, 648 (Fla. 3d DCA 2009)(evidence that bank patrons stopped to watch Fields as they were coming out of the bank was insufficient to support a conviction for disorderly conduct); *Smith v. State*, 967 So. 2d 937, 940 (Fla. 2d DCA 2007)(evidence that witnesses to Smith's speech "were either curious or annoyed" insufficient). The surveillance video, which shows the entirety of Quiroga's purported criminal conduct, definitively shows that his complaints had no larger public impact, save for engaging the fleeting curiosity of a handful of casino patrons.[3]

Because the State failed to introduce competent, substantial evidence that Quiroga caused a public disturbance, the trial court erred in denying his motion for judgment of acquittal.

[3] Where "a ruling is based on an audio recording or videotape, the trial court is in no better position to evaluate such evidence than the appellate court, which may review the tape for facts legally sufficient to support the trial court's ruling." *McCloud v. State*, 208 So. 3d 668, 676 (Fla. 2016)(internal quotation and citation omitted).

CONCLUSION

For the reasons set forth above, the appellant requests this court vacate the withhold of adjudication and order imposing costs on the charge of disorderly intoxication *or* reverse the same and remand the case to the trial court with instructions that the court enter a judgment of acquittal.

Respectfully submitted,

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545–1960

BY: */s/ Amy Weber*
AMY WEBER
Assistant Public Defender
Florida Bar No. 662151
AppellateDefender@pdmiami.com
ALW@pdmiami.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's efiling portal to the Office of the Attorney General, Criminal Division, at CrimAppMIA@MyFloridaLegal.com, this 30th day of December, 2025. Undersigned counsel hereby designates, pursuant to Rule 2.516, the following email addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary email address); ALW@pdmiami.com (secondary email address).

/s/ Amy Weber
AMY WEBER
Assistant Public Defender

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the type used in this brief is 14-point proportionately spaced Bookman Old Style. Undersigned counsel further certifies that this brief complies with the word count limits in Rule 9.210 of the Rules of Appellate Procedure.

/s/ Amy Weber
AMY WEBER
Assistant Public Defender