No.

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER CROCE, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Sixth and Fourteenth Amendments guarantee the right to a trial by a 12-person jury when the defendant is charged with a felony?

II. Whether Florida's stalking statute violates the First Amendment and Fourteenth Amendments under *Counterman v. Colorado*, 600 U.S. 66 (2023).

RELATED PROCEEDINGS

The proceeding listed below is directly related to the above-captioned case in this Court:

Croce v. State, 379 So. 3d 1153 (Fla. 4th DCA 2024) (Table).

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Christopher Croce, respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida.

OPINION BELOW

The opinion of Florida's Fourth District Court of Appeal is reported as *Croce v. State*, 379 So. 3d 1153 (Fla. 4th DCA 2024) (Table), and is reprinted in the appendix. 1a.

JURISDICTION

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences on January 11, 2024, without written opinion. 1a. *Croce v. State*, 379 So. 3d 1153 (Fla. 4th DCA 2024) (Table). The court denied Petitioner's motion for rehearing and certification on February 22, 2024. 2a.

The Florida Supreme Court is "a court of limited jurisdiction," *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (citation omitted), Specifically, the state supreme court has no jurisdiction to review district court of appeal decisions entered without written opinion. *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Hence, Petitioner could not seek review in that court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment provides that "Congress shall make no law … abridging the freedom of speech."

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Section 1 of the Fourteenth Amendment of the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law…."

Article I, section 22 of the Florida Constitution provides:

> Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Section 913.10, Florida Statutes, provides:

> Number of jurors.—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

Section 784.048, Florida Statutes (2020), provides in relevant part:

> (1) As used in this section, the term:
>
> (a) "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
>
> …

(d) "Cyberstalk" means:

1. To engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or[1]

2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission,

causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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[1] This statutory language was slightly altered in July 2021 — several months after the alleged acts at bar — to change the expression "communicated, words, images, or language," to "communicated, directly or indirectly, words, images, or language." Ch. 2021–220 § 1, Laws of Fla.

STATEMENT OF THE CASE

Petitioner, Christopher Croce, was charged in the Nineteenth Judicial Circuit of Florida with two counts of two counts of aggravated stalking, a felony under section 784.048 (3) (2020), Florida Statutes. He was tried by a six-member jury, which found him guilty as charged as to the first count, and guilty of the lesser-included crime of misdemeanor stalking as to the second count.

The court entered judgment, and imposed a sentence of 37 months in prison followed by a year of community control followed by two years of probation for the felony. For the misdemeanor, Petitioner was sentenced to time served.

On appeal to Fourth District Court of Appeal, Petitioner argued for the first time that his convictions should be reversed because Florida's stalking statute is facially unconstitutional under the First Amendment, 3a–9a and because he was convicted by a six-member jury in violation of his Sixth Amendment right to a twelve-member jury. 10a–12a.

The district court of appeal affirmed the convictions and sentences without written opinion. 1a. Subsequently, it denied Petitioner's motion for rehearing and motion for certification. 2a.

REASONS FOR GRANTING THE PETITION

I. THE REASONING OF *WILLIAMS V. FLORIDA* HAS BEEN REJECTED, AND THE CASE SHOULD BE OVERRULED.[2]

The decision in *Williams v. Florida*, 399 U.S. 78 (1970), is impossible to square with the ruling in *Ramos v. Louisiana*, 206 L. Ed. 2d 583 (2020), that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption," *id.* at 1395. What the term meant was a jury of twelve. As this Court stated in *Ramos*, Blackstone recognized that under the common law, "no person could be found guilty of a serious crime unless 'the truth of every accusation . . . should . . . be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]" 140 S. Ct. at 1395. "A 'verdict, taken from eleven, was no verdict' at all." *Id.*

The Court said in *Thompson v. Utah*, 170 U.S. 343, 349–350

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[2] There are a number of other cases pending before the Court as to this issue. *Guzman v. Florida*, No. 25–5173 *Cunningham v. Florida*, No. 23–5171; *Arellano-Ramirez v. Florida*, No. 23–5567; *Sposato v. Florida*, 23–5575; *Morton v. Florida*, No. 23–5579; *Jackson v. Florida*, No. 23–5570; *Crane v. Florida*, No. 23–5455; *Aiken v. Florida*, No. 23–5794; and *Enrriquez v. Florida*, No. 23–5965. This case should at least be held pending resolution of *Guzman* and those other petitions.

(1898), that since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve people. Given that that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.* at 350.

In addition to the authorities cited in *Thompson*, one may note that Blackstone stated that the right to a jury of twelve is even older, and more firmly established, than the unqualified right to counsel in criminal cases. 4 William Blackstone, *Commentaries on the Laws of England*, ch. 27 ("Of Trial and Conviction"). Blackstone traced the right back to ancient feudal right to "a tribunal composed of twelve good men and true," and wrote that "it is the most transcendent privilege which any subject can be enjoy or wish for, that he cannot be affected in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals." 3 Blackstone, ch. 23 ("Of the Trial by Jury").

After *Thompson* Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. In 1900, the Court explained that

"there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). Thirty years later, this Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U.S. 145, 151–152 (1968).

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as "stripping off the livery of history from the jury trial" and ignoring both "the intent of the Framers" and the Court's long held understanding that constitutional "provisions are framed in the language of the English common law [] and … read in the light of its history." *Baldwin v.*

New York, 399 U.S. 117, 122–123 (1970) (citation omitted) (Harlan, J., concurring in the result in *Williams*). Indeed, *Williams* recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Williams*, 399 U.S. at 98–99. But *Williams* concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. Rather, the Court focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community participation and [with] shared responsibility." *Id.* at 100–01. According to the *Williams* Court, both "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101–102 & n.48; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Williams's ruling that the Sixth Amendment (as applied to the States by the Fourteenth) permits a six-person jury cannot stand in light of *Ramos*. There, this Court held that the Sixth Amendment

requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." 140 S. Ct. at 1401–1402.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of "cost-benefit analysis" undertaken in *Williams*, observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the Sixth Amendment and those that don't.'" 140 S. Ct. at 1400–01. Rather, *Ramos* explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required—"a verdict, taken from eleven, was no verdict at all." *See* 140 S. Ct. at 1395 (quotation marks omitted).

Even setting aside *Williams's* disfavored functionalist logic, its

ruling suffered from another flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court "f[ou]nd little reason to think" that the goals of the jury guarantee—including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the community"—"are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Id.* at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id.* at 102.

In the time since *Williams*, that determination has proven incorrect. This Court acknowledged as much eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams'* assumptions. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation,"

id. at 233, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.* at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.* at 236; and (4) decreasing jury sizes "foretell[] problems … for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.* at 236–37. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.* at 239*; see also id.* at 245–46 (Powell, J.) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates that "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); *see also* Higginbotham et al.,

Better by the Dozen: Bringing Back the Twelve-Person Civil Jury, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. … In reality, cutting the size of the jury dramatically increases the chance of excluding minorities."); Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants.").

Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., *Achieving Diversity on the Jury*, *supra*, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Other important considerations also weigh in favor of the twelve-member jury. Studies indicate that twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant

factors during deliberation. *See* Smith & Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury*, 60 Fla. L. Rev. 441, 465 (2008); Samuel R. Sommers & Phoebe C. Ellsworth, *How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Research*, 78 Chi.-Kent L. Rev. 997, 1030 (2003) ("[R]acially mixed juries ha[ve] longer, more thorough deliberations than all-White juries.").

Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." Smith & Saks, 60 Fla. L. Rev. at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., *Better by the Dozen*, *supra*, at 52.

Importantly, the history of Florida's rule can be traced to the Jim Crow era. Justice Gorsuch has observed that "[d]uring the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and

systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from denial of certiorari) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Id*. But Florida's jury of six did arise in that Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id*. The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6, Laws of Florida (1877). *See Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So. at 241.

The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and*

Renewal, 1865–1877, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops] in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5–6 (1972); Shofner at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white

dominance." Hume at 15.

The purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." Hume, 15–16. *See also* Shofner 266.

Smaller juries and non-unanimous verdicts were part of a Jim Crow era effort "to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from denial of certiorari); *see also Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context.

And this history casts into relief another negative consequence of having small juries: it denies a great number of citizens the "duty, honor, and privilege of jury service." *Powers v. Ohio*, 499 U.S.

400, 415 (1991). Many consider jury service an "amazing and powerful opportunity and experience—one that will strengthen your sense of humanity and your own responsibility." United States Courts, *Juror Experiences*.[3] Jury service, like civic deliberation in general, "not only resolves conflicts in a way that yields improved policy outcomes, it also transforms the participants in the deliberation in important ways—altering how they think of themselves and their fellow citizens." John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Values of Institutionalized Deliberation*, 34 Pol'y Stud. J. 605, 606 (2006).

In view of the foregoing, this Court should grant the petition and reverse Petitioner's conviction because he was deprived of his right a twelve-member jury.

II. PETITIONER WAS CONVICTED UNDER A FACIALLY UNCONSTITUTIONAL STATUTE.

Petitioner was convicted of aggravated stalking and misdemeanor stalking under section 784.048(2) and (3), Florida Statutes.

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[3] Available at: https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service/juror-experiences

These statutory provisions required proof that Appellant "willfully, maliciously and repeatedly harassed or cyberstalked" the alleged victims in that he engaged in conduct "causing substantial emotional distress" for no legitimate purpose. *Id.* Further, the felony conviction under subsection (3) of the statute required proof that the accused made a "credible threat." Subsection (1)(c) of the statute defined a credible threat as one that "places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm." § 784.048(1)(c).

The statute does not require proof that one intended to cause substantial emotion distress or, at a minimum, that one consciously disregarded a substantial risk that his communications would be viewed as causing substantial emotional distress and threatening violence, and hence is unconstitutional under the First and Fourteenth Amendments. *See Counterman v. Colorado*, 600 U.S. 66 (2023).

In that case, a woman received hundreds of messages from Counterman indicating that he was surveilling her, and expressing

anger, envisaging her being killed, and urging her to die. *Id.* at 70. Very fearful and believing she was being threatened, the victim stopped walking alone, declined social activities and canceled professional engagements as a musician. *Ibid.* She contacted the police and charges were brought under Colorado's stalking statute. *Ibid.* The statute provided in pertinent part:

> (1) A person commits stalking if directly, or indirectly through another person, the person knowingly:
>
> …
>
> (b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or
>
> …
>
> (2) For the purposes of this part 6:
>
> (a) Conduct "in connection with" a credible threat means acts that further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.
>
> (b) "Credible threat" means a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

> (c) "Immediate family" includes the person's spouse and the person's parent, grandparent, sibling, or child.
>
> (d) "Repeated" or "repeatedly" means on more than one occasion.

Colo. Rev. Stat. Ann. § 18–3–602 (2022).

Counterman moved to dismiss on the ground that his messages were not true threats, but the trial court ruled that the statute required only an objective reasonable person standard, under which the state did not need to prove any kind of subjective intent to threaten. *Id.* at 71. On appeal from his resulting conviction, Counterman made a different argument: that the state was required by the First Amendment to prove that he was aware of the threatening nature of his statements. *Ibid.* The appellate court rejected that argument. It "decline[d] today to say that a speaker's subjective intent to threaten is necessary," and it approved the trial court's ruling that the messages were "true threats" unprotected by the First Amendment. *Id.* at 71–72.

After the state supreme court denied review, Counterman petitioned for certiorari review. The Court took the case to determine whether the First Amendment requires proof of a defendant's subjective mindset "in true-threats cases," and, if so,

what *mens rea* standard is sufficient. *Id.* at 72.

The state argued that there is no requirement that defendants be aware in some way of the threatening nature of the communications in cases involving true threats. *Ibid.* Counterman contended that there is one, "based mainly on the likelihood that the absence of such a mens rea requirement will chill protected, non-threatening speech." *Id.* at 72–73. Faced with the two positions, the Court wrote that "Counterman's view, we decide today, is the more consistent with our precedent." *Id.* at 73.

The Court held that "a mental state of recklessness is sufficient. The State must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. The State need not prove any more demanding form of subjective intent to threaten another." *Id.* at 69. The Court concluded that Colorado's objective standard is unconstitutional:

> It is time to return to Counterman's case, though only a few remarks are necessary. Counterman, as described above, was prosecuted in accordance with an objective standard. See *supra*, at 3. The State had to show only that a reasonable person would understand his statements as threats. It did not have to show any awareness on his part that the statements could be

> understood that way. For the reasons stated, that is a violation of the First Amendment.

Id. at 82.

In view of *Counterman*, Florida's statute is facially unconstitutional as it does not require the subjective intent required by the First Amendment.

Specifically, the statute does not require proof that a defendant acted with recklessness such that he "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id*. at 69, Contrary to *Counterman*, the Florida statute does not require the state to show, or the jury to find, that the defendant had "any awareness on his part that the statements could be understood that way." *Id*. at 82.

Further, the felony under subsection (3) of section 784.048 does not require proof that defendants have consciously disregarded a substantial risk that their communications would be viewed as, or that there be any awareness on the defendant's part that the statements could be understood as creating a reasonable fear for safety. Again, the lack of this requirement renders the statute unconstitutional.

Accordingly, Petitioner was convicted under an unconstitutional statute. It would be appropriate for the Court to grant certiorari review and reverse his convictions.

CONCLUSION

The petition should be granted or held. *See supra* n.2.

Respectfully submitted,

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