

**IN THE SUPREME COURT OF FLORIDA**

Case No. SC 23-53

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RON DESANTIS, GOVERNOR, ET AL.,  
Appellants,

v.

DREAM DEFENDERS, ET AL.,  
Appellees.

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**INITIAL BRIEF OF APPELLANT SHERIFF MIKE WILLIAMS**

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ON A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT, CASE No. 21-13489

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## **INTRODUCTION**

Section 870.01(2), Florida Statutes (2021), prohibits “willfully participat[ing] in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in ...[i]njury to another person; ... [d]amage to property; ... or [i]mminent danger of injury to another person or damage to property.” Under the plain language of the statute, a person present at a violent public disturbance does not violate the statute if he does not personally engage in or abet violence and disorderly conduct, if he lacks the shared common intent, or if he peacefully protests in the midst of violence or disorderly conduct by others. Nor does the statute prohibit aiding others, where the aid would not make the protestor a principal in a crime. The statute thus proscribes the same behavior that the common law defined as a riot, while allowing constitutionally protected conduct.

## STATEMENT OF THE CASE AND FACTS

### **I. Background**

Before 2021, Florida statutory law prohibited rioting and “inciting or encouraging a riot.” § 870.01, Fla. Stat. (1971). Although the statute did not define the term “riot,” this Court had defined it as

[a] tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner.

*State v. Beasley*, 317 So. 2d 750, 752 (Fla. 1975).

In 2021, the Florida Legislature enacted House Bill 1, which became law on April 19, 2021. Section 15 of the bill amended section 870.01(2), Florida Statutes, to define a riot in a way that generally corresponds to this Court’s definition in *Beasley*:

(2) A person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in:

- (a) Injury to another person;
- (b) Damage to property; or
- (c) Imminent danger of injury to another person or damage to property.

A person who commits a riot commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## **II. Procedural History**

Appellees brought a facial challenge to the statute one month after the effective date of the amended statute, contending that the statute was vague, overbroad, and chilled their First Amendment rights. [Doc. 1.]<sup>1</sup> They sued the Governor of Florida, the Attorney General of Florida, and three of Florida's 66 sheriffs: Sheriff Walt McNeil of Leon County, Sheriff Gregory Tony of Broward County, and Sheriff Mike Williams of Jacksonville/Duval County.<sup>2</sup> [Doc. 1.] in the United States District Court for the Northern District of Florida

Appellees generally claimed to have limited their organizations' protest activities due to concerns about enforcement of the amended statute. For instance, the president of Appellee Northside Coalition contended that members of the organization feared an emboldening effect of the amended statute on a "known white power activist and agitator" who appeared at an event and threatened to have Northside

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<sup>1</sup> References to the record appear as [Doc. \_\_ - Pg. \_\_] as docketed in the Northern District and contained in the record transmitted to this Court by the Eleventh Circuit.

<sup>2</sup> Each of the Sheriffs was sued in his official capacity. Mike Williams is no longer the Sheriff of Jacksonville; the current Sheriff, T.K. Waters, should automatically be substituted as a party pursuant to Fla. R. App. P. 9.360(c).

Coalition members “arrested and kept in jail until they see a judge.” [Doc. 65-7 – P. 7.] Another Appellee, the Black Collective, expressed a concern that the revised statute “emboldens civilians to hit protestors with their cars.” [Doc. 65-2 – P. 6.] Another Appellee, Chainless Change, asserted that during its February 1, 2021 protest, its members were “met by agitators who spit on our staff and made efforts to attack one of our members.” [Doc. 65-3 – P. 5] Yet another Appellee, Black Lives Matter Alliance Broward (BLMA Broward), described a May 31, 2020 protest that “was non-violent and calm, and it was coming to an end when agitators joined the crowd ... trying to cause chaos and incite a reaction from police.” [Doc. 65-4 – P. 3.] BLMA Broward expressed the concern that under the new statute, its members engaging in nonviolent protest “would be guilty by association, even if they were attempting to leave the area when agitators were being disruptive.” [Doc. 65-4 – P. 4.] Similarly, Appellee Florida A&M University NAACP expressed a concern that its members “can be arrested simply for attending a protest where violence or disorderly conduct takes place, even if they do not engage in any such conduct themselves.” [Doc. 65-6 – P. 4.]

The United States District Court for the Northern District of Florida issued a preliminary injunction prohibiting the Governor and the Sheriffs from taking any steps to enforce section 870.01(2), Florida Statutes (2021). *Dream Defenders v. DeSantis*, 559 F.Supp.3d 1238 (N.D.Fla. 2021). The Governor and Sheriff Williams appealed to the Eleventh Circuit, who certified the following question to this Court:

What meaning is to be given to the provision of Florida Stat. § 870.01(2) making it unlawful to “willfully participate[] in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in ... [i]njury to another person; ... [d]amage to property; ... or [i]mminent danger of injury to another person or damage to property”?

*Dream Defenders v. Governor of the State of Fla.*, 57 F.4th 879, 894 (11th Cir. 2023).

### **SUMMARY OF ARGUMENT**

The meaning to be given section 870.01(2), Florida Statutes (2021), is found in the plain language of the entire subsection. That language provides that to be convicted of the third-degree felony crime of riot, the State must prove that a defendant “willfully participates in a violent public disturbance involving an assembly of

three or more persons, acting with a common intent to assist each other in violent and disorderly conduct” resulting in personal injury or property damage or imminent danger thereof. § 870.01(2), Fla. Stat. (2021).

The “violent public disturbance” must consist of three or more persons who share an intent to assist each other – including the defendant – in engaging in violence or disorder. The State must also prove that the defendant participated in the violent disturbance, rather than simply standing nearby or otherwise acting in a peaceful manner. To construe the statute otherwise would be contrary to both the plain language and well-settled Florida law that prohibits prosecution of mere bystanders. Finally, the State must prove that the defendant had a dual intent: to participate willfully – that is, intentionally or purposely – and to assist others in the assembly in their violent and disorderly conduct. This dual intent requirement separates violent agitators from peaceful protestors and innocent bystanders.

Nothing in this plain language criminalizes peaceful protest or other constitutionally protected conduct; this plain meaning is confirmed by section 870.01(7), Florida Statutes (2021). The statute

incorporates the common law definition of riot and this Court's limiting construction of the prior statute, with the effect of criminalizing only violent conduct among several actors with a common intent.

### **STANDARD OF REVIEW**

The question certified by the Eleventh Circuit requires statutory interpretation; this Court thus reviews it *de novo*. *Southeast Floating Docks, Inc., v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 78 (Fla. 2012) (citing *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 591 (Fla. 2006).)

### **ARGUMENT**

The response to the certified question is simple: The “meaning to be given” to the statute is precisely what it says in its entirety, as a whole, omitting nothing. It means that, to be convicted of committing a riot, a person must willfully (that is, with purpose) participate (that is, not simply stand by or observe) in a violent public disturbance (that is, not a peaceful protest) with an intent to assist at least two other participants in that violent and disorderly conduct (that is, not simply stand by or provide water or defend oneself from outside agitators with whom one does not share a common intent).

This Court can answer the certified question by doing nothing more than reading the plain language of the statute as a whole. The individual subissues that the Eleventh Circuit asked the Court to consider must also be answered by reading the statute as a whole; the definitions of each selected phrase and clause should only be considered by reading them in the context of the statute.

**I. THE PLAIN LANGUAGE OF THE STATUTE DOES NOT PROHIBIT CONSTITUTIONALLY PROTECTED CONDUCT.**

This Court determines the meaning of a statute by beginning with the language of the statute; “if that language is clear, the statute is given its plain meaning, and the Court does not ‘look behind the statute’s plain language for legislative intent or resort to rules of statutory construction’.” *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019) (citations omitted). In this case, the plain language of section 870.01(2), Florida Statutes (2021), provides that a person commits a riot if he or she (1) willfully (2) participates in a (3) violent public disturbance (4) of three or more persons AND (5) shares an intent common with those other persons to (6) engage in violent and disorderly conduct that (7) results in injury to another person or damage to property or imminent danger of such injury or

damage. § 870.01(2), Fla. Stat. (2021). The statute on its face does not prohibit peaceful protest, but only violent disturbance. Nor does the statute on its face put peaceful protestors at risk of prosecution, because those protestors would lack the requisite intent of willfully participating in a violent public disturbance and sharing that intent with others who are engaging in violence. This is particularly true in light of subsection 7 of the statute, in which the Legislature reaffirmed its intent that the statute does not prohibit peaceful protest. § 870.01(7), Fla. Stat. (2021). Even in the absence of that subsection, however, the statute means what it says: it prohibits only the conduct specified in subsection 2.

Reading the statute in context allows a person of ordinary intelligence to determine exactly what conduct it prohibits. An individual word, phrase, or clause in a statute “should be accorded its plain and ordinary meaning, giving due regard for the context in which it is used.” *Barnett v. Dept. of Financial Svcs.*, 303 So. 3d 508, 513 (Fla. 2020) (citations omitted). While the Eleventh Circuit’s additional questions for consideration focus on specific clauses within the statute, those questions should be answered by reading the statute in its entirety.

**A. While a single actor may engage in a violent public disturbance, he is only subject to prosecution under section 870.01(2), Florida Statutes (2021), where the disturbance consists of three or more persons with whom he shares a common intent and he assists those persons in their violent and disorderly conduct.**

In its first issue for consideration, the Eleventh Circuit asked

1) What qualifies as a violent public disturbance? Is it more than “three or more persons acting with a common intent to assist each other in violent and disorderly conduct resulting in injury to another person, damage to property, or imminent danger of such injury or damage?”

*Dream Defenders*, 57 F.4th at 894.

The statute does not define a “violent public disturbance,” so this Court must use the plain and ordinary meaning. *Somers v. United States*, --- So. 3d ---, No. SC21-1407, 2022 WL 16984702 (Fla. Nov. 17, 2022). As this Court has recently stated, “violence” means “the use of physical force to cause harm.” *Id.* at \*4 (citations omitted). Therefore, a peaceful protest in which no one uses physical force to cause harm would not qualify as a “violent public disturbance” under the statute. Nor would a protest at which loud chanting or noisemaking disrupts neighboring citizens; even though it may disturb the public, and possibly violate local noise ordinances, it would not be a “violent public disturbance” because no physical force

is being used to cause harm. Even if a peaceful protest later turns violent, it would not qualify as a “violent public disturbance” until the point at which physical force is used to cause harm.

Nor does the statute define the terms “public” or “disturbance,” and thus the Court must look to common usage. “Public” means “exposed to general view,” while “disturbance” means “an interruption of a state of peace, quiet, or calm” and “noisy or violent activity.” *Public*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/public> (last visited March 16, 2023); *disturbance*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disturbance> (last visited March 16, 2023). Therefore, three people fighting inside a private house would not qualify as a “violent public disturbance.” *See also Palancar v. State*, 204 So. 3d 473 (Fla. 4th DCA 2016) (no public disturbance occurred where no people gathered as a result of or were otherwise affected by defendant’s conduct).

Defining the term “violent public disturbance” must also be done in the entire context of the statute. For instance, a single person could engage in a violent public disturbance if he loudly screamed while breaking windows of buildings and cars in a public area. That

conduct alone, however, would not subject him to prosecution for a riot under the statute, because the conduct does not “involve an assembly of three or more persons, acting with common intent to assist each other.” Simply defining a “violent public disturbance,” therefore, is not sufficient to determine the meaning of the statute.

Even if a violent public disturbance occurs, that alone does not subject an individual to prosecution. For instance, if three people act violently at an otherwise peaceful public protest of 300 people, that may be considered a “violent public disturbance.” However, none of the 297 people who peacefully protest are at risk of conviction under the statute, unless they are willfully participating in the violent actions of the “three or more.” If they are assisting the assembly in peaceful protest, they are not committing a riot. If they are assisting the assembly in violent conduct and have the same intent as the three violent actors, then they are rioting. The statute means exactly what it says: the activity must disturb the public and be violent and involve more than two people who are assembled and have a common intent to assist each other in that violent public activity.

**B. A person is subject to prosecution for “willfully participat[ing] in a violent public disturbance” only where he intentionally engages in violence and assists others with whom he shares a common intent who engage in violence.**

In its second and fourth issues for consideration, the Eleventh Circuit asked

2) What conduct is required for a person to willfully participate in a violent public disturbance? Can a person willfully participate in a violent public disturbance without personally engaging in violence and disorderly conduct or advocating for violence and disorderly conduct? If so, what level of participation is required?

...

4) May a person be guilty of riot if he attends a protest and the protest comes to involve a violent public disturbance in which three or more people acting with a common intent to assist each other engage in violent and disorderly conduct and the violent disturbance results in injuries to another person, damage to property, or imminent danger of injury to another or damage to property, but the person did not engage in or intend to assist others engaging in violent and disorderly conduct?

*Dream Defenders*, 57 F.4th at 894-95. As with the first question, the answers to the second and fourth questions posed by the Eleventh Circuit can also be answered by considering the plain language of entire statute in context. The statute in its entirety describes the type of violent public disturbance as well as the intent required, and the use of the term “participate” contemplates more than just passive

presence or even active engagement. Instead, both intentional violence and a shared intent with other violent actors are required.

A person not engaging in violence does not willfully participate in it, unless the person otherwise qualifies as a principal in the violence. If the Legislature had intended to prosecute bystanders, it would have said “attends” rather than “willfully participates.” It did not do so. Similarly, if the Legislature had intended prosecution of people who willfully participate in peaceful protest that later becomes violent, the statute would have read “if he or she willfully participates in a protest that becomes a violent disturbance.” Instead, a person subject to prosecution must willfully participate in the violent disturbance itself and share a common intent with two or more persons in the assembly to engage in violence.

Neither mere attendance at a violent disturbance nor protesting amidst violence constitutes “participation” under the plain language of the statute. Any suggestion that the statute would prosecute innocent bystanders is inconsistent with well-settled Florida law governing participation in a crime by a principal. For instance, in *Staten v. State*, 519 So.2d 622, 624 (Fla. 1988), the Court upheld the petitioner’s conviction as a principal to second-degree murder, armed

robbery, and aggravated battery where she had “prior knowledge of the criminal plan” and waited in the car to help the robbers escape.” The Court also noted that “mere knowledge that an offense is being committed is not the same as participation with criminal intent, and mere presence at the scene ... is not sufficient to establish participation,” but found the rule inapplicable under the circumstances, because the defendant was more than merely present but was rather an active participant and thus a principal. *Id.*, citing *Collins v. State*, 438 So. 2d 1036, 1038 (Fla. 2d DCA 1983).<sup>3</sup> See also *Parker v. State*, 458 So. 2d 750, 752 (Fla. 1984) (“an act in which a defendant does not participate and which is ‘outside of and foreign to the common design’ of the original felonious collaboration may not be used to implicate the non-participant in the act”).

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<sup>3</sup> Of course, as with any violent crime, a person may be guilty of even rioting without being physically present at the riot. The classic example of the getaway driver at an armed robbery applies equally to rioting. If, for example, a person drove twenty rioters in a bus two blocks away from the site of a planned riot, provided the rioters with weapons, and intended both to assist the rioters in attacking police officers and to drive the getaway bus after the riot, that person would be guilty of riot (assuming the riot actually happens). In that case, the person would be guilty even though he never left the bus. Without the actions of aiding and abetting, however, the person could not be convicted under Florida law.

The Florida District Courts of Appeal have applied this law repeatedly to distinguish between actual participants, who can be convicted as principals, and those who are merely present at the scene. See, e.g., *Sanders v. State*, 563 So. 2d 781, 782 (Fla. 1st DCA 1990) (passenger's brief holding of a bag of crack cocaine was not sufficient by itself to establish aiding and abetting purchase of cocaine); *A.D. v. State*, 106 So. 3d 67, 71-72 (Fla. 1st DCA 2013) (mere presence at the scene, even coupled with questionable behavior after the fact, is not sufficient to establish participation unless the State presents enough additional evidence to contradict defendant's theory of innocence); *K.B. v. State*, 170 So. 3d 121,123 (Fla. 2d DCA 1998) (defendant's conviction reversed because, although it was proved that he was present at the scene and had knowledge of his companions' action, there was no evidence of participation); *Jimenez v. State*, 715 So. 2d 1038,1041 (Fla. 3d DCA 1998) (although mere presence at scene with knowledge that the crime is to be committed without more will not suffice, conviction would be sustained where there was ample evidence of participation and intentional aiding and abetting); *Dorsainville v. State*, 203 So.3d 1010, 1012-1013 (Fla. 4th DCA 2016) (conviction must be reversed for lack of evidence of

participation even though State proved defendant may have known the crime was going to be committed, was present at the scene, and fled afterwards); *Midgett v. State*, 152 So. 3d 767, 769 (Fla. 5th DCA 2014) (“mere presence nearby while someone else possesses stolen property is also not sufficient to create the inference of guilt”). In short, a conviction for mere innocent protest in the vicinity of violence would be improper in Florida based on the long-standing and consistently applied law regarding principals. The plain language of the instant statute is entirely consistent with this long-standing body of law.

As discussed above, if the Legislature had intended to criminalize mere presence at a riot, it would have stated this intent in the statute as the State of Delaware did in the late 1960’s. In *State v. Ayers*, 260 A.2d 162, 164 (Sup.Ct.Del.1969), the court addressed a statute that stated in part “it is prima facie evidence of participation in the riot that the accused was present at the scene of the riot, not assisting to suppress it.” The Delaware Supreme Court held that this presumption was “irrational and arbitrary and, thus, unconstitutional,” because the presumed fact of participation was not “‘more likely to flow than not to flow’ from the fact of presence.”

260 A.2d at 170 (*quoting Leary v. United States*, 395 U.S. 6, 36 (1969).) The court severed the unconstitutional presumption from the rest of the riot statute, noting “mere presence at the scene, in view of many innocent reasons for that presence, cannot be made the basis for an almost irrebuttable presumption.” 260 A.2d at 170. The Florida statute contains no such presumption, and this Court should not construe the term “participation” to mean mere presence. To do so would be contrary to long-standing Florida law and the plain language of the statute.

The other language in the statute confirms that mere presence at a riot or mere proximity to violence does not constitute “participation.” Reading the statute as a whole, the “participation” occurs in the “violent public disturbance” while “acting with common intent” with others involved in the disturbance. Further, the inclusion of the word “willfully” indicates the required intent and thus excludes innocent bystanders from the group of persons who are subject to prosecution. The term “willfully” is “susceptible of comprehension by the ordinary reasonable person;” in a criminal context, it “implies that a defendant has acted voluntarily and consciously, not accidentally.” *Arnold v. State*, 755 So. 2d 796, 798

(Fla. 2d DCA 2000) (*citing Black's Law Dictionary* 1773 (4th ed. 1968)); *see also Main Street Entertainment, Inc. v. Guardianship of Faircloth*, 342 So. 3d 232, 242 (Fla. 1st DCA 2022) (Makar, dissenting) (“A man who negligently trips over a dog can’t be compared to a man who willfully kicks the dog; even the dog knows the difference!”) (citations omitted). Similarly, the inclusion of the phrase “a violent public disturbance involving” shows exactly what the person must do to be convicted: engage in a specific action, and have the requisite intent. In other words, even if “participate” could be read as doing something passive, the rest of the statute shows that more is required.

For example, imagine a person passing out water to 300 peaceful protestors at a business. Suddenly, the protest turns violent, as three people start throwing rocks through the windows of the business. If the person later hands one of the rock-throwers a plastic bottle of water, he is not guilty of riot because he is not participating in the violent act of throwing a rock or otherwise causing property damage. Nor, absent additional evidence, does the water-provider share an intent with the rock-throwers to do violence. If, however, one of the rock-throwers says “I’ve run out of rocks – I

wish I had something else to throw!” and the water-provider hands him a bottle, he could be guilty of riot, assuming the common intent could be established and all of the other elements are present. In the latter circumstance, the water-provider is doing more than simply being present; he is willfully participating in the violence and shares a common intent. Only under the second scenario would he be guilty.

**C. The State must prove beyond a reasonable doubt that the defendant intended to participate in a violent public disturbance and that he shared that intent with two or more other persons who also engaged in violence.**

In its third issue for consideration, the Eleventh Circuit asked

3) To obtain a conviction, does the state have to prove beyond a reasonable doubt that the defendant intended to engage or assist two or more other persons in violent and disorderly conduct?

*Dream Defenders*, 57 F.4th at 894. The answer is yes. Based on the plain language of the statute, the State must prove two aspects of intent. First, the statute requires the first element of willfulness, which is intentional conduct. In addition, the statute requires that the defendant intend to assist others in violent and disorderly conduct whom also intend to engage in violent and disorderly conduct. This double intent requirement provides another

mechanism to separate actual participants, who are subject to prosecution, from innocent bystanders or peaceful protestors not engaged in violence. *See, e.g., Romero v. State of Fla.*, 314 So. 3d 699, 706 (Fla. 3d DCA 2021) (a court is charged with “reading that *mens rea* necessary to separate wrongful conduct from otherwise innocent conduct into the statute.”) (internal quotations omitted).

One federal court has noted that the statute contains “an express intent requirement” with its use of the terms “willfully” and “common intent.” *Legacy Entertainment & Arts Foundation, Inc. v. Mina*, Case No. 6:21-cv-698-PGB-DCI, 2021 WL 4444688 at \*5 (M.D. Fla. August 20, 2021). The court expressly stated that it was not reasonable to interpret the statute as “threaten[ing] to impose liability ... regardless of their intent to incite violence.” *Id.* at \*5. The Middle District’s interpretation of the intent element is consistent with the plain language of the statute.

The requirement of shared common intent helps to protect peaceful protestors from prosecution due to the violent actions of outside agitators. For example, if the Northside Coalition engages in a peaceful protest against the presence of Confederate monuments, and white supremacists infiltrate their protest and engage in

violence, no member of the Northside Coalition could be prosecuted under the statute because he would not share an intent in common with the white supremacist to engage in a violent public disturbance. Even if a member of the Northside Coalition used reasonable force to defend himself from the violent agitator, he would not be prosecuted under this statute, because he would not have either the common shared intent or the intent to willfully participate in a violent public disturbance. Of course, he also has the right to stand his ground against criminal assault. § 776.012, Fla. Stat. (2022). The statute therefore requires two separate proofs of intent.

## **II. THE NEW STATUTE CONTAINS THE CONSTITUTIONAL PROTECTIONS SUGGESTED BY THIS COURT IN *BEASLEY*.**

By amending section 870.01(2), Florida Statutes, the Legislature accepted the invitation of this Court in *State v. Beasley*, 317 So. 2d 750, 753 (Fla. 1975), to “adopt a statute which expressly defines the offense of riot” and “include[s] the element that the prohibited conduct encourages or constitutes a breach of the peace.” The Court also suggested that the Legislature could enact a statute “more encompassing than the common law definition of riot.” *Id.* In enacting the express definition of a riot, the Legislature provided even

more protection for innocent bystanders and peaceful protestors than existed under the previous statute and common law.<sup>4</sup>

Before the enactment of HB 1 in 2021, the statute simply read “All persons guilty of a riot, or of inciting or encouraging a riot, shall be guilty of a felony of the third degree.” § 870.01, Fla. Stat. (1971). This Court in *Beasley* held that the “term ‘riot’ at common law is defined as a tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner.” *Beasley*, 317 So. 2d at 752 (citations omitted). The Court held that the statute was constitutional, even though it did not define “riot,” as long as it was understood to incorporate the common law definition and that each of those common law elements were established. The Court further specified that “the charging document must articulate facts which

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<sup>4</sup> Throughout the federal court litigation, there was some discussion about whether the 2021 statute codified or clarified or otherwise related to the common law definition. *Dream Defenders*, 57 F.4th at 893. Such discussion has no bearing on the meaning of the plain language of the statute.

establish that three or more persons acted with a common intent to mutually assist each other in a violent manner to the terror of the people and a breach of the peace.” *Id.* at 753. After *Beasley*, if the term “riot” in the statute was replaced with the common law definition, the statute would read as follows:

All persons guilty of a [tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner] or of inciting or encouraging a riot shall be guilty of a felony of the third degree.

The 2021 version of the statute meets the requirements of *Beasley* by including the “common intent” language. It then provides greater protection for innocent bystanders and peaceful protestors by requiring that the defendant “willfully participate[] in a violent public disturbance” in addition to having the shared common intent. The Legislature thus enacted a statute that conforms to the prior authoritative limiting construction of this Court.

### **III. APPELLEES' FEARS OF PROSECUTION ARE UNFOUNDED, BASED ON THE PLAIN LANGUAGE OF THE STATUTE.**

The statute does not prohibit innocent behavior and therefore does not implicate the First Amendment rights of citizens. Instead, it criminalizes engaging in violent behavior when the person has the same intent as the other participants to engage in such behavior. The language of the statute does not reach peaceful protests and similar activities, nor does anything in the statute empower violence by counter-protestors or outside agitators. To the contrary, as discussed above, the new statute provides additional protection from prosecution to the protestors whose activities are infiltrated.

For instance, members of BLMA Broward would not have been arrested even when agitators incited violence at their protest, because the members of BLMA Broward would (presumably) not have had the intent common with those agitators to engage in violence. Contrary to their assertion, this example shows why the language of the statute on its face would not have subjected them to arrest or prosecution. The statute requires the person to *willfully* participate *and* to “act with a common intent to assist [the others] in violent and disorderly conduct.” Neither of these elements would be met in that

scenario. Similarly, members of the Northside Coalition would not have lawfully been subject to arrest or prosecution if they did not share a common intent to or willfully participate in the violence orchestrated by white supremacists and other counter-protesting agitators. Nothing in the record shows any innocent bystanders have been arrested when counter-protestors transformed a peaceful protest into a violent destructive situation. Rather, the statute helps prevent violence by threatening prosecution not of peaceful protestors but of agitators who actually commit a riot.

In addition, nothing in the statute would support prosecution of a non-violent protestor under the circumstances in the declaration of the president of the Northside Coalition. [Doc. 65-7 – P. 6-7.] Even if an outside agitator might want to claim protection under the statute if he felt threatened by non-violent protestors and took violent action against Coalition members, that would not be reasonable based on the plain language of the statute. Similarly, absolutely nothing in the statute or the record supports the contention of the Black Collective that the statute “emboldens civilians to hit protesters with their cars.” [Doc. 65-2 – P. 6.]

What Appellees appear to fear is false arrest for peaceful protest. But those fears would have been exactly the same under the previous version of the statute. Indeed, all criminal statutes bear a risk of false arrest. The plain language of section 870.01(2), however, does not support an arrest for peaceful protest, because it does not criminalize innocent behavior.

The statute is also viewpoint neutral and does not subject peaceful protestors to prosecution regardless of their message. Some of the concerns about the statute appear to be based on a statement threatening to have “a ton of bricks rain down on” a certain category of protestors. *Dream Defenders*, 57 F.4th at 883. But the Legislature did not include this language in its amendment of the statute, and the Sheriff does not intend to enforce the statute in that manner, which does not comport with the plain language of the statute. Protestors holding up signs and shouting “defund the police” without engaging in violent behavior would not be subject to prosecution; on the other hand, a person who willfully participates in a violent mob attack while chanting “back the blue” or “blue lives matter” would be subject to prosecution. Regardless of the impetus for the enactment of the statute, its plain language applies to any violent protests of

three or more persons regardless of the viewpoint expressed by the protestors. Only those persons willfully participating in violence and having a shared common intent will be subject to prosecution.

### **CONCLUSION**

The meaning of the statute is apparent on its face. Only those people who actually and willfully participate in a violent public disturbance, and share an intent with at least two other participants to do violence, will be guilty of a riot. The Sheriff therefore requests that this Court answer the certified question by confirming that the statute does not outlaw constitutionally protected conduct or other non-criminal behavior.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of March, 2023, I filed this Initial Brief with the Clerk of Court by using the Florida Courts E-Filing Portal, which will send an electronic copy of the brief to all counsel of record.

*/s/ Sonya Harrell* \_\_\_\_\_

**CERTIFICATE OF COMPLIANCE**

I certify that this Initial Brief was prepared in Bookman Old Style 14-point font, in compliance with the requirements of Fla. R. App. P. 9.045(b).

*/s/ Sonya Harrell* \_\_\_\_\_