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DISORDERLY CONDUCT:

AN INVESTIGATION INTO POLICE AND PROSECUTOR PRACTICES

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I. INTRODUCTION

Disorderly conduct is a criminal charge that prohibits a broad range of behavior. One state statute, for example, criminalizes "violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct," even when such conduct merely "tends to cause or provoke a disturbance" without actually doing so.[2]

There are many valid criticisms of disorderly conduct laws, including that they are too broad in scope,[3] carry penalties that are too harsh,[4] and fail to give sufficient notice

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[2] *See* Part I.
[3] *See* Part II.A.
[4] *See* Part II.B.

of what specific acts are actually criminalized.[5] A fourth criticism of such statutes is race-based. At least two law professors have recently called for the abolition of disorderly conduct statutes, in part because the police are allegedly using such laws to surveil African American "communities for signs of disorder" and "as a means of social control against people of color."[6]

This article investigates this race-based claim, which I call the race-motivated theory of disorderly conduct.[7] To do so, I selected a sample of 91 disorderly conduct cases from a timeframe, venue, and jurisdiction that would likely *substantiate* the race-motivated theory, if the theory is true.[8] I then tested two hypotheses: (1) I hypothesize that the evidence will *not* support the race-motivated theory of disorderly conduct; and (2) I further hypothesize that the disorderly conduct statute *is* being abused, not by police, but by prosecutors (and in a race-neutral way).[9]

The investigation confirmed the first hypothesis. Although African Americans were indeed charged disproportionately (25.3% of all cases) relative to their population (11.5%), [10] the investigation was able to completely rule out police surveillance as the cause. [11] Instead, in every single case filed against an African American defendant, the police were summoned to the scene—usually by a witness who knew the defendant well, if not intimately—for accusations of criminal activity.[12]

The investigation of this first hypothesis has its limitations. Most significantly, it examines data from only one state, one county, and three law enforcement agencies.[13] But that is also the primary lesson imparted by this article. Broad, sweeping claims of systemic police racism are popular in academia, but the reality is that policing is a very state-, county-, and even agency-specific matter. [14] Such far-

[5] *See* Part II.C.
[6] *See* Part II.D.
[7] *See* Part III.
[8] *See* Part III.B.
[9] *See* Part III.A.
[10] *See* Part III.C.
[11] *See* Part IV.A.
[12] *See id*.
[13] *See* Part V.
[14] *See id*.

reaching claims of racism are therefore often misplaced and detract from the true, underlying problem.[15]

The investigation also confirmed the second hypothesis. Regardless of the defendant's race, 75 of the 91 disorderly conduct cases (82.4%) also included a charge or charges *other than* disorderly conduct.[16] Most commonly, 23 of the cases (25.3%) were two-count cases charging an underlying battery crime with a disorderly conduct tacked-on for the same incident.[17] This prosecutorial practice of charge-stacking gives the state tremendous leverage over the defendant in plea bargaining, thus enabling it to obtain a conviction without the risk or inconvenience of a jury trial.[18]

Concerning this second finding, i.e., that disorderly conduct is being abused not by police but by prosecutors (and in a race-neutral way), this article argues for specific and simple statutory reform to protect defendants of all races from prosecutorial misuse, and overuse, of the disorderly conduct law.[19]

II. THE CRIME OF DISORDERLY CONDUCT

Misdemeanor crimes have received a substantial amount of attention in law journals in recent years.[20] Even one of the lowliest misdemeanors, disorderly conduct, is about to see its time in the spotlight.[21] Disorderly conduct is

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[15] *See id*.
[16] *See* Part III.C.
[17] *See* Part IV.B.
[18] *See id*. In fact, not a single case in the sample went to jury trial. However, as discussed in Part IV.B., this does not necessarily prove a cause-and-effect relationship between charge-stacking and the zero-percent trial rate for cases in the sample.
[19] *See* Part VI.
[20] *See, e.g.*, Sandra G. Mayson & Megan T. Stevenson, *Misdemeanors By the Numbers*, 61 B.C. L. REV. 971, 974 (2020) ("After decades of neglect, misdemeanors have entered mainstream criminal-justice debates."); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1315 (2012) ("Most U.S. convictions are misdemeanors, and they are generated in ways that baldly contradict the standard due process model of criminal adjudication."); Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1090 (2013) ("There is a misdemeanor crisis in the United States.").
[21] *See, e.g.*, Rachel Moran, *Doing Away with Disorderly Conduct*, 63 B.C. L. REV. __ (forthcoming, 2022), at

a strange criminal charge. Unlike other misdemeanors—such as battery, prostitution, theft, or driving under the influence—disorderly conduct is difficult, if not impossible, to define. As a result, criminal statutes vary greatly from state to state.[22]

For example, California's near book-length disorderly conduct statute dedicates several paragraphs to criminalizing "any act of prostitution," and then itemizes several prohibited uses of "a concealed camcorder, motion picture camera, or photographic camera."[23] Texas's mere article-length statute, by comparison, criminalizes the creation of "a noxious and unreasonable odor" before it switches gears to delineate several illegal uses of firearms.[24] The statute then takes a truly unexpected turn: it rather oddly and specifically outlaws the "reckless" exposure of one's "anus or genitals in public."[25]

On the other hand, relative to California and Texas, Florida's disorderly conduct statute is short and sweet. Weighing in at a mere 74 words, it prohibits "such acts" that "affect the peace and quiet of persons who may witness them."[26] More impressive still, Wisconsin's statute is short on language yet amazingly broad in scope. In only 40 words, it criminalizes conduct that merely *tends* to cause a disturbance, even when no actual disturbance results.[27] In its entirety, it reads: "Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor."[28]

While the above statutes may seem relatively harmless, in many respects they are quite serious and can wreak havoc with defendants' lives in a variety of ways.

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https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3807607; Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. __ (forthcoming, 2021), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552620.

[22] *See* Rachel Moran, *supra* note 21, at 4-8 (citing all fifty states' disorderly conduct statutes).

[23] CAL. PENAL CODE § 647.

[24] TEX. PENAL CODE ANN. § 42.01.

[25] *Id*.

[26] FLA. STAT. ANN. § 877.03.

[27] WIS. STAT. ANN. § 947.01.

[28] *Id*.

Because of this, many authors have harshly criticized disorderly conduct statutes, and two forthcoming law review articles call for their abolition.[29]

III. ARGUMENTS FOR ABOLITION

While there are many criticisms of disorderly conduct statutes, four arguments for their abolition center on the statutes' reach, associated penalties, lack of notice, and racially disparate impact.

A. WE'RE ALL CRIMINALS NOW

One argument for abolishing the disorderly conduct statute is that its language is so broad that it criminalizes too much behavior and, in a related vein, those in power have too much discretion to unfairly target the unpopular among us.[30]

For example, in a case involving the Wisconsin statute discussed in Part I, a defense lawyer went to visit his client who was being held at a state mental health facility.[31] The client had retained the lawyer "to try to effect her release from that institution."[32] Upon arrival during regular business hours, the lawyer was denied access to his client for no legitimate reason.[33] One of the nurses even said, "he really did not know exactly why everyone wanted the [lawyer] to leave the ward."[34]

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[29] *See* Rachel Moran, *supra* note 21, at 41 ("While this article is the first to call for abolition of disorderly conduct laws, other scholars have expressed concern about these laws for decades."). This claim about being the first to advocate for *abolishing the statutes* may be true; however, it may also demonstrate the narcissism of petty differences, as at least one other author has nearly simultaneously "propose[d] *legalizing disorderly conduct*." Jamelia Morgan, *supra* note 21, at 54 (emphasis added).

[30] *See* Rachel Moran, *supra* note 20, at 21-22.

[31] State v. Elson, 208 N.W.2d 363 (Wis. 1973).

[32] *Id.* at 367.

[33] *Id.* at 368 ("On the visit involved here, the hospital aide in charge of signing in visitors, Eleanor Lynch, told the defendant that he could not be allowed to visit and that the hospital administration had a new rule which forbade his presence on the ward, she thought, because his presence had been agitating to the patients in the past.").

[34] *Id.*

The lawyer objected to being singled out this way, and he "insisted he had the right to remain and visit with his client."[35] When his protest fell on deaf ears, he "peaceably left the premises."[36] But it was too late; merely poking the bear got the lawyer in trouble. The prosecutor charged him, under the disorderly conduct statute, for "otherwise disorderly conduct" that "tends to cause" a disturbance.[37] The defense-lawyer-turned-defendant was convicted and then appealed.[38]

The state's high court upheld the conviction, but the dissent criticized the incredible reach of the statute: the phrase "otherwise disorderly conduct" is "vague and subject to almost any interpretation that a complainant or a court wishes to put upon it."[39] This, in turn, permitted the powerful to target the unpopular:

> It appears . . . that the issuance of a complaint and warrant after the [lawyer-]defendant peaceably left the premises raises grave questions of *abuse of the criminal processes*. . . . The record shows that he alone was singled out, by a patently illegal rule that denied certain rights of access to patients. It would appear . . . that this prosecution was instituted not because of what [the lawyer-defendant] had done, *but because of who he was*—a lawyer who considered it his duty to protect his clients in the face of official arrogance, a thorn in the side of the hospital authorities. The record shows pique not at what [the lawyer-defendant] did . . . but at his course of conduct that had irritated the authorities to the extent that they denominated him, as the complaint reveals, an "*undesirable person*."[40]

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[35] *Id.*
[36] *Id.* at 372 (Heffernan, J., dissenting).
[37] *Id.* at 368. There was no actual disturbance; rather, the disturbance was merely possible or hypothetical or imaginary.
[38] *Id.* at 363.
[39] *Id.* at 372 (Heffernan, J., dissenting).
[40] *Id.* (emphasis added).

This demonstrates that, with disorderly conduct statutes, legislatures have given prosecutors a metaphorical blank check to fill in as they see fit against even the mildest of gadflies. If a lawyer demanding to see a client at a state institution during normal business hours is disorderly, then we're all criminals now.

B. DOES THE PUNISHMENT FIT THE CRIME?

Another argument for the abolition of disorderly conduct is that the punishment is too severe for the relatively minor, underlying disorderly act that gives rise to the charge. [41] This is true in many cases, and the disproportionate punishment is sometimes enabled by the amazing breadth of the statute as discussed in Part II.A. For example, the Wisconsin disorderly conduct statute carries a maximum penalty of 90 days in jail.[42] However, if the defendant has been convicted of three misdemeanors or one felony in the five years preceding the alleged commission of the disorderly conduct, then the maximum penalty jumps to two years in prison.[43] Worse yet, if the defendant has been convicted of two domestic abuse misdemeanors (even if they are both based upon a single incident or even a single act) in the previous ten years,[44] then any new domestic disorderly conduct charge is transformed into a felony with a maximum penalty of two years and three months in prison.[45] And this

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[41] *See* Rachel Moran, *supra* note 21, at 1 ("[T]hese laws create adverse consequences disproportionate to the minor misbehaviors they condemn.").
[42] WIS. STAT. § 939.51 (3) (b).
[43] WIS. STAT. § 939.62.
[44] WIS. STAT. § 939.621 (1) (b). Despite the statute's requirement that the defendant be "convicted on 2 or more separate occasions of a felony or a misdemeanor" crime of domestic abuse in order to be a domestic abuse repeater, the courts simply disregard the language "on 2 or more separate occasions" and "interpret" that to mean "2 or more convictions" regardless of whether they are based on separate occasions, the same occasion, or even the same act. *See* Michael D. Cicchini, *Criminal Repeater Statutes: Occasions, Convictions, and Absurd Results*, 11 HOUS. L. REV. OFF REC. 1 (2020), at https://houstonlawreview.org/article/17127-criminal-repeater-statutes-occasions-convictions-and-absurd-results.
[45] WIS. STAT. § 939.621 (2).

says nothing of the collateral consequences of a disorderly conviction, which are many.[46]

Judges are not shy about using this available incarceration time under the disorderly conduct statute, particularly when they do not like the favorable concessions the defense obtained in a plea bargain or the result the defense achieved at a jury trial. For example, I once defended a case with two serious, violent charges and a disorderly conduct tack-on charge—a classic example of prosecutorial charge-stacking.[47] The case went to trial and the jury acquitted on the two serious charges of violence but convicted on the disorderly conduct charge—a huge trial victory by any imaginable standard.

However, given that the language of the disorderly conduct statute encompasses nearly every type of behavior, it is never clear on what, exactly, the jury's conviction for that charge is based. And because the judge did not like the jury's verdict, he invoked at sentencing the statute's language prohibiting "violent or abusive" conduct. He ignored the statute's other, milder prohibitions (e.g., profanity) which were much more likely to have been the true basis for the jury's verdict given its acquittal on the two serious, violent charges. The judge then sent the defendant to prison (not jail) for disorderly conduct despite our trial victory. Such judicial abuse of the statute certainly makes a strong case for abolition.

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[46] This is especially true if the crime of conviction, possibly including even a disorderly conduct, is classified as "violent." *See* Michael O'Hear, *Third-Class Citizenship: The Escalating Legal Consequences of Committing a "Violent" Crime*, 109 J. CRIM. L. & CRIMINOLOGY 165 (2019).

[47] Ethics rules arguably—or at least under the incredibly expansive interpretation of Wisconsin's state bar and office of lawyer regulation—prohibit my disclosure of the client's name, even though the case is closed and the information is publicly available. *See* Michael D. Cicchini, *On the Absurdity of Model Rule 1.9*, 40 VT. L. REV. 69 (2015). I unsuccessfully petitioned the Supreme Court of Wisconsin to change or clarify this ethics rule—a rule which other states have already declared is a violation of lawyer free speech rights. *See* Michael D. Cicchini, *Petition to Modify Wisconsin SCR 20:1.9*, THE LEGAL WATCHDOG (Sept. 9, 2015), at http://thelegalwatchdog.blogspot.com/2015/09/petition-to-modify-wisconsin-scr-2019.html.

C. WHAT IS DISORDERLY?

A serious problem with many disorderly conduct statutes is that they fail to describe what conduct is criminal, thus leaving a person to wonder whether his or her contemplated act is prohibited.[48] Parts II.A. and II.B. have already indirectly discussed this problem. For consistency, then, consider once again Wisconsin's broad disorderly conduct statute. Unlike statutes prohibiting such crimes as battery, theft, drunk driving, or prostitution, for example, could a reasonably intelligent reader discern what types of conduct are prohibited by the disorderly conduct law?

To illustrate this conundrum, think back to the case, discussed in Part II.A., involving the hapless lawyer. Then try to imagine how shocked the lawyer-turned-defendant must have been to learn that merely going to visit a client, at a state facility during normal business hours, constituted criminal disorderly conduct. No reasonable person or even any lawyer—other than an imaginative, overeager prosecutor—would have read the statute that way.

Worse yet, it is easy to envision constitutionally protected speech being prosecuted under the disorderly conduct statute.[49] On college campuses, for example, one can imagine a variety of political views—expressed with or without the mildly "profane" language included in, but not required by, the statute—that would plunge the student body into a state of emotional disturbance.[50] This, in turn,

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[48] *See* Rachel Moran, *supra* note 21, at 12-15 ("A statute is unconstitutionally vague if the average civilian cannot understand what conduct the statute prohibits.") (citing Coates v. Cincinnati, 402 U.S. 611, 614 (1971)).

[49] *See id*. at 12 (citing Gooding v. Wilson, 405 U.S. 518, 521-22 (1972) (setting limits on laws that infringe upon speech)).

[50] Many students are unable even to hear, let alone debate, opposing views on certain subjects. *See, e.g.,* Christian Schneider, *Nearly Two-Thirds of College Students Think Government Should Have Power to Punish "Hate Speech": Survey*, COLLEGE FIX (Jan. 8, 2021) (In a survey, "40 percent of students agreed the government should be able to restrict the speech of 'climate change deniers' and 50 percent of students believe the government should be able to restrict the speech of 'racially insensitive people.'"), at https://www.thecollegefix.com/nearly-two-thirds-of-college-students-think-government-should-have-power-to-punish-hate-speech-survey/.

could satisfy the elements of the disorderly conduct statute and could result in a conviction, or at least a prosecution, depending on the political leanings of the jury and the prosecutor. Stranger things have happened at the hands of the intolerant.[51]

Granted, in speech cases, courts will often "interpret" the statute more restrictively than its actual language reads, thus protecting that particular defendant but also bailing out the legislature and salvaging its facially unconstitutional statute.[52] But most citizens don't realize that courts engage in that type of linguistic dance; further, even if they did realize it, most people would not want to wade into the legal system, spend many thousands of dollars, and risk possible conviction on the hope that a judge might temporarily rewrite the statute in their favor.

Instead, most people intuitively know it is desirable to *avoid* the court system. As the legal critic Ambrose Bierce wrote about a woman who filed an injury lawsuit after falling into an open sewer: "It is surprising that the lady should have consented to go into Court; we should suppose that one adventure in a cesspool would suffice."[53] That is, no reasonable person should willingly subject him- or herself to

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Further, some universities have created trigger warnings and bias reporting systems which make students hypersensitive and emotionally fragile. This is a great disservice to the future lawyers among them. Given the downright hostile environment that awaits future criminal defense lawyers, and probably future litigators in general, law schools should do their best to reverse this trend as part of their professional training. *See* Michael D. Cicchini, *Law Schools, Lawyers, and Dead Philosophers*, WIS. L.J. (Dec. 14, 2016) (arguing that law schools should teach students the Stoic Method alongside the Socratic Method), at https://wislawjournal.com/2016/12/14/critics-corner-law-schools-lawyers-and-dead-philosophers/; Michael D. Cicchini, *Combating Judicial Misconduct: A Stoic Approach*, 67 BUFF. L. REV. 1259 (2019) (providing Stoic strategies for dealing with abusive judges in the courtroom).

[51] *See* Rachel Moran, *supra* note 21, at 21-22 (discussing disorderly conduct prosecutions and convictions for unpopular speech, such as "distributing religious literature").

[52] *See id*. at 15-16.

[53] J. Gordon Hylton, *The Devil's Disciple and the Learned Profession: Ambrose Bierce and the Practice of Law in Gilded Age America*, 23 CONN. L. REV. 705 (1991) (quoting Ambrose Bierce).

litigation, which Bierce described as "[a] machine which you go into as a pig and come out of as a sausage."[54]

The problem, then, is that the disorderly conduct statute violates our constitutional rights by "chilling a substantial amount of protected speech" out of fear of becoming criminal defendants.[55] This chilling effect is a problem that, by its very nature, the courts will not witness firsthand. Nonetheless, the courts have enabled it. How? By bending over backward to preserve a legislature's overly broad disorderly conduct statute instead of striking it down and bringing it the swift death it probably deserves.[56]

D. RACIAL DISCRIMINATION

The final criticism, and the one on which this article will focus, relates to race. I will call it the *race-motivated theory of disorderly conduct*. The professors who call for the abolition of the disorderly conduct statutes on this theory essentially make the following argument.

First, the police have "tremendous discretion . . . to decide what laws to enforce and against whom."[57] And the "disorderly conduct" law "equip[s] police with nearly unfettered discretion to harass and arrest people engaged in relatively harmless conduct[.]" [58] More specifically, the professors claim that the police use the disorderly conduct statute proactively to "surveil communities for signs of disorder."[59]

Second, the professors argue that, when it comes to identifying disorder, "the mere status of being Black is often perceived as a symbol of disorder[.]"[60] And because police "perceptions of disorder are racialized," they use the statute

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[54] *Id*. (quoting THE COLLECTED WORKS OF AMBROSE BIERCE: THE DEVIL'S DICTIONARY 187 (1911)).
[55] Rachel Moran, *supra* note 21, at 12-13.
[56] *Id*. at 15-16.
[57] *Id*. at 18. This is *usually* true; however, as explained later in Part IV.A., it actually is *not* true for most disorderly conduct cases in many states due to mandatory domestic abuse arrest laws.
[58] *Id*. at 33.
[59] *Id*. at 31 (quoting Devon Carbado, *Blue on Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1486 (2016)).
[60] *Id*. at 23 (citing Etienne Toussaint, *Blackness As Fighting Words*, 106 VA. L. REV. ONLINE 124 (2020)).

to surveil or target African American neighborhoods.[61] This racist tactic then leads to a disproportionately high number of arrests, prosecutions, and convictions of African Americans relative to their percentage of the population.[62] In sum, racist police surveillance essentially turns the disorderly conduct statute into a tool for "social control against people of color."[63]

I am no fan of the police; in fact, I have spent my legal career battling them in court and criticizing them in writing. For the last two decades, I have defended individuals accused of crimes in which the police were almost always adversarial, and sometimes even the complaining, witnesses.[64] I have also spent the last fifteen or so years writing books[65] and law review articles[66] to expose police

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[61] *Id*.

[62] *Id*. at 32 (citing statistics that African Americans "comprised approximately 32 percent of the people arrested for disorderly conduct, despite representing less than 13 percent of the population."). Then, the resulting "convictions . . . adversely affect [the defendants'] ability to obtain or maintain housing, jobs, and legal status in the country." *Id*. at 2.

[63] *Id*. at 23. As indicated earlier, there are at least two forthcoming articles making claims of racist policing via disorderly conduct laws. *See also* Jamelia Morgan, *supra* note 21, at 21 ("Negatively racialized groups, trans and queer communities of color, low-to-no income communities of color have in particular faced the harms of overpolicing due to stereotypes that inform social perceptions of criminality and disorder.").

[64] *See* CICCHINI LAW OFFICE LLC: EXPERIENCE (accessed Apr. 26, 2021), at https://cicchinilaw.com/experience.

[65] *See, e.g.*, MICHAEL D. CICCHINI, ANATOMY OF A FALSE CONFESSION: THE INTERROGATION AND CONVICTION OF BRENDAN DASSEY (Rowman & Littlefield 2018) (exposing multiple police interrogation tactics and calling for legal reform to prevent such abuses); MICHAEL D. CICCHINI, TRIED AND CONVICTED: HOW POLICE, PROSECUTORS, AND JUDGES DESTROY OUR CONSTITUTIONAL RIGHTS (Rowman & Littlefield 2012) (exposing police tactics in multiple contexts and calling for legal reform).

[66] *See, e.g.,* Michael D. Cicchini, *An Economics Perspective on the Exclusionary Rule and Deterrence*, 75 MO. L. REV. 459 (2010) (arguing for legal reform to deter police abuses of the Fourth Amendment); Michael D. Cicchini & Joseph Easton, *Reforming the Law on Show-Up Identifications*, 100 J. CRIM. L. & CRIMINOLOGY 381 (2010) (arguing for legal reform to protect against police abuses in the eyewitness identification process); Michael D. Cicchini, *The New Miranda Warning*, 65 SMU L. REV. 911 (arguing for legal reform to protect against police abuses of the *Miranda* process); Anthony Domanico, Michael D. Cicchini & Lawrence T. White, *Overcoming Miranda: A Content Analysis of the Miranda Portion of Police Interrogations*, 49 IDAHO L. REV. 1 (2021)

misconduct and argue for legal reform that would end many of their dishonest and unconstitutional practices.

Despite my strong anti-police bias, however, the claim that the police are actively surveilling African Americans "for signs of disorder," so that prosecutors can convict them of disorderly conduct, runs contrary to my experience with how the government uses the statute. And although my experience is necessarily limited to where I practice law, the race-motivated theory of disorderly conduct strikes me as a generally implausible one—at least in contemporary times. Therefore, the next Part investigates this race-motivated theory, and it also offers and investigates a second hypothesis for how our government agents may be using the disorderly conduct statute.

IV. THE INVESTIGATION

A. HYPOTHESES

I hypothesize that the race-motivated theory of disorderly conduct will *not* be supported by the evidence. More specifically, concerning criminal disorderly conduct, I hypothesize that such charges are *not* the result of the police surveilling African Americans for signs of disorder.

I further hypothesize that, concerning criminal disorderly conduct, the statute is not being improperly used by police, but rather *by prosecutors*. That is, I hypothesize that prosecutors use disorderly conduct to stack charges against defendants *of all races* to increase the number of counts and potential penalties, thus coercing defendants to accept plea bargains instead of going to trial.[67]

(analyzing recorded interrogations to expose police abuses of the *Miranda* process); and Danielle E. Chojnacki, Michael D. Cicchini & Lawrence T. White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 ARIZ. ST. L.J. 1 (2008) (advocating for legal reforms to counter the coercive police tactics that induce false confessions).

[67] One of the authors advocating the race-based theory briefly touches on this issue of charge-stacking, but in a different context. *See* Rachel Moran, *supra* note 21, at 41 (discussing and disagreeing with the argument that the prosecutor's use of the disorderly conduct charge can actually benefit the defendant in plea bargaining by saving him or her from conviction on more serious charges).

B. THE SAMPLE

Because of the tremendous volume of criminal cases, any investigation (beyond macro-level statistics) into how police and prosecutors are using disorderly conduct statutes will necessarily be limited in its scope. For this investigation, I analyzed all disorderly conduct charges alleged to have occurred in July 2018, in the County of Kenosha, State of Wisconsin.

I used this venue and jurisdiction for several reasons. First, practicing in Wisconsin, I am familiar with the publicly available, macro-level information on state disorderly conduct charges.[68] Second, practicing in Kenosha County, I have relatively easy, quick, and inexpensive access to the micro-level, publicly available detail that will be needed to conduct this investigation.[69] And third, I am admittedly curious to see if the evidence supports my experience-based views about prosecutorial, rather than police, abuse of the statute.

Kenosha County is located on the shores of Lake Michigan in the southeast corner of Wisconsin in the I-94 Milwaukee-Chicago corridor; it is about thirty minutes south of Milwaukee and less than sixty minutes north of Chicago.[70] The County has a population of 169,561, which includes a population of 99,944 in the City.[71] Based on my nearly twenty years of practicing criminal defense in Kenosha, I am confident that the City accounts for a disproportionately high percentage of criminal cases, as is probably true of most intra-county, urban-suburban settings across the country. The City is comprised of 51.0% female and 49.0% male.[72] The percentage of the City's population that is "White alone,

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[68] The database of cases in the Appendix is drawn from public information on the Wisconsin Circuit Court Access, at https://wcca.wicourts.gov/case.html.

[69] This information, including the criminal complaint which sets forth the facts on which a defendant's charges are based, is available to the public at the Kenosha County Clerk of Circuit Court's office.

[70] THE CITY OF KENOSHA: VISITORS (accessed April 26, 2021), at https://www.kenosha.org/visitors.

[71] U.S. CENSUS BUREAU: QUICK FACTS, Kenosha Wisconsin (Population Estimates, July 1, 2019), at https://www.census.gov/quickfacts/fact/table/kenoshacountywisconsin,kenoshacitywisconsin/PST045219.

[72] *Id*.

not Hispanic or Latino" is 66.1%, "Hispanic or Latino" is 17.8%, "African American alone" is 11.5%, with other races accounting for the balance.[73]

To give the politically popular race-motivated theory of disorderly conduct a puncher's chance of being substantiated, I selected all instances of criminal disorderly conduct allegedly committed in July 2018.

I selected the month of July because if the police are surveilling individuals for signs of disorder based on their race, those individuals would probably have to be outdoors where the police can see them. This is far more likely to happen in July than it is, say, in Wisconsin's cold winter months.[74] Further, July provides a good-sized sample: this single month, while roughly 8.3% of a calendar year, contains 11% of all disorderly conduct charges in 2018.[75] This disproportionately high number for July is not surprising, as research psychologists have established a cause-and-effect relationship between hot temperatures and acts of aggression that would qualify as disorderly.[76]

I selected the year 2018 for two reasons. I wanted a fairly recent sample, but I also wanted enough time for most, if not all, of the cases to be resolved. Given that I conducted my computer search in April 2021, this allowed nearly three years from the date of the alleged disorderly conduct (which would have been sometime in July 2018) for the cases to resolve by plea, dismissal, or trial. In my own experience, criminal cases are filed fairly quickly after an alleged

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[73] *Id.*

[74] *See* Craig A. Anderson, *Heat and Violence*, 10 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 33, 33 (2001) ("[M]ore assaults occur during the summer months than during other months . . . people are outside more in the summer").

[75] *Compare* Wisconsin Circuit Court Access, Kenosha County, Statues 947.01 and 947.01 (1), Offense Range 7/01/2018 to 7/31/2018 (99 counts in 90 cases) *with* Wisconsin Circuit Court Access, Kenosha County, Statues 947.01 and 947.01 (1), Offense Range 1/01/2018 to 12/31/2018 (900 counts in 848 cases).

[76] Craig Anderson, *supra* note 74, at 35 ("Field studies consistently find positive associations between uncomfortable heat and aggression. . . . The consistency of findings across many settings and methods provides strong support for the *causal version* of the heat hypothesis, even from correlational studies.") (emphasis added). In a broad range of studies, "[a]ggression—as measured by assault rates, spontaneous riots, spouse batterings, and batters being hit by pitched baseballs—is higher during hotter days, months, seasons, and years." *Id.* at 34.

incident—usually within days and nearly always within months—and very few cases, once filed, take longer than two years to resolve.

In addition to my selected timeframe of July 2018, Kenosha itself appears to be a good location from which to draw a sample that would substantiate the race-motivated theory of disorderly conduct, if the theory is true. There are two reasons for this. First, Kenosha law enforcement is viewed by many as being racist. Granted, such opinions are often based on a small sample of cases,[77] are sometimes rooted in false information,[78] and usually ignore relevant facts.[79] But the racist reputation exists nonetheless.[80]

Second, Kenosha law enforcement and prosecutors have a reputation among the defense bar for being aggressive with criminal charges and, in particular, with the disorderly conduct statute. A simple macro-level comparison of Kenosha and Milwaukee indicates that this reputation may be justified. As explained below, in July 2018, there were 99 counts of disorderly conduct in 90 different criminal cases in

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[77] *See* Aisha I. Jefferson, *Kenosha Residents Say the Way the Police Handled the 2 Shootings this Week Tell [sic] You All You Need to Know About Whether the City is Racist*, INSIDER (Aug. 28, 2020), at https://www.insider.com/kenosha-race-relations-jacob-blake-police-kyle-rittenhouse-shootings-2020-8.

[78] *See id*. The article, along with countless others, alleged that Jacob Blake was "unarmed" and was "shot in the back seven times," both of which are false. *See* Michael D. Graveley, *Report of the Officer Involved Shooting of Jacob Blake* (Jan. 5, 2021), at https://www.kenoshacounty.org/DocumentCenter/View/11827/Report-on-the-Officer-Involved-Shooting-of-Jacob-Blake. More specifically, "[a]s he resisted arrest, Jacob Blake was armed with a knife." *Id*. at 3. Further, when shots were eventually fired, three of them were "to his left side (flank)." *Id*. The significance of this is explained in the report. *See id*.

[79] For example, in the Blake shooting, it frequently goes unreported that the complaining witness, an African-American woman, summoned the police because Blake was allegedly taking her vehicle and her children without her consent and, when the police arrived on scene, she "flagged them down and shouted statements identifying Jacob Blake as the other person involved and indicating that he was trying to take her car, stating, 'My kids are in the car.'" *Id*. at 2-3.

[80] For another recent example, *see* Katie Shepard, *"They Just Need to Disappear": Kenosha Sheriff Once Called for Black Shoplifters to be "Warehoused" and Kept from Having Children*, WASH. POST (Aug. 28, 2020), at https://www.washingtonpost.com/nation/2020/08/28/kenosha-sheriff-aclu-protests-rittenhouse/. To offer a mild defense of the Sheriff, although his comments are stupid, they seem to be focused on the defendants' alleged conduct rather than their race.

Kenosha County.[81] By comparison, there were only 201 counts of disorderly conduct in 193 such cases in Milwaukee County in that same timeframe.[82] The upshot: Kenosha had about 50% of the disorderly conduct charges and cases as Milwaukee, even though Kenosha is a fraction of the size with a mere 17% of Milwaukee's population.[83]

For all of the above reasons, the sample of cases investigated in this article would likely *substantiate* the race-motivated theory of disorderly conduct, if the theory is true. That is, if disorderly conduct statutes are being abused by racist police, one would expect to find such abuse in Kenosha—a county with allegedly racist law enforcement agencies which, along with the county's district attorney's office, are known for aggressively using the statute.

Returning to the sample of cases discussed above, then, the 90 Kenosha criminal cases included three cases alleging disorderly conduct inside the Kenosha County Jail. As these cases would offer no insight into police surveillance practices, I excluded them from the sample which left a total of 87 criminal cases.

Two of these 87 cases each charged two counts of disorderly conduct for two *separate dates*. Similarly, one of the 87 cases charged three counts of disorderly conduct for three *separate dates*. Because each count was separated by time and circumstances, I considered each count to be its own case. I, therefore, designated the case numbers with a suffix of either –a, –b, or –c in the table of cases in the Appendix. This increased the sample to 91 disorderly conduct "cases."[84]

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[81] *See* Wisconsin Circuit Court Access, *Kenosha* County, Statues 947.01 and 947.01 (1), Offense Range 7/01/2018 to 7/31/2018.

[82] *See* Wisconsin Circuit Court Access, *Milwaukee* County, Statues 947.01 and 947.01 (1), Offense Range 7/01/2018 to 7/31/2018.

[83] This population statistic is true with regard to the respective counties *and* cities. *Compare* U.S. CENSUS BUREAU: QUICK FACTS, Kenosha Wisconsin (Population Estimates, July 1, 2019) *with* U.S. CENSUS BUREAU: QUICK FACTS, Milwaukee Wisconsin (Population Estimates, July 1, 2019) in the searchable database at https://www.census.gov/quickfacts/fact/table/US/PST045219. There could be reasons *other than* aggressive law enforcement for the discrepancy, e.g., Kenosha residents may simply be more disorderly and/or more eager to summon the police than are Milwaukee residents. Therefore, while these statistics support the claim that the Kenosha authorities are more aggressive in their use of the disorderly conduct statute, these statistics do not, by themselves, prove the truth of the claim.

[84] *See* APPENDIX.

In another three of these 91 cases, multiple counts of disorderly conduct (two counts in two cases and four counts in another case) were charged for the *same date*. Because these charges were not different in time and circumstances, I did not separate them for the analysis. The sample size, therefore, remained at 91 disorderly conduct cases, with a total of 96 disorderly conduct charges, all of which are detailed in the table of cases in the Appendix.

C. MACRO-LEVEL FINDINGS

Given this article's first hypothesis that the race-motivated theory of disorderly conduct will not be substantiated, i.e., that the disorderly conduct statute is *not* being used as a police tool to surveil African Americans, a significant preliminary finding is the race of the defendants charged with disorderly conduct.

In the 91 cases in the sample, 63 (or 69.2%) of the defendants are "Caucasian," 23 (or 25.3%) are "African-American," four (or 4.4%) are "Hispanic," and one (or 1.1%) is "Asian."[85] Because most crime occurs in the City, rather than the surrounding areas, the relevant demographic for purpose of comparison is probably the City. Nonetheless, the comparisons with both the City and County populations are as follows:

Race of Defendant / Population	**No. of D.C. Cases**	**Pct. of D.C. Cases**	**City Pop.**	**County Pop.**
Caucasian / White alone, not Hispanic or Latino	63	69.2%	66.1%	75.4%
African American / African American alone	23	25.3%	11.5%	7.4%
Hispanic / Hispanic or Latino	4	4.4%	17.8%	13.5%

[85] *See id.*

Other	1	1.1%	4.6%	3.7%
	91	100.0%	100.0%	100.0%

When using the City's population for comparison, it appears that Hispanics are significantly undercharged relative to their population, while African Americans are significantly overcharged relative to their population.

The difference between the Hispanic charging rate and population may be due to inconsistent classifications of race between the Kenosha County District Attorney's Office and the U.S. Census Bureau. In other words, is the District Attorney's classification of "Caucasian" the same as the Census Bureau's "White alone, not Hispanic or Latino"? If not, then the numbers are not comparable.

Concerning African Americans, however, such classification issues probably do not exist. Therefore, the disproportionate prosecution of African Americans relative to their population in the City—25.3% of the cases versus 11.5% of the population—is most likely a real and significant difference,[86] and it is certainly worth investigating.

It would be a mistake to simply attribute this difference to racist policing without further investigation. For example, one professor argues—citing national arrest statistics that are very comparable to the charging statistics in this article—that "[t]he disproportionate racial impacts of policing disorder are apparent in statistics on disorderly conduct arrests."[87] The level of analysis that went into reaching that particular conclusion is unclear, but that type of claim, without more, may very well confuse correlation with causation. That is, we must not simply assume as the cause the very thing to be investigated: racist police surveillance.

In other words, a higher charging rate for a group, relative to that group's percentage of the overall population, says little or nothing. By analogy, nearly 90% of the

[86] For a discussion of the concept of statistical significance, but in a different context (i.e., mock juror conviction rates using different burden of proof instructions), *see* Michael D. Cicchini, *Reasonable Doubt and Relativity*, 76 WASH. & LEE L. REV. 1143, 1473-74, n. 138-144 (2019).

[87] Jamelia Morgan, *supra* note 21, at 23.

disorderly conduct cases in this article's sample were filed against men,[88] yet men account for less than half of the population in both the City and the County.[89] Without further investigation, however, we could not properly conclude that the disproportionate charging is due to sexist or anti-male policing. Rather, there could be numerous other explanations for the difference.

Similarly, to determine whether there is evidence of racist police surveillance for disorderly acts, we will have to dig deeper into the numbers and consider the following, additional statistics. (The next Part will then examine these statistics and explore other facts in some of the underlying cases.)

Most significantly, 59 of the 91 disorderly conduct cases are classified as domestic violence.[90] This constitutes 65%, or nearly two-thirds, of all cases. An even higher percentage—70% (16 out of 23)—of the disorderly conduct cases filed against African Americans are classified as domestic violence.[91] The meaning and significance of this domestic violence label will be discussed in the next Part.

Seventy-five (82.4%) of the 91 disorderly conduct cases also include charges other than disorderly conduct.[92] A mere 16 cases (17.6%) involve a charge or charges only of disorderly conduct.[93]

The disorderly conduct charge is most commonly paired with a battery-related charge. In 52 (57.1%) of the 91 disorderly conduct cases, the complaint charged one of the battery statutes, a child abuse statute, or both, and then tacked on a disorderly conduct charge.[94] Many of those 52 cases also include additional counts, such as strangulation, intimidation of a victim, and false imprisonment.[95]

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[88] *See* APPENDIX.

[89] U.S. CENSUS BUREAU: QUICK FACTS, Kenosha Wisconsin (Population Estimates, July 1, 2019) ("Female persons, percent" is 50.5% for the County and 51.0% for the City of Kenosha), at https://www.census.gov/quickfacts/fact/table/kenoshacountywisconsin,kenoshacitywisconsin/PST045219.

[90] *See* APPENDIX. Domestic violence or domestic abuse cases are denominated with "DV".

[91] *See id*.

[92] *See id*.

[93] *See id*.

[94] *See id*. Battery was by far the most common, as 49 cases paired the disorderly conduct charge with one of the criminal battery statutes.

[95] *See id*.

Of the multi-count cases that did *not* charge some form of battery or child abuse, a common pairing for the disorderly conduct charge was criminal damage to property.[96] Ten of the 91 disorderly conduct cases (11%) did not include a battery or child abuse charge but did pair disorderly conduct with underlying criminal damage to property charge, sometimes with yet additional charges.[97]

As far as the disposition of the 91 cases, 76 cases were resolved by a plea deal, one of which involved a plea of not guilty because of mental disease or defect (NGI), and 15 cases were dismissed.[98] Some of these 15 cases were no doubt dismissed as part of a larger plea deal, as some defendants had other cases as well. However, those companion cases would not appear in the sample unless their alleged crimes were *also* in the same timeframe (July 2018) and *also* included a disorderly conduct charge.

The important statistic in this regard is that out of the 91 cases that included a count of disorderly conduct, not a single case went to a jury trial. Rather, 100 percent were resolved by a plea bargain or, in a few cases, possibly with an outright dismissal. Of the 75 cases that were known to have resolved by a plea agreement and did not involve an NGI plea, 51 cases (or 68%) included a plea to disorderly conduct (and sometimes to other charges as well), and 24 cases (or 32%) resulted in a plea to an underlying charge or charges but *not* to disorderly conduct.[99]

With these macro-level statistics at our disposal, the next Part will dive deeper into the numbers and some case-specific details to investigate this article's two hypotheses.

V. ANALYSIS AND DISCUSSION

The analysis of the above data can be broken down into two parts which parallel the two, independent hypotheses. First, does the sample of cases substantiate the race-motivated theory of disorderly conduct? (I hypothesized the sample would *not* substantiate the theory.) And second,

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[96] *See id.*
[97] *See id.*
[98] *See id.*
[99] *See id.*

regardless of whether it is substantiated, does the sample of cases support this article's charge-stacking hypothesis?

A. RACE-MOTIVATED THEORY OF DISORDERLY CONDUCT

As explained above, African Americans comprise 11.5% of the City's population (and an even smaller 7.4% of the County's population), yet account for 25.3% of the defendants in disorderly conduct cases. Also as discussed above, there could be many reasons for this disparity, one of which is that the police are actively surveilling African Americans for signs of disorder, which leads to more and disproportionate charges.

Upon examining the data, however, that potential explanation can be ruled out. Why? To begin, the majority of disorderly conduct cases in the sample—roughly 65% of all cases and nearly 70% of cases with African American defendants—are domestic violence (a/k/a domestic abuse) cases.[100]

Race of Defendant	**No. of D.C. Cases**	**No. of D.V. Cases**	**Pct. of D.V. Cases**
Caucasian	63	39	61.9%
African American	23	16	69.6%
Hispanic	4	3	75.0%
Asian	1	1	100.0%
	91	59	64.8%

The significance of labeling a disorderly conduct case as domestic abuse is explained below. But first, what is domestic abuse? In Wisconsin, it is not a crime in itself, but rather a classification. For a charged crime to be a crime of domestic abuse there must be a qualifying relationship and a qualifying act. Regarding the relationship, the defendant must be "an adult person" and the alleged victim must be "his or her spouse or former spouse," or "an adult with whom

[100] *See* APPENDIX. The table of cases in the Appendix is sorted first by race, and then by whether the case is domestic violence related which denominated with "DV".

the [defendant] resides or formerly resided," or "an adult with whom the [defendant] has a child in common."[101] Regarding the act, it must be alleged that the defendant engaged in at least one of the following:

> 1. Intentional infliction of physical pain, physical injury or illness.
> 2. Intentional impairment of physical condition.
> 3. A violation of [first, second, or third degree sexual assault].
> 4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.[102]

As long as there is a qualifying relationship, a battery charge necessarily constitutes domestic abuse under part 1. But the domestic abuse label is much broader than that. Charges of criminal damage to property and disorderly conduct, for example, easily qualify under part 4.

But why is the domestic violence label important for purposes of this article's investigation into alleged racist police surveillance? Most significantly, unlike other crimes such as traffic violations, prostitution, many drug transactions, or *possibly* even *non-domestic* disorderly conduct crimes, the police do not—and, as a practical matter, can not—surveil or patrol for crimes of domestic abuse. Rather, the police are responding to 911 calls from, or on behalf of, alleged victims.

For example, in case number 18cf744 with an African American defendant, the police "responded to a call for a disturbance" and, upon arrival, spoke to the complaining witness.[103] Among other allegations, she told the police that the defendant, her live-in boyfriend, "had punched [her] in the face with a closed fist, hitting her on the left side of her face, causing her pain."[104] The police officer reported

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[101] WIS. STAT. § 968.075 (1) (a).
[102] *Id*.
[103] Criminal Complaint at 3, Wisconsin v. Ferguson, No. 18-CF-744 (Cir. Ct. Kenosha County, July 17, 2018) (on file with author).
[104] *Id*.

"observ[ing] redness to the left side of her face."[105] The police eventually arrested the defendant who was charged with crimes of domestic abuse, including battery and disorderly conduct.[106]

Similarly, in case number 18cm902, also filed against an African American defendant, the police responded to another domestic incident.[107] In that case, the complaining witness "stated that just prior to calling the police, she was at her residence with the defendant," her husband.[108] According to the complaint, she "was very upset and crying, and reported that her husband pointed a gun at her."[109] The defendant allegedly admitted that the gun was loaded and he intended "to scare" his wife with it.[110] He was charged with disorderly conduct with a weapon, as a domestic abuse crime.[111]

In domestic disturbances, the alleged victim does not necessarily make the initial call to police, but the relevant point is that the police are still *summoned by a citizen witness* and then speak to the alleged victim. For example, in case number 18cf799, which also charged an African American defendant, a citizen witness called 911 to report a public fight.[112] The police went to the scene and then to the hospital where the alleged victim was being treated for head wounds.[113] She told the police that her live-in boyfriend struck her during their public argument.[114] The defendant

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[105] *Id*.

[106] *Id*. at 1-3. The defendant was also charged with other, unrelated crimes that centered on the facts and circumstances of his arrest. After leaving the scene and upon arrest, he was also charged with driving a motor vehicle without a valid license (second offense) and resisting arrest. In addition to those charges and the domestic-related charges, the defendant was also charged with bail jumping for allegedly driving without a license (second offense) while out-of-custody on bond for a separate case of driving a motor vehicle without a valid license (first offense). *Id*.

[107] Criminal Complaint at 1, Wisconsin v. Carr, No. 18-CM-902 (Cir. Ct. Kenosha County, July 17, 2018) (on file with author).

[108] *Id*. at 2.

[109] *Id*. at 1.

[110] *Id*. at 2.

[111] *Id*. at 1.

[112] Criminal Complaint at 2, Wisconsin v. Kimbrough, No. 18-CF-799 (Cir. Ct. Kenosha County, July 30, 2018) (on file with author).

[113] *Id*.

[114] *Id*.

was then charged with substantial battery and disorderly conduct as domestic abuse crimes.[115]

As these typical examples of domestic abuse demonstrate, the police are not surveilling anyone; rather, they are *responding to calls for help*. Or, as one level-headed and well-grounded academic put it: "I've noted repeatedly (but no one else ever seems to be aware) when the police make contact with a suspect, this is usually because *a citizen called the police* to report possible criminal behavior by someone . . ."[116] This assertion is not necessarily true in every type of case, but it *is* true in nearly 100 percent of domestic abuse cases. Further, the person calling the police or making the allegation (or both) necessarily has an intimate relationship with the defendant and is often, if not usually, of the same race as the defendant.[117]

Returning, then, to the sample of cases, because 70% of the cases involving African American defendants are domestic in nature, we know that the police are *not* surveilling anyone for any reason in those cases, but rather are summoned by, or on behalf of, someone who has an intimate, domestic relationship with the defendant.

But what about the other seven (30%) of the cases in the sample that were filed against African Americans?[118] It is possible that, concerning those *non*-domestic allegations, the police could have used the statute to actively surveil and target suspects based on race. But once again, a deeper examination reveals that surveillance (race-motivated or otherwise) was not the underlying basis for those cases.

Three of the non-domestic disorderly conduct cases were very similar to the typical domestic abuse situation but were not classified as such because the complaining witness and defendant did not qualify for domestic status under the

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[115] *Id*. at 1.

[116] Michael Huemer, *Simple Truths, I: Police Violence*, FAKE NOUS (Apr. 24, 2021) (parenthetical in original) (emphasis added), at https://fakenous.net/?p=2271.

[117] *See, e.g.*, Gretchen Livingston & Anna Brown, *Intermarriage in the U.S. 50 Years After Loving v. Virginia*, PEW RESEARCH CENTER: SOCIAL & DEMOGRAPHIC TRENDS (May 18, 2017) (Only "one-in-ten married people in 2015—not just those who recently married—had a spouse of a different race or ethnicity."). This statistic may not hold for relationships outside of marriage, yet it is probably very safe to assume that most intimate relationships are between individuals of the same race.

[118] *See* APPENDIX.

statute. Most commonly, this means the couple was in a dating relationship but never formally resided together and did not have a child in common. Nonetheless, the police were *not* surveilling for criminal activity; rather, a citizen witness called the police and summoned them to the scene to report a crime.

In 18cm971, the defendant was charged with disorderly conduct after the caller complained that the defendant "was hitting her and would not get out of her house."[119] In 18cm842, the defendant was charged with property damage and disorderly conduct after two citizen witnesses reported a disturbance involving a female in need of help.[120] The female then reported that she "hid outside in the yard until police arrived," at which time she accused the defendant, her ex-boyfriend, of the crimes.[121] Finally, in 18cm986, the defendant was charged with battery and disorderly conduct after a citizen witness reported a man attacking a woman in public.[122] Upon arrival, the alleged victim complained to police that "[t]he defendant forcefully grabbed the back of her neck . . . and pushed her up against the fence" and was "cussing at her and yelling that she was disrespecting him."[123]

Similarly, two of the seven non-domestic cases filed against African Americans, while not comparable to the typical domestic scenario, also involved citizen witnesses summoning the police. In 18cm939, the defendant was charged with disorderly conduct when "the caller reported that there were intoxicated subjects"—her friends whom she previously invited inside—"in the home causing problems."[124] And in 18cm1029, the defendant was charged with criminal damage to property and disorderly conduct when the caller reported that the defendant, whom she knew,

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[119] Criminal Complaint at 1, Wisconsin v. Scott, No. 18-CM-971 (Cir. Ct. Kenosha County, July 30, 2018) (on file with author).
[120] Criminal Complaint at 1, Wisconsin v. Herron, No. 18-CM-842 (Cir. Ct. Kenosha County, July 5, 2018) (on file with author).
[121] *Id*. at 3.
[122] Criminal Complaint at 1, Wisconsin v. Walker, No. 18-CM-986 (Cir. Ct. Kenosha County, Aug. 1, 2018) (on file with author).
[123] *Id*. at 2.
[124] Criminal Complaint at 1, Wisconsin v. Clary, No. 18-CM-939 (Cir. Ct. Kenosha County, July 23, 2018) (on file with author).

"threw a glass bottle at her mother's car" striking "her rear window causing it to break."[125]

Finally, the last two cases of non-domestic disorderly conduct filed against African Americans involved unusual circumstances, but neither of them could be attributed to race-based surveillance. In 18cf1023, disorderly conduct was not initially charged at all.[126] Rather, the Information—the charging document that supersedes the complaint in felony cases[127]—was later amended by the prosecutor to include disorderly conduct as part of a plea bargain.[128] And in 18cm937, the suspect was arrested and charged with disorderly conduct when paramedics summoned a police officer at the scene of an auto accident to report that the defendant "was threatening them and interfering with their ability to treat their patient."[129]

In sum, the common thread running through all cases—including the 30% of cases that were non-domestic in nature—is that in every single disorderly conduct case filed against an African American defendant, some person called to report a crime and summoned the police to the scene. In 22 of the 23 cases against African Americans, the person who summoned the police or reported being victimized (or both) knew the defendant well, if not intimately. In *no case* was any police officer surveilling anyone for crimes of disorder.

This article's first hypothesis is therefore confirmed. The sample of cases does *not* substantiate but directly *contradicts*, the race-motivated theory of disorderly conduct as an explanation for why African Americans are charged at a disproportionately high rate relative to their population. Not even a single case with an African American defendant

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[125] Criminal Complaint at 2-3, Wisconsin v. Terrien-Body, No. 18-CM-1029 (Cir. Ct. Kenosha County, August 13, 2018) (on file with author).
[126] Criminal Complaint at 1, Wisconsin v. Murray, No. 18-CF-1023 (Cir. Ct. Kenosha County, September 20, 2018) (charging a single count of attempting to flee or elude an officer) (on file with author).
[127] *See* WIS. STAT. § 971.01.
[128] *See* Circuit Court Access, Court Record of Events, Wisconsin v. Murray, No. 18-CF-1023 (Cir. Ct. Kenosha County, July 18, 2019) ("state files amended information" at "plea sentencing hearing"), at https://wcca.wicourts.gov/caseDetail.html?caseNo=2018CF001023&countyNo=30&index=0&mode=details#records.
[129] Criminal Complaint at 1, Wisconsin v. Reaves, No. 18-CM-937 (Cir. Ct. Kenosha County, July 23, 2018) (on file with author).

involved police surveillance of any kind, whether race-based or otherwise.

B. PROSECUTORIAL CHARGE-STACKING

Just because there is no evidence that the police are surveilling African Americans for arrest and prosecution for disorderly conduct, it does not mean the statute isn't being abused in some way (perhaps in a nonracial way) by some government agent.

In the second of this article's two independent hypotheses, I assert that *prosecutors* are abusing the disorderly conduct statute in a race-neutral way: they are tacking it on to the underlying charge or charges to force the defendant into a plea bargain instead of going to trial.[130] One author explains this prosecutorial tactic of charge-stacking as follows:

> [P]rosecutors will "stack charges" against a defendant . . . and then approach the defendant with a "plea deal" that would result in a guaranteed, substantially reduced charge[s] and sentence if the defendant agrees to plead guilty to [one of the charges]. If the defendant takes the deal, the prosecutor doesn't have to take the case to trial . . . which [is] a lot of work and require[s] a lot of time on the part of the prosecutor. *This has become absolutely standard practice.* The prosecutor will "stack" charges . . . [and] even actually innocent people will be intimidated into pleading guilty, rather than face what's called the "trial penalty"—that very scary long sentence if they should somehow be convicted [of both charges] at trial. Not surprisingly, the nature of the deal offered by the prosecutor will be driven by how strong a case he/she

[130] I stand by this label of "abuse." However, this should *not* be confused with an ethics violation. Charge-stacking is so widespread (well beyond the use of the disorderly conduct statute discussed in this article) that if the practice were an ethics violation, nearly every prosecutor would be disbarred.

> thinks they would have in court—the weaker the case, the better the deal.[131]

Is there any evidence in the sample of cases to support this charge-stacking hypothesis? As discussed earlier, in only 16 of the 91 cases (17.6%), disorderly conduct was the only crime charged.[132] In the large majority of cases, 75 of the 91 (82.4%), disorderly conduct was tacked on to another charge or other charges allegedly occurring in the same incident.[133] Further, 100% of the time the cases in the sample were resolved by plea bargain or were dismissed—and some, if not most, of those dismissals were part of a larger, multi-case plea bargain.[134]

In other words, charge-stacking was highly prevalent and not a single case went to trial. However, it is important to draw a distinction here. While the investigation in this article proves the *practice* of charge-stacking, it does not necessarily prove that it is the direct or only cause of the observed, zero-percent trial rate. It is possible those cases

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[131] Phil Locke, *Prosecutors, Charge Stacking, and Plea Deals*, WRONGFUL CONVICTIONS BLOG (June 12, 2015) (emphasis added), at https://wrongfulconvictionsblog.org/2015/06/12/prosecutors-charge-stacking-and-plea-deals/. For a more detailed discussion of charge-stacking, *see* Michael L. Seigel & Christopher Slobogin, *Prosecuting Martha: Federal Prosecutorial Power and the Need for a Law of Counts*, 109 PENN ST. L. REV. 1107, 1121 (2005) ("Redundant charging can skew plea bargaining . . . Most obviously, multiple charges intimidate defendants."); Andrew Manuel Crespo, *The Hidden Law of Plea Bargaining*, 118 COLUM. L. REV. 1303, 1313 (2018) ("[T]he prosecutor can inflate the quantity of charges the defendant faces, by piling on overlapping, largely duplicative offenses—increasing with each new charge the defendant's potential sentence, his risk of conviction, and the 'sticker shock' of intimidation that accompanies a hefty charging instrument."); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 594 (2001) (discussing "charge-stacking"); Tracey L. Meares, *Rewards for Good Behavior: Influencing Prosecutorial Discretion and Conduct with Financial Incentives*, 64 FORDHAM L. REV. 851, 878 (1995) (discussing "horizontal overcharging"); Andrew D. Leipold, *How the Pretrial Process Contributes to Wrongful Convictions*, 42 AM. CRIM. L. REV. 1123, 1143 (2005) ("A defendant who is guilty of one charge but innocent of another may find it difficult" to defend both).

[132] *See* APPENDIX.

[133] *See id.*

[134] *See id.*

would have been resolved by plea bargain anyway, even without charge-stacking.[135]

Nonetheless, while this investigation does not in itself prove a cause-and-effect relationship, it "does waggle its eyebrows suggestively and gesture furtively while mouthing 'look over there'" in the direction of causation.[136] And charge-stacking is more likely to have an impact on plea bargaining in the two-count cases. The reason is that, with only one underlying count, the disorderly conduct tack-on charge takes on greater significance in plea negotiations.

This becomes clearer by focusing on a subset of the two-count cases in the sample. In 39 of 91 cases (42.9%), the defendant was charged with precisely two counts: a single, underlying count of some kind, and a disorderly conduct tack-on charge.[137] Twenty-seven of these 39 cases are

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[135] The reality is that the vast majority of criminal cases in all federal and state jurisdictions resolve by plea bargain for a variety of reasons. *See* Darryl K. Brown, Response, *What's the Matter with Kansas—and Utah?: Explaining Judicial Interventions in Plea Bargaining*, 95 TEX. L. REV. SEE ALSO 47, 62 (2017) ("All this has allowed state and federal courts to reach guilty plea rates of 96 to 99 percent."); John H.. Langbein, *Torture & Plea Bargaining*, 46 U. CHI. L. REV. 3, 9 (1978) (In some jurisdictions "as many as 99 percent of all felony convictions are by plea."); Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909, 1912 (1992) (Plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system.").

Further, charge-stacking with the disorderly conduct statute is only a single, very limited form of charge-stacking. And in addition to charge-stacking (with or without the use of disorderly conduct), another reason for the dominance of plea bargaining may be that some defense lawyers are averse to trying cases. *See* Eve Brensike Primus, *Culture as a Structural Problem in Indigent Defense*, 100 MINN. L. REV. 1769, 1769 (2016) ("Too many lawyers appointed to represent poor criminal defendants do not perform their intended role in the system, because they have been conditioned not to fight for their clients").

[136] CAUSEWEB.ORG, Munroe on Correlation (accessed May 8, 2021), at https://www.causeweb.org/cause/resources/fun/quotes/munroe-correlation.

[137] *See* APPENDIX. For purposes of determining the number of counts, bail jumping charges are disregarded. Further, the 39 cases are a *subset* of two-count cases. There were additional two-count cases in the sample, but in those cases it is not necessarily clear that the disorderly conduct charge was tacked-on to an underlying crime; therefore, such cases are not included in the subset of the 39 two-count cases that I discuss here. For example, in 18cm979 the defendant is charged with two counts: carrying a concealed weapon (CCW) and disorderly conduct. However, the disorderly conduct may not be a tack-on charge. Rather, it might be

battery cases, another eight are criminal damage to property, two are child abuse, one is strangulation, and one is violating a domestic no-contact order—and in each of these 39 cases, the prosecutor tacked on a disorderly conduct charge to make a two-count case out of a single incident.[138]

But how can the prosecutor charge the defendant with a primary, underlying crime (usually battery) and then tack on a second crime (disorderly conduct) for the same alleged act? How does that type of charge-stacking not violate double jeopardy? The legal gymnastics that permit it are best illustrated by focusing on the battery-disorderly conduct example. This familiar two-charge combination accounts for 27 of the cases described above, which is a whopping 30%, or nearly one-third, of *all cases* in the entire sample.[139]

This two-charge combination was also the subject of the appeal in *State v. Kanarowski*, wherein the defendant was charged with battery and a disorderly conduct tack-on (and two more crimes not relevant for our analysis) for allegedly hitting the complaining witness with a baseball bat.[140] The defendant argued that he cannot be charged with two crimes for the same act, as "[t]he constitutional protections against double jeopardy in a single prosecution are meant to prevent a single offense from being arbitrarily transformed into multiple offenses with multiple punishments."[141]

In response, the court held that the applicable test is whether "each charged offense require[s] proof of an element or fact that the other does not."[142] If each does, then transforming the defendant's single act (swinging the baseball bat) into two offenses (battery and disorderly conduct) would not be arbitrary and, therefore, would be permitted. The court elaborated: on the one hand, *battery* requires proof that the victim suffered bodily harm without consent and that the defendant had the "intent to cause

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the primary, underlying charge with the CCW charge being added for a weapon that may have been found on the defendant's person upon his arrest.

[138] *See id.*

[139] *See id.*

[140] State v. Kanarowski, 489 N.W.2d 660, 661 (1992).

[141] *Id.* at 662.

[142] *Id.* (discussing the so-called *Blockburger* test set forth in *Blockburger v. U.S.* 284 U.S. 299 (1932)).

bodily harm,"[143] whereas disorderly conduct does not; on the other hand, the court continued, *disorderly conduct* requires proof that the defendant's conduct was "violent . . . and tended to cause or provoke a disturbance," [144] whereas battery does not.

According to the court, because each crime requires proof of an element that the other does not—*bodily harm* for battery and *a disturbance* for disorderly conduct—transforming the defendant's single offense into two different crimes is not arbitrary and, therefore, is permitted. In other words, even though hitting someone with a baseball bat is one *act*, the battery and disorderly conduct are "based upon different facts, not the same fact."[145] One "fact" is that the defendant intentionally caused bodily harm; the other "fact" is that the defendant also caused or provoked a disturbance.[146]

In reality, it is certainly true that a person can commit disorderly conduct without committing a battery—as we've learned, even a lawyer attempting to visit a client at a government building during regular business hours can be disorderly.[147] But as a practical matter, in most imaginable circumstances can a person really commit a battery without also being disorderly? In the baseball-bat case, doesn't causing pain or injury necessarily cause a disturbance? Wouldn't the crime victim who suffers bodily harm also necessarily be disturbed—or at least "tend to" be disturbed, which is all that the disorderly conduct statute requires?[148] Isn't breaking this fact into two different "facts" just a

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[143] *Id*.
[144] *Id*.
[145] *Id*. In the court's reasoning, the fact that the defendant's battery "drew a crowd and . . . the police [were] summoned" is evidence of the disturbance, thus justifying the disorderly conduct. In the domestic context, there usually isn't a crowd to witness the battery yet the police are still "summoned," which is evidence that the complaining witness was disturbed. This is enough to pass the *Blockburger* elements-only test. And in cases of disorderly conduct, recall that an actual disturbance is not even needed. Rather, the test is whether the defendant's conduct (the battery) is such that it merely "tends to cause" a disturbance. WIS. STAT. § 947.01 (1).
[146] *Id*.
[147] *See* Part II.A.
[148] WIS. STAT. § 947.01 (1).

disingenuous way to double up the charges and pile on the defendant?[149]

In commonsense layman terms, disorderly conduct is (almost always) inherent in or included within a battery crime. But because the test is not one of commonsense, but rather is the hyper-technical elements-only test, the state may charge battery *and* disorderly conduct for a single incident (or even a single act), thus giving the prosecutor the bargaining power to offer dismissal of one count in exchange for a plea to the other.[150] Which count stays and which one goes, of course, depends on the perceived strength of the case. But either way, having two counts with which to wheel-and-deal dramatically increases the prosecutor's chance of getting the desired conviction without the inconvenience and risk of a jury trial.

In the sample, of the 39 two-count cases described above, 33 are known to have been resolved by plea bargain.[151] The remaining six were dismissed,[152] though probably as part of a larger plea deal involving another case that does not appear in the sample. The results of those 33 known plea bargains are as follows:

[149] *See* Michael Seigel & Christopher Slobogin, *supra* note 131, at 1113 (discussing the prosecutor's ability "to shape the contours of a crime and to split it up—perhaps arbitrarily—into many different but overlapping counts.").
[150] *See id.* at 1121-24 (discussing the elements-only test and reasonable alternatives to it).
[151] *See* APPENDIX.
[152] *See id.*

Underlying Charge	**No. of Cases**	**Plea to underlying charge** [153]	**Plea to D.C.** [154]	**Pct. D.C.**
Battery (+ D.C.)	23	9 [155]	15	65.2%
Crim. Damage to Prop. (+ D.C.)	7	2	5	71.4%
Child Abuse (+ D.C.)	2	1	1	50.0%
Violate DV No-Contact (+ D.C.)	1	0	1	100.0%
	33	12	22	66.7%

Put another way, we know that no cases in the sample went to trial. We can also safely assume that in over one-third of the cases (33 of 91), and probably more, the prosecutor was able to use the disorderly conduct charge to force the defendant into a plea bargain.[156] In about two-thirds of those 33 cases, the prosecutor offered a plea to the less serious disorderly conduct in exchange for dismissal of the primary charge (most commonly, battery). In roughly

[153] In 18cm999, a battery case, the defendant also had a bail jumping charge, but such charges are ignored for purposes of this article. Further, the bail jumping charge (not the battery charge) is actually the underlying count to which the defendant entered a plea. In 18cf810, also a battery case, the defendant entered a plea to disorderly conduct and *also* to a *reduced* battery charge. This plea to battery is not included in this "underlying charge" column because the plea was to a modified or reduced charge.

[154] In 18cm953, a battery case, and 18cm974, a criminal damage to property case, the defendants entered pleas to disorderly conduct as part of a deferred prosecution agreement.

[155] In 18cm992, the defendant entered pleas to *both* the underling battery and the disorderly conduct. This is why the table indicates pleas to 24 counts (nine underlying charges and 15 disorderly conduct charges), even though there are only 23 cases in that row. In all of the other two-count cases, the defendant entered a plea to one count in exchange for the dismissal (or in one instance, the reduction) of the other.

[156] I limit my claim to the 33 two-count cases, however, because even though the prosecutor obtained a plea in many more cases, those other cases had more than two counts. The more counts the prosecutor has at his or her disposal, the less impact a single count of disorderly conduct will have in plea bargaining.

the other one-third, the prosecutor induced a plea to the more serious charge by offering to dismiss the disorderly conduct.

But while this investigation demonstrates that charge-stacking is highly prevalent in the sample, it has not yet demonstrated the extent of the practice—not even in the county from which the sample was drawn. In other words, we know that whenever disorderly conduct was charged, in the vast majority of cases it was used as a tack-on to another charge—typically battery or property damage. But how often was battery or property damage charged *without* tacking on a disorderly conduct count? Such cases, *sans* disorderly conduct, would not have appeared in the sample. If there are a high number of such cases, then the practice of charge-stacking may not be that widespread.

This question is easily answered with two additional searches. It turns out that charge-stacking is not just widespread, but habitual—i.e., "absolutely standard practice."[157] Within the timeframe (July 2018), county (Kenosha), and state (Wisconsin) under investigation, there were only three cases that charged some form of battery but did not also charge disorderly conduct.[158] Similarly, there was only one case that charged property damage but did not also charge disorderly conduct.[159] In other words, *not* tacking on a disorderly conduct charge in a battery or property damage case was the rare exception to the rule—so rare, it may have been a charging oversight.

To summarize, this investigation substantiates the article's second hypothesis: it conclusively demonstrates habitual prosecutorial charge-stacking. Further, the complete absence of jury trials in the sample of cases is consistent with the commonsense claim that prosecutors stack charges to increase their leverage over defendants and force them into plea bargains.

VI. LESSONS AND LIMITATIONS

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[157] Phil Locke, *supra* note 131.

[158] *See* Wisconsin Circuit Court Access, Kenosha County, All Battery-Related Statutes in Ch. 940, Wis. Stats., Offense Range 7/01/2018 to 7/31/2018.

[159] The one case is a codefendant case, thus generating two separate case numbers for a single incident and a single charging decision. *See* Wisconsin Circuit Court Access, Kenosha County, Statute 943.01, Offense Range 7/01/2018 to 7/31/2018.

One limitation of this investigation is that it tests the two narrow hypotheses using a sample that is limited in scope: it was drawn from one county in one state and investigated only three law enforcement agencies.[160] (The cases studied were not randomly selected, either, but that is not a limitation; as explained earlier, the sample was selected to increase the odds of *substantiating* the race-motivated theory of disorderly conduct, if the theory was true. Also as explained earlier, the sample is fairly large, as it comprises 11% of the disorderly conduct cases in 2018.)

Therefore, while I believe the race-motivated theory of disorderly conduct is generally implausible, I cannot say that this investigation debunks the theory on a national or statewide scale. It would be more accurate to say that the sample of cases investigated in this article offered no support whatsoever for the race-motivated theory and, in fact, completely contradicted it.

But that limitation is also the primary lesson. Policing is a very local affair. Police practices and policies are sometimes determined at the state level,[161] and in most respects at the county or even agency level.[162] Therefore, broad claims and generalizations about police-related problems and reforms are usually of little value. When a police officer commits misconduct, even crimes, against a suspect in Minneapolis, it says nothing about whether the police in Seattle or Portland, for example, should be abolished, defunded, *or even reformed*. Similarly, even if it

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[160] The vast majority of cases in Kenosha County in July 2018 would have been investigated by the Kenosha Police Department, the Kenosha Sheriff's Department, and the Pleasant Prairie Police Department. (Another potential agency which sees a much lower volume of cases would have been the Twin Lakes Police Department.).

[161] An example of a statewide practice is the state-level mandatory arrest law in domestic situations, discussed in Part IV.A.

[162] *See* Elizabeth Joh, *Policing, Race, & Technology*, 2021 U. ILL. L. REV. ONLINE 84, 84 (2021) ("Like schools and fire departments, policing is largely a local institution."). As an example of a difference at the agency level, even within Kenosha County the three primary law enforcement agencies are not on the same page with the use of body cameras. *See* Deneen Smith, *First Body Cameras on the Street for Sheriff's Deputies, Testing Beginning for Kenosha Police*, KENOSHA NEWS (Apr. 28, 2021) (By comparison to the Kenosha Sheriff and the Kenosha Police Departments, "Pleasant Prairie Police [another Kenosha County law enforcement agency] have had body cameras since 2017.").

were shown that the police were surveilling African Americans for disorderly conduct in, say, New York, that would not support the abolition of the disorderly conducts statute in, say, Florida or Wisconsin. This is especially true if the New York law enforcement surveillance practices were in use many decades ago.[163]

A secondary lesson relates to claims and evidence. Those asserting a claim—e.g., that the police are currently using the disorderly conduct statute to surveil African Americans for signs of disorder—generally have the burden to provide evidence in support of that claim.[164] And merely pointing to disproportionate charging of a demographic group relative to its share of the total population says absolutely nothing about *why* that difference exists.

The claims of racist police surveillance for signs of disorder tend to be advanced by those in academia—a place where it is currently popular to make sweeping allegations of racism.[165] For example, in what can only be described as an oddly self-destructive move, the English department at Rutgers University stated that to promote anti-racism, it will "deemphasize traditional grammar rules."[166] Moving from the perplexing to the disturbing (and from general academia

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[163] *See* Jamelia Morgan, *supra* note 21, at 7 (discussing the "broken windows policing initiatives of the 1980s and 1990s" and the "order-maintenance policing that characterized the vagrancy regimes of the latter half of the 20th century.").

[164] *See, e.g.*, PHILOSOPHY OF RELIGION: THE BURDEN OF PROOF (accessed May 5, 2021) ("[Y]ou simply cannot prove general claims that are negative claims—one cannot prove that ghosts do not exist; one cannot prove that leprechauns too do not exist. One simply cannot prove a negative and general claim."), at https://www.qcc.cuny.edu/socialsciences/ppecorino/phil_of_religion_text/CHAPTER_5_ARGUMENTS_EXPERIENCE/Burden-of-Proof.htm.

[165] Both of the authors cited in this article who make claims of race-motivated police surveillance are employed in legal academia. *See supra* note 21. This is not surprising for another reason as well: the majority of all law review articles are written by professors. In one recent study, more than sixty percent of articles were written by authors who were already affiliated with law schools. *See* Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 J. LEGAL ANALYSIS 309, 319-20 (2013). This strikes me as an underestimate of the true number; in any case, of the remaining authors, many are no doubt publishing with the hope of breaking into the academy's hallowed ranks.

[166] Alex Frank, *Rutgers English Department to Deemphasize Traditional Grammar In Solidarity with Black Lives Matter*, COLLEGE FIX (Jul 20, 2020), at https://www.thecollegefix.com/rutgers-english-department-to-deemphasize-traditional-grammar-in-solidarity-with-black-lives-matter/.

to legal academia) several law professors at Northwestern University introduced themselves at a virtual town hall meeting by obediently announcing: "I am a racist."[167] Returning to the general academy for a final, head-scratching example, students at Georgetown condemned as racist a minority fellowship program that provides "alumni mentorship, interview practice, and leadership trips" to minority students.[168] A primary complaint was the program's practical orientation; it should instead have focused on race-based activism, critics say.[169]

Certainly, if rules of grammar, liberal law professors,[170] and even fellowship programs designed exclusively for minority students are called racist, then it is no surprise (and might even be expected) that those in academia will attempt to brand the police as racist as well. But such liberal, free-wheeling use of the word racism can pose several problems—assuming that one's goal is to identify real, contemporary issues and advocate for meaningful reform.

One problem is that sometimes the evidence contradicts such claims of police racism. This was demonstrated in this article. Allegations of racism should therefore be made narrowly (e.g., "the police at agency A in county B of state C are surveilling African Americans for crimes of disorderly conduct . . .") and only when grounded in evidence beyond macro-level arrest or charging statistics. Otherwise, such allegations lose their effectiveness. Worse yet, rather than merely falling on deaf ears, blanket claims of racism can harm. "The most damaging aspect of this mindset is that it renders impossible the task of rooting out

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[167] Chrissy Clark, *Northwestern Law Administrators Confess Their Racism in Online Diversity Session*, WASHINGTON FREE BEACON (Sept. 6, 2020), at https://freebeacon.com/campus/northwestern-law-administrators-confess-their-racism-in-online-diversity-session/; Maria Lencki, *Northwestern Law Faculty Refuses to Explain Why They Introduced Themselves as Racists*, COLLEGE FIX (Sept. 8, 2020), at https://www.thecollegefix.com/northwestern-law-faculty-refuse-to-explain-why-they-introduced-themselves-as-racists/.

[168] Dalton Nunamaker, *At Georgetown, Program Supporting Students of Color Accused of Racism*, COLLEGE FIX (Dec. 16, 2020), at https://www.thecollegefix.com/at-georgetown-program-supporting-students-of-color-accused-of-racism/.

[169] *Id*.

[170] *See* James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J. L. & PUB. POL'Y 89 (2015) (discussing the gross overrepresentation of Democrats on law school faculties).

[true] racism. Falsely assuming that racism is everywhere . . . is guaranteed to engender resentment and sow racial division."[171]

Blindly placing all problems into the basket of racism means that, when racism isn't the real issue, the underlying problem is overlooked and it gets a free pass. As demonstrated by this article, the real problem in the sample of cases is broader as it affects *all defendants*, not just African Americans. And the problem isn't surveillance by the police; rather, it is the completely independent problem of charge-stacking by prosecutors. (As the next Part demonstrates, even though the problem impacts all defendants, the associated fix is less extreme than abolishing the statute.)

In any event, there are also some other limitations of this article's investigation and findings. It is possible that *after* the police are summoned and respond to a domestic incident, they *then* discriminate based on race in deciding whether to arrest the suspect. Such racism would not be detected by this investigation; different information would be needed to test that hypothesis. However, I think that hypothesis is also unlikely to be substantiated for two reasons.

First, in many states including Wisconsin, once the police respond to a call for a domestic disturbance their discretion is severely restricted by mandatory arrest laws that govern the domestic setting.[172] Under Wisconsin's law, the police *must* arrest the suspect, regardless of race, in most cases and certainly in every case where there is any

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[171] Andrew Doyle, *The Anti-Racism Movement is Sowing Deeper Divisions*, THE SPECTATOR (Dec. 5, 2020) (parenthetical added), at https://www.spectator.co.uk/article/the-anti-racism-movement-is-sowing-deeper-divisions.

[172] *See* WIS. STAT. § 968.075 (2) (a) (enumerating several different circumstances in which a police officer "shall" arrest a domestic abuse suspect). For a discussion of mandatory arrest laws, *see, e.g.,* Alayna Bridgett, M*andatory-Arrest Laws and Domestic Violence: How Mandatory-Arrest Laws Hurt Survivors of Domestic Violence Rather Than Help Them*, 30 HEALTH MATRIX 437 (2020); Alexandra Pavlidakis, *Mandatory Arrest: Past Its Prime*, 49 SANTA CLARA L. REV. 1201 (2009); David Hirschel, et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions*, 98 J. CRIM. L. & CRIMINOLOGY 255 (2007); Joel Garner, *Evaluating the Effectiveness of Mandatory Arrest for Domestic Violence in Virginia*, 3 WM. & MARY J. RACE, GENDER & SOC. JUST. 223 (1997).

"evidence of physical injury," no matter how slight, "to the alleged victim."[173] And because a large percentage of the domestic cases in the sample involved an underlying crime of violence with a disorderly tack-on, the police would have no arrest discretion in most cases.

Second, even if the data were available, how would one define or measure racism in arrest decisions? Assume, for example, the unusual case of a domestic disturbance call where the police do have some discretion in making an arrest. Then assume the usual situation where the suspect and the complaining witness are of the same race. The data used in this investigation do not reveal the race of the complaining witness, but presumably many (and probably most) domestic relationships involve parties of the same race.[174] Upon being summoned, would the police be racist for arresting the defendant or for *not* arresting the defendant, given that the complaining witness who is seeking help is also African American?

One other limitation of this article's investigation is that it does not attempt to detect prosecutorial racism if any exists. Assume the police are doing their jobs under the mandatory arrest law: when they are summoned to a domestic incident, they arrest every person, regardless of race, who is accused of a qualifying crime. Even then, it is possible that a disproportionately high percentage (relative to the population) of African Americans is being *charged* because the prosecutor's office is making decisions based on race.

Once again, this strikes me as highly unlikely—at least in the county where I practice given the race consciousness of the prosecutor's office.[175] But even if such a

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[173] WIS. STAT. § 968.075 (2) (a).

[174] *See* Livingston, *supra* note 117.

[175] *See, e.g.*, *BLM Activist Who Lost Race for Congress and Judge to Become Kenosha's Newest [Assistant] Prosecutor*, KENOSHA COUNTY EYE (Apr. 30, 2021) ("BLM sympathizer, Kenosha County District Attorney Michael Graveley (D) hired [the BLM activist] as an Assistant District Attorney."), at http://kenoshacountyeye.com/2021/04/30/blm-activist-who-lost-race-for-congress-and-judge-to-become-kenoshas-newest-prosecutor/; *Another Day, Another 32 Pages of Text Messages Between Kenosha DA Mike Graveley and BLM Extremist Whitney Cabal*, KENOSHA COUNTY EYE (Jan. 28, 2021) ("[T]he two seem to make plans to meet up in person . . . She then presses him for information on the police shooting of Jacob

prosecutorial practice exists, the race of the complaining witness would also have to play a role in whether a charging decision could be called racist. Nonetheless, this article's investigation does not examine the relevant data and, therefore, would not detect such race-based prosecutorial practices, assuming they even exist.[176]

In sum, the reader should be cautious not to overstate the findings of this article's investigation. Just as it is unwise to make broad, sweeping statements about racism or racist police practices without sufficient evidence, the reader must also recognize the limits of this study, including the geographic scope of its sample and the narrowly drawn hypotheses it investigates.

VII. RECOMMENDED REFORM

There are very good arguments for abolishing disorderly conduct statutes. Three of those were discussed in Parts II.A.–C. And to the extent a particular statute does not pass constitutional muster—for example, by not providing sufficient notice of what conduct is criminalized or by chilling constitutionally protected speech—the statute most certainly should be (and, in theory, must be) abolished.

However, there are also arguments *against* abolishing disorderly conduct statutes, particularly those that do pass constitutional muster. In a case discussed earlier, for example, the defendant was alleged to have

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Blake."), at http://kenoshacountyeye.com/2021/01/28/another-day-another-32-pages-of-text-messages-between-kenosha-da-mike-graveley-and-blm-extremist-whitney-cabal/.

[176] Another theoretical possibility—but one that is so fanciful and unlikely that it is best relegated to this footnote—is that the police are, in fact, surveilling and arresting African Americans for disorderly conduct, but the prosecutor's office is refusing to file charges. Under this hypothetical scenario, racist police surveillance exists but would escape detection, as this article studies disorderly conduct *charges*. It seems incredibly unlikely, however, that the police would surveil a racial group for signs of disorder knowing that the prosecutor's office will not file disorderly conduct charges against members of that group. Nonetheless, this theoretical possibility illustrates the potential for differences between arrest data and charging data. For a general discussion of this topic, *see* Michael M. O'Hear, *Milwaukee Arrest Trends, 1980-2011 – Part Three: Chicago Comparisons*, MARQ. U. L. SCH. FAC. BLOG (July 21, 2013), at https://law.marquette.edu/facultyblog/2013/07/milwaukee-arrest-trends-1980-2011-part-three-chicago-comparisons/.

pointed a loaded gun at his wife in an attempt to scare her during a domestic argument.[177] No other charge was filed.[178] Far from the situation of law enforcement allegedly using "unfettered discretion to harass and arrest people engaged in relatively harmless conduct,"[179] this scenario seems, at least on its face, to be a legitimate use of the statute. Without the statute, the prosecutor would have to forego charging such abusive and even potentially dangerous conduct—unless the prosecutor could identify a different charge to fit the allegation which, admittedly, is often possible given today's expansive criminal codes.

But legal reform short of abolition can address the governmental abuse substantiated in this article, i.e., prosecutors using disorderly conduct to stack charges to coerce plea bargains. Assuming, for the sake of argument, that plea bargaining's stranglehold on the criminal justice system is not desirable and that more cases should be tried by juries to determine guilt or innocence,[180] what can be done about it?

The fix is quite simple. "A rational legislature should seek to avoid promulgating numerous overlapping and vague criminal provisions."[181] And toward that end, there are

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[177] Criminal Complaint, Wisconsin v. Carr, No. 18-CM-902 (Cir. Ct. Kenosha County, July 17, 2018) (on file with author).

[178] *Id*.

[179] Rachel Moran, *supra* note 21, at 33.

[180] The scourge of plea bargaining has been well documented and argued. *See, e.g.,* Stephen J. Schulhofer, *Plea Bargaining as Disaster*, 101 YALE L.J. 1979, 1979 (1992) ("[P]lea bargaining seriously impairs the public interest in effective punishment of crime and in accurate separation of the guilty from the innocent."); H. Mitchell Caldwell, *Coercive Plea Bargaining: The Unrecognized Scourge of the Justice System*, 61 CATH. U. L. REV. 63 (2012) (The prosecutorial practice of charge-stacking "compromises the justice system as a whole."); Russell D. Covey, *Signaling and Plea Bargaining's Innocence Problem*, 66 WASH. & LEE L. REV. 73, 73 (2009) ("Because it is perfectly rational for innocent defendants to plead guilty, plea bargaining might be said to have an 'innocence problem.'"); F. Andrew Hessick III, *Plea Bargaining and Convicting the Innocent: the Role of the Prosecutor, the Defense Counsel, and the Judge*, 16 BYU J. PUB. L. 189, 233 (2002) ("[T]he prosecutor has incentives to enter into a plea bargain without much concern as to whether the defendant is guilty or innocent."); Tina Wan, *The Unnecessary Evil of Plea Bargaining: An Unconstitutional Conditions Problem and a Not-So-Least Restrictive Alternative*, 17 REV. L. & SOCIAL JUSTICE 33 (2207) (Plea bargaining "should be banned and held unconstitutional.").

[181] Michael Seigel & Christopher Slobogin, *supra* note 131, at 1119.

currently statutes that limit the number of charges a prosecutor can file in certain circumstances. For example, concerning the crimes of (1) repeated acts of sexual assault of a child within a specified time period and (2) sexual assault of a child for a single act, one such limiting statute reads:

> The state may not charge in the same action a defendant with a violation of this section [repeated acts] and with a violation involving the same child under s. 948.02 [sexual assault] . . . unless the other violation occurred outside of the [specified] time period [of the repeated acts] . . .[182]

The above statute may be difficult to understand without careful parsing and some familiarity with the substantive statutes to which it relates. But in short, it prevents the prosecutor from charge-stacking certain sex-related crimes. And the statute could easily be adapted to prohibit the prosecutor from tacking on a disorderly conduct charge to its underlying charge (e.g., battery). Such a limiting statute for disorderly conduct could read as follows:

> The state may not charge a defendant with a violation of this disorderly conduct statute and with a violation of any other statute unless the alleged violation of the other statute is separated by time, place, and circumstances from the alleged violation of the disorderly conduct statute.

This charging limitation would restrict the state's ability to stack a disorderly conduct charge onto what is a single-act criminal allegation and what should be a single-count criminal complaint.[183] Granted, in cases where the prosecutor charges a battery or property damage, for example, he or she could still offer to *amend* that underlying

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[182] WIS. STAT. § 948.025 (3).

[183] For a reform measure that calls on the judiciary, rather than the legislature, to take sensible action, *see* Michael Seigel & Christopher Slobogin, *supra* note 131, at 1128-30 ("[W]e suggest that the courts use their common law power to create a 'law of counts.'").

charge to a disorderly conduct charge to induce a plea. However, the limiting statute proposed above would still constrain the prosecutor in two important ways.

First, the prosecutor would not be able to induce a plea to an underlying charge by offering to dismiss a disorderly conduct charge, as the initial charging would be limited to the underlying charge. (It is true that, under the proposed statute, the prosecutor could opt for charging disorderly conduct instead of an underlying charge such as battery or property damage. However, the prosecutor would rarely do that, as the underlying charge—even when it, too, is a misdemeanor—will be a more serious charge than disorderly conduct.)

Second, in the case where the prosecutor offers to *amend* the sole, underlying charge to a count of disorderly conduct to induce a plea, the innocent defendant could reject that offer, go to trial, and face only one count (e.g., battery) instead of two counts (e.g., battery plus the disorderly conduct tack-on).

The innocent defendant in this position would be less likely to capitulate to a plea bargain, as there would be less to lose (i.e., he or she would face fewer counts and a lower potential penalty) when going to trial. Perhaps even more significantly, at trial the jury would be prevented from splitting the charges in a convenient compromise verdict—in my experience, typically "not guilty" of the underlying charge but "guilty" of disorderly conduct—as there would be only a single count for it to consider.[184]

In sum, the statutory amendment proposed above would curtail the prosecutorial practice of extorting a plea to one count in exchange for dismissal of the other—at least in the context of the disorderly-conduct charge-stacking ploy. In this narrow context, no longer would the prosecutor be able to so easily obtain a criminal conviction—possibly from an innocent defendant, no less—without proving the state's case at trial.

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[184] *See id.* at 1125-26 (discussing how the jurors may "horse-trade" charges to reach a "compromise verdict"); *see also* Andrew D. Leipold & Hossein A. Abbasi, *The Impact of Joinder and Severance on Federal Criminal Cases: An Empirical Study*, 59 VAND. L. REV. 349, 355 (2006) ("[T]he more counts in the indictment, the quicker the jury may be to assume that the accused must be guilty of something.").

VIII. CONCLUSION

Broad, sweeping claims of police racism are popular in academia and other circles. However, such claims pose three potential problems. First, concerning the statistics cited, a claimant might be confusing correlation with causation.[185] Second, policing is a very state-, county-, and even agency-specific matter. Just as police misconduct in Minneapolis, for example, tells us nothing about police practices in, say, New York or Seattle, these broad claims of police racism are often meaningless.[186] And third, worse than being meaningless, broad claims of racism may even detract from the true, underlying problem.[187]

This article investigated a particular claim of police racism: that the police are using disorderly conduct statutes to surveil African American neighborhoods "for signs of disorder" and "as a means of social control against people of color."[188] This article examined a sample of disorderly conduct cases from a state, county, and timeframe that would likely substantiate this race-motivated theory if the theory is true.[189]

The investigation found that African Americans were indeed charged with disorderly conduct at a disproportionately high rate relative to their percentage of the population.[190] However, this by itself does not mean that the charging difference is due to race-based police surveillance.[191] Rather, a deeper investigation into the facts revealed that in all cases filed against African American defendants, the police were not surveilling anyone for any reason.[192]

Instead, in all cases, the police were summoned to the scene by a citizen or complaining witness who alleged that the defendant had committed a crime—usually an allegation of domestic violence.[193] Consequently, at least concerning the venue and jurisdiction under investigation, this article's

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[185] *See* Part III.C.
[186] *See* Part V.
[187] *See id.*
[188] *See* Part II.D.
[189] *See* Part III.B.
[190] *See* Part III.C.
[191] *See id.*
[192] *See* Part IV.A.
[193] *See id.*

findings do not support, but rather directly contradict, the broad-brush claim of racist police surveillance.[194]

This article also investigated and confirmed a second, independent hypothesis: that the disorderly conduct is being abused not by racist police, but in a race-neutral way by prosecutors.[195] In the vast majority of cases, disorderly conduct was merely tacked on to a primary, underlying charge (usually battery) that was part of the same alleged incident.[196] This practice of charge-stacking gives the prosecutor a tremendous advantage over the defendant in plea bargaining; unsurprisingly, not a single case in the sample of cases went to trial.[197]

Given that racist police surveillance was ruled out as an explanation for the disproportionate charging of African Americans with disorderly conduct, and given that the prosecutorial practice of charge-stacking was substantiated, this article concludes by recommending reform that is tailored to the real problem.[198] By amending the statute to prohibit the use of disorderly conduct as a duplicative add-on charge, the coercive prosecutorial tactic of charge-stacking will be curtailed and the disorderly conduct law will be limited to its proper and intended uses.[199]

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[194] *See id.*
[195] *See* Part III.A.
[196] *See* Part IV.B.
[197] *See id.*
[198] *See* Part VI.
[199] *See id.*

APPENDIX: DATABASE OF CASES

The table of cases is sorted by three criteria in the following order: (1) the defendant's race; (2) whether the case is charged as domestic abuse (violence); and (3) the description of the criminal charges. The following shorthand is used for criminal charges. Other shorthand is also listed below:

CCW = Carrying a Concealed Weapon
CDTP = Criminal Damage to Property
DC = Disorderly Conduct
FI = False Imprisonment
Intimid = Intimidation of a Victim
OAR = Operating After Revocation
Para Poss'n = Drug Paraphernalia Possession
RES = Reckless Endangerment of Safety

AfAm = African American
Cauc = Caucasian
Dis = Dismissed
DV = Domestic Violence (also known as Domestic Abuse)
Hisp = Hispanic

Two case numbers in the table of cases have been excluded to comply with the most expansive imaginable reading of the rule of confidentiality.[200] Some cases in the table may have subsequently been expunged by the court and may no longer be publicly available.[201]

Some criminal charges, such as Battery, can be either a misdemeanor or felony depending on the severity of the alleged injury and other factors.[202] Domestic-related charges, including Battery and Disorderly Conduct, can be misdemeanors or felonies depending on whether the defendant has prior domestic abuse convictions.[203]

Any charge of any classification (domestic or non-domestic) and severity (felony or misdemeanor) can be

[200] *See supra* note 47.
[201] *See* WIS. STAT. § 973.015.
[202] *See* WIS. STAT. § 940.19 – 940.208.
[203] *See supra* note 44.

enhanced if the defendant is a general repeater[204] or is subjected to other penalty enhancers, such as the dangerous weapon enhancer.[205]

These charge classifications and penalty distinctions, however, are not relevant for this article and therefore are not included in the table of cases. Similarly, bail jumping charges are ignored.

No.	Case No.	Def's Sex	Def's Race	Description of Charges	DV	Resolution	Plea to D.C.
1	-------	M	AfAm	Battery (5), CDTP, FI, Strangulation (2), DC (4)	DV	Plea Deal	N
2	18cm1078	M	AfAm	Battery, CDTP, DC	DV	Plea Deal	Y
3	18cm1086	M	AfAm	Battery, CDTP, DC	DV	Plea Deal	Y
4	18cf799	M	AfAm	Battery, DC	DV	Plea Deal	N
5	18cm843	M	AfAm	Battery, DC	DV	Plea Deal	Y
6	18cm879	M	AfAm	Battery, DC	DV	Plea Deal	Y
7	18cm946	M	AfAm	Battery, DC	DV	Plea Deal	N
8	18cm999	M	AfAm	Battery, DC	DV	Plea Deal	N
9	18cf778	M	AfAm	Battery, FI, Kidnapping, DC	DV	Plea Deal	N
10	18cf744	M	AfAm	Battery, Intimid, OAR, Resisting, DC	DV	Plea Deal	Y
11	18cf867	M	AfAm	Battery, Intimid, Strangulation, DC	DV	Dis	--

[204] *See* WIS. STAT. § 939.62.
[205] *See* WIS. STAT. § 939.63.

12	18cm844	F	AfAm	Battery, Oleoresin Device, DC	DV	Plea Deal	N
13	18cf750	M	AfAm	Battery, Violate No Contact, DC	DV	Plea Deal	Y
14	18cm902	M	AfAm	DC	DV	Plea Deal	Y
15	18cm936	M	AfAm	DC	DV	Plea Deal	Y
16	18cm960	M	AfAm	DC	DV	Plea Deal	Y
17	18cm986	M	AfAm	Battery, DC		Plea Deal	N
18	18cm1029	F	AfAm	CDTP, DC		Plea Deal	Y
19	18cm842	M	AfAm	CDTP, Drug Poss'n, DC		Plea Deal	N
20	18cm971	M	AfAm	DC		Plea Deal	Y
21	18cm939	M	AfAm	Obstructing, DC		Plea Deal	Y
22	18cf1023	F	AfAm	Obstructing, Fleeing Officer, DC		Plea Deal	Y
23	18cm937	M	AfAm	Resisting, DC		Plea Deal	N
24	18cm856	M	*Asian*	Battery, DC	DV	Dis	--
25	18cf771	M	Cauc	Battery (2), Burglary, CDTP, Strangulation, DC	DV	Plea Deal	Y
26	18cf725	F	Cauc	Battery (2), Child Neglect, FI, DC	DV	Plea Deal	Y
27	18cm850	M	Cauc	Battery (2), DC	DV	Plea Deal	Y
28	18cm897	M	Cauc	Battery (2), Sexual Assault (2), DC	DV	Plea Deal	Y

29	18cf797	M	Cauc	Battery, CDTP, Strangulation, DC	DV	Plea Deal	Y
30	18cm892	M	Cauc	Battery, DC	DV	Dis	--
31	18cm853	F	Cauc	Battery, DC	DV	Plea Deal	Y
32	18cm894	F	Cauc	Battery, DC	DV	Plea Deal	Y
33	18cm973	F	Cauc	Battery, DC	DV	Plea Deal	Y
34	18cm980	F	Cauc	Battery, DC	DV	Plea Deal	Y
35	18cf793-b	M	Cauc	Battery, DC	DV	Plea Deal	N
36	18cf810	M	Cauc	Battery, DC	DV	Plea Deal	Y
37	18cm841	M	Cauc	Battery, DC	DV	Plea Deal	N
38	18cm849	M	Cauc	Battery, DC	DV	Plea Deal	Y
39	18cm945	M	Cauc	Battery, DC	DV	Plea Deal	Y
40	18cm952	M	Cauc	Battery, DC	DV	Plea Deal	N
41	18cm992	M	Cauc	Battery, DC	DV	Plea Deal	Y
42	18cf821-b	M	Cauc	Battery, DC	DV	Dis	--
43	18cf793-a	M	Cauc	Battery, FI, DC	DV	Plea Deal	N
44	18cf745	M	Cauc	Battery, FI, Intimid, Strangulation, DC	DV	Dis	--
45	18cf748	M	Cauc	Battery, FI, Intimid, Strangulation, DC	DV	Plea Deal	N

46	18cf749	M	Cauc	Battery, FI, Strangulation, Theft, DC	DV	Plea Deal	N
47	18cm846	M	Cauc	Battery, Intimid, DC	DV	Dis	--
48	18cf812	M	Cauc	Battery, Intimid, DC	DV	Plea Deal	Y
49	18cf708	M	Cauc	Battery, RES, DC	DV	Plea Deal	Y
50	18cf714	M	Cauc	Battery, Strangulation, DC	DV	Plea Deal	Y
51	18cm864	F	Cauc	CDTP, DC	DV	Plea Deal	Y
52	18cm951	M	Cauc	CDTP, Intimid, DC	DV	Dis	--
53	18cf760	M	Cauc	Child Abuse, DC	DV	Plea Deal	N
54	18cm948	M	Cauc	DC	DV	Dis	--
55	18cm881	M	Cauc	DC	DV	Plea Deal	Y
56	18cm905	M	Cauc	DC	DV	Plea Deal	Y
57	18cm938	M	Cauc	DC (2)	DV	Plea Deal	Y
58	18cf757	M	Cauc	Drug Poss'n, DC	DV	Plea Deal	N
59	18cm950	M	Cauc	Para Poss'n, DC	DV	Plea Deal	Y
60	18cm1008	M	Cauc	Resisting, DC	DV	Plea Deal	Y
61	18cf821-a	M	Cauc	Strangulation, DC	DV	Dis	--
62	18cm909	M	Cauc	Theft, DC	DV	Plea Deal	Y
63	18cm908	M	Cauc	Violate No Contact, DC	DV	Plea Deal	Y

64	18cf768	M	Cauc	Arson, Obstructing, DC		Plea Deal	N
65	18cf772	M	Cauc	Battery, Child Abuse, DC		Plea Deal	N
66	18cm1040	F	Cauc	Battery, DC		Plea Deal	Y
67	18cf1013	M	Cauc	Battery, DC		Plea Deal	Y
68	18cm961	M	Cauc	Battery, DC		Plea Deal	Y
69	18cm1289	M	Cauc	Battery, DC		Plea Deal	Y
70	18cm1463	M	Cauc	Battery, DC		Plea Deal	N
71	18cm979	M	Cauc	CCW, DC		Plea Deal	Y
72	18cm1146	M	Cauc	CDTP, DC		Dis	--
73	18cm974	F	Cauc	CDTP, DC		Plea Deal	N
74	-------	M	Cauc	CDTP, DC		Plea Deal	Y
75	18cm969-a	M	Cauc	CDTP, DC		Plea Deal	Y
76	18cm1119	M	Cauc	CDTP, DC		Plea Deal	Y
77	18cf826	M	Cauc	Child Abuse (2), RES, DC		Dis	--
78	18cf739	M	Cauc	Child Abuse, DC		Plea Deal	Y
79	18cm1172	M	Cauc	DC		Dis	--
80	18cm900	M	Cauc	DC		Plea Deal	Y
81	18cm947	M	Cauc	DC		Plea Deal	Y

82	18cm969-b	M	Cauc	DC		Plea Deal	Y
83	18cm969-c	M	Cauc	DC		Plea Deal	N
84	18cm878	M	Cauc	DC		NGI	--
85	18cm868	M	Cauc	DC (2)		Plea Deal	Y
86	18cm1437	M	Cauc	Resisting, DC		Dis	--
87	18cf758	M	Cauc	Resisting, Threat to LEO, DC		Plea Deal	N
88	18cf734	M	Hisp	Battery, DC	DV	Dis	--
89	18cm910	M	Hisp	Battery, DC	DV	Plea Deal	Y
90	18cm959	F	Hisp	DC	DV	Dis	--
91	18cm901	M	Hisp	CDTP, DC		Plea Deal	N