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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

JOHN BOYD RIVERS,

Appellant,

vs.

CASE No. 1D23-1473
LT No. 22-CF-924

STATE OF FLORIDA,

Appellee.

____________________________/

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

BRIEF OF CRIMINAL LAW SCHOLARS AS *AMICI CURIAE* FOR APPELLANT

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae are scholars of criminal law and criminal procedure who have taught and written extensively on principles of criminal law in the United States and Florida in particular. Their names, titles, and institutional affiliations (for identification purposes) are listed in Exhibit A.

Amici have a professional interest in the doctrinal, historical, and policy issues involved in this Court's interpretation of the criminal law. No fees have been or will be paid for the preparation and filing of this amicus brief.

[1] Counsel for Mr. Rivers has consented to the filing of *amicus* briefs in this matter. The State took no position but consented to *amici*'s request for an extension of time. No counsel for any party authored this brief in whole or in part.

SUMMARY OF THE ARGUMENT

This appeal presents a question of critical importance: Does a person commit a crime by voting when he *does not know* he is ineligible to vote, but is aware of the facts that make him ineligible? The correct answer is no. Florida's Legislature specified in § 104.15 Fla. Stat. that "[w]hoever, *knowing* he or she is not a qualified elector, *willfully* votes at any election is guilty of a felony of the third degree" (emphasis added). The statute thus criminalizes conduct only if a person (1) knows he is not qualified to vote in an election and (2) willfully votes in that election anyway.

In denying Mr. Rivers' motion for judgment of acquittal and instructing the jury on the elements of § 104.15 Fla. Stat, the trial court misinterpreted the statute and the fundamental principle of *mens rea*. A bedrock principle of criminal law is that only an individual who acts with criminal intent is subject to criminal punishment. That principle is reflected in the common law, in numerous Supreme Court cases, and in decisions of the Florida Supreme Court—which has stood as a bulwark against attempts to read Florida statutes to criminalize innocent conduct. *See, e.g.*,

Chicone v. State, 684 So. 2d 736, 743 (Fla. 1996) ("The group of offenses punishable without proof of any criminal intent must be sharply limited."), *superseded by statute as stated in State v. Adkins*, 96 So.3d 412 (Fla. 2012)

The trial court's interpretation of § 104.15, Fla. Stat. and the ensuing guilty verdict, turned this principle on its head. Rather than apply the statute as written, the trial court permitted the State to prove Mr. Rivers' culpability only based on Mr. Rivers' alleged awareness of facts that might have rendered him ineligible to vote—not Mr. Rivers' actual knowledge of his ineligibility. TR-191–92. That was error. For Mr. Rivers, knowing that he was "on probation," TR-191, was not at all the same as "knowing he [was] not a qualified elector," § 104.15, Fla. Stat. Further compounding this error, the trial court then instructed the jury that "[i]f you find the State proved beyond a reasonable doubt that the defendant *did not have an honest, good faith belief* that he had the right to vote you should find him guilty." R-52 (emphasis added). Of course, a person can lack a good-faith belief that he has the right to vote (*e.g.*, because he has not considered the issue or has relied on the State to determine his

eligibility) but not *know* that he is *ineligible* to vote. The statute criminalizes only the latter conduct.

The trial court, in effect, read the explicit *mens rea* requirement out of the statute (or equally problematic, imposed a substitute standard), depriving Florida's legislature of its choice to criminalize voting only when a person knows he is ineligible to vote and does so with that knowledge. § 104.15, Fla. Stat. As then-Judge Gorsuch observed in a similar case: "How can it be that courts elsewhere read a *mens rea* requirement *into* statutory elements criminalizing otherwise lawful conduct, yet when [the legislature] expressly imposes just such a *mens rea* requirement in [this statute] we turn around and read it *out* of the statute?" *United States v. Games-Perez*, 667 F.3d 1136, 1145 (10th Cir. 2012) (Gorsuch, J., concurring in the judgment).

The requirement that someone act with a culpable state of mind is essential to criminal law in the United States. And it is all the more important in a case involving voting: "[T]he right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard." *Boardman v. Esteva*, 323 So. 2d 259, 263 (Fla. 1975). It is difficult to imagine an interpretation more likely to chill

the exercise of this fundamental right than the interpretation below, which enabled the State to convict Mr. Rivers for casting a ballot without offering sufficient evidence that he actually knew he was unqualified to do so. Mr. Rivers' conviction should therefore be vacated.

ARGUMENT AND AUTHORITIES

I. *Mens Rea* Is a Fundamental Safeguard Against Punishment for Unknowingly Unlawful Conduct.

A. *Mens Rea* Is Part of the United States' Common Law Heritage.

The trial court's construction of § 104.15, Fla. Stat. is inconsistent with the *mens rea* requirement—a core principle of criminal law tracing its roots to common law. Both at English common law and in early American decisions, it was universally accepted as a "basic principle" that a "'vicious will'" is necessary for conduct to be criminal. *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019) (quoting 4 William Blackstone, Commentaries on the Laws of England 21 (1769) ("An unwarrantable act without a vicious will is no crime at all.")).

The "vicious will" requirement arrived in England primarily through the church. *See* Albert Levitt, *Origin of the Doctrine of Mens Rea*, 17 Ill. L. Rev. 117, 136 (1923) (concluding that "the genesis of the modern doctrine of *mens rea* is . . . the mutual influences and reactions of Christian theology and Anglo-Saxon law"); *see also* Francis Bowes Sayre, *Mens Rea*, 45 Harv. L. Rev. 974, 983 (1932) (describing *mens rea* as "a scrap copied in from the teachings of the church"). Central to church teachings was that moral guilt should dictate punishment; a guilty state of mind was essential to moral guilt. English common law thus made *mens rea* "a factor of prime and decisive importance in the determination of criminal responsibility." Sayre, 45 Harv. L. Rev. at 988, 992–93.

By the time of the Founding, English law had universally accepted for centuries "that an evil intent was as necessary for [a] felony as the act itself." *Id.* at 993. *See also* 4 W. Blackstone, Commentaries at 21; Ann Hopkins, Mens Rea *and the Right to Trial by Jury*, 76 Cal. L. Rev. 391, 394 (1988) (describing the "great deal of consensus" about the criminal intent requirement among the foremost English criminal law scholars of the eighteenth century).

Early American jurisprudence incorporated these same principles. Cases easily adopted the maxim that "[c]rime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand." *Morissette v. United States*, 342 U.S. 246, 251–52 (1952). As state legislatures codified common law crimes, state courts inferred the presence of *mens rea* requirements, "influenced by the fact that '[t]he existence of *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.'" *Chicone*, 684 So. 2d at 743 (citing *Dennis v. United States*, 341 U.S. 494, 500 (1951)).

B. Modern Jurisprudence Embraces a Presumption in Favor of Scienter.

Applying this longstanding principle, modern courts read statutes with a presumption in favor of "scienter"—a "presumption that criminal statutes require" someone to act with knowledge of "*each* of the statutory elements that criminalize otherwise innocent conduct." *Rehaif*, 139 S. Ct. at 2195 (emphasis added) (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994)); *see also Elonis v. United States*, 135 S. Ct. 2001, 2011 (2015). This requirement helps to "separate those who understand the wrongful

nature of their act from those who do not." *Rehaif*, 139 S. Ct. at 2196 (quoting *X-Citement Video*, 513 U.S. at 72-73 n.3); *see also* Oliver Wendell Holmes, Jr., The Common Law 3 (1881) ("[E]ven a dog distinguishes between being stumbled over and being kicked."). Further, a strong scienter requirement also serves "to diminish the risk of 'overdeterrence'"—that is, punishing otherwise "acceptable and beneficial conduct." *Ruan v. United States*, 142 S. Ct. 2370, 2378 (2022) (citations omitted).

Indeed, the presumption in favor of scienter is so strong that courts have read statutes to include a *mens rea* requirement even when (unlike here) the statute's plain language did not include a scienter requirement, and even when "the most grammatical reading of the statute" suggested there was no such requirement. *X-Citement Video*, 513 U.S. at 70; *see also Staples v. United States*, 511 U.S. 600, 605, 619 (1994) (reading in a scienter requirement when the plain language of the statute was silent concerning the *mens rea* required). And where, as here, "a statute is not silent as to *mens rea*," the presumption in favor of scienter "applies with equal or greater force to the scope of that provision," meaning that "a word such as 'knowingly' modifies not only the words directly following it but also

those other statutory terms that separate wrongful from innocent acts." *Ruan*, 142 S. Ct. at 2377.

Importantly, the U.S. Supreme Court has applied this presumption when considering statutes, like § 104.15, Fla. Stat., that contain a legal element in the definition of the offense. *See Liparota v. United States*, 471 U.S. 419 (1985). The statute in *Liparota* made it a crime to "knowingly use[], transfer[], acquire[], alter[], or possess[] coupons or authorization cards [*i.e.*, food stamps] in any manner not authorized by [the statute] or the regulations." *Id.* at 419 (quoting 7 U.S.C. § 2024(b)(1) (1982)). The Supreme Court construed the statute to require a defendant to "know" that his use of food stamps was unauthorized by law, reasoning that to do otherwise would "depart[] from th[e] background assumption of our criminal law" that *mens rea* is required. *Id.* at 420.

In so holding, the Court also rejected an argument that its construction created an improper "mistake of law" defense. *Id.* at 425 n.9 (internal quotation marks omitted). As the Court explained, when a statute contains a "legal element" as part of its definition, knowledge is required as to that legal element, even though it is not required as to the existence of the criminal statute itself. *Id.* So to

violate a statute criminalizing the receipt of stolen goods, a defendant does not have to know that receiving stolen goods is a crime but does have to know that the goods in question were stolen. *Id.* Thus, to violate the statute in *Liparota*, the defendant did not have to know it was a crime to use food stamps in an unauthorized manner but did have to know the use in question was unauthorized by law. *Id.*

So too here. To violate § 104.15, Fla. Stat. Mr. Rivers did not have to know it was a crime to vote while ineligible, but he did have to know that he *was* ineligible to vote. The fact of Rivers' ineligibility, like the fact that the use in *Liparota* was unauthorized, is an embedded "legal element" of the crime as to which *mens rea* is presumptively required. *Liparota*, 471 U.S. at 425 n.9.[2] If permitted

[2] Since *Liparota*, the U.S. Supreme Court has continuously applied a criminal statute's "knowingly" language to the statute's legal status element. *See Ruan,* 142 S. Ct. at 2376 (concluding that a statute making it unlawful "[e]xcept as authorized . . . for any person knowingly or intentionally" to distribute a controlled substance required proof that "the defendant knowingly or intentionally acted in an unauthorized manner"); *Rehaif*, 139 S. Ct. at 2198 (where statute made it a crime to "knowingly violate[]" a prohibition on the possession of firearms by those in the United States unlawfully, whether defendant was in the country unlawfully was a "'collateral' question of law" to which the *mens rea* requirement applied); *see also United States v. Golitschek*, 808 F.2d 195, 202 (2d Cir. 1986) ("[A] defendant normally need not be shown to know that there is a law

to stand, the trial court's departure from this long-standing presumption will "criminalize a broad range of apparently innocent conduct"—the exact opposite of what the *mens rea* requirement guards against. *Id.* at 420.

II. The Trial Court Applied A *Mens Rea* Standard That Is Inconsistent With the Presumption In Favor of Scienter.

The trial court did not approach § 104.15, Fla. Stat. with a presumption in favor of scienter. Instead, the trial court ignored the statutory language and decisions of Florida courts interpreting statutes with similar *mens rea* requirements. The trial court thus wrongly endorsed a *mens rea* standard that eliminated the State's burden to prove that Mr. Rivers knew he was an unqualified elector and voted anyway.

A. The Florida Legislature Made Plain that to Violate § 104.15, Fla. Stat. A Person Must "Know" He Is Not Qualified to Vote.

"To determine whether the Legislature included a knowledge requirement in any given statute," courts must "first look to the

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that penalizes the offense he is charged with committing. However, he must be proven to have whatever state of mind is required to establish that offense, and sometimes that state of mind includes knowledge of a legal requirement.").

statute's plain language." *State v. Giorgetti*, 868 So. 2d 512 at 515 (Fla. 2004). Section 104.15 specifies that "[w]hoever, *knowing* he or she is not a qualified elector, *willfully* votes at any election is guilty of a felony of the third degree[.]" (emphasis added). The statute plainly establishes two prerequisites for criminal liability to attach: a person must (1) know he is not qualified to vote, and (2) willfully vote with that knowledge.

Rather than apply the knowledge requirement as written, the trial court permitted the State to submit the case to the jury based on the State's claim that Mr. Rivers "knew he was unqualified" because "[h]e had his felony convictions, he was on probation at the time, and he admitted to voting." TR-191. In other words, the State claimed that Mr. Rivers could be convicted because he knew the *facts that made him ineligible* to vote, regardless of whether or not he actually *knew he was ineligible* as a result of those facts. That application of the *mens rea* requirement gives short shrift to the plain language of the statute and "[o]ne of the most fundamental principles of Florida law," which "is that penal statutes must be strictly construed according to their letter." *Polite v. State*, 973 So. 2d 1107,

1111 (Fla. 2007). Here, the Legislature deliberately included a requirement that a person "know[] he or she is not a qualified elector."

The Legislature could have written the statute to criminalize other types of conduct, but it did not. It could, for example, have omitted the knowledge requirement and written the statute to say "[w]hoever is not a qualified elector and willfully votes in an election is guilty of a felony of the third degree."

That the Legislature chose not to draft the statute in this manner speaks volumes. The Legislature has "broad authority to determine any requirement for intent or knowledge in the definition of a crime." *Giorgetti*, 868 So. 2d at 515 (citing *Reynolds v. State*, 82 So. 2d 46, 49 (Fla. 2002)). If, on the other hand, the Legislature wanted to write a statute to avoid imposing criminal punishment on individuals who vote in good faith while mistakenly believing they are eligible, there is no way to write the statute other than the way it did in § 104.15. What more could the Legislature have done to make plain that it intended only to criminalize voting by those who *know* they are not qualified to vote, beyond specifying that the defendant must "know[] [he] is not qualified to vote"?

This interpretation also draws support from related provisions in Florida's election code. *See T.R. v. State*, 677 So. 2d 270, 271 (Fla. 1996) ("[A]ll parts of a statute must be read *together* in order to achieve a consistent whole." (citation omitted) (emphasis in original)). Section 98.071(2), for example, requires the supervisor of elections—along with the Florida Department of State, where necessary—to "verify and make a final determination . . . regarding whether the person who registers to vote is eligible" under Amendment 4 and Senate Bill 7066. Why make the supervisor of elections and the State the final arbiters of a voter's eligibility if the Legislature intended to impose criminal punishment on any ineligible voter who cast a ballot?

The better explanation is that the Legislature adopted this verification requirement because it understood that the statutory scheme governing elections may lead to situations in which a voter's eligibility is unclear—where, for example, an ineligible voter receives a voter information card. Indeed, one trial court has observed that the State's role in verifying a voter's eligibility will prevent any prosecutor from "meet[ing] the scienter requirement under the statute[]." *State v. Suggs*, No. 22-008080CF10A (Fla. 17th Cir. Ct.

May 19, 2023). Whether or not that is so, at a minimum, this notification requirement underscores the importance of faithfully enforcing the Legislature's requirement that a voter have actual knowledge of his ineligibility in order to violate § 104.15.

Ultimately, respect for legislative intent demands that courts enforce the statutory *mens rea* requirement as written. *See State v. Adkins*, 96 So. 3d 412, 417 (Fla. 2012) ("Enacting laws—and especially criminal laws—is quintessentially a legislative function."). And there is good reason for the Legislature to have written the statute as it did. After all, given the importance of voting to the political process, the Legislature likely did not want to chill lawful voting by threatening criminal punishment for those who vote or attempt to vote in the good-faith belief that they are eligible, only to discover later that they are not.

B. The Trial Court's Interpretation Conflicts With Florida Criminal Law.

The trial court's interpretation also conflicts with Florida criminal law. Consistent with the *mens rea* principles discussed in Part I, the Florida Supreme Court has defined "knowing" and "willful" conduct as requiring an individual to have subjective "awareness or

understanding" and to "[i]ntend the result which actually comes to pass." *Polite*, 973 So. 2d 1113; *see also O'Neill v. State*, 684 So. 2d 720, 722 n.5 (Fla. 1995) ("'Knowingly' means with actual knowledge and understanding of the facts."). And because the "willfulness requirement assures that no one will be convicted of a crime because of a mistake or because he does something innocently, not realizing what he was doing," an accused must have personal knowledge of all elements of the crime. *Corrales v. State*, 84 So. 3d 406, 408 (Fla. 1st DCA 2012) (citation omitted); *Sanchez v. State*, 89 So. 3d 912, 915 (Fla. 2d DCA 2012) (holding that to prove someone "knowingly aid[ed] or assist[ed] a person in escaping . . . from an officer" under § 843.12, Fla. Stat., the State was required to prove "both that [the defendant] knew the police were attempting to serve an arrest warrant and that [the defendant] knew [his friend] was attempting an escape"); *cf. Polite,* 973 So. 2d at 1111 (concluding that the knowledge requirement in a statute criminalizing "[w]however knowingly and willfully resists . . . any officer" also applies to the victim's status).

For example, in *Corrales*, this court analyzed § 843.15, Fla. Stat. which criminalizes a failure to appear in court. 84 So. 3d at 409. Because the statute "requires proof that the nonappearance

was knowing and willful," this Court deemed the state's reliance on oral notice given to the defendant's attorney insufficient. *Id.* So too here. The State did not rely on any evidence showing that Mr. Rivers actually knew that either his April 2020 conviction (which he believed had been withheld) or his being on community control disqualified him from voting. T-214, 221. But the trial court still permitted the State to submit the case to the jury based on an election worker's testimony that the worker "told everybody what your sentence being completed meant," T-192, and that although the worker recognized Mr. Rivers, he "[d]idn't have any memory" of their interaction. T-64. Just as the prosecution in *Corrales* could not show the requisite *mens rea* by imputing notice to the defendant's attorney to the defendant himself, the State cannot impute Mr. Rivers' subjective, personal knowledge solely from an election worker's testimony that he generally told people who were detained at the jail what he, the election worker, understood to constitute a completed sentence.

In a similar vein, in *Ramirez v. State*, the Second District analyzed § 648.44(8)(b), Fla. Stat., which prohibits persons with felony convictions from working for a bail bond agency. 113 So. 3d 28, 29–30 (Fla. 2d DCA 2012). Although § 648.44(8)(b), Fla. Stat.

did not contain an explicit knowledge requirement, the court read one into the statute to avoid criminalizing "what is otherwise innocent conduct, *i.e.*, working at a clerical job." *Id.* at 30. But by reading the knowledge requirement out of § 104.15, Fla. Stat. the trial court did just that. Voting, without actual knowledge of ineligibility, is not only innocent conduct, it is conduct in which all citizens are *encouraged* to engage.

Nor is "knowledge" or "willfulness" commensurate with "good faith," as the jury instructions implied. Recently, in *Ruan*, the U.S. Supreme Court rejected the government's argument that it could convict individuals of distributing controlled substances not "as authorized" "by proving beyond a reasonable doubt that [the defendant] did not even make an objectively reasonable attempt to ascertain and act within the bounds of professional medicine." 142 S. Ct. at 2381. The Court explained that adopting such a construction would not only ignore the statute's explicit use of "the familiar *mens rea* words 'knowingly or intentionally,'" but would also impermissibly "turn a defendant's criminal liability on the mental state of a hypothetical, 'reasonable' doctor" rather than the defendant's own mental state. *Id.*

Florida courts have embraced this principle in analogous criminal contexts. In *T.R.W. v. State*, for example, the court considered the mental state applicable to a statute criminalizing written threats but did not include an explicit *mens rea* requirement. 363 So. 3d 1081, 1082 (Fla. 4th DCA 2023). The court held that the question of whether a threat was made must be analyzed based on the defendant's subjective intent, not whether a reasonable person would have perceived the communication as a threat. *Id.* at 1088. In so holding, the court adopted the U.S. Supreme Court's position that employing a reasonable person standard is "inconsistent with the conventional requirement for criminal conduct—awareness of some wrongdoing." *Id.* at 1087 (*citing Elonis v. United States*, 575 U.S. 723, 737 (2015)).

Here, the trial court made no meaningful effort to distinguish the mental state of a hypothetical elector from Mr. Rivers' own mental state. In doing so, the trial court flouted the long line of Florida cases interpreting state criminal laws containing a "knowing" requirement to mean what they say: Proof of knowledge requires proof of actual, subjective intent.

CONCLUSION AND PRAYER

The Court should reverse the decision below.

Dated: November 16, 2023

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, under Florida Rule of Appellate Procedure 9.045(e), that this Brief complies with the applicable font and word-count requirements. It was prepared in Bookman Old Style 14-Point font, and it contains ____ words.

/s/ *Brian Miller*
Brian Miller

Dated: November 16, 2023.

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FIRST DISTRICT OF FLORIDA

JOHN BOYD RIVERS,

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STATE OF FLORIDA,

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ON APPEAL FROM THE CIRCUIT COURT
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