THE BENCH & THE BARD: A MOOT COURT SERIES BY KENAI PERFORMERS

COVER PAGE

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THE BENCH & THE BARD: A MOOT COURT SERIES BY KENAI PERFORMERS

2025 – 2026 Season Case Problem Scenario
"Julius Caesar"

Following the events of "Julius Caesar," Marcus Antonius (hereinafter "Mark Antony"), falls from political favor and is branded a traitor. This is due in no small part to Mark Antony's peculiar fondness for Egypt, where – much to the dismay of the Senate and people of Rome – he appears to have fallen under the spell of a certain Ptolemaic *femme fatale*.[1] The Republic of Rome – at the behest of the most august Octavius Caesar (hereinafter "Octavius"), and with the blessing of two thirds of the Roman Senate – charges Mark Antony with multiple criminal offenses.

One of the charges levied against Mark Antony alleges that he committed the felony crime of riot under an accomplice liability theory. The Republic of Rome argues that Mark Antony's funeral oration for Julius Caesar incited violence and chaos among the Roman populace, leading multiple citizens to attack Julus Caesar's assassins, and ultimately resulting in tumultuous civil unrest. The Republic of Rome further argues that such ensuing civil unrest satisfies the criminal elements of riot.

The Honorable Christophorus Marloweus (hereinafter "Christopher Marlowe"), Superior Court Judge for the First Judicial District at Rome, presides over the criminal bench trial in this matter. Upon the close of evidence, Judge Marlowe finds Mark Antony guilty of riot as an accomplice and enters a judgment of conviction.

Relevant portions from Judge Marlowe's decision include the following:

……

I. Introduction.

This matter involves the felony crime of riot. The Republic of Rome (hereinafter "The Republic"), charges the Defendant, Mark Antony, with this crime under an accomplice liability theory, arguing that Mark Antony's funeral oration for Julius Caesar provoked multiple Roman citizens to engage in conduct that constituted – in turn – rioting under our criminal code.

[1] *See*, ANTONY & CLEOPATRA (Act 1, Scene 1) (Philo: "Nay, but this dotage of our general's / O'erflows the measure. Those his goodly eyes, / That o'er the files and musters of the war / Have glowed like plated Mars, now bend, now turn / The office and devotion of their view / Upon a tawny front. His captain's heart, / Which in the scuffles of great fights hath burst / The buckles on his breast, reneges all temper / And is become the bellows and the fan / To cool a gypsy's lust.").

The criminal indictment reads as follows:

> That on or about The Ides of March, 44 B.C., at or near the City of Rome, Mark Antony, as accomplice, did knowingly aid or abet another person or persons in planning or committing the crime of riot, or did knowingly solicit another person or persons to commit the crime of riot.

Mark Antony requested a criminal bench trial in this matter and waived his right to trial by jury. The bench trial has since been held. Having concluded the presentation of evidence, the parties stipulate that there are only two issues facing this Court with respect to Mark Antony's criminal charge; namely, (1) whether the Roman citizens who heard Mark Antony's funeral oration sufficiently "participated with" (*i.e.*, entered into a "mutual agreement" with), each other so as to give rise to the felony crime of riot, and (2) assuming the felony crime of riot occurred, whether Mark Antony is criminally liable as an accomplice. (Mark Antony does not dispute that sufficient evidence exists to prove all other elements regarding the crime of riot.)

Concerning the first issue presented, Mark Antony argues that there is insufficient evidence demonstrating that the Roman citizens who heard his funeral oration "participated with" each other – as this phrase is understood legally – in committing the felony crime of riot. Thus, it is not possible for him to be held criminally liable as an accomplice, because one cannot be at fault for a crime that never occurred. The Republic disagrees. The Republic argues that the available evidence sufficiently demonstrates that the Roman citizens who heard Mark Antony's funeral oration did in fact "participate with" each other for purposes of satisfying this legal element, meaning that the felony crime of riot occurred.

Concerning the second issue presented (and assuming for the sake of argument that the felony crime of riot occurred), Mark Antony argues that he is not criminally liable for these Roman citizens' riotous actions because the available evidence does not satisfy the necessary elements of accomplice liability (which require, among other things, a showing that Mark Antony either (1) "aided or abetted" the riot, or (2) "solicited" the riot). The Republic argues the opposite, taking the position that Mark Antony both "aided or abetted" and "solicited" the riot. (The Republic correctly notes that, under Roman law, this Court need only find that Mark Antony "aided or abetted" the riot ***or*** "solicited" the riot, before he can be held liable as an accomplice. That is, it is not necessary that Mark Antony "aided or abetted" ***and*** "solicited" the riot to be found liable as an accomplice).

To resolve these issues, this Court will first outline the applicable law. A review of the elements defining the felony crime of riot will prove instructive. Recent developments in the legal interpretation and application of these elements will also prove essential. This will then be followed by a quick outline of the legal principles governing accomplice liability. Finally, this Court will analyze the available facts under applicable law and address the parties' various arguments.

II. Applicable Law.

A. The felony crime of riot.

Rome's criminal code defines the felony crime of riot as follows:

"A person commits the crime of riot if, while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing, damage to property or physical injury to a person."[2]

When prosecting a criminal defendant for the crime of riot, The Republic is obligated to prove every element of this crime beyond a reasonable doubt. The Court of Appeals of The Republic of Rome recently addressed the legal elements of riot in *Burton-Hill v. State*.[3] Looking to the above-enumerated statutory definition of riot, and based upon the recent interpretative guidance provided by our Court of Appeals in *Burton-Hill*, it appears the following elements must be proved beyond a reasonable doubt before a defendant can be found guilty of committing the felony crime of riot: [4]

1) Six or more people mutually agreed (a) to achieve or advance a shared purpose, (b) by engaging in tumultuous and violent conduct in a public place, and (c) by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it;

2) ***Either*** these six or more people engaged in tumultuous and violent conduct in a public place, ***or*** *at least one of these six or more people* engaged in tumultuous and violent conduct in a public place *while the remainder of the six or more people* were physically present and standing ready for the purpose of assisting the tumultuous and violent conduct, including preventing resistance to the tumultuous and violent conduct;

3) The defendant was one of these six or more people;

4) The defendant knowingly engaged in tumultuous and violent conduct; [5] and

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[2] AS 11.61.100(a).

[3] 569 P.3d 1 (Alaska Ct. App. 2025) (reh'g denied June 6, 2025) (pending petition for hearing filed sub nom. *State v. Burton-Hill*, S-19532 (Alaska July 7, 2025)).

[4] *See* ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RIOT" 11.61.100 (Revised 2015) *in conjunction with Burton-Hill v. State*, 569 P.3d at **17–18. The enumeration of the elements of riot herein constitutes this Court's attempt to reconcile the existing Pattern Jury Instruction with the recent *Burton-Hill* opinion.

[5] *See*, discussion *infra* pp. R.12–13 (explaining why *Burton-Hill* does not vitiate or otherwise abrogate the statutory requirement that a defendant charged with the crime of riot as a *principal* must engage in tumultuous and violent conduct, whereas a defendant charged as an *accomplice* need not engage in such conduct – nor in any other specific element of the crime for that matter).

5) As a result of the defendant's tumultuous and violent conduct, the defendant recklessly caused, or created a substantial risk of causing, damage to property or physical injury to a person.

This case only concerns *the first element* of riot; namely, the "participating with" / "mutual agreement" element. The statutory language "participating with" is interpreted by our judiciary to include the common law requirement that rioters enter into a "mutual agreement" with reach other prior to committing the riotous conduct. Exploring this in more detail will prove helpful.

1. The meaning of the phrase "participating with" as used in Rome's criminal riot statute.

The riot statute's phrase "participating with" warrants contextual analysis through a common law lens[6] in accordance with our judiciary's method of statutory construction.[7] Practically speaking, this is important because any number of citizens may be assembled and "participating with" each other in a perfectly lawful activity, but then, depending on how broadly "participating with" is defined, find themselves subject to criminal liability should one member of their group suddenly decide – unilaterally – to engage in tumultuous and violent conduct: "[F]or example, if one player on a baseball team . . . jump[s] into the bleachers and launch[es] a physical attack on a heckling fan."[8] Such a broad interpretation of "participating with" for purposes of assigning criminal liability to a group of people (in this example, holding the remaining baseball players responsible for the conduct of the one player who attacks a heckling fan) "would be a substantial departure from any traditional understanding of riot."[9] This demonstrates why the definition of legal words matter, especially when deciding whether to assign criminal liability.

Indeed, as our Court of Appeals recently observed: "'Riot' was not a disturbance of the peace by a single person who happened to be participating in some sort of group activity at the time. Rather, . . . the crime of riot has always been understood to mean a *group* disturbance of the peace by people who have *mutually agreed to do so* (and have mutually agreed to assist each other)."[10]

Similarly, prosecuting conduct as "riotous" is not justified – nor has it historically been justified – merely because several people, acting independently, just so happen to engage in similar unlawful conduct that has an amalgamating consequence of disturbing

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[6] *See*, *Burton-Hill*, 569 P.3d at **13–18.

[7] *See*, *id*. at **17 ("When a felony statute codifies a common-law crime, and when that common-law crime required the government to prove that a defendant acted with one or more particular intents, Alaska courts should interpret our modern-day statute as incorporating this same requirement, even though the wording of the statute might not appear to require proof of these intents, unless the wording of the statute or the statute's legislative history affirmatively demonstrates that the Alaska legislature intended to depart from the common law and abandon these elements.") (internal citation and quotation marks, if any, omitted).

[8] *Id*. at **13 (internal citation and quotation marks, if any, omitted).

[9] *Id*. (internal citation and quotation marks, if any, omitted).

[10] *Id*. (internal citation and quotation marks, if any, omitted) (emphasis in original).

the public peace. Indeed, at common law, "riot did *not* occur when a number of people independently engaged in turbulent and violent conduct at the same time – and this remained true even if each of these people was reckless as to whether others might be simultaneously engaging in turbulent and violent conduct."[11]

A good example of this concept comes from a case involving "some thirty people who simultaneously (and unlawfully) disrupted the public peace by setting off fireworks on the Fourth of July."[12] Despite the fact that "all these people disturbed the public peace simultaneously," it was correctly held that "their actions did not constitute a riot – because they did not act pursuant to a preceding mutual agreement." In other words, these people lacked a "common purpose or intent . . . ."[13]

The common law concept of riot was:

> premised on the notion that[,] when a group of people agreed to act together and to mutually assist each other in acts of turbulent violence, this group poses a greater threat to society than an equivalent number of individuals who happen to be simultaneously acting in a turbulent and violent manner – because "participants acting in concert [possess an] increased capacity to overcome resistance."[14]

There was, and always has been, a "heightened threat[ ] posed to public safety and law enforcement when numerous persons confederate against the public peace . . . , when a group of people acts together toward a common, violent or illegal, end."[15] This is what the crime of riot is meant to address.

For these reasons, the statutory phrase "participating with" must be interpreted to include evidence of a "mutual agreement" (a demonstrated shared intent, if you will), among those accused of committing the criminal act of riot. Specifically, it is necessary for the prosecution to prove the existence of "a mutual agreement by the defendant and at least five other people (1) to achieve or advance a shared purpose, (2) by engaging in tumultuous and violent conduct, and (3) by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it."[16]

However, there are several important caveats that must be noted when it comes to proving the existence of a "mutual agreement" under our criminal code's "participating with" phrase.

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[11] *Id*., at **9 (internal citation and quotation marks, if any, omitted) (emphasis in original).
[12] *Id*., at **10 (internal citation and quotation marks, if any, omitted).
[13] *Id*. (internal citation and quotation marks, if any, omitted).
[14] *Id*. (internal citation and quotation marks, if any, omitted).
[15] *Id*. (internal citation and quotation marks, if any, omitted).
[16] *Id*., at **18 (internal citation and quotation marks, if any, omitted).

First, while it is likely incorrect to speak of a "spontaneous riot" (for it is necessary that there be at least some prior mutual agreement among those who engage in the act of rioting before they actually riot),[17] it is nonetheless possible that the "mutual agreement" itself can manifest quite spontaneously. The Court of Appeals acknowledges this:

> The mutual agreement among the rioters (*i.e.*, the agreement to jointly assist each other in conduct of such turbulence and violence as to breach the public peace) might occur on the spur of the moment . . . . Moreover, the interval between the rioters' reaching their mutual agreement and the rioters' commencement of their agreed-upon violent and turbulent conduct might potentially be quite short.[18]

Second, there is no requirement that the "mutual agreement" be communicated or memorialized in any particular way. In fact, the mutual agreement "might be tacit rather than express."[19] It is not "necessary . . . that [the defendants] should have actually made formal promises to each other, of mutual assistance, [so long as] they had such a mutual intent."[20]

Third, "it is not material *how* . . . [this mutual] intent [is] formed [among rioters]."[21]

B. Accomplice Liability.

Accomplice liability renders it possible for a defendant to be found guilty of a crime "even if the defendant personally did not commit the acts constituting the crime."[22] The underlying concept here is that a person who sufficiently encourages or assists a perpetrator commit a crime is considered just as guilty as the perpetrator.[23] Thus, an accomplice is guilty of a crime "based in whole or in part on the conduct of some other person or persons . . . ."[24]

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[17] *Id*., at **8 ("But the mutual agreement had to precede the turbulent and violent conduct itself: 'with whatever speed the plan was carried out, . . . it must have been agreed upon *before* [it was] translated into action," PERKINS AND BOYCE, p. 484 (emphasis added).") (internal citations omitted) (emphasis in original) (alteration in original).

[18] *Id*. (internal citation and quotation marks, if any, omitted).

[19] *Id*. (internal citation and quotation marks, if any, omitted).

[20] *Id*., at *9 (internal citation and quotation marks, if any, omitted) (alterations in original).

[21] *Id*. (internal citation and quotation marks, if any, omitted) (emphasis added).

[22] ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "LEGAL ACCOUNTABILITY – AIDS OR ABETS & SOLICITATION" 11.16.110(2) #1 (Revised 2014).

[23] *See*, AS 11.16.110(2)(a)–(b). *See also*, *Riley v. State*, 60 P.3d 204, 207 (Alaska Ct. App. 2002) ("When a defendant solicits, encourages, or assists another to engage in conduct, and does so with the intent to promote or facilitate that conduct, the defendant becomes accountable under AS 11.16.110(2) for that conduct.").

[24] ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "LEGAL ACCOUNTABILITY – AIDS OR ABETS & SOLICITATION" 11.16.110(2) #1 (Revised 2014).

To find someone guilty of riot in their capacity as an accomplice (that is, to find a person guilty of riot based in whole or in part on the conduct of some other person or persons), it appears necessary for the prosecution to prove the following four elements beyond a reasonable doubt: [25]

1) Each element of the crime of [riot] . . . was committed by some person or persons;

2) The defendant intended to promote or facilitate the act(s) or conduct constituting the crime of riot;

3) With respect to causing, or creating a substantial risk of causing, damage to property or physical injury to a person, the defendant acted recklessly; and

4) The defendant knowingly aided or abetted the other person or persons in planning or committing the crime of riot, or knowingly solicited the other person or persons to commit the crime of riot.

1. The intent to promote or facilitate the act(s) or conduct constituting a crime.

Looking to the second element of accomplice liability, "[t]he standard interpretation of the phrase 'intent to promote or facilitate the commission of the offense' is that it requires proof of the accomplice's intent to promote or facilitate another person's *conduct* that constitutes the *actus reus* of the offense."[26] By way of example, Person A can be convicted of first-degree assault either upon proof that Person A personally shot a firearm into a crowd, or alternatively, upon proof that, acting with intent to promote or facilitate Person B's act of shooting into a crowd, Person A "solicited, encouraged, or assisted" Person B to do so.[27]

In this sense, there is no such thing as "reckless" accomplice behavior when it comes to the act(s) or conduct constituting the crime for which someone can be liable as an accomplice. All accomplice behavior is necessarily "intentional" when it comes to such act(s) or conduct. This is what it means to have "intent to promote or facilitate" the offense.[28] (This should not be confused with a latter element regarding the particular *result or consequences* of the criminal conduct, which *does* require an accomplice to have acted or behaved at least recklessly.)

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[25] *See*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "LEGAL ACCOUNTABILITY – AIDS OR ABETS & SOLICITATION" 11.16.110(2) #1 (Revised 2014) *in conjunction with* ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RIOT" 11.61.100 (Revised 2015).

[26] *Riley*, 60 P.3d at 220 (emphasis in original).

[27] *Id*., at 221.

[28] *See*, *Ashenfelter v. State*, 988 P.2d 120, 124–25 (Alaska Ct. App. 1999).

Additionally, it is not necessary that an accomplice share the principal's motive for committing a crime. Rather, the accomplice must merely intend to promote or facilitate the commission of the offense by the principal, regardless of the principal's personal reasons for doing so.[29]

2. Acting recklessly with respect to the particular result of the crime.

When it comes to the third element, the defendant charged with being an accomplice (at least for purposes of the felony crime of riot), need only be "reckless" when it comes to the result(s) of the crime. The results of a riot are "causing, or creating a substantial risk of causing, damage to property or physical injury to a person." So while an alleged accomplice must have *intended* to promote or facilitate the acts or conduct constituting a riot, the alleged accomplice need only be *reckless* – "aware of and consciously disregard[ ] a substantial and unjustifiable risk that"[30] – the ensuing result of "causing, or creating a substantial risk of causing, damage to property or physical injury to a person" would occur by virtue of one's accomplice-related behaviors or actions.

3. Knowingly aid or abet; knowingly solicit.

The fourth element of accomplice liability requires at least one of two possible alternative actions for someone to be liable as an accomplice. The defendant must either "aid or abet" the principal in planning or committing the crime, or the defendant must "solicit" the principal to commit the crime.

"'Aid or abet' means to help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission."[31] Several guiding principles accompany what it means to aid or abet.

First, a defendant's physical location, relative to the scene of the crime, is not determinative of accomplice liability. "A person who aids or abets the commission of a crime need not be present at the scene of the crime." [32] However, "[m]ere presence at the scene of the crime, without the intent to promote or facilitate the commission of the crime, is not itself enough to make a person legally responsible for the conduct of another."[33]

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[29]*See*, *Mudge v. State*, 760 P.2d 1046, 1048 (Alaska Ct. App. 1988).

[30]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RECKLESSLY" 11.81.900(a)(3) (Revised 2016).

[31]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999). *See also*, *Thomas v. State*, 391 P.2d 18, 25 (Alaska 1964).

[32]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999).

[33]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999).

Second, "[c]oncealment of knowledge that a crime is about to be committed or has been committed does not, standing alone, make a person legally responsible for the conduct of another."[34]

One of the classic examples that best demonstrates the harmonious application of these principles is a person who serves as a lookout at or near the scene of a crime. A person "who acts as a lookout at or near the scene where the crime is being committed is performing a valuable function. Even though that person is not actually called upon by circumstances to engage in the 'action' of giving a warning or protecting those committing the crime, his or her presence is more than 'mere' presence because it is helpful to accomplishing the criminal enterprise."[35]

A more detailed examination of "abetting" seems to take on the concept of "encouraging" someone to do something.[36] Though "aiding or abetting" is functionally treated as a single operative concept, "abetting" possesses its own common law meaning.

> At common law, the act of "abetting" encompasses conduct such as counseling or encouraging the other person's criminal act by words or gestures—or, indeed (in the words of *Perkins and Boyce*), by "any conduct which unmistakably [communicates] a design to encourage, incite, or approve of the crime". Thus, "abetting" can take the form of promising a benefit if the other person will commit the crime, or threatening to inflict harm or exact a penalty if the other person declines to commit the crime.
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> But, as noted in *Perkins and Boyce,* "much less will meet the legal requirement [of abetting]"—as, for example, "where [the defendant, as] a bystander[,] merely embolden[s] the perpetrator to [commit the crime]", or where the defendant "merely stand[s] by for the purpose of giving aid to the perpetrator if necessary, provided the latter is aware of [the defendant's] purpose."[37]

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[34]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999).

[35]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999).

[36]*See*, *Andrew v. State,* 237 P.3d 1027, 1044 (Alaska Ct. App. 2010).

[37]*Id*. (quoting ROLLIN M. PERKINS & RONALD N. BOYCE, *Criminal Law* (3rd edition 1982), p. 739 & 740 (other internal quotations and citations omitted)) (alterations in original).

Regarding solicitation, an alternative action that an accomplice can perform under element four as opposed to aiding or abetting, there appears to be no clear delineation between "aiding or abetting" and "soliciting".[38] However, there are several guiding principles that suggest important key differences.

First, one should not confuse "solicit" as used under Rome's accomplice liability statute[39] with the separate crime of "solicitation."[40] In other words, The Republic is not required to prove each element of the separate crime of solicitation[41] beyond a reasonable doubt as a perquisite to proving that a defendant is an accomplice to someone else's crime based upon a theory that the alleged accomplice "solicits the other to commit the offense."[42] The key difference lies in the fact that accomplice liability renders a defendant guilty "based in whole or in part on the conduct of some other person or persons" who actually commit(s) "*each element of* [*a*] *crime*[,]" whereas the separate crime of solicitation merely requires that a defendant intend "to cause another person to engage in *conduct constituting a crime* . . . ." At first glance, this may appear to be a distinction without a difference, but the difference has to do with why criminal liability is assigned under each scenario.

For the accomplice, criminal liability attaches because the accomplice is considered "just as guilty as" the principal who has committed the actual crime (or the "completed crime," if you like). The source of the accomplice's criminal liability flows from the criminal liability of the principal, which can only be true if the principal has actually committed a crime.

For the defendant guilty of committing the separate crime of solicitation, criminal liability attaches because the proscribed conduct constitutes its own separate crime, *regardless of the solicited individual's criminal liability*, and even if "a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation[.]").[43] The crime of solicitation merely punishes the solicitor for intending another person to engage in "conduct constituting a crime," and thus, "it appears that the legislature deliberately employed this language to emphasize that the person whom the defendant solicits need not be criminally liable for the conduct he or she is asked to perform[.]"[44]

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[38]*Compare* ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "AID OR ABET" 11.16.110(2) #2 (Revised 1999) *and Thomas v. State*, 391 P.2d 18, 25 (Alaska 1964) *with* ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "SOLICITATION" 11.31.110(a) (Revised 1999) (providing some overlap in definitional terms and concepts).

[39]*See*, AS 11.16.110(2)(B).

[40]*See*, AS 11.31.110(a).

[41]*See*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "SOLICITATION" 11.31.110(a) (Revised 1999); AS 11.31.110(a).

[42]AS 11.16.110(2)(B).

[43]AS 11.31.110(b)(1)(B). *See also*, *Braun v. State*, 911 P.2d 1075, 1082 (Alaska Ct. App. 1996).

[44]*Braun*, 911 P.2d at 1082.

Second, whereas it is possible to be held liable as an accomplice for aiding or abetting a defendant in "planning or committing the offense," it is only possible to be held liable as an accomplice for soliciting a defendant "to commit the offense."[45] Thus, for purposes of soliciting as an accomplice, it is only possible to solicit the "committing" of an offense, not the "planning" of an offense.

Third, for purposes of understanding what conduct comes under the definition of "solicits" as used under Rome's accomplice liability statute, it is helpful to look at the *actus reus* element of the crime of solicitation. The criminal pattern jury instruction defining the *actus reus* element appears to define "solicits" as "ask[ing], induc[ing], or command[ing][.]" Similarly, the statutory definitions section found within Rome's criminal code provides as follows: "[the definition of] 'solicits' includes '[to] command[ ]'[.]"[46]

With these guiding principles in mind, it appears the best way to delineate "aids or abets" from "solicits" is to think of "solicits" as a more overt form of "encouragement" for someone else to commit a crime.[47] In other words, the act of soliciting someone to do something likely amounts to more than just a wink and a nod. Instead, soliciting appears to involve a far more express (if not blunt), asking, inducing, or commanding of someone to do something. And, as previously noted, it is not possible to solicit the *mere planning* of a crime for purposes of being liable as an accomplice. One is only liable as an accomplice if the solicitation is for another to *commit* a crime.

C. The interface between the felony crime of riot and the law of accomplice liability.

This case requires the Court to examine the interface between the felony crime of riot and the law of accomplice liability. The Republic argues that Mark Antony is guilty of the felony crime of riot as an accomplice.

In exploring the interface between the felony crime of riot and the law of accomplice liability, it is necessary to dispense with a possible misconception regarding this interface given some of the language found in *Burton-Hill*. In *Burton-Hill,* the Court of Appeals asserts several times that The Republic is not required to present "proof that *every member* of th[e] group [constituting the riot] personally committed acts of violence."[48] At first glance, this may appear to suggest that a

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[45]*Contrast* AS 11.16.110(2)(A) *with* AS 11.16.110(2)(B).

[46]AS 11.81.900(b)(63).

[47]*See*, MODEL PENAL CODE § 5.02(1) (providing a definition of solicitation to include a person who "commands, encourages, or requests" something of another person); *Estes v. State*, 249 P.3d 313, 319 (Alaska Ct. App. 2011) ("The statute defining accomplice liability, AS 11.16.110(2), declares that vicarious liability for another's conduct can be premised on several different types of conduct: *soliciting another person to commit the crime*, encouraging or assisting another person in planning the crime, or encouraging or assisting another person in committing the crime.") (emphasis added) (citations omitted).

[48]*Burton-Hill*, 569 P.3d at **18 (emphasis added). *See also*, *id*. at **10.

defendant can be charged with – and successfully convicted of – riot *as a principal* to the crime without needing to prove that the defendant personally "engage[d] in tumultuous and violent conduct[.]" Such an interpretation strikes this Court as an incorrect reading of *Burton-Hill*.

In proper context, the Court of Appeals' assertion stems from the common law distinction between *principals in the first degree* and *principles in the second degree*.[49] Our present-day criminal code has since done away with these unique common law distinctions in favor of assigning criminal liability in terms of a defendant's status as either a *principal* or an *accomplice* to a crime.[50] Taken together, the Court of Appeals' assertion should be understood to mean that, while a defendant charged with committing riot *as a principal* must "engage[ ] in tumultuous and violent conduct[,]" it is not necessary for the defendant's riotous cohorts to engage in such conduct as well. Another way of saying this is that it is not necessary for the defendant's riotous cohorts to commit the crime of riot *as principals* before the defendant can be successfully charged and convicted as a *principal*. Instead, it is possible for one or all of the defendant's riotous cohorts to commit the crime of riot *as accomplices*, though their conduct as *accomplices* must satisfy certain factual conditions concerning the defendant's "participation with" them before the defendant can be found guilty (*e.g.*, these riotous cohorts must be physically present during the tumultuous and violent conduct).[51]

Regardless, the proper interpretation of the Court of Appeals' assertion is irrelevant in this particular case because The Republic's charge against Mark Antony does not allege his presence at the scene where the actual "tumultuous and violent conduct" occurred. Instead, The Republic's charge against Mark Antony is based upon a different theory of accomplice liability that focuses on Mark Antony's actions prior to – and at a separate physical location from – the "tumultuous and violent conduct" in question. That is, Mark Antony's alleged criminal liability as an accomplice to riot is not based upon his status as one of "five or more others" with whom a particular defendant "participates with" for purposes of "engaging in tumultuous and violent conduct[.]" (At common law, The Republic's charge against Mark Antony would likely be phrased as alleging that Mark Antony was an *accessory before the fact*, but like *principals in the second degree*, this is a common law concept that no longer exists as a separate criminal category under our criminal code, and has since been consolidated into an all-encompassing statutory definition of "accomplice liability".)[52]

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[49] *Id*. at **11.
[50] *See*, *Andrew,* 237 P.3d at 1033–38.
[51] *See*, *Burton-Hill*, 569 P.3d at **11 & **18.
[52] *See*, *Andrew*, 237 P.3d at 1033. *See also*, AS 11.16.110(2).

Accordingly, accomplice liability for the crime of riot can be understood to occur in at least two ways. First, there is the concept of the accomplice who is present as one of the riotous group's members, but for the sole purpose of assisting – in some meaningful way – the accomplishment of the tumultuous and violent conduct while not actually participating in the tumultuous and violent conduct itself. In other words, this type of accomplice is one who is present with the riotous group, but not actually engaging in the tumultuous and violent conduct.

The following example proves helpful:

> [I]t is not necessary that [the rioters] should do [precisely] the same act, in the sense that what each one does must be identical with what is done by each of the others. If so, a riot [would be] an impossibility; for . . . the action of each [rioter] [must inevitably] have a certain individuality which will distinguish it from the action[s] of all the rest. In [unlawfully] tearing down a house, for instance, one rioter breaks down a door, and another breaks down a window, *and a third merely hands a crow-bar to one of his associates*. Here each one's act is different from the acts of the others, *and the act of [the third rioter] has in it nothing of violence*. But there is an obvious legal sense in which they all do the same act. The common intent which covers all the individual parts in the action cements those parts into one whole, of which each actor is a responsible proprietor. … The principle [here] is that each one adopts the performances of all the rest and adds them to his own, and thus does the whole, in the sense of the definition [of riot], so long as they are acting in execution of a common intent, but no longer.[53]

The accompanying consequence of this logic is that "[b]ystanders who did not themselves agree to engage in or assist the riotous conduct could not be counted toward the minimum number of rioters, *even if* these bystanders observed and encouraged the acts of violence."[54] (This harkens back to the need for a sufficient number of people to form a shared "mutual agreement" with each other to engage in the tumultuous and violent conduct). However, such persons are inherently at risk of becoming accomplices to a riot should a riot actually manifest. This segues to the second way in which one may be charged, or become, an accomplice to the crime of riot.

The second concept of accomplice liability for the crime of riot is this; namely, a person who (a) incites a riot *before* a riot actually commences can be held liable as an accomplice to the riot, and a person who (b) lends a riot encouragement *after* the riot actually commences can be held liable as an accomplice to the riot.

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[53] *Id.,* at **11 (emphasis added) (alterations in original).
[54] *Id.* (emphasis added).

> "[O]nce the necessary minimum number of rioters commenced their group acts of turbulent violence (so that a riot had actually started), anyone who had solicited the riot, or any bystander who encouraged the rioters in their tumultuous and violent conduct, could be charged with riot as an accomplice."[55]

This includes individuals who incite a riot or who subsequently "lend it encouragement."[56] Similarly, "[i]f persons are [intentionally] present [at the scene of a riot] in order to lend the courage of their presence to the rioters, … [such persons] may be equally guilty with the principals."[57]

Several jurisdictions proscribe the act of incitement as a separate criminal offense. "An incitement to riot statute is generally directed at punishing those who urge riotous conduct, *without the necessity of showing that a riot occurred*."[58] For purposes of accomplice liability, incitement can render the inciting party liable as a "rioter" if a riot actually manifests or takes place, regardless of the inciting party's physical location. Thus, "[a]ll those who incite others to commit riot, if a riot results, may be deemed principal rioters, even though they may be absent from the place where the riot is committed."[59]

(To the extent The Republic is obligated to prove Mark Antony possessed an intent "to promote or facilitate the act(s) or conduct constituting the crime of riot," and that he "knowingly aided or abetted [the alleged rioters] in planning or committing [riot], or knowingly solicited [the alleged rioters] to commit [riot]," it is not necessary to address whether Mark Antony actually committed the separate crime of incitement. It is similarly unnecessary to address the implications of possible First Amendment free speech liberty interests. For purposes of this case, the only charge levied against Mark Antony is that of riot based upon the statutory definition of accomplice liability, not accomplice liability flowing from a separate charge of incitement. Even so, Mark Antony raises no First Amendment defenses in this matter.)[60]

However, while it is not necessary to prove that someone actually committed the separate crime of incitement to hold them liable as an accomplice to riot, it *is* necessary to demonstrate that an individual who is charged as an accomplice based upon their alleged encouragement for others to riot possesses (1) the requisite intent to promote the acts constituting the crime of riot, and (2) the requisite awareness that they are in fact knowingly aiding, abetting, or soliciting others to engage in a riot. Thus, "incite" can possess a non-technical colloquial sense for purposes of charging someone as an accomplice to riot under Rome's accomplice liability statute, as opposed to having to

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[55] *Id.,* at **12.

[56] *Id.*

[57] *Id.*

[58] 77 C.J.S. Riot § 11 "ELEMENTS OF INCITING TO RIOT, GENERALLY" (May 2025 Update) (emphasis added).

[59] 77 C.J.S. Riot § 15 "ACTIVE RIOTERS" (May 2025 Update).

[60] *See*, *People v. Upshaw*, 741 N.Y.S.2d 664, 668 (N.Y. City Crim. Ct. 2022) (analyzing the difference between constitutionally protected free speech and incitement-based conduct that is lawfully subject to criminal sanction).

prove the formal elements of the crime of incitement (though, if The Republic hypothetically wanted to, it could endeavor to prove this separate crime as a condition precedent to holding someone liable as an accomplice to riot, but The Republic would almost certainly be going out of its way to do so).

(Further, it should be noted that Rome does not possess an incitement statute. Arguably, the closest thing Rome possesses on the books is a theory of disorderly conduct.[61] So it makes sense that The Republic only seeks to rely upon the elements of Rome's accomplice liability statute as the sole basis for attempting to prove that Mark Antony is an accomplice to the alleged riot because there is no "precursor crime" to riot (so to speak) with which to charge Mark Antony that could trigger, in turn, his liability as an accomplice. Under Rome's existing statuary scheme, there is simply no easier way to go about arguing that Mark Antony is liable as an accomplice.)

As a reminder, it is important that both the intent element and the knowing element of accomplice liability are proved because this is what helps prevent otherwise lawful conduct from being unjustly penalized, including constitutionally protected free speech liberties. "[I]f a riotous plan is suddenly conceived and executed by part of those who have *lawfully* assembled, only those who participate [in the execution of this plan], or [who] lend it encouragement, are guilty [of riot]."[62] The point here is that the "lending of [such] encouragement" cannot be done unwittingly, innocently, or for an intended purpose that is otherwise lawful.

Prior to addressing the parties' specific arguments in this case, it will prove helpful as a quick reminder to review the central issues that are raised in this trial, and what specific elements the parties contest.

D. A brief review of the central issues raised in this criminal matter.

First, the parties dispute whether the felony crime of riot actually occurred, for which – in turn – Mark Antony is alleged to be criminally liable as an accomplice. The sole element of the felony crime of riot in dispute is the "participating with" element; that is, whether the Roman citizens who allegedly rioted upon hearing Mark Antony's funeral oration formed "a mutual agreement . . . (1) to achieve or advance a shared purpose, (2) by engaging in tumultuous and violent conduct, and (3) by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it."[63]

For purposes of this trial, it must be remembered that the parties stipulate to the existence of all other necessary elements regarding the felony crime of riot; namely, that (1) there was a group of at least six or more citizens (who entered into the alleged mutual agreement, and that per their alleged mutual agreement), (2) at least one (if not all) of the members of this group engaged in tumultuous and violent conduct in a public space while

[61] *See*, AS 11.61.110(a)(6) ("A person commits the crime of disorderly conduct if the person recklessly creates a hazardous condition for others by an act which has not legal justification or excuse.").

[62] *Burton-Hill*, 569 P.3d at **8.

[63] *Id*., at **18

the remaining members of this group (if any) were physically present and standing ready for the purpose of assisting the tumultuous and violent conduct, including preventing resistance to the tumultuous and violent conduct, (3) the member(s) of this group who engaged in the tumultuous and violent conduct did so knowingly, and (4) as a result of this member's/these members' tumultuous and violent conduct, the member(s) recklessly caused, or created a substantial risk of causing, damage to property or physical injury to a person).

Second, assuming the evidence supports a finding that there was indeed a "mutual agreement" among this group of Roman citizens (*i.e.*, that this group statutorily "participated with" each other), such that the felony crime of riot in fact occurred, the parties dispute whether Mark Antony is liable as an accomplice. This renders only the last three elements of the accomplice liability statute at issue; namely, (1) whether Mark Antony intended to promote or facilitate the act(s) or conduct constituting the crime of riot, (2) whether Mark Antony acted recklessly with respect to the riot's results (*i.e.*, causing, or creating a substantial risk of causing, damage to property or physical injury to a person), and (3) whether Mark Antoney knowingly aided or abetted the Roman citizens who heard his funeral oration in planning or committing the riot, or knowingly solicited the Roman citizens who heard his funeral oration to commit the riot.[64]

E. The parties' arguments and this Court's analysis.

1. Whether the Roman citizens in question formed the requisite "mutual agreement" to give rise to the felony crime of riot.

The Republic argues that sufficient evidence exists to demonstrate that the Roman citizens who allegedly rioted upon hearing Mark Antony's funeral oration formed the requisite "mutual agreement" to give rise to the felony crime of riot.

a. To achieve or advance a shared purpose.

Regarding the first part of the mutual agreement element, The Republic claims that the Roman citizens who listened to Mark Antony's funeral oration formed a mutual agreement "to achieve or advance a shared purpose[;]" namely, to exact revenge upon Brutus and the other conspirators who murdered Julius Caesar.

Mark Antony counters that these Roman citizens failed to enter into a mutual agreement to achieve or advance a shared purpose. He points to the fact that a formal collective plan or multi-party strategy was neither expressly adopted nor articulated.[65] There was no single citizen who was speaking on behalf of, or with authority from, the other citizens in this group so as to indicate a decisive collective will.[66] Similarly, this

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[64]*See*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "LEGAL ACCOUNTABILITY – AIDS OR ABETS & SOLICITATION" 11.16.110(2) #1 (Revised 2014) *in conjunction with* ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RIOT" 11.61.100 (Revised 2015); AS 11.16.110(2); AS 11.81.610(b).

[65][Tr. 46 – 51] (Act III, Scene II).

[66][Tr. 46 – 51] (Act III, Scene II).

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group of citizens was hardly speaking with a single coherent voice.[67] Instead, random individual citizens were shouting out or declaring their own personal sentiments upon hearing Mark Antony's funeral oration.[68] Furthermore, from the beginning to the end of Mark Antony's funeral oration, these individual declarations were not only inconsistent, but at times, directly contradictory to each other.[69] As such, it is impossible to demonstrate, much less infer, that these citizens entered into a mutual agreement to achieve or advance a shared purpose.

In countering that there was no "riotous plan"[70] that manifested among this select "throng of [c]itizens[,]"[71] Mark Antony specifically points to the fact that the assembly within the Roman Forum was perfectly lawful.[72] Mark Antony emphasizes that the citizens' lawful assembly renders the need to prove "an antecedent agreement to jointly pursue a shared goal . . . particularly important"[73] in this case because these citizens possessed a counterbalancing interest – indeed, a constitutionally protected right – to assemble peaceably, and to do so without fear that the possible riotous intentions of mere individuals within their midst could be used by The Republic as a pretext to marshal its prosecutorial power against the crowd as a whole.[74] Mark Antony argues that no "riotous plan [was] suddenly conceived" among these lawfully assembled citizens as a whole, or as a collective, so as to trigger liability for the crime of riot under the mutual agreement element. Instead, any decision to act was the inclination of various individuals in their respective individual capacities, who just so happened to engage – eventually – in similar activities.[75] Mark Antony contends that The Republic is merely inferring that this group of citizens agreed to act in concert and to concurrently engage in an activity that was, at most, the product of independent individual inclinations, nothing more.

Finally, Mark Antony argues that, assuming these Romans citizens "participated with" each other at all, then at most, they did so in the broadest possible sense, thereby failing to satisfy the collective intent-based concept of the "mutual agreement" definition that undergirds the "participating with" statutory phrase. Mark Antony argues that these Roman citizens "participated with" each other in no greater sense than when individuals join together "in a charitable fund-raising drive[,] [and make] a donation to a charity in response to the charity's fund-raising plea."[76] As such, just as "people who give money in response to such fund-raising pleas do not [typically] make their decision in concert with other donors[,]"[77] so too – Mark Antony argues – was no citizen's decision to avenge Julius Caesar's murder in this case truly made "in concert" with other citizens. And just as "[t]here is [typically] no group agreement among donors [who elect to

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[67] *Contrast* [Tr. 46] (Act III, Scene II) *with* [Tr. 47] (Act III, Scene II).

[68] [Tr. 46 – 51] (Act III, Scene II).

[69] *See, e.g.*, [Tr. 48] (Act III, Scene II) (Fourth Citizen: "They were traitors: honorable men!"). *Contrast also* [Tr. 46] (Act III, Scene II) *with* [Tr. 50] (Act III, Scene II).

[70] *Burton-Hill*, 569 P.3d at *8.

[71] [Tr. 44] (Act III, Scene II).

[72] *See, Burton-Hill*, 569 P.3d at **8 – 9.

[73] *Id.,* at **8.

[74] *See, id.,* at **8 – 9.

[75] *See, id.,* at **13.

[76] *Id*.

[77] *Id*.

respond to a fund-raising plea], . . . often . . . not know[ing] for certain whether anyone else has decided to give money to the charity[,]"[78] so too – Mark Antony argues – there was no true group agreement among the citizens in this case to avenge Julius Caesar's murder, and no indication that any given citizen knew for certain that their fellow citizens had truly decided to do the same.[79] At most, just as "the nature of charitable fund-raising pleas[ ] [typically cause] donors . . . [to] be aware of a substantial *likelihood* that they will not be the only donor – that a number of other people will also choose to respond to the fund-raising plea[,]"[80] so too – Mark Antony argues – was any given citizen in this case merely aware of a substantial likelihood that they would not be the only citizen to avenge Julius Caesar's death. To the extent this type of "participation" is inadequate to form the underlying intent to riot as a matter of law,[81] Mark Antony concludes that The Republic fails to establish that these Roman citizens actually entered into a mutual agreement to achieve or advance a shared purpose.

This Court finds The Republic's arguments more persuasive.

Though this Court appreciates that it would certainly be *easier* to find the existence of a "mutual agreement to achieve or advance a shared purpose" in this case had the Roman citizens who listened to Mark Antony's funeral oration expressly articulated an actual collective plan, the law does not require that a mutual agreement be explicit.[82] A mutual agreement to achieve or advance a shared purpose may be tacit.[83] The utterances made by these Roman citizens throughout Mark Antony's funeral oration, though varied and at times contradictory, demonstrate a gradual and overall collective shift in opinion and inclination to act in concert, coalescing into a general consensus that they ought to work in tandem to seek revenge against Brutus and the other conspirators.[84]

Admittedly, it is difficult to prove – as with any criminal mental state (*i.e.*, *mens rea*) – that someone possesses an intent[85] to do something. However, the law allows the trier of fact to consider the attending circumstances (*e.g.*, actions, behaviors, reactions, statements), when deciding whether someone possesses an intent to do something.[86] Though such circumstances are often, at best, merely circumstantial evidence of a

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[78]*Id.*

[79]*See*, *id*.

[80]*Id.*

[81]*Id.*, at **14.

[82]*Id.*, at **14 – 15.

[83]*Id.*

[84]*See*, [Tr. 46 – 51] (Act III, Scene II).

[85]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "INTENTIONALLY" 11.81.900(a)(1) (Revised 2007) ("A person acts 'intentionally' with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result. When intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective.").

[86]ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "MENTAL STATE – CIRCUMSTANTIAL EVIDENCE" 1.15 (Revised 2012) ("A person's mental state may be shown by circumstantial evidence. It can rarely be established by any other means. Witnesses can see and hear, and thus be able to give direct evidence of, what another person does or does not do. But no one can see or hear the mental state the person had at the time the person acted or did not act. Yet what a person does or does not do may indicate that person's mental state. [The trier of fact] may consider any statements made and acts done or not done by the person and all other facts and circumstances in evidence when determining that person's mental state.").

person's mental state, the law further allows the trier of fact to rely upon circumstantial evidence to the same extent that direct evidence may be relied upon.[87] Similarly, the trier of fact is allowed to look at the eventual actions and conduct executed by alleged rioters to determine whether there was, in fact, an antecedent mutual agreement.[88] Such guiding principles of law, applied to the facts at hand, demonstrate the existence of sufficient evidence to conclude the existence of a "mutual agreement to achieve or advance a shared purpose[.]"

Even so, it is difficult to conclude that these Roman citizens' utterances were merely indicative of individual inclinations as opposed to the product of a shared sentiment when, at various intervals, the crowd spoke in unison.[89]

Nor does this Court find persuasive Mark Antony's argument that, at most, the crowd's intra-citizen "participation" was too broad in nature to constitute a "mutual agreement" for purposes of achieving or advancing a truly shared purpose. His attempt to analogize the facts in this case to the general nature in which donors "participate" in heeding a fund-raising plea by a charitable organization is simply not apt.[90]

For all these reasons, this Court finds that there is sufficient evidence in the record to conclude that the Roman citizens who listened to Mark Antony's funeral oration entered into a mutual agreement to achieve or advance a shared purpose.

b. By means of engaging in tumultuous and violent conduct.

Regarding the second part of the mutual agreement element, The Republic claims that the Roman citizens who listened to Mark Antony's funeral oration formed a mutual agreement to pursue their shared purpose "by engaging in tumultuous and violent conduct[;]" namely, by burning the conspirators' houses and slaying them.

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[87] ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "DIRECT/CIRCUMSTANTIAL EVIDENCE" 1.14 (Revised 2012) ("A fact may be proved by direct evidence, by circumstantial evidence, or by both. Direct evidence is given when a witness testifies about an event that the witness personally saw or heard. Circumstantial evidence is given when a witness did not personally see or hear an event but saw or heard something that, standing alone or taken together with other evidence, may lead [the trier of fact] to conclude that the event occurred. By way of example, if before you go to bed on a winter night, you look out your window and see it snowing and you reach out the window and feel it on your hand, you have personal knowledge that it is snowing. This is direct evidence. But, if when you go to sleep, the sky and the ground are clear and when you later awaken the ground is white and covered with snow, you can conclude that it snowed even though you did not see the snow fall. This is circumstantial evidence. *Both types of evidence are admissible and may be considered by [the trier of fact]. Neither is necessarily entitled to any greater weight than the other*.") (emphasis added).

[88] *Burton-Hill*, 569 P.3d at **15 ("It is not necessary, however, that the parties shall have deliberated or [explicitly] exchanged views with each other before entering upon the execution of their common purpose[.] [Rather,] concert of action … and a common intent or purpose *may be inferred from the manner in which the act is done*.") (emphasis added).

[89] *See, e.g.*, [Tr. 50] (Act III, Scene II) (All: "Revenge! About! Seek! Burn! Fire! Kill! Slay! Let not a traitor live!").

[90] *Contrast generally, Burton-Hill*, 569 P.3d at **13 *with* [Tr. 46 – 52) (Act III, Scenes II – III).

Mark Antony counters that the Roman citizens who were listening to his funeral oration failed to agree mutually that any shared purpose be achieved by engaging in tumultuous and violent conduct. While Mark Antony acknowledges that the citizens' statements about burning down houses, killing, and slaying[91] were certainly concerning, troublesome, and perhaps even violent, such statements in-and-of-themselves did not rise to an actual mutual agreement to engage in *tumultuous* conduct. As Mark Antony points out, it is not enough that rioters entered into a mutual agreement to pursue a shared purpose by engaging in conduct that was merely violent, but their mutual agreement to pursue a shared purpose must have included an intent to engage in conduct that was *both* tumultuous *and* violent.[92]

> The heart of the common-law element of "tumultuous" or "turbulent" conduct was proof that the defendants' conduct breached the public peace in a manner that created a "likelihood of public terror and alarm". Judges and lawyers referred to this element of public terror or alarm by using the Latin phrase *in terrorem populi* ("to the terror of the people"), and this allegation was a necessary element of all common-law indictments for riot.[93]

In accordance with this common-law principle, our Court of Appeals explains:

> [A] charge of riot requires proof of conduct that is both violent *and* "tumultuous" – not in the popular sense of "loud, excited, and chaotic", but rather in the common-law sense of creating a likelihood of public terror and alarm – what the drafters of [a sister jurisdiction's] riot statute referred to as "terroristic mob behavior involving ominous threats of personal injury and property damage."[94]

Mark Antony concludes that, assuming the Roman citizens were actually agreeing mutually to do anything in concert, any such plan to exact revenge upon the conspirators who murdered Julius Caesar was neither designed nor comprehended to create a "likelihood of public terror and alarm," but instead – at most – any resulting byproduct of their actions would perhaps possibly be "loud, excited, and chaotic" in nature. In support of this argument, Mark Antony further emphasizes that any actual intent to burn down houses and engage in killing was confined to a select list of proscribed individuals; namely, the conspirators, an extremely small and relatively insignificant portion of the

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[91] *See, e.g.*, [Tr. 50] (Act III, Scene II) (All: "Revenge! About! Seek! Burn! Fire! Kill! Slay! Let not a traitor live!").

[92] *See*, AS 11.61.100(a). *See also*, *Burton-Hill,* 569 P.3d at **19 – 20; COMMENTARY ON THE ALASKA REVISED CRIMINAL CODE, originally published in 1978 Senate Journal, Supplement 47 (June 12th), and republished the following month by the Alaska Legislative Affairs Agency, p. 93 ("Behavior that is merely tumultuous would be insufficient to sustain a conviction under the statute."); *Dawson v. State*, 264 P.3d 851, 856 n.12 (Alaska Ct. App. 2011) ("By design, this statute . . . requires that the conduct be both tumultuous *and* violent.").

[93] *Burton-Hill*, 569 P.3d at **19.

[94] *Id*., at **20.

Roman populace.[95] Thus, it was never the Roman citizens' design to create general "public terror and alarm[,]" – these citizens were not planning to set fire to the whole of Rome, nor were they planning to engage in an indiscriminate killing spree against the Roman populace at large.[96]

This Court is not persuaded by Mark Antony's arguments.

The Roman citizens' statements, on their face, both individually and collectively, evince an intent to engage in conduct designed to be *in terrorem populi*. The sheer severity – and even viciousness – of the citizens' shouts calling for violent retribution against the conspirators are inherently tethered to professed intended acts that any reasonable person would take as manifesting a design to strike terror and alarm in anyone who was residing in Rome that day.[97] The particular means of how these citizens intended to go about burning down the conspirators' homes points to not a mere private affair, but a spectacle of public and grandiose proportions.[98] Even public property, or likely the property of other private citizens, was specifically targeted as fuel for the torches that would eventually be used to engage in these citizens' arsenous plan.[99]

As mentioned earlier, the trier of fact may look at the eventual riotous conduct to determine whether the rioters formed the necessary antecedent mutual agreement to satisfy the "participating with" element of riot,[100] and doing so in this case reveals that the citizens' actions spilled over and went well beyond merely causing the conspirators to perceive – rightly – that they would suffer personal harm and property damage at the hands of these citizens,[101] but in fact actually resulted in the murder of at least one private citizen in a public street merely because this private citizen shared a name in common with one of the conspirators.[102] This was more than just loud, exited, and chaotic conduct. This was conduct was publicly terrorizing in nature, and exacted with such visceral and frenzied anger that perfectly innocent members of the Roman populace had good reason to fear for their lives and property that day.[103] All of this informs a finding as to whether the citizens' in fact intended to pursue their mutual agreement by tumultuous and violent conduct, and this Court so finds.

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[95]*See*, [Tr. ix] (*Dramatis Personae*) (listing only eight "conspirators against Julius Caesar").

[96]*See generally*, [Tr. 46 – 51] (Act III, Scene II).

[97]*See, e.g.*, [Tr. 49 – 51] (Act III, Scene II).

[98]*See*, [Tr. 50 – 51] (Act III, Scene II).

[99]*See*, [Tr. 51] (Act III, Scene II).

[100]*Burton-Hill*, 569 P.3d at **15 ("It is not necessary, however, that the parties shall have deliberated or [explicitly] exchanged views with each other before entering upon the execution of their common purpose[.] [Rather,] concert of action … and a common intent or purpose *may be inferred from the manner in which the act is done*.") (emphasis added).

[101][Tr. 51] (Act III, Scene II) (Servant: "I heard [Octavius] say, Brutus and Cassius / Are rid like madmen through the gates of Rome." Antony: "Belike they had some notice of the people, / How I had moved them.").

[102][Tr. 52] (Act III, Scene III).

[103]*See generally*, [Tr. 46 – 52] (Act III, Scenes II – III).

For all these reasons, this Court finds that there is sufficient evidence in the record to conclude that the Roman citizens who listened to Mark Antony's funeral oration entered into a mutual agreement to pursue their shared purpose by engaging in tumultuous and violent conduct.

c. By assisting each other in committing tumultuous and violent conduct, including resisting anyone who might oppose it.

Regarding the third part of the mutual agreement element, The Republic claims that the Roman citizens who listened to Mark Antony's funeral oration formed a mutual agreement to pursue their shared purpose not only by engaging in tumultuous and violent conduct, but also "by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it[;]" namely, by articulating their plan to exact revenge against the conspirators as a group, and to do so in a rebellious manner designed to overcome any possible resistance.

Mark Antony counters that the Roman citizens who were listening to his funeral oration failed to agree mutually to assist each other in committing tumultuous and violent conduct, including resisting anyone who might oppose such tumultuous and violent conduct. He suggests that, assuming there was a mutual agreement to pursue a shared purpose by engaging in tumultuous and violent conduct, there is no evidence demonstrating that these citizens agreed to "assist[ ] each other" in executing such conduct, and certainly no evidence of an agreement to "resist[ ] anyone who might oppose" such conduct.[104]

For example, Mark Antony argues that at no time was there ever a sentiment – much more a statement – by the citizens indicating their willingness to actually help each other commit any of the acts of burning and killing. Instead, all that we have are the shouted statements of the crowd in unison, and shouts in common do not demonstrate an actual willingness to assist one's companions.[105] He also points to the fact that at no time was there ever a sentiment – much more a statement – that the citizens were willing to resist the Praetorian Guard,[106] the Vigiles Urbani,[107] or Legionnaires, if marshaled against them to restore peace and order.[108]

This Court is persuaded that The Republic has the better argument on this issue.

Once a Roman's sense of honor is piqued, it often serves as fuel for a dedicated pursuit to prove or vindicate said honor. This dedication is typically headstrong and obstinate in nature. Not uncommonly, it leads to the ruin – if not the outright demise – of many a Roman. Indeed, honor and death are Roman themes that often go hand-in-

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[104]*See generally*, [Tr. 46 – 51] (Act III, Scene II).

[105]*See, e.g.*, [Tr. 50] (Act III, Scene II).

[106]Prior to becoming the elite bodyguard unit of Rome's emperors, the Praetorian typically served as escorts for high-ranking political officials.

[107]"Watchmen of the City" (*i.e.*, the firefighters and police of Rome).

[108]*See generally*, [Tr. 46 – 51] (Act III, Scene II).

hand.[109] The citizens' collective zeal to avenge Julius Caesar's murder, fueled by general undertones of vindicating Roman honor,[110] serves as strong circumstantial evidence that these citizens' formed the requisite intent not only to pursue a common goal by engaging in tumultuous and violent conduct, but to assist each other in doing so while resisting any who would seek to thwart their collective efforts.

Furthermore, the public demise of Cato the Poet at the hands of these citizens demonstrates the very real extent to which these citizens were willing to assist each other in carrying out their tumultuous and violent intentions.[111] The ominous and imminent nature of their various threating statements,[112] coupled with the immediate temporal and physical proximity with which they were all acting,[113] demonstrate – in retrospect – what type of antecedent mutual agreement they formed to help each other and to resist anyone who might try to interfere with their planned group efforts.

The evidence of what they planned to do prior to engaging in such conduct,[114] and then the resulting conduct itself,[115] viewed together, demonstrates an essential "follow-through" of what their actual planned intentions were with respect to their mutual agreement. The tumultuous and violent conduct planned generally matches the tumultuous and violent conduct that ultimately occurred (as evidenced by both the conduct itself and the reactions that others had to such conduct).[116] From this vantage point, it is clear that the citizens planned to engage in tumultuous and violent conduct together as a group, and to resist any who opposed them in executing this group conduct.

The idea that these citizens planned to resist any who opposed them in executing their mutually planned conduct is especially captured by their shouts to engage in what they described as "mutiny"[117] – which, on its face, connotes the idea of assisting fellow mutinous members of the mutiny while simultaneously resisting any who might oppose the mutiny. A "mutiny" also implies revolt against an established order, authority, or regime, which inherently carries with it the idea of resisting such authority, including any attempt to thwart the mutiny itself.

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[109]*See generally*, [Tr. 1 – 78] (Act I – Act V). *See also, e.g.*, [Tr. 6] (Act I, Scene II) (Brutus: "What is it that you would impart to me? / If it be aught toward the general good, / Set honour in one eye and death i' the other, / And I will look on both indifferently: / For let the gods so speed me as I love / The name of honour more than I fear death."); (Tr. 27 – 28) (Act II, Scene I) (demonstrating the resolve of even "sick" Romans to undertake substantial – and arguably life-threatening – tasks, provided such tasks constitute "[a]ny exploit worthy the name of honour."); ([Tr. 77 – 78] (Act V, Scene V) (addressing honor both immediately prior to and following Brutus running upon his own sword).

[110]*See*, [Tr. 49 – 51] (Act III, Scene II).

[111]*See*, [Tr. 52] (Act III, Scene III).

[112]*See*, [Tr. 48 – 51) (Act III, Scene II).

[113]*See*, [Tr. 52] (Act III, Scene III).

[114]*See*, [Tr. 49 – 51] (Act III, Scene II).

[115]*See*, [Tr. 52] (Act III, Scene III).

[116]*See*, [Tr. 52] (Act III, Scene III).

[117][Tr. 50] (Act III, Scene II).

For all these reasons, this Court finds that there is sufficient evidence in the record to conclude that the Roman citizens who listened to Mark Antony's funeral oration formed a mutual agreement to pursue their shared purpose not only by engaging in tumultuous and violent conduct, but also by assisting each other in committing this tumultuous and violent conduct, including resisting anyone who might oppose it.

To the extent that all three essential components of the "mutual agreement" element are satisfied in this case so as to demonstrate that the citizens "participated with" each other, and given that the parties do not dispute any other element associated with the crime of riot, this Court finds sufficient evidence to conclude that the crime of riot occurred. In turn, to the extent that the prerequisite existence of a riot in fact occurred for which Mark Antony *may* be liable as an accomplice, it is now possible to address the issue of whether, in fact, Mark Antony *is* liable as an accomplice to this riot.

2. Whether Mark Antony is liable as an accomplice to the felony crime of riot.

It is now necessary to determine whether Mark Antony is liable for the Roman citizens' riot in his capacity as an accomplice. This determination depends upon the answer to the following three issues: (1) Whether Mark Antony intended to promote or facilitate the act(s) or conduct constituting the crime of riot; (2) Whether Mark Antony acted recklessly with respect to causing, or creating a substantial risk of causing, damage to property or physical injury to a person; and (3) Whether Mark Antony knowingly aided or abetted the other person(s) in planning or committing riot, or knowingly solicited the other person(s) to commit riot.

a. Intention to promote or facilitate the act(s) or conduct constituting the crime of riot.

Regarding the first issue, The Republic argues that Mark Antony intended to promote or facilitate the act(s) or conduct constituting the crime of riot. That is, it is alleged Mark Antony intended to promote or facilitate a person's or persons' engagement – while participating with five or more others – in tumultuous and violent conduct in a public place.

Mark Antony counters that he possessed no such intent. He argues that, in fact, the evidence proves just the opposite of any such intent because his funeral oration expressly admonished the citizens *to refrain from* engaging in riotous behavior.[118]

Mark Antony also counters that it was not his intention to cause the crowd to riot, but instead, he merely sought to excite the crowd sufficiently enough to draw the conspirators' attention towards the crowd, and away from himself, for his own safety's sake. Thus, his design was not to provoke or incite the crowd to riot, but rather, to create a distraction sufficient to draw the conspirators' attention away from himself, or to cause the conspirators to flee Rome so that Mark Antony would not be targeted as the next

[118] *See, e.g.*, [Tr. 50] (Act III, Scene II) (Mark Antony: "Good friends, sweet friends, let me not stir you up / To such a sudden flood of mutiny.").

victim of the conspirators' murderous plot (especially given that Mark Antony was politically aligned with Julius Caesar, a friend of Julius Caesar, had served as Julius Caesar's co-consul, and was originally targeted for possible assassination alongside Julius Caesar prior to the actual implementation of the conspirators' murderous plot).[119] Perhaps this distraction he sought to create got out of hand and became a riot, but this was certainly not his intention. At most, Mark Antony argues that he was perhaps reckless when it came to the promotion or facilitation of act(s) or conduct constituting the crime of riot, but to the extent that it was not his intention to do so, and given that the evidence fails to demonstrate that this was his intention, he argues that he cannot legally be held liable as an accomplice to any such ensuing riot.

This Court does not find Mark Antony's arguments persuasive.

The evidence demonstrates that Mark Antony's express words merely masked his true intentions. In fact, Mark Antony's words, and his various replies to the citizens' reactions throughout his speech, is a masterful example of the rhetorical device known as apophasis,[120] whereby he stirred-up the crowd's emotions by pretending to refrain from criticizing the conspirators when, in reality, that was precisely what he was doing.[121]

Mark Antony himself acknowledges the true purpose of his funeral oration when, immediately after the citizens shout out their riotous intentions (as they leave with Julius Caesar's body), he proclaims: "Now let it work. Mischief, thou art afoot, / Take thou what course thou wilt."[122]

Additionally, Mark Antony gives himself away by not being surprised when – following his funeral oration – he receives word that two of the conspirators responsible for Julius Caesar's murder, Brutus and Cassius, have hastily fled the city.[123] He acknowledges that Brutus and Cassius's flight was likely the result of hearing about the crowd's riotous intentions (and possibly the crowd's riotous acts too), and then attributing his funeral oration as the direct and proximate cause. Indeed, he expressly states: "Belike they [*i.e.*, Brutus and Cassius] had some notice of the people, / How I had moved them [*i.e.*, the people]."[124]

Mark Antony also possessed enough sway over the crowd to dissuade them, several times, from going forth to exact riotous conduct.[125] The fact that he did nothing to prevent the crowd from finally leaving the Forum to exact their declared riotous plan is evidence in support of the fact that Mark Antony intended them to do so.[126]

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[119]*See, e.g.*, [Tr. 10] (Act I, Scene II); [Tr. 23] (Act II, Scene I); [Tr. 46] (Act III, Scene II).

[120]"Apophasis" is a rhetorical device where a speaker or writer alludes to something by claiming they will not mention it. This can also be referred to as "paralipsis" or "preterition," and is often used to bring up a topic by pretending to dismiss it.

[121]*See, e.g.*, [Tr. 50] (Act III, Scene II).

[122][Tr. 51] (Act III, Scene II).

[123]*See*, [Tr. 51] (Act III, Scene II).

[124][Tr. 51] (Act III, Scene II).

[125]*See,* [Tr. 50 – 51] (Act III, Scene II).

[126]*See*, [Tr. 50 – 51] (Act III, Scene II).

It also strikes this Court as relevant to observe that Mark Antony is no mere babe in the woods when it comes to political machinations.[127] He fled from, and could have remained beyond the grasp of, the conspirators shortly after the conspirators murdered Julius Caesar (thereby securing his safety).[128] But instead, Mark Antony purposefully returned and sought to ingratiate himself with the conspirators almost immediately following Julius Caesar's murder.[129] The evidence demonstrates that it was Mark Antony's design to do so, waiting until he was given a chance to speak to the people of Rome (and for Brutus to leave him alone with the people), so that he could then exact his revenge by turning the people of Rome against the conspirators.[130] That is, Mark Antony was playing possum (politically speaking), lulling the conspirators into a false sense of security and trust, all in an effort to lure them into a vulnerable political position, which was then accomplished once Mark Antony ascended the public rostrum in the Forum to address the people. Indeed, more often than not, and as the vast majority of the evidence in this case tends to demonstrate, appearances can be deceiving. Or, as Octavius puts it: "And some that smile have in their hearts, I fear, / Millions of mischiefs."[131]

In further support of this notion, it appears Mark Antony possesses a penchant for manipulating others, especially when it proves to his personal advantage. For example, Mark Antony describes to Octavius his intent to use Lepidus in achieving their plot to reduce some of the gifts bequeathed to the people of Rome in Julius Caesar's will, and, perhaps, for accomplishing other potential misdeeds. Once such misdeeds are completed, Mark Antony informs Octavius of his plan to use Lepidus as a scapegoat to take all the blame, and then cast Lepidus aside. Indeed, the very language Mark Antony uses to insult Lepidus demonstrates how he views Lepidus as someone easy to manipulate.[132] Mark Antony is a cunning and ruthless practitioner of the political arts. His actions and statements – throughout the entirety of the record – are relevant when divining what his true intentions were at the time he delivered his funeral oration.

For all these reasons, this Court finds that there is sufficient evidence in the record to conclude that Mark Anonty intended to promote or facilitate the act(s) or conduct constituting the crime of riot (*i.e.*, that he intended to promote or facilitate a person's or persons' engagement – while participating with five or more others – in tumultuous and violent conduct in a public place).

b. Recklessenss regarding the results of the rioters' criminal conduct.

Regarding the second issue, The Republic argues that Mark Antony acted recklessly with respect to the particular result involved in the crime of riot. That is, when Mark Antony delivered his funeral oration, he acted recklessly regarding the result of the

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[127]*See, e.g.*, [Tr. 23] (Act II, Scene I) (Cassius: "[W]e shall find of [Mark Antony] / A shrewd contriver; and you know his means, / If he improve them, may well stretch so far / As to annoy us all: which to prevent, / Let Antony and Caesar fall together.").

[128]*See*, [Tr. 37 – 39] (Act III, Scene I).

[129]*See*, [Tr. 38 – 39] (Act III, Scene I).

[130]*See*, [Tr. 37 – 44] (Act III, Scene I).

[131][Tr. 54] (Act IV, Scene I).

[132]*See*, [Tr. 53 – 54] (Act IV, Scene I).

rioters' criminal conduct; namely, their causing, or creating a substantial risk of causing, damage to property or physical injury to a person.

Mark Antony argues that he was in no way reckless with respect to causing, or creating a substantial risk of causing, such damage and harm. He points to the nature of his speech, which served as a funeral oration for Julius Caesar. Mark Antony ascended the public rostrum "to bury Caesar," and to share the contents of Caesar's will to the people.[133] He argues that these are perfectly ordinary things to do during a state funeral oration. As such, there is no basis to believe that – by merely giving a funeral oration, and discussing what one typically discusses during a funeral oration – this somehow created a "substantial and unjustifiable risk" of the citizens turning around and causing (or creating a substantial risk of causing), damage to property or physical injury to anyone.

Given the normal subject matter of his funeral oration, and the appropriateness of the setting for such a funeral oration, Mark Antony also argues that there was no "substantial and unjustifiable risk" to be "aware of and consciously disregard[ ]" in the first place (at least, not when it came to delivering a funeral oration).[134] Thus, not only was there absolutely no "substantial and unjustifiable risk[,]" but even assuming for the sake of argument that such a risk existed, no reasonable person in his position would have (1) had any reason to be "aware of" such a risk, and (2) considered such a speech to constitute a "conscious[ ] disregard[ ]" of such a risk.[135]

Finally, Mark Antony contends that he was not reckless regarding the results of this riot because The Republic cannot prove how many citizens heard his speech and how many citizens were then subsequently moved to take action by his speech. To be clear, Mark Antony is not arguing an absence of the requisite number of persons to prove the crime of riot (*i.e*., the existence of six or more persons). Rather, his argument is that The Republic's inability to prove the actual number of citizens involved is fatal for purposes of proving that he was reckless with respect to the results of the ensuing riot, because no reasonable person in Mark Antony's position would – at the time of delivering his funeral oration – have any reason to be aware of a substantial and unjustifiable risk that so few citizens could actually cause the results of the ensuing riot. Mark Antony points to the evidence, suggesting a substantially reduced number of citizens would have been moved to engage in the riot and, in turn, cause the property damage and physical injury. Initially, there was "a throng of [c]itizens" in the Forum,[136] who were then subsequently divided between Brutus and Cassius before Mark Antony took to the public rostrum, initially

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[133]*See*, [Tr. 46 – 51] (Act III, Scene II).

[134]*See*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RECKLESSLY" 11.81.900(a)(3) (Revised 2016) ("A person acts "recklessly" with respect to a result or a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.").

[135]*See*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "RECKLESSLY" 11.81.900(a)(3) (Revised 2016).

[136][Tr. 44] (Act III, Scene II).

addressing only those citizens who had remained with Brutus.[137] It then appears that an even smaller group of citizens was immediately at hand when an unidentified number of them formed "a ring about the corpse of Caesar,"[138] with Antony descending from the public rostrum into the middle of this ring to more readily point out the features and murderous wounds of Caesar's corpse prior to reading Caesar's will.[139] Mark Antony argues that no reasonable person in his position would honestly think that his speech could move so few citizens to engage in such tumultuous and violent conduct so as to result in the property damage and physical injury that ultimately transpired.

This Court is persuaded that The Republic has the better argument regarding this issue.

For many of the same reasons previously articulated regarding Mark Antony's intention to promote or facilitate the crime of riot, he was certainly at least reckless when it comes to the results of the riot that actually did ensue. Mark Antony knew what he was doing, and he was doing it on purpose.[140] The fact that Mark Antony made no sincere effort to deescalate the citizens, but instead, continued to stoke and enflame their passions[141] (ultimately making no effort to stop them when they were in the process of departing the Forum to burn Julius Caesar's body and then, with the same funeral torches, burn down the conspirators' homes and kill them),[142] is evidence that he not only consciously disregarded a substantial and unjustified risk that the citizens would, as a result of rioting, destroy property and inflict physical harm,[143] but that he intended (or at least certainly hoped and desired)[144] that this be done.

The actual number of citizens who were moved sufficiently to engage in the rioting so as to cause the resulting property damage and physical harm is irrelevant for purposes of Mark Antony's particular argument. It does not matter whether it was a group of six citizens or six thousand citizens who rioted (though, per the parties' stipulation, we know that there were at least six citizens in this group, constituting the bare minimum number of persons required under the riot statute). Even so, the fact remains that this body of citizens constituted a sufficient number of persons to achieve the riotous ends sought by Mark Antony. Not only were the conspirators targeted with arsenous and murderous intent, but the crowd proved sufficient in number – however many were actually in their ranks – to cause both Brutus and Cassius to flee Rome without delay,[145] and to engage in the frenzied killing of at least one innocent citizen who just so happened to share the same name as one of the conspirators.[146]

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[137] *See*, [Tr. 44 – 45] (Act III, Scene II).
[138] [Tr. 48] (Act III, Scene II).
[139] *See*, [Tr. 48 – 49] (Act III, Scene II).
[140] *See*, [Tr. 39 – 51] (Act III, Scenes I – II).
[141] *See*, [Tr. 49 – 51] (Act III, Scene II).
[142] *See*, [Tr. 51] (Act III, Scene II).
[143] *See*, [Tr. 52] (Act III, Scene III).
[144] *See*, [Tr. 49 – 52] (Act III, Scenes II – III).
[145] *See*, [Tr. 51] (Act III, Scene II).
[146] *See*, [Tr. 52] (Act III, Scene III).

c. Knowingly aiding or abetting the riot or knowingly soliciting the riot.

Regarding the third issue, The Republic argues that Mark Antony knowingly aided or abetted these Roman citizens in planning or committing the riot, or knowingly solicited these Roman citizens to commit the riot.

Mark Antony counters that he neither (1) aided or abetted the rioters in planning or committing the riot, nor (2) solicited the rioters in committing the riot.

First, he contends that nothing he said during his funeral oration actually amounts to aiding or abetting. Mark Antony once again points to the fact that he expressly admonished the citizens to refrain from riotous conduct.[147] Additionally, Mark Antony notes that he engaged in no physical conduct in furtherance of the riot. To the extent he merely delivered a funeral oration – that is, he did nothing but speak words – he argues that such words must be taken at face value. Indeed, he notes that statements, pleas, and commands – and any spoken words in general – can only be understood in their literal plain sense (and indicative of a declarant's true intentions), if unaccompanied by any demonstrable physical action or conduct to the contrary.

Second, he contends that The Republic cannot prove that he solicited the rioters to commit their riot because absolutely nothing he said amounted to a request or command for the rioters to riot.

Finally, Mark Antony argues that the crowd's misinterpretation of his funeral oration – or their hyperbolic and bizarre response to it – does not retroactively transform what Mark Antony said into aiding or abetting the crowd's ensuing criminal conduct, nor does it transform what Mark Antony said into a solicitation for the crowd to engage in such criminal conduct. He insists that The Republic's criminal prosecution against him – and The Republic's entire theory regarding his liability as an accomplice – amounts to nothing more than a fallacious exercise of *post hoc ergo propter hoc*. That is, all The Republic is doing in this criminal prosecution is noticing that the crowd's riotous actions occurred after his funeral oration, and then simply concluding that his funeral oration must have incited the riot. Mark Antony contends that The Republic is wrongly inferring a causal relationship solely based on the chronological order of the two events, and that the available evidence does not actually support a causal relationship between the two.

This Court does not find Mark Antony's arguments persuasive.

First, Mark Antony overlooks the fact that, legally, one who incites, solicits, or encourages a group of people to riot can be held liable as an accomplice to a riot if a riot actually ensues.[148] This means that no overt "physical act" – as such – is needed to be

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[147] *See*, [Tr. 50] (Act III, Scene II).

[148] *See*, *Burton-Hill*, 569 P.3d at **12 ("*Perkins and Boyce*, pp. 484 – 85 (explaining the accomplice liability of people who incite a riot or who 'lend it encouragement')[.]"); 77 C.J.S. Riot § 15 "ACTIVE RIOTERS" (May 2025 Update) ("All those who incite others to commit riot, if a riot results, may be deemed principal rioters, even though they may be absent from the place where the riot is committed.").

held liable as an accomplice to riot. For reasons articulated previously, the available evidence does not warrant taking Mark Antony's funeral oration at face value. Instead, it was a clever tactic employed to exact revenge against the conspirators who murdered Julius Caesar.[149] Even so, our case law emphasizes that to "abet" another in committing a crime can take subtle forms.[150]

Turning to Mark Antony's contention that he cannot be found to have solicited the crowd to commit the crime of riot, this is a closer call. He is correct that he made no clear request or command for the crowd to do so (and, in fact, expressly asked the crowd to refrain from doing so, at least once during his oration).[151] And it is also true that, for purposes of accomplice liability, "solicits" appears to bear a much more overt form of encouragement beyond that of merely "aiding or abetting".[152] However, "solicitation" in general also appears to encompasses the idea of "inducing" someone to commit a crime.[153] It appears that Mark Antony certainly "induced," – through his powers of persuasion – the crowd to riot, even if the crowd was not immediately aware of how quickly and easily Mark Antony manipulated them into doing so.

Finally, Mark Antony's contention that The Republic's case against him merely amounts to the fallacy of inferring a causal relationship solely based on the chronological order of events is not well taken. The context of the evidence presented as a whole demonstrates that the Roman citizens' riot was the direct and proximate result of Mark Antony's funeral oration, which was purposefully undertaken to exact retribution against the conspirators who murdered Julius Caesar.[154] This conclusion is all the more warranted given the close temporal proximity between the funeral oration and the riot,[155] the evolving nature of the citizens' articulated statements and feelings throughout the course of – and in reaction to – the funeral oration,[156] and Mark Antony's own statements, both prior to and following, the funeral oration.[157]

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[149]*See*, [Tr. 39 – 51] (Act III, Scenes I – II).

[150]*See*, *Andrew*, 237 P.3d at 1044–45 (Alaska Ct. App. 2010) ("But although accomplice liability requires proof of something more than mere presence at the scene of the crime, or mere acquiescence in the crime, it does not necessarily require proof of an overt act of incitement or encouragement. Rather, an accomplice's acts of encouragement can take subtler forms.").

[151]*See*, [Tr. 46 – 51] (Act III, Scene II). *See also*, [Tr. 48] (Act III, Scene II).

[152]*See*, MODEL PENAL CODE § 5.02(1) (providing a definition of solicitation to include a person who "commands, encourages, or requests" something of another person), *in conjunction with*, *Estes v. State*, 249 P.3d 313, 319 (Alaska Ct. App. 2011) ("The statute defining accomplice liability, AS 11.16.110(2), declares that vicarious liability for another's conduct can be premised on several different types of conduct: *soliciting another person to commit the crime*, encouraging or assisting another person in planning the crime, or encouraging or assisting another person in committing the crime.") (emphasis added) (citations omitted).

[153]*See, cf.*, ALASKA COURT SYSTEM – PATTERN JURY INSTRUCTION: "SOLICITATION" 11.31.110(a) (Revised 1999).

[154]*See*, [Tr. 39 – 52] (Act III, Scenes I – III).

[155]*See*, [Tr. 46 – 52] (Act III, Scenes II – III).

[156]*See*, [Tr. 46 – 51] (Act III, Scenes II).

[157]*See*, [Tr. 43 – 44] (Act III, Scenes I) *in conjunction with* [Tr. 51] (Act III, Scene II).

III. Conclusion.

For all the reasons articulated herein, this Court finds and concludes that (1) the Roman citizens who heard Mark Antony's funeral oration "participated with" each other (*i.e.*, entered into a "mutual agreement" to engage), in conduct constituting the felony crime of riot beyond a reasonable doubt in violation of Rome's criminal code, and (2) Mark Antony is guilty of said riot in his capacity as an accomplice thereto beyond a reasonable doubt.

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Following the entry of Judge Marlowe's written findings of fact and conclusions of law, Mark Antony appeals his conviction to the Court of Appeals of the Republic of Rome. Mark Antony seeks to have his conviction overturned, arguing that Judge Marlowe erred by resolving the two issues presented during trial in The Republic's favor. Oral argument is scheduled to take place on November 22, 2025.

In the Court of Appeals of The Republic of Rome

MARCUS ANTONIUS, Appellant, v. **THE REPUBLIC OF ROME,** Appellee.	Court of Appeals No. **A-00001** **Opening Notice of Appeal** Date of Notice: **10/22/2025**

Trial Court Case No. **1RM-25-00001CI**

Appellant appeals from Judge Marlowe's final judgment of conviction entered in Case No. 1RM-25-00001CR. Oral argument will be held on 11/22/2025 to address the following issues raised on appeal:

1. Whether the Roman citizens who heard Mark Antony's funeral oration "participated with" each other *(i.e.*, entered into a "mutual agreement" to engage), in conduct constituting the felony crime of riot.

2. If so, and assuming the felony crime of riot occurred, whether Mark Antony is guilty as an accomplice.

_____//s//_____
CLERK OF THE APPELLATE COURTS
OF THE REPUBLIC OF ROME

Procedural Aspects, Stipulations, & Parameters

The parties and judges may review a present-day English version of "Julius Caesar" to better understand the nature of the facts and proceedings in this matter at the following website: [https://www.litcharts.com/shakescleare/shakespeare-translations/julius-caesar]. This is merely an aid. The present-day English translation is not binding and may not be relied upon as an authoritative interpretation of the facts and proceedings. Only the Official Transcript is authoritative in this regard.

The Official Transcript consists of the 1991 Dover Thrift Editions publication of "Julius Caesar" by William Shakespeare, along with all footnotes and commentary contained therein. Written citations to the Official Transcript shall take the following form: [Tr. 46] (Act III, Scene II).

The Record consists of the Season Case Problem Scenario Packet, which includes (1) the 2025 – 2026 Season Case Problem Scenario, (2) the Opening Notice of Appeal, and (3) the Procedural Aspects, Stipulations, & Parameters document. Citations to The Record shall take the following form: [R. 1].

All stipulations and procedural agreements entered into by the parties, as outlined within the 2025 – 2026 Season Scenario Case Problem, are binding. All stipulations and waivers are sufficient as a matter of law.

The law of Alaska is the law of Rome in all respects unless otherwise noted herein or within The Record. Alaska law is binding. All other authority is merely persuasive.

The statute of limitations is not at issue in these proceedings, and the appeal herein is in no way time-barred.

Immunity of any kind, whether qualified, sovereign, or otherwise, is not at issue in these proceedings.

Jurisdiction is proper and not at issue in these proceedings.

Prosecutorial misconduct (selective, vindictive, or otherwise), is not at issue in these proceedings.

Constitutionality is not at issue in these proceedings. Constitutional principles may, if implicated, be discussed and explored in the course of the parties' arguments, but only in context of, and in subordination to, the issues raised on appeal. There is no separate constitutional claim or issue raised on appeal (*e.g.*, First Amendment violations/infringements).

There is no defect or procedural error of any kind regarding the charging document. There are no procedural errors of any kind at issue in this matter.

A *de novo* standard of review applies to all issues for which review is granted as to both law and fact. This is to say that the Court of Appeals of the Republic of Rome affords no deference to the findings and conclusions within Judge Marlowe's decision, but instead, the Court of Appeals applies its own independent judgment. The Court of Appeals will assess for itself, as guided by the parties' briefing and oral arguments, whether the available facts and applicable law support the parties' various assertions regarding the issues presented.

Any doctrine regarding mootness that would otherwise foreclose Mark Antony's ability to seek relief for purposes of these proceedings is set aside, or applied in such a way so as to allow the Court of Appeals to entertain these proceedings.

Pinpoint citations (*i.e.*, "pincites") to *Burton-Hill v. State*,[158] throughout this case problem scenario packet employ Westlaw's online database pagination as opposed to the since-assigned Pacific Reporter's pagination. When the author originally accessed *Burton-Hill* to complete this case problem, only Westlaw database pagination was available. The case had yet to receive formal Pacific Reporter pagination. In lieu of going back and adjusting all pincites to reflect Pacific Reporter pagination, please be aware that all pincites instead conform to Westlaw's database pagination. This is why *Burton-Hill* pincites throughout the case problem possess double asterisks [**]. If you access *Burton-Hill* on Westlaw's database, you will see that Westlaw employs double asterisk-based pagination to signify Westlaw database pages as opposed to the single asterisk-based Pacific Reporter pages. The double asterisks provided herein should correlate directly to Westlaw's double asterisk-based pagination.

The parties are to prepare written briefs for the Court of Appeals' review prior to oral argument. These are "briefs" in name only. Briefs should simply consist of a short, informal argument outline with select quotations from relevant authorities upon which the parties intend to rely so as to assist the judges and fellow counsel prepare for oral argument. Briefs will not be shared with the public.

The time allowed for oral argument is 30 minutes per side. Parties will be afforded 3 minutes to argue their case without interruption before the judges begin to ask questions. The Appellant is permitted to reserve a portion of argument time for rebuttal, and for purposes of this exercise, Appellant is encouraged to do so.

The parties are not confined to the arguments addressed within Judge Marlowe's written decision. The parties may raise new or additional arguments as they see fit during oral argument. However, all arguments should be raised/mentioned within the parties' briefs (to afford the parties and judges a fair opportunity to prepare), and all arguments must be relevant to/address the issues raised on appeal. The parties are not confined to the authorities addressed/cited within Judge Marlow's written decision.

[158] 569 P.3d 1 (Alaska Ct. App. 2025) (reh'g denied June 6, 2025) (pending petition for hearing filed sub nom. *State v. Burton-Hill*, S-19532 (Alaska July 7, 2025)).

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CONCLUDING PAGE

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