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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ROXANNE UJHELYI SZAKACS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-1280

[May 7, 2026]

Appeal from the County Court for the Fifteenth Judicial Circuit, Palm Beach County; Ashley Zuckerman, Judge; L.T. Case No. 502024MM007132AXXXMB.

Daniel Eisinger, Public Defender, and Ethan Goldberg, Assistant Public Defender, West Palm Beach, for appellant.

Erich E. Schuttauf, Kissimmee, for Amicus Curiae American Association for Nude Recreation.

James Uthmeier, Attorney General, Tallahassee, and Kimberly Tollett Acuña, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

CIKLIN, GERBER and LOTT, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

Appendix A
App. 1

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

June 23, 2026

ROXANNE UJHELYI SZAKACS, Appellant(s), v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2025-1280** L.T. No. - 50-2024-MM-007132-AXXX-MB

BY ORDER OF THE COURT:

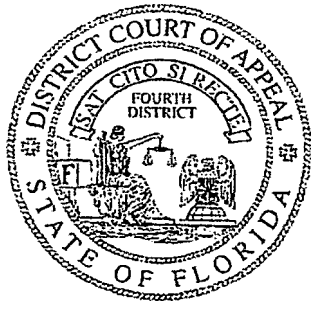
ORDERED that Appellant's May 21, 2026 motion for written opinion and certification of question of great public importance is denied.

Served:
Kimberly Tollett Acuna
Crim App WPB Attorney General
Roxanne Ujhelyi Szakacs

AM

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



Appendix B
App. 2

IN THE COUNTY COURT, FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 24MM007132AMB
DIV: M
OBTS NUMBER:

STATE OF FLORIDA Ujhelyi Szakacs, Roxanne
v.
DEFENDANT, ~~Ujhelyi Szakacs, Roxanne~~

5/9/93	W	F	
D.O.B.	RACE	GENDER	SOCIAL SECURITY NUMBER

[ ] PROBATION VIOLATOR [ ] COMMUNITY CONTROL VIOLATOR [ ] RETRIAL [ ] RESENTENCE

JUDGMENT

The above defendant, being personally before this Court represented by DiMaio (attorney)

[ ] Having entered a plea of guilty to the following crime(s):	[ ] Having entered a plea of nolo contendere to the following crime(s):	[X] Having been tried and found guilty of the following crime(s):	[ ] Having been tried and found not guilty of the following crime(s):

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGR
1	Disorderly Conduct	877.03	MS
2	RWOV	843.02	MF
3	Giving False Name	901.36(1)	MF

[X] and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

[ ] and having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to attempts or offenses in violation of the following Florida Statute sections – § 784.048; § 810.14; § 847.011; § 847.013; § 847.013; § 847.0135; § 877.26 – and/or offenses found to have been committed for the purpose of benefiting, promoting, or furthering criminal gang interests as defined in F.S. §§ 874.03, 874.04], and/or any other offenses specified in F.S. § 943.325, the Defendant shall be required to submit DNA samples.

[ ] and good cause being shown: IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

The Defendant in Open Court was advised of his right to appeal from the Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

[ ] and no cause having been shown why the trial verdict should not be upheld, it is ORDERED that the Defendant is hereby ADJUDICATED NOT GUILTY of the above crime(s).

DONE AND ORDERED in Open Court at Palm Beach County, Florida, this 3 day of April 2025.
COUNTY COURT JUDGE

FILED
APR - 3 2025
JOSEPH ABRUZZO, CLERK
PALM BEACH COUNTY, FL
COUNTY CRIMINAL

Appendix C
App. 3

SCANNED
APR - 4 2025

Online Sunshine

Select Year: 2026 Go

The 2026 Florida Statutes

Title XLVI
CRIMES

Chapter 877
MISCELLANEOUS CRIMES

View Entire Chapter

877.03 Breach of the peace; disorderly conduct.—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-325; s. 1147, ch. 71-136; s. 2, ch. 86-174.

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Appendix D
App. 4

ORDINANCE NO. 2-81

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES, TOWN OF PALM BEACH, ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS", SO AS TO AMEND SECTION 21-48 THEREOF, "REGULATIONS REGARDING DRESS"; REPEALING ORDINANCE NO. 4-79 OF THE TOWN OF PALM BEACH; AND SUBSTITUTING THIS ORDINANCE THEREFOR; PROVIDING A PENALTY FOR VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State of Florida by enacting Chapter 163 of the Florida Statutes has mandated that each municipality within the State of Florida assess its goals, priorities and needs in order to preserve and enhance present qualities, overcome present handicaps and prevent or minimize future problems by adopting a Comprehensive Plan; and

WHEREAS, Section 163.165 sets forth that the legislative intent and the provisions of the Local Government Comprehensive Planning Act in its interpretation and application are declared to be the enactment of minimum requirements necessary to promote, protect and improve the public health, safety, comfort, good order, appearance, convenience, morals and general welfare; to conserve the value of land, buildings and resources; and to protect the character and maintain the stability of residential, agricultural, business and industrial areas and to promote the orderly development of such areas; and

WHEREAS, the Town of Palm Beach in compliance with the mandate of the State of Florida did enact its Comprehensive Plan in the form of Ordinance No. 13-79 of the Town of Palm Beach, Florida, enacted September 25, 1979, with its required objectives stated, in part, to be: "To maintain the quality of life which has given the Town its unique, physical and historic character and, towards its objective, to take all legally and technically available measures to stablize the Town's land use...and further to maintain the Town's identity and quality of life by maintaining the Town's unique physical and historical character with emphasis on visual qualities associated with the sub-tropical water oriented environment and to maintain the role of the Town as a predominantly residential community adding only the type and amount of business and other support services to provide for the needs of the Town's residents and their visitors..."; and

WHEREAS, the Town of Palm Beach has received the advice of its planning consultants and experts on maintaining land values and said experts have advised the Town of Palm Beach that because of its unique character and history it is in the interest of the public health, safety and welfare of the citizens of the Town of Palm Beach and its visitors, in order to meet and maintain the goals of the Town's Comprehensive Plan, to, in concert with other regulations and ordinances, minimally regulate the attire of citizens and visitors within certain limited and defined areas in the Town of Palm Beach; and

WHEREAS, the purpose and intent of the Town of Palm Beach in enacting certain minimal regulations regarding the attire of citizens and visitors is solely related to the Town's attempt to maintain the quality of life within the community and preserve the Town's unique historical and physical character and is not intended for the purpose of attempting to define or impose any moral code on individuals or otherwise impair or restrict individual rights not otherwise governed by the general law; NOW, THEREFORE,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1: Section 21-48 of the Code of Ordinances, Town of Palm Beach, is hereby repealed and this Ordinance shall serve in its place and stead.

Section 2: It shall be unlawful for any person to appear in any public place in the Town of Palm Beach without the upper part of his or her body covered. This section shall not apply to private property or public bathing beaches and the immediate vicinity of public bathing beaches.

Section 3: A person engaged in recreational activities in public places and facilities in the Town of Palm Beach, where such recreational activities are otherwise permitted and which are not areas excluded from the operation of this Ordinance by Section 2, shall have the upper part of his or her body covered in clothing appropriate to and characteristic of the recreational activity being undertaken; however, the choice and style of such clothing shall be at the complete option of the individual but such clothing shall always consist of some garment. Such recreational activities and places shall include, but not be limited to:

a. Golf on public golf courses.

b. Tennis on public tennis courts.

c. Walking, bicycling, jogging, running, skating or skateboarding on Town facilities or rights-of-way where such activity is not otherwise prohibited.

Section 4: Definitions: As contained in this Ordinance the following definitions shall apply:

a. "Upper part of his or her body covered" shall mean clothed above the waist in dress characteristic to the activity being undertaken by the individual at any particular time. There are no activities for which some dress above the waist is not required.

b. "Vicinity of public bathing beaches" shall mean within 150 feet of an ocean beach.

c. "Beach", as used in this Ordinance, shall mean the landward most portion of the sandy area adjacent to the Atlantic Ocean.

d. "Garment" shall mean an article of clothing.

e. "Person" or "individual" shall mean a male or female, 14 years of age or older.

Section 5: Penalties: Any person who shall violate any of the terms, provisions or conditions of this Ordinance shall, upon conviction thereof, be punished by a fine as provided by general law for the violation of municipal ordinances but shall not be subject to imprisonment.

Section 6: If any provision, section, paragraph, sentence or phrase in this Ordinance shall for any reason be found to be invalid or inoperative, or shall be held by any court to be unconstitutional, the remainder of the provisions of this Ordinance shall, nevertheless, continue in full force and effect.

Section 7: That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 8: That this Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading on the 13th day of January, 1981, and on second and final reading on February 10, 1981.

Walter L. Rathbun

M. M. Rhein

Charles H. Waibel, Jr.

Caldwell A. Shaw

Robert M. Grace

Town Council

APPROVED:

Mark Fletcher

Mayor

ATTEST:

Grace J. Peters

Town Clerk

App. 8

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

Case No. 4D2025-1280

roxanne ujhelyi szakács,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

APPELLANT'S MOTION FOR WRITTEN OPINION AND CERTIFICATION OF QUESTION OF GREAT PUBLIC IMPORTANCE

Pursuant to Florida Rule of Appellate Procedure 9.330, Appellant respectfully moves this Court for issuance of a written opinion and certification of a question of great public importance.

Motion for Issuance of Written Opinion

Florida Rule of Appellate Procedure 9.330 provides that "[w]hen a decision is entered without opinion, and a party believes that a written opinion would provide a legitimate basis for supreme court review, the party may request that the court issue a written opinion."

Such is the case here.

1. This appeal presented recurring constitutional questions concerning Article I, section 2 of the Florida Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, gender-based enforcement, and the constitutional application of Florida disorderly conduct and related criminal statutes to female toplessness absent lewd or lascivious conduct.

Fourth District Court of Appeal
2025 MAY 21 PM 12:06

Appendix F
App. 9

2. If this Court affirmed because the panel concluded that enforcement of section 877.03, Florida Statutes, under the circumstances presented did not implicate equal protection concerns, then a written opinion would provide Appellant a legitimate basis to seek discretionary review in the Supreme Court of Florida pursuant to Article V, section 3(b)(3), of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), which provides that the Supreme Court may review decisions that "expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law."

3. This appeal further implicates recurring and evolving constitutional questions concerning the continuing application and scope of Moffett v. State, 340 So. 2d 1155 (Fla. 1976), in light of evolving equal protection jurisprudence, modern intermediate scrutiny analysis concerning gender-based classifications, and subsequent national topless-equality litigation, including State v. Plancarte, 942 N.W.2d 572 (Minn. Ct. App. 2020).

4. The constitutional treatment of toplessness and upper-body coverage regulations in Palm Beach-area jurisdictions has generated recurring litigation and municipal regulation for decades. See DeWeese v. Town of Palm Beach, 812 F.2d 1365 (11th Cir. 1987).

5. Town of Palm Beach Ordinance No. 2-81, which amended section 21-48 of the Town Code within the same municipal jurisdiction implicated in this case and under which Palm Beach Police Department officers were dispatched, expressly stated that the Town's attire regulations were "not intended for the purpose of attempting to define or impose any moral code," while simultaneously utilizing gender-neutral language applicable to both male and female persons and

exempting "public bathing beaches and the immediate vicinity of public bathing beaches" from upper-body coverage requirements. The conduct underlying this case arose within that same broader municipal and beach-related regulatory context.

6. These longstanding municipal and constitutional distinctions concerning beach-related attire enforcement demonstrate that the issues presented in this appeal are neither isolated nor novel, but instead involve recurring constitutional and jurisprudential questions concerning:

a. equal protection;

b. gender-based enforcement;

c. the constitutional limits of disorderly conduct enforcement;

d. evolving standards governing public toplessness;

e. the interaction between municipal beach-attire regulation and statewide criminal enforcement.

7. The Amicus Curiae Brief additionally highlighted longstanding jurisprudential disagreement concerning the constitutional treatment of toplessness-related enforcement in Florida, including the dissents in State v. McGuire and observations by Justice Adkins concerning the difficulty in determining whether female toplessness falls within "commonly accepted standards" for purposes of criminal enforcement.

8. These unresolved constitutional tensions further support issuance of a written opinion because the issues presented continue to implicate:

a. evolving equal protection jurisprudence;

App. 11

b. intermediate scrutiny analysis concerning gender-based classifications;

c. recurring statewide enforcement questions;

d. vagueness and arbitrary-enforcement concerns;

e. the constitutional relationship between public discomfort and criminal liability.

9. Additionally, Florida courts have recognized constitutional and statutory limitations on disorderly conduct enforcement even in cases involving complete public nudity. See Goodmakers v. State, 450 So. 2d 888 (Fla. 2d DCA 1984). The continuing constitutional distinction between non-lewd female toplessness and other forms of public nudity enforcement further supports the need for written clarification and guidance.

10. The procedural evolution of the charging theories in this case further illustrates the continuing uncertainty and constitutional tension surrounding the treatment of female toplessness under Florida criminal law, including recurring questions concerning vagueness, arbitrary enforcement, and the boundaries of disorderly conduct enforcement absent objectively lewd conduct.

11. Federal courts applying Florida law have likewise recognized limitations on the criminalization of mere public nudity absent lewd conduct. See United States v. A Naked Person Issued Notice of Violation, 841 F. Supp. 1153 (M.D. Fla. 1993). The continuing constitutional distinction between non-lewd nudity and criminally punishable conduct further supports the need for written clarification concerning the application of disorderly conduct and related statutes to female toplessness.

12. A written opinion would materially assist Florida trial courts, municipalities, law enforcement agencies, and future litigants concerning:

a. whether female toplessness, absent lewd conduct, may constitutionally support disorderly conduct enforcement;

b. whether public discomfort or third-party complaints may transform otherwise non-lewd conduct into criminal conduct;

c. the constitutional standards governing gender-based toplessness enforcement under Article I, section 2 of the Florida Constitution and the Fourteenth Amendment.

13. Without a written opinion, Appellant cannot meaningfully determine whether affirmance was grounded upon:

a. preservation;

b. harmless error;

c. constitutional interpretation;

d. evidentiary sufficiency;

e. equal protection analysis;

f. disorderly conduct jurisprudence.

14. Because the issues raised involve recurring constitutional questions of statewide significance and evolving jurisprudence, written clarification would materially assist both the parties and future courts confronting similar constitutional issues.

Motion for Certification of Question of Great Public Importance

15. Alternatively, if the Court determines the issues presented involve recurring constitutional questions of statewide significance, Appellant respectfully requests certification of one or more questions of great public importance pursuant to Article V, section 3(b)(4), of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v).

16. Suggested certified questions include:

Whether disorderly conduct or related criminal enforcement may constitutionally be applied to female toplessness within a municipal beach-related regulatory context, including under Town of Palm Beach Ordinance No. 2-81 and section 21-48 of the Town Code, which expressly recognize upper-body attire exemptions and disclaim enforcement based upon moral-code considerations.

Whether female toplessness, absent objectively lewd or lascivious conduct, may constitutionally serve as the initiating basis for warrantless detention, arrest, or escalation of disorderly conduct enforcement under Florida law.

Whether application of Florida disorderly conduct or related criminal statutes to female toplessness, absent lewd or lascivious conduct, implicates Article I, section 2 of the Florida Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Whether public discomfort or third-party complaints, without more, may convert otherwise non-lewd conduct into criminal disorderly conduct consistent with constitutional limitations.

Whether the constitutional application of Florida disorderly conduct and related criminal statutes to non-lewd female toplessness is consistent with equal protection principles where Florida courts have recognized limitations on disorderly

conduct enforcement even in cases involving complete public nudity. Goodmakers v. State, 450 So. 2d 888 (Fla. 2d DCA 1984).

Whether evolving equal protection jurisprudence and intermediate scrutiny analysis affect the continuing constitutional application of Moffett v. State, 340 So. 2d 1155 (Fla. 1976), to gender-based toplessness enforcement under section 877.03, Florida Statutes.

17. These questions are of great public importance because they concern recurring statewide constitutional enforcement issues, evolving toplessness jurisprudence, gender-based criminal enforcement, and the constitutional limits of disorderly conduct statutes.

WHEREFORE, Appellant respectfully requests that this Court withdraw the per curiam affirmance, issue a written opinion, certify one or more questions of great public importance, and grant such further relief as justice requires.

Respectfully submitted,

roxanne ujhelyi szakács
Pro Se Appellant
9189 Beverly Court
Boynton Beach, Florida.
roxi.szakacs@hotmail.com

App. 15

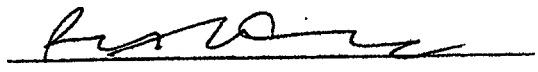
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail on this 21 day of May, 2026, to:

Office of the Attorney General
1515 North Flagler Drive, Ninth Floor
West Palm Beach, Florida 33401-3432

and filed with the Clerk of the Fourth District Court of Appeal at:

Fourth District Court of Appeal
110 South Tamarind Avenue
West Palm Beach, Florida 33401



roxanne ujhelyi szakács
Pro Se Appellant

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this motion complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and has been prepared in Bookman Old Style, 14-point font.

roxanne ujhelyi szakács
Pro Se Appellant

App. 17

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, CRIMINAL DIVISION IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No.: 2024MM007132AMB
Division: M - Criminal

STATE OF FLORIDA,
Plaintiff,

Vs.

Roxanne Ujhelyi Szakacs,
Defendant,
_____/

FILED
2024 SEP 30 AM 11:32
JOSEPH ABRUZZO, CLERK
PALM BEACH COUNTY, FL
COUNTY CRIMINAL

MOTION TO DISMISS

1. If trying to prosecute me I am entitled to a trial by my peers.

2. I am entitled to Due Process, if this is a criminal case.

3. If you deny me of my Constitutional rights then this is a Federal matter and needs to be taken to Federal Court.

4. I am a Private Citizen, and was acting in my private capacity when the alleged crime occurred.

5. I sent an Affidavit of Truth and no one rebutted any of it. How come?

6. I did not commit a crime because by law showing a sexual organ which qualifies as indecent exposure is genitalia.

7. The officers arrested me without a warrant.

SCANNED
SEP 30 2024

8. Seeing as how the indecent exposure charge is dropped, that means I never committed a crime, which means everything that happened from there no longer applies: the arrest, false name, resisting arrest, and the disorderly conduct charges.

9. The officer had to have reasonable articulate suspicion. Exposing my chest is not a crime, so there couldn't have been suspicion there was a crime.

10. The officers did not understand the law and arrested me without a warrant, which is a violation of my due process.

11. I should not have been arrested, as there was no crime, and the officers violated my rights.

12. If this motion to dismiss is going to be ignored then I want my case to go to trial so that I can have due process.

13. Initially the alleged crime was indecent exposure, which by state law does not qualify. The officers did not understand the law, and they were not competent in the law. The court then changed the indecent exposure charge to disorderly conduct.

14. I challenge that per the body cam none of the charges would have occurred without the initial alleged indecent exposure charge. Proven by state code that there was no legal definition for indecent exposure, which means no crime was committed.

15. Due to the negligence and incompetence of the officers I was falsely arrested and detained, which is a federal offense.

16. Due to this information none of the rest of the charges apply due to the incompetence of the officer. Not knowing the proper legal definition of indecent exposure.

17. This is a victimless crime

18. Palm Beach County Code of Ordinances - Chapter 21 Parks and Recreation. Section 21-24 Swimming and Wading : (b)
All persons shall be so covered with clothing or a bathing suit so as to prevent any indecent exposure of the person in all park areas including those designated for swimming or wading.

19. Town of Palm Beach stated no specific ordinances about clothing and bathing.

20. West Palm Beach Code of Ordinances- Chapter 58 Recreational Facilities. Section 58-84 Recreational Activities: Bathing and Swimming- *Designated areas.* Swim, bathe or wade in any waters or waterways adjacent to any park or recreational facility, except in such waters and at such places as are provided therefor, and in compliance with such regulations as are set forth in this article or may be hereafter adopted nor shall any person frequent any waters or places customarily designated for the purpose of

will. It is not necessary to prove that the defendant used actual violence against the victim. Coercion may exist if a victim is told that an officer will bring false charges or cause the victim to suffer unjust punishment.

48. I was sexually assaulted by the officer touching me during a pat down without my consent. My 4th Amendment right was violated. There should have been a female officer present.

49. 42 U.S.C 1981 Equal rights under law. I was violated based on my gender and sexual orientation.

50. I want to submit this Affidavit for a motion to dismiss and I want this on the record.

51. Failure to have this information reviewed by competent parties, including the legal department may result in a Federal lawsuit against the police officer and all parties involved in this matter in their public or private capacity, including the county.

52. Please respond to this within three weeks.

ACCEPTANCE

Subscribed and sworn, without prejudice, and with all rights reserved,

Printed Name: Roxanne Ujhelyi Szakacs

Principal, by Special Appearance, in *propria persona*, proceeding *sui juris*.

Autograph of Affiant: [signature]

Date: 9/29/24

ACKNOWLEDGEMENT

II. Florida's disorderly conduct statute is unconstitutional as applied to Appellant. Appellant's constitutional right to equal protection of the law was violated when she was prosecuted, convicted, and sentenced for an act that men across Florida are freely permitted to do.

A. Standard of review

Constitutional matters are reviewed *de novo*. *Correll v. State*, 184 So. 3d 478, 488 (Fla. 2015). The unconstitutionality of a statute is a fundamental error that may be raised for the first time on appeal. *State v. Johnson*, 616 So. 2d 1, 3 (Fla. 1993).

B. Preservation

While Appellant did not directly challenge the constitutionality of the disorderly conduct statute at the trial court, Appellant advanced several arguments to the trial court to show that the prosecution of topless women violates the equal protection clause.

Appellant argued in various *pro se* motions that her equal protection rights were violated based on her gender and sexual orientation. R91; R97; R110; R126; R133; R153; R160. Appellant argued in the motion to dismiss ruled on by the trial court that she has equal rights under the law, and that her rights were violated because of her gender. R97. The trial court should have construed this *pro se* motion

as a motion challenging the constitutionality of the disorderly conduct statute on equal protection grounds. *See Tribble*, 936 So. 2d at 788 ("*Pro se* pleadings, however, should be given liberal construction.").

At trial, Appellant advanced the argument that she was allowed to be topless on the beach, just like a man. T81. Appellant continued to argue that the constitution did not prevent women from being topless at the beach. T87, T237, T243. Appellant further argued she did not "see my breasts as a problem. I don't see anybody's breasts as a problem." T243.

C. Analysis

i. Appellant was adjudicated guilty of Florida's disorderly conduct statute for the simple act of being topless on a public beach.

Appellant was adjudicated guilty of violating section 877.03 Florida Statutes. R185. That statute penalizes those who commit "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them." *Id.*

The State sought a conviction pursuant to the disorderly conduct statute simply because Appellant was topless on the beach.

The State made this point clear in its closing arguments:

> So how do we know that the defendant's actions that day of not having her top on affected the peace and quiet of those around her?
>
> Ms. Villatoro got up on the stand yesterday and told you she worked at the Tideline Hotel and she received complaints. People asked her to go talk to the defendant **because she had her top off.**
>
> And she told you it affected her peace and quiet. She had to go and do something that was out of the norm; something that she didn't have to do every single day; that she had never done before and go talk to somebody. **She met the defendant on the beach, who was topless and asked her to put her shirt on.**
>
> **That affected her peace and quiet**. We've proven that to you beyond a reasonable doubt.

T284-285 (emphasis added).

The State further argued that "public morals were potentially being corrupted by the defendant's actions." T304-305.

The State's theory of prosecution was that Appellant's exposure of her chest while sunbathing and swimming either affected the peace and quiet of the hotel manager, or that the public on the beach was potentially "corrupted" by Appellant's exposure of her bare chest.

The fact that beach patrons may have complained to the hotel manager, and the hotel manager "had to go and do something that

was out of the norm; something that she didn't have to do every single day," T285, was insufficient to support a conviction of disorderly conduct. *See Oxyde v. State*, 417 So. 3d 350, 353-54 (Fla. 4th DCA 2025) ("[M]ere boisterous behavior, even if it disrupts the operations of a business and draws onlookers' attention, is not by itself enough to sustain a disorderly conduct conviction (quoting *St. Fleury v. State*, 244 So. 3d 330, 332 (Fla. 4th DCA 2018)); *C.L.B. v. State*, 689 So. 2d 1171, 1172 (Fla. 2d DCA 1997) ("the First Amendment does not permit imposition of criminal sanctions for making a scene. In the instant case, appellant's actions amounted to more than creating a scene; his actions actually hindered the arrest of a suspect.").

As shown by the video evidence, Appellant was quiet and cooperative with the police officers. She put on a shirt mere minutes after voluntarily coming out of the ocean to speak with the officers. There was simply no indication that Appellant was engaging in any acts that could have been considered disorderly, except for the assertion that her toplessness itself breached the peace and quiet, or corrupted the public morals.

ii. Equal protection and gender based discrimination

Appellant challenges section 877.03, Florida's disorderly

conduct statute, on the grounds that the statute violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I Section 2 of the Florida Constitution to the extent the statute criminalizes females from being topless on a public beach, but does not criminalize men who engage in the same activity as women.

"Parties who seek to defend gender-based government action must demonstrate 'an exceedingly persuasive justification' for that action." *United States v. Virginia,* 518 U.S. 515, 531 (1996) (citing *J.E.B. v. Alabama ex rel. T.B.,* 511 U.S. 127, 136-137 (1994); *Mississippi Univ. for Women v. Hogan,* 458 U.S. 718, 724 (1982).

For challenges based on gender-discrimination under the equal protection clause, "the reviewing court must determine whether the proffered justification is 'exceedingly persuasive.' The burden of justification is demanding and it rests entirely on the State." *U.S. v. Virginia,* 518 U.S. at 533 (citing *Mississippi Univ. for Women,* 458 U.S. at 724).

"The heightened review standard our precedent establishes does not make sex a proscribed classification. Supposed 'inherent differences' are no longer accepted as a ground for race or national

origin classifications." *Id.* (citing *Loving v. Virginia,* 388 U.S. 1, 87 (1967)). "Physical differences between men and women, however, are enduring: '[T]he two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.'" *Id.* (quoting *Ballard v. United States,* 329 U.S. 187, 193 (1946)).

The Supreme Court recognizes that "'inherent differences' between men and women, we have come to appreciate, remain cause for celebration, ... [b]ut such classifications may not be used, as they once were, ... to create or perpetuate the legal, social, and economic inferiority of women." *Id.* at 533-34. "As a result, gender-based classifications 'call for a heightened standard of review,' a standard dubbed 'intermediate scrutiny' because it lies '[b]etween the [] extremes of rational basis review and strict scrutiny." *Free The Nipple-Fort Collins,* 916 F.3d at 799 (quoting *City of Cleburne, Tex. V. Cleburne Living Center,* 473 U.S. 432, 440 (1985), and *Clark v. Jeter,* 486 U.S. 456, 461 (1988)); *see also United States v. Skrmetti,* 145 S.Ct. 1816, 1828 (U.S. 2025) ("We have similarly held that sex-based classifications warrant heightened scrutiny.").

In order to survive intermediate scrutiny, "a gender-based

classification needs 'an exceedingly persuasive justification.'" *Free The Nipple-Fort Collins,* 916 F.3d at 799. (citing *J.E.B.,* 511 U.S. at 136). "The classification must serve 'important governmental objectives' through means' substantially related to' achieving those objectives." *Id.* (quoting *U.S. v. Virginia,* 518 U.S. at 533). This heightened scrutiny review applies to all gender-based classifications. *See Sessions v. Morales-Santana,* 582 U.S. 47, 57 (2017).

The 10th Circuit recently noted that early equal-protection cases required invidiousness as a "threshold," to trigger heightened scrutiny, however, "invidiousness still matters, but only in challenges to facially gender-neutral statutes that disproportionately and adversely impact one gender." *Free the Nipple-Fort Collins,* 916 F.3d at 799-800. Intermediate scrutiny still applies to gender-neutral statutes which adversely impact women, as "[o]f course, a State may not circumvent the Equal Protection Clause by writing in abstract terms." *Skrmetti,* 145 S.Ct. at 1831 (citing *Personnel Adm'r of Mass. v. Feeney,* 442 U.S. 256, 274 (1979)). In *Free the Nipple-Fort Collins,* the topless ban by the city of Fort Collins was directly targeted to women, thus immediately triggering the heightened intermediate

scrutiny analysis. 916 F.3d at 800.

Because Florida's disorderly conduct statute is facially gender-neutral, this Court's analysis must begin with the two-part test outlined in *Feeney,* 442 U.S. at 259. *Feeney* involved an equal-protection challenge to a state statute giving preferential hiring to veterans, which was facially gender-neutral. However, at the time of the litigation, over one quarter of the state's population were veterans, and of that population, only 1.8% were female. *Id.* at 270. To determine whether a heightened intermediate scrutiny applied to these facially gender-neutral laws, the Court created a two part test:

> When a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionably adverse, a twofold inquiry is thus appropriate. The first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based. If the classification itself, covert, of [sic] overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender based discrimination. In this second inquiry, impact provides an 'important starting point,' but purposeful discrimination is the 'condition that offends the Constitution.

Id at 274 (citations omitted).

> 'Discriminatory purpose,' however, implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,'

its adverse effects upon an identifiable group.

Id. (citing *United Jewish Organizations v. Carey*, 430 U.S. 144, 179 (1977) (Stewart, J., concurring).

iii. The effects of the disorderly conduct statute pass the two part test laid out in *Feeney*.

Similar to the statute at issue in *Feeney*, section 877.03, Florida Statutes, is facially gender neutral. The statute does not, on its face, differentiate between what conduct is disorderly based on whether a person committing the alleged act of disorderly conduct is male or female. *See Steiger v. U.S. R.R. Retirement Bd.*, 761 F.2d 1428, 1431 (9th Cir. 1985) ("On its face, however, section 321c(e)(5) is gender neutral. ... By its terms, this category comprises both men and women.").

Just because the statute is facially neutral, this Court's "inquiry does not end [here]. *Feeney* instructs us next to determine whether the purportedly gender-neutral statute is actually a classification which by design is covertly gender-based." *Austin v. Berryman*, 955 F.2d 223, 226 (4th Cir. 1992) (citing *Feeney*, 442 U.S. at 274).

The effects of this statute reflect invidious gender discrimination. Only the exposure of breasts by women is considered

an act which by itself, "corrupts the public morals," "outrages the sense of public decency," or "affects the peace and quiet." § 877.03 Fla. Stat. *See Free the Nipple-Fort Collins,* 237 F.Supp 3d. at 1131 ("it appears that underlying Fort Collin's belief that topless females are uniquely disruptive of public order is the same negative stereotype about female breasts ... namely, that society considers female breasts primarily as objects of sexual desire whereas male breasts are not."); *id.* at 1133 ("At bottom this ordinance is based upon *ipse dixit*—the female breast is a sex object because we say so. That is, the naked female breast is *seen* as disorderly or dangerous because society, from Renaissance paintings to Victoria's Secret commercials, has conflated female breasts with genitalia and stereotyped them as such.").

In *Austin,* the Fourth Circuit analyzed a Virginia unemployment compensation statute under the *Feeney* test where the petitioner claimed that the statute negatively impacted women who relocate for their husbands. The court noted that while the statute would, in practice, negatively impact more women than men, the court held that "it is obvious that the statute, viewed more broadly, also negatively impacts men who relocate with their wives, as well as both

spouses whenever a husband or wife relocates to be with a marital partner." *Austin,* 955 F.2d at 227.

The issue here is not that there is some disparate impact on women compared to men. Both women and men *can* perform activities which fall under the disorderly conduct statute, *but* only the mere act of being topless on a beach, is considered "disorderly" when done by women. *See, e.g., Buzzetti v. City of New York,* 140 F.3d 134, 143 (2nd Cir. 1998) ("the male chest is routinely exposed on beaches.").

Male and female breasts are identical except for the milk-producing capabilities of female breasts. Only male breasts serve a purely erotic function. Yet, only the mere exposure of a female breast is viewed under Florida law as inherently capable of corrupting public morals or disrupting the peace and quiet. One simply must walk on the sands of any public beach in this State to know that male breasts are not considered as inherently capable of corrupting public morals or disrupting the peace and quiet.

In fact, the body worn camera in this case depicts a shirtless man walking behind Appellant as she is interacting with the officers. V1 10:35.

To show "discriminatory purpose" under *Feeney*, the decision maker must select or reaffirm "a particular course of action at least in part 'because of,' not merely 'in spite of' its adverse effects upon an identifiable group." 442 U.S. at 279. In *Feeney* there was no "discriminatory purpose" to the veterans preference statute as "nothing in the record demonstrates that this preference for veterans was originally devised or subsequently re-enacted because it would accomplish the collateral goal of keeping women in a stereotypic and predefined place in the Massachusetts Civil Service." *Id.*

Section 877.03 broadly criminalizes a wide range of behaviors that "morally corrupt" the public, or that disturb the "peace and quiet." There is no requirement that one commit lewd and lascivious acts to secure a conviction for section 877.03. The State knows that it cannot prosecute women for being topless pursuant to section 800.03 without a lewd or lascivious act, as the mere exposure of breasts is not a crime in the state of Florida. *See, Duvallon,* 404 So. 2d at 197; *Goodmakers,* 450 So. 2d at 891; *Egal,* 469 So. 2d at 198; *A Naked Person Issued Notice of Violation No. P419490,* 841 F.Supp. at 1155. So, in order to criminalize female toplessness, the state is forced to prosecute these cases under the broader disorderly conduct

statute.

Prosecutors retain discretion about which charges to file and purse on behalf of the state, and are thus "decision makers" on behalf of the State. Prosecutors routinely perpetuate the social inferiority of women who prosecute women as committing morally corrupt actions and affecting the peace of others for simply exposing their breasts while engaging in recreational activities on a beach. The social inferiority of women is perpetuated by enforcement of this statute as men were once criminalized for being topless on beaches, but won the right to expose their chests on the beach over 100 years ago. *See generally,* Petula Dvorak, *Men were once arrested for baring their chest on the beach,* THE WASHINGTON POST (January 5, 2019) https://www.washingtonpost.com/history/2019/01/05/men-were-once-arrested-baring-their-chests-beach/ (last accessed November 3, 2025).

The enforcement of Florida's disorderly conduct statute against topless women but not topless men perpetuates the social inferiority of women as only female beach goers must cover their breasts, while male beachgoers are more than welcome to "free the nipple." In a case involving the prosecution of topless sunbathing, Justice England

noted that under the words of Florida's disorderly conduct statute, "it makes no sense for the courts of this state to be involved in drawing lines between permissible and impermissible variations on the degree of clothing worn by females." *Moffett*, 340 So. 2d at 1159 (England, J., dissenting). The enforcement of Florida's disorderly conduct statute routinely polices the clothing decisions of female beachgoers, but not male beachgoers, evidencing invidious gender discrimination. The continued stigmatization of the female breast, compared to male breasts, simply reinforces the sexual objectification of women, and is primarily rooted in negative stereotypes toward women. *See Plancarte,* 20 N.W. 3d at 45 (Hennessey, J., concurring); *Free the Nipple-Fort Collins,* 916 F.3d at 803.

The Supreme Court held that "impact provides an 'important starting point,' but purposeful discrimination is the 'condition that offends the Constitution." *Feeney,* 442 U.S. at 274. The impact here is clear; only females who expose their breasts on a public beach are subject to prosecution pursuant to the disorderly conduct statute. By prosecuting the mere toplessness of females under the disorderly conduct statute to skirt the lewd and lascivious requirement of

section 800.03, the State is able to criminalize women for the same activity in which men are free to engage, on any beach, across this state. The purposeful discrimination is clear. The State continually reaffirms the social inequality of women and the stigmatization and sexualization of female breasts by prosecuting female toplessness as a "morally corrupt act" or an act that "affects the peace and quiet," while men are freely permitted to expose their breasts without subjecting themselves to prosecution.

There is a gender-neutral way to prosecute women who publicly expose their breasts. First, Florida law is clear that nudity alone is not a crime. *Duvallon,* 404 So. 2d at 197; *see also Goodmakers,* 450 So. 2d at 891; *Egal,* 469 So. 2d at 198; *A Naked Person Issued Notice of Violation No. P419490,* 841 F.Supp. at 1155.

Section 800.03(b) criminalizes "being naked in public in a vulgar or indecent manner." If a woman is topless on the beach, her partial nudity could subject her to prosecution under section 800.03(b) if she is engaged in lewd or lascivious acts.

Prosecuting a topless woman under section 800.03 is not violative of the equal protection clause because her nudity must be accompanied by a lewd or lascivious act. A topless man who engages

in lewd and lascivious behavior can similarly be prosecuted under section 800.03. The decision to prosecute a man under 800.03 is not tied to the exposure of the breasts, but tied to the lewd act being performed that accompanies the exposure of the breast.

Anyone, regardless of gender, who exposes their breasts while paired with: touching themselves in a suggestive manner; engaging in a sexualized performance; or otherwise engaging in any other lewd or lascivious behavior, is rightfully subject to prosecution under section 800.03.

Accordingly, while section 877.03 is facially gender neutral-the effect of enforcement of this statute against women beachgoers who expose their breasts but not male beachgoers who expose their breasts reflects purposeful, invidious gender discrimination.

iv. The government cannot proffer any justification that the prosecution of topless women satisfies the intermediate scrutiny standard.

The primary focus here, to avoid muddying the waters, "is the equal right of women to expose their breasts in public, not necessarily a plan to make it an everyday, everywhere routine." *Free the Nipple-Fort Collins*, 237 F.Supp.3d at 1131. The burden lies with the government who must proffer an "exceedingly persuasive

justification" for the gender-based government action. *U.S. v. Virginia,* 518 U.S. at 531. Intermediate scrutiny requires "the defender of the challenged action [to] show 'at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Id.* at 524 (citing *Mississippi Univ. for Women,* 458 U.S., at 724). "The burden of justification is demanding and it rests entirely on the State." *Id.* at 533.

The government cannot meet its burden. The government will not be able to proffer any exceedingly persuasive objective that is served by prosecuting topless women, but not men, pursuant to the disorderly conduct statute.

Appellant recognizes, however that at least two courts have held that Florida's disorderly conduct statute has passed constitutional scrutiny pursuant to the equal protection clause in similar contexts.

The Fifth District reviewed a challenge to sections 800.03, 877.03, and a Brevard County Ordinance as violating the equal protection guarantee of Article I Section 2 of the Florida Constitution "to the extent that they prohibit exposure of the female breast in circumstances where the exposure of the male breast would not be