IN THE SUPREME COURT OF FLORIDA

Case No. SC24-1522
L.T. No. 4D22-3429

TERRY HUBBARD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Review from the District Court of Appeal, Fourth District,

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INITIAL BRIEF OF PETITIONER TERRY HUBBARD

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STATEMENT OF THE CASE & FACTS

The State of Florida initiated criminal election law charges against Petitioner, Terry Hubbard through the OSP on August 15, 2022. (R. 41; R1. 9–15)[1]. The OSP notified the circuit court that it, rather than the Broward County State Attorney's Office, would serve as the "prosecuting authority." (R. 41; R1. 16–17). The two-count Information charged Mr. Hubbard as follows:

> Count 1
> FALSE INFORMATION IN CONNECTION WITH ELECTION
>
> NICHOLAS B. COX, Statewide Prosecutor for the State of Florida, under oath, charges that on or about February 14, 2020, in the Seventeenth and Second Judicial Circuits of Florida, to wit: Broward and Leon Counties, Florida, as part of a related transaction occurring in two or more judicial circuits, TERRY LEWIS HUBBARD did willfully affirm falsely to an oath or affirmation in connection with an arising out of voting or elections, contrary to Section 104.011(1) Florida Statutes (2020).
>
> Count 2
> VOTING BY UNQUALIFIED ELECTOR
>
> NICHOLAS B. COX, Statewide Prosecutor for the State of Florida, under oath, charges that on or about October 28, 2020, in the Seventeenth and Second Judicial Circuits of Florida, to wit: Broward and Leon Counties, Florida, as part of a related transaction occurring in two or more judicial circuits, TERRY LEWIS HUBBARD did willfully vote in an election knowing that

[1] References to the Record shall be as follows: The symbol "R" shall denote the Record on Appeal of the Supreme Court of Florida and the symbol "R1" shall denote the record on appeal in the Fourth District Court of Appeal.

> he was not a qualified elector, contrary to Section 104.15, Florida Statutes (2020).

(R. 41; R1. 9–10).

Mr. Hubbard moved to dismiss on the grounds that OSP did not have the constitutional or statutory authority to circumvent the State Attorney's Office as the "prosecuting officer." (R. 42; R1. 20–26).

The parties entered a Joint Stipulation of Facts to facilitate the trial court's ruling on the motion to dismiss and dispense with the necessity of an evidentiary hearing. (R. 42; R1. 68–69). It was stipulated that "[a]t no point between on or about February 14, 2020, and on or about November 3, 2020, did Defendant physically enter the Second Judicial Circuit, nor did he himself mail or electronically transfer anything to the Second Judicial Circuit" and "[t]he acts charged in the State's Information did not involve a criminal conspiracy." (R. 42;R1. 69).

Based on the stipulated facts, the trial court granted Mr. Hubbard's motion to dismiss (R. 42; R1. 78). The Court found that Mr. Hubbard, "never in any way, shape[,] form or fashion entered Leon County" and that "he committed no actions in Leon County and thereby his crime did not affect Leon County." (R. 85). In other words, because the charged crimes were not "committed" in more than one judicial circuit, the OSP lacked the requisite jurisdiction to serve as the prosecuting authority. (R. 42; R1. 85).

The State appealed to the Fourth District Court of Appeal arguing essentially two points. First, the state argued that it was within the constitutional mandate for OSP to prosecute this case and second, that the 2023 amendment to section 16.51 was retroactively applicable. In a 2-1 opinion issued on July 17, 2024, the Fourt District Court of Appeal entered an opinion reversing the trial court's dismissal. (R. 998-1010). While the court did not address the underlying constitutional claim, it resolved the case mainly on the grounds that the amendment was retractive and being retroactive applied to allow OSP to prosecute. The court held "submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the Secretary of State in Leon County. So too does voting in an election in Broward County. As a result, the OSP had the authority to charge Hubbard with these crimes." (R. 1006).

Judge May dissented stating that, "[t]he issue here is the constitutional and statutory limitations on the reach of the [OSP]. . . . The history, purpose, and language of both the constitutional and statutory authority for the OSP leads me to but one conclusion: the OSP's reach does not extend to this single-circuit crime." (R. 1006). Judge May continued and stated, "[o]ne

need only follow a simple logical syllogism: (1) The OSP was created to prosecute multi-judicial circuit crimes. (2) The Information does not allege a multi-judicial circuit crime. (3) The OSP does not have jurisdiction to prosecute the defendant for these charges." (R. 1010). Mr. Hubbard filed a motion for rehearing, rehearing en banc. (R. 1025-1038) He also moved to certify the questions as one of great public importance:

> I. Does Article IV section 4(b) of the Florida Constitution allow Florida Section16.56 to grant the Office of Statewide Prosecutor the authority to prosecute offenses as a related transaction in two or more judicial circuits where the only conduct in the other judicial circuit is a ministerial function of a statewide agency?
>
> II. Does Article IV section 4(b) of the Florida Constitution allow Florida Section16.56 to grant the Office of Statewide Prosecutor the authority to prosecute offenses affecting two or more judicial circuits where the information does not allege any impact on other circuits and the only conduct in the other judicial circuit is a ministerial function of a statewide agency?

(R. 1036-1037).

The Court denied the motion for rehearing and rehearing on banc, but it granted the motion to certify the question as one of great public importance. The court fashioned its own question of great public importance as follows:

> Do Article IV section 4 (b) of the Florida Constitution and section 16.56, Florida Statutes, permit the Office of the Statewide Prosecutor to prosecute crimes

> relating to registering and/or voting in a statewide election?

(R. 1049).

Similar questions regarding the authority of OSP were also before the Third DCA *State v. Miller*, Case No. 3D22-2180 and the Sixth DCA in *State v. Washington*, Case No. 6D23-2104. In Miller, the Third DCA reversed. However, in Washington, the Sixth DCA unanimously affirmed and certified conflict with the present case and with Miller.

Mr. Hubbard filed a Notice to Invoke the discretionary jurisdiction of this Court. (R. 1053). This Court granted jurisdiction and this appeal follows.

SUMMARY OF THE ARGUMENT

This Court should affirm the trial court's order granting Mr. Hubbard's motion to dismiss for two reasons.

First, the OSP lacked the requisite jurisdiction to exercise authority over Mr. Hubbard's prosecution. Mr. Hubbard individually completed his Florida Voter Application in Broward County—the same county where he voted. Moreover, the charged voting crimes did not affect multiple circuits as part of any related transaction. As stipulated by the State, Mr. Hubbard acted alone and had no co-conspirators.

Second, the 2023 amendment of the relevant OSP statute cannot serve as a basis to reverse the lower court's dismissal. In Florida, criminal statutes operate prospectively, unless the Legislature expressly states otherwise. There was no such statement here. § 775.022, Fla. Stat. Additionally, the 2023 amendment took effect after the trial court's dismissal.

Mr. Hubbard's criminal conduct, if proven, is insufficient to trigger the multi-circuit authority of the OSP because it occurred in a single judicial circuit. Neither the prosecutorial authority available to the OSP in 2022, nor the statutory amendment granting the OSP the power to prosecute such crimes in 2023, change those undisputed facts.

The trial court's dismissal was correct as a matter of law because the OSP lacks subject matter jurisdiction to prosecute individual voting-related offenses occurring in a single judicial circuit by one person acting alone. This decision should be upheld by the reviewing Court.

STANDARD OF REVIEW

The OSP's authority to prosecute crimes is a question of law to be reviewed *de novo. State v. Tacher*, 84 So. 3d 1131, 1132 (Fla. 3d DCA 2012) ("We review a trial court's order on a motion to dismiss *de novo* where, as here, it concerns a question of law."). A challenge to the authority of the OSP to prosecute a case is tested by a motion to dismiss. *Winter v. State*, 781 So.

2d 1111, 1116 (Fla. 1st DCA), *rev. denied*, 799 So. 2d 219 (Fla. 2001), *disapproved on other grounds, Carbajal v. State*, 75 So. 3d 258 (Fla. 2011) (challenge to OSP jurisdiction barred by time limitations of Rule 3.850).

ARGUMENT

Introduction

The Fourt District Court of Appeal certified the following question of great public importance:

> Do Article IV section 4(b) of the Florida Constitution and section 16.56, Florida Statutes, permit the Office of the Statewide Prosecutor to prosecute crimes relating to registering and/or voting in a statewide election?

The answer to this question should be no. A contrary answer would require the abandonment of long-standing jurisprudence circumscribing the limits of OSP power. Indeed, it would transform the OSP into a "Marvel superhero that can magically extend its long arm of the law into a single judicial circuit and steamroll over the local state attorney." *State v. Hubbard,* 392 So. 3d 1067, 1075 (Fla. 4th DCA 2024 (May, J. dissenting). Such a conclusion would stretch the constitutional underpinnings upon which the OSP rests to its breaking point.

I.

THE STATEWIDE PROSECUTOR DOES NOT HAVE JURISDICTION OR AUTHORITY TO PROSECUTE MR. HUBBARD BECAUSE ANY ACTS HE MAY HAVE COMMITTED OCCURRED IN A SINGLE JUDICIAL CIRCUIT.

This case is ultimately about preserving the constitutionally mandated restrictions on the OSP enunciated in Article IV, section 4(c), of the Florida Constitution. It is also about preventing OSP's overreach into areas traditionally and constitutional within the exclusive province of the locally elected State Attorneys.

The OSP is a creature of limited jurisdiction established by the Florida Constitution to address the challenge of statewide organized criminal activity. *See* Art. IV, § 4 (c), Fla. Const; Fla. Exec. Order No. 84-150 (Aug. 8, 1984). Consistent with this purpose, OSP's original enabling legislation limited its authority to an enumerated list of crimes, including fraud, extortion, drug crimes, and violations of the Florida RICO Act, when any such offense "is occurring, or has occurred, in two or more judicial circuits as part of a related transaction" or "is connected with an organized criminal conspiracy affecting two or more judicial circuits." *See* § 16.56(1)(a), Fla. Stat. (1986). *See also Zanger v. State*, 548 So. 2d 746, 747 (Fla. 4th DCA 1989) (reversing conviction for failing to properly allege OSP jurisdiction on the face

of the information, which requires showing that crimes would implicate more than one judicial circuit).

Florida law explicitly limits OSP jurisdiction to large-scale, complex, and organized criminal conspiracies that extend beyond a single judicial circuit. § 16.56(1)(a)(16). The rationale behind the OSP's creation was to hand such complex cases to statewide prosecutors when they could not be effectively or efficiently prosecuted by a single-circuit state attorneys' office. *See* Fla. Exec. Order No. 84-150 (Aug. 8, 1984). The OSP was never imagined or intended to investigate isolated instances of voter confusion caused by Florida's own failure to administer its voting rights restoration system and thereby become a de facto voter police.[2]

Rather, the legislature and voters created the OSP out of sheer necessity. Florida's twenty State Attorneys were not "responsible for nor aware of crime problems in other parts of the State" and there was "no unified or central direction . . . on existing or imminent criminal activity of statewide

[2] Attorney Barbara Linthicum, who helped organize the OSP when formed in 1986 and served on the Florida Elections Commission, states: "At that time, it was about organized crime. I can guarantee you that it never came to anybody's mind that [OSP] would be prosecuting election laws." Lori Rozsa, The First Arrests from DeSantis's Election Police Take Extensive Toll, Wash. Post (May 1, 2023), https://www.washingtonpost.com/nation/2023/04/30/desantis-election-police-arrests-florida/#.

importance which should have a unified state-wide response."[3] The OSP's prosecutions since its inception in 1986 are demonstrative of the multi-circuit crimes it was designed to pursue: prosecuted crimes include organized fraud, human trafficking, Medicaid fraud, and drug trafficking.[4] One person voting in one county presents a blunt and unprecedented departure from the OSP's historic prosecutions.

Furthermore, the legislature cannot accord more powers to the OSP than are provided by the Florida Constitution. Unlike the constitutional grant of broad discretionary authority to the State Attorneys, the OSP's creation in the Florida Constitution is limited in nature, describing the statewide prosecutor as having only "concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law." Art. IV, § 4(c), Fla. Const. Thus, the OSP's limited jurisdictional confines prescribed by the Florida Constitution cannot be expanded legislatively or judicially. The Fourth District Court of Appeal did

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[3] The Florida Bar Special Committee on the Statewide Prosecution Function, Report to the Board of Governors 1, 12 (1977), https://tinyurl.com/4csp9r67.

[4] *See* Office of the Attorney General, *Office of Statewide Prosecution Annual Reports*, https://www.myfloridalegal.com/statewide-prosecutor/office-of-statewide-prosecution-annual-reports (last visited Nov. 28, 2023).

not address this point in its opinion. As Judge May noted, "history purpose and intent of both the constitutional and statutory authority for the OSP does not support the [majority's] position." *State v. Hubbard,* 392 So. 3d 1067, 1073 (Fla. 4th DCA 2024)(May, J. dissenting). Therefore, while the Fourth District does not address the issue, it nonetheless violates Article 4, section 4(b).

Indeed, in addressing this issue directly, the Sixth District Court of Appeal held that OSP conduct violated the Florida Constitution where multicircut conduct is not present. *See, State v. Washington*, 403 So. 3d 465 (Fla. 6th DCA 2025). The Washington court goes into detail in concluding that Washington's alleged actions (stipulated facts of which are the same here) could not meet the multi-circuit definition in the Florida Constitution or the enabling statute and therefore, OSP lacked authority to prosecute. *Id.,* at. 476; 480.

Section 16.56(1)(a), Fla. Stat. (2022), likewise narrows the OSP's jurisdiction stating that it may "investigate and prosecute" certain crimes but "shall have such power only when such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits." *Tacher*, 84 So. 3d at 1132–33.

Here, like in Washington, the stipulate facts establish that the OSP exceeded Its jurisdictional mandate. The facts stipulate that the charged offense conduct of falsely filling out a voter registration application and voting by Mr. Hubbard occurred exclusively in Broward County on no other jurisdiction. (R. 83–84). Therefore, the OSP lacked both constitutional and statutory authority to prosecute Mr. Hubbard for the criminal allegations of false election registration affirmation and voting by an unqualified elector.

A. The State cannot use Chapter 2023-2 to expand OSP jurisdiction in this pending case.

To save its prosecution against Mr. Hubbard, the State took great pains to argue in the District Courts of Appeal that Chapter 2023-2 and the amended statute Section 16.56 broadens the OSP jurisdiction enough to grant it authority over Mr. Hubbard. The gravamen of the Fourth District Court of Appeal opinion rests on the grounds that the amendment to section 16.56 grants OSP the authority to prosecute irrespective of constitutional limits on its power. This position, simply put, is not supported by this Court's jurisprudence.

1. The State failed to preserve any argument related to Chapter 2023-2 because it did not raise it before the trial court.

The Fourth District Court of Appeal rested its opinion primarily on the grounds that the amendment to section 16.56 applied retroactively and

allowed OSP to prosecute. However, the State did not preserve this argument for appellate review because it did not present this argument to the trial court or secure a ruling on it. Indeed, as noted by judge May in her dissent and by the unanimous majority in Washington, this issue was not preserved for appeal. Specifically, Judge May stated. "[s]imply put, the State failed to preserve the issue: the State never raised the 2023 amendment or the 'affecting or has affected' language from the Florida Constitution in the trial court." *State v. Hubbard,* 392 So. 3d at 1073 (May, J. dissenting). OSP did request the Fourth District to relinquish jurisdiction to raise this but that motion was denied. Additionally, the Washington court was faced with a similar preservation issue and held, "the State did not preserve the issue for our review." *Washington v. State*, 430 So. 3d 465, 476 (Fla. 6th DCA 2025). Furthermore, with respect to this case, the Sixth District did not certify conflict on this ground because, "the *Hubbard* majority did not expressly rule on the preservation issue or otherwise detail the procedural facts that would inform such a ruling, so we are unable to determine whether our decision on preservation is in conflict." *Id,* at 479, n.8.

It is axiomatic that to preserve a matter for appellate review, a party must present the specific legal argument to the trial court. *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005). Absent

preservation in this manner or fundamental error, "an appellate court will not consider an issue that has been raised for the first time on appeal." *Vorbeck v. Betancourt*, 107 So. 3d 1142, 1147 (Fla. 3d DCA); *see also Orton v. State*, 212 So. 3d 377, 379 (Fla. 4th DCA 2017). The State did not raise this specific argument in the trial court, and the record on appeal is devoid of any such argument by the State. Indeed, the State attempted to remedy its failure to raise this issue by moving to relinquish jurisdiction from the Fourth District, which denied the State's motion to relinquish. Therefore, the State's argument that the OSP can prosecute Hubbard pursuant to Chapter 2023-2 is not cognizable in this appeal and should not be considered by this Court.

2. In the alternative, Chapter 2023-2 does not retroactively confer the OSP with the requisite authority to prosecute Mr. Hubbard.

Notwithstanding the preservation issues, Chapter 2023-2 does not operate retroactively. The amended statute was not in effect when the information was filed against Mr. Hubbard, when the trial court properly dismissed the charges, nor when the State sought this appeal. The State cites no case or authority that would allow an amendment to apply retroactively **after** a dismissal has been entered.

Indeed, the amendment post-dates the dismissal here and is not retroactive. Had the legislature intended for this to be retroactive, it could have certainly written that into the legislation. What the legislature did

affirmatively provide was a clear effective date of the amendment: February 15, 2023. Thus, the statute applies from that date forward. *See Landgraf v. USI Film Products,* 511 US. 244, 272 (1994) (finding that statutory enactments "will not be construed to have retroactive effect unless their language requires this result"). The Fourth District was wrong when it concluded otherwise.

Additionally, the Fourth District did gave short shrift to Section 775.022(3) fundamentally misapplied it. Section 775.022 (3) states an "amendment of a criminal statute operates prospectively . . . ." and "as used in this section the term 'criminal statute' means a statute, **whether substantive or procedural**, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime." § 775.022, Fla. Stat. (2019) (emphasis added). However, the Fourth District concludes that the amendment is procedural and still subject to retroactive application. *Id.* The Fourth District then proceeds to define a "procedural" law as one "which provides or regulates the steps by which one who **violates a criminal statute is punished**." *Id*., (emphasis added) citing *Love v. State*, 286 So. 3d 177, 185 (Fla 2019). The Fourth District then inexplicably concludes section 16.56 is not a criminal statute. *Hubbard*, at n.1. However, section 775.022 plainly defines what a

criminal statute is for the purpose of its operation. Indeed, section 775.022(2) states "[a]s used in this section, the term "criminal statute" means a statute, whether substantive or procedural, **dealing in any way with** a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime." § 775.022(2), Fla. Stat. (2019)(emphasis added).[5] A crime cannot be punished without being prosecuted and thus, a statute that deals with who or what may prosecute surely deals with criminal law for the purposes of section 775.022.

The flaw in the Fourth District's analysis here stems from its reliance on caselaw from 2019 and before on this point illuminates its misapprehension of section 775.022, Florida Statutes (2019). This section, which post-dates the caselaw relied upon, plainly states that criminal statutes "whether substantive or procedural" must operate prospectively in the absence of clear legislative intent. 775.022(3). The Fourth District specifically states, "[t]he legislature did not expressly indicate an intent that the amendments apply retroactively." Hubbard, opinion, p. 7. Nonetheless, the Fourth District attempts eliminate 775.022's application here by declaring

[5] In footnote 1, the Fourth District mistakenly cites that this language is from section 775.022(3) however it is from 775.022(2).

that the 2023 amendment to section 16.56 is not a criminal statute as defined in 775.022. Hubbard, p. 8 fn. 1.

However, concluding that the 2023 amendment does not "in any way" deal with a crime or its punishment is antithetical to the Fourth District's reasoning on the substantive versus procedural question that forms the basis of its ruling. In holding that the 2023 amendment is procedural, the Fourth District stated procedural laws are those, that regulate "the steps by which **one who violates a criminal statute** is punished. Hubbard opinion, p. 7.(emphasis added). Thus, the Fourth District concluded that for the purposes of deciding if the 2023 amendment is procedural, the court had to conclude it deals "in any way" with crime or its punishment. If the 2023 amendment deals with the steps of a criminal prosecution it must also follow that those steps "deal" in some way with a crime. *See* §775.022(2), Fla. Stat (2019). Stated another way, the court conflated the definition of procedural statutes with the definition of criminal statutes as enunciated in section 775.022(2). Indeed, section 775.022 makes this abundantly clear because it specifically applies to criminal laws "whether substantive or procedural." *Id.* Thus, the critical distinction for section 775.022 is whether the statute deals in any way with crime, not, as the Fourth District concluded, whether it is substantive or procedural. Certainly, a statute that purports to take single

circuit conduct and make it multi-circuit so that the OSP may extend its long arm into a judicial circuit, deals with crime in at least some way. See *Hubbard*, May, J. dissenting p. 12.

The amended statute purports to give the OSP jurisdiction over voter registration and voting-related crimes where they occur in two or more judicial circuits as part of a related transaction or when they affect two or more judicial circuits even without a conspiracy. § 16.56(1)(c), Fla. Stat.; Ch. 2023-2, §§ 1-2 Laws of Fla. (effective Feb 15, 2023). Thus, OSP necessarily presents a two-staged argument: (1) The amendment that became effective months after the State filed this appeal is retroactive and (2) if it is retroactive, Mr. Hubbard's conduct affected two or more judicial circuits, even though his conduct was confined solely to Broward County. This argument fails on both accounts.

Here, the State attempted to fashion a retroactivity argument by claiming the amendment at issue is procedural because it regulates the steps by which one who violates a criminal statute is punished. This amendment, however, does not accomplish that. Regardless of what Section 16.56 says about OSP jurisdiction, the steps to punish a voting crime is to file an Information and present evidence of the crime. It is a different question entirely regarding which office is authorized to prosecute. Here, the facts to

sustain a conviction are identical, regardless of whether the prosecution is handled by Broward County or the OSP. In other words, prosecutorial authority is independent of whether a criminal statute was violated. The offenses at issue in this case were chargeable at the discretion of the Broward State Attorney. A legislative amendment that attempts to broaden the OSP's authority cannot create jurisdiction where it did not otherwise exist.

The more appropriate analogous law to 16.56 is the law governing the filing of a complaint or a change in the rules of evidence. With regard to complaints, the applicable law is the law at the time when the complaint is filed. Indeed, the Florida Supreme Court has held that "[a] new rule concerning the filing of complaints would not govern an action in which the complaint had already been properly filed under the old regime . . . ." *Love v. State,* 286 So. 3d 177, 187–88 (Fla. 2019).

Interestingly, the amendment upon which the State relies defines, creates, and regulates the right of the OSP to prosecute voting offenses without a criminal conspiracy. Since it defines and regulates that right, by definition, the amendment is a substantive law and therefore not subject to retroactive application. *See DeLisle v. Crane Co.,* 258 So. 3d 1219, 1229 (Fla. 2018) (holding a statutory amendment incorporating *Daubert* was not substantive because it did not "create, define, or regulate a right"); *Hight v.*

State, 253 So. 3d 1137, 1140 (Fla. 4th DCA 2018) ("[T]he amendment has no retroactive effect since it is a substantive, not a procedural, change in the law.").

B. The charged voting crimes occurred in a single circuit and do not affect the entire state.

The Fourth District concluded, again without record support, that Mr. Hubbard's actions occurred in Broward and Leon Counties because, "voter fraud impacts the public's confidence in elections throughout the state." (Hubbard at p.). The court accepted the State's argument here even though the State raised it for the first time on appeal. The Fourth District now holds that all voting affects the entire state because "public confidence" may be impacted. Thus, in the view of the Fourth District, OSP may prosecute all voting offenses irrespective of long-standing statutory and constitutional limitations.

In the Fourth District estimation, all voting crimes automatically occur in and affect more than one judicial circuit merely by virtue of a claimed impact to public confidence. However, there are no facts in the record regarding public confidence in Florida's voter system. More precisely, the record is entirely devoid of any evidence that Mr. Hubbard's conduct caused a member of the public to lose confidence in the election, let alone the entire public in Florida at large. Without such evidence, there is no basis to

conclude public confidence is impacted, only supposition outside the record on review.

Furthermore, the Fourth District may not elevate a local act by a single person to the level of multi-circuit action merely by presenting the specter of eroded public confidence. If public confidence were the bellwether of what constitutes a statewide impact, then a multitude of offenses would fall into that category. For example, workers' compensation fraud undermines the working public's confidence that they will be protected if injured on the job. Property crimes can undermine public confidence in the general welfare of homeowners. Insurance fraud crimes can undermine public confidence in the ability of the injured to obtain insurance proceeds for fair claims. Even mortgage fraud can undermine public confidence in the housing market. The list can go on. If the Fourth District's position stands, the legislature can grant OSP the unrestrained authority to prosecute virtually any crime possible—regardless of its size and scope—based on restoring "public confidence." Such a proposition would render the OSP's jurisdiction virtually limitless, a result in direct conflict with the Florida Constitution and office's very purpose of creation.

The is no record evidence that allowing local State Attorneys to exercise their authority to prosecute voter crimes is somehow insufficient or

incapable of preserving public confidence. What the State and the Fourth District's opinion are saying is that the elected State Attorney in any given county is ineffective and incapable of safeguarding the very public that voted for them. Indeed, by usurping a State Attorney's long-standing authority to prosecute crimes in its circuit under the guise of public confidence, the State and the OSP will erode the public's confidence in their duly elected local State Attorney—the very thing it claims to protect. The amorphous need to safeguard public confidence should not be a reason to expand OSP jurisdiction to the constitutional breaking point.

C. Mr. Hubbard's voting activity did not trigger government processes nor cause government action in at least two circuits sufficient to create multi-circuit prosecution authority.

The Fourth District concluded because paperwork was sent from Broward County to Tallahassee, Mr. Hubbard's alleged conduct "occurred in or affected two or more judicial circuits." *State v. Hubbard,* 392 So. 3d 1067, 1073 (Fla. 4th DCA 2024). The court concluded that simply "submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the Secretary of State in Leon County. So too does voting in an election in Broward County. As a result, the OSP had the authority to charge Hubbard with these crimes." *Id*.

Yet, this assertion is based and relies upon facts not in the record. There is nothing in the stipulated facts that indicates there is record support for the contention that any governmental action was undertaken in Leon County other than information being sent by the Broward County Supervisor of Election to the Secretary of State. (R. 41-42; R1. 68–69). In fact, all of Mr. Hubbard's alleged actions occurred in Broward County and at no point did he "physically enter the Second Judicial Circuit, nor did he himself mail or electronically transfer anything to the Second Judicial Circuit." (R. 41-42; R1. 69). Again, the act of voting occurred exclusively in Broward County.

Furthermore, the Fourth District's conclusion here appears to be grounded on facts that are not in the record. Specifically, the Fourth District stated that Mr. Hubbard submitted his voter registration "**with knowledge** that the application would be sent to the Department of State in Leon County for verification." *State v. Hubbard,* 392 So. 3d at 1073 (emphasis added). The Fourth District does not cite to the record or any source for this assertion. Indeed, there are stipulated facts that the Fourth District cited in their entirely. *Id.,* at 1069-170. In none of the eleven paragraphs of stipulated facts is an assertion that Mr. Hubbard **knew** anything would be sent to Leon County. This is critically important since the Fourth District holds that the mere fact that something was sent Leon County caused Mr. Hubbard's actions to

"occur in both Broward and Leon County . . . " as part of a related transaction. *Id*. More importantly, the Fourth District specifically used the worked "fraudulent" with regard to the voter registration. Faud requires scienter or knowledge. *Id.,* at 1073. There is no record fact or evidence that Mr. Hubbard possessed such knowledge or intent. The court's erroneous declaration that Mr. Hubbard knew paperwork would be sent to Leon County seems to be a significant basis of its decision. On review of the record facts, there simply is no basis for the court's conclusion.

When one views the stipulated facts and what is contained therein, OSP has no basis to charge Mr. Hubbard. The charging document accuses Mr. Hubbard of falsely affirming a voter registration application in Broward County (Count 1) and willfully voting in a Broward County election (Count 2). (R. 20, 68–69). The facts as they exist in the stipulations must be viewed in light of the offenses charged in the Information. Mr. Hubbard was charged in Count 1 with willfully affirming falsely to an affirmation in connection with an election. (R. 41-42; R1. 9). In other words, filing out the voter registration card—which happened exclusively in Broward County, not Leon County. Likewise, count 2 charged Mr. Hubbard with voting in an election in Broward County "knowing he is not a qualified elector." (R. 41-42; R1. 9). The is no question that Mr. Hubbard did not cast a vote in Leon County; the State itself

stipulated to this fact, conceding that all of Mr. Hubbard's alleged crimes occurred exclusively in Broward County.

There is nothing in the charges that contemplates Leon County or the Secretary of State. Rather, the plain language of the Information and stipulated facts illustrate that all facts necessary for the State to prove its case occurred, if at all, in Broward County. None of those facts are alleged to have occurred in Leon County. Thus, OSP jurisdiction cannot be accomplished within the confines of Florida law or logic.

Indeed, if this position were to hold, then many, if not all, homeowner's insurance fraud prosecutions would come under OSP jurisdiction. Take, for instance, a Broward homeowner who, acting alone, attempts to defraud their insurance carrier after a storm. The home is in Broward County, the damage occurred in Broward County, the adjuster who investigates the property does so in Broward County, and the claim of loss is completed and singed in Broward County. In the Fourth District's view, the OSP could prosecute that insurance fraud because insurance rates may speculatively rise for all Floridians and because the Department of Financial Services, Office of Insurance Regulation is in Tallahassee, even though the fraud occurred solely in Broward County. Surely, such a result goes far beyond the limited jurisdictional threshold for the OSP.

Such conclusions lead to absurd results. It is settled that Florida law may not be interpreted to allow for absurd results. *Thompson v. State*, 695 So.2d 691, 693 (Fla.1997); *State v. Hamilton*, 660 So.2d 1038, 1045 (Fla.1995). As Judge May succinctly states in her dissent, allowing such tenuous connection to Leon County will make,

> any act committed in a single judicial circuit that involves licensing in the Second Judicial Circuit necessarily fall within the grasp of the OSP's overreaching arm. Crimes such as driving with a suspended license or state agency regulations would all transform a single judicial circuit offense into one that the OSP could prosecute.

State v. Hubbard, 392 So. 3d at 1075, (May, J. dissenting).

Taking Judge May's analogy even further, the Fourth District's opinion will allow OSP jurisdiction over a single circuit arson case because the smoke from the fire traveled to an adjacent circuit thereby negatively affecting the air quality in that circuit. This is not the type of conduct the Florida Constitution contemplated OSP being able to prosecute. An additional absurd result here is that OSP would have authority to prosecute voting crimes in only 19 of Florida's 20 judicial circuits. This is because if one were to allege such a crime in Leon County, there can be no argument that all aspects occurred only in one circuit. Florida law cannot countenance such a result.

Indeed, like the 2023 amendment, Article IV section 4(b) of the Florida Constitution gives the OSP authority only where a violation of criminal law is "occurring or having occurred in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law." Art. IV, §4(b), Fla. Const. Nothing in the stipulated facts indicates a relationship or transaction between Mr. Hubbard and the Secretary of State. The Secretary of State was merely engaged in a ministerial function of creating a card and sending it to Mr. Hubbard as it does with thousands of voter registrations. A function it ultimately failed to properly do since it issued the card to Mr. Hubbard when, according to the information OSP filed, it should not have.

The trial judge understood this when it considered the State's proposal of a Tallahassee impact and concluded that it did not alter the OSP's limited jurisdictional authority. There, the court stated:

> [I]n order for the OSP to have the authority to prosecute[,] there must be a showing that the Defendant's actions affected Broward County and Leon County . . . . Due to the stipulations in this case, the OSP cannot establish jurisdiction. The Defendant never in any way, shape[,] form or fashion entered Leon County. He never mailed anything to Leon County[,] nor did he attempt to contact anyone in or from Leon County. Thus, he committed no actions in Leon County and thereby his crime did not affect Leon County. Most would agree with the idea that any crime committed against any citizen in Florida affects all Floridians. However, this premise does not establish jurisdiction for the purposes of the OSP. If it did, then the OSP would have unlimited authority to prosecute

> anyone who commits a crime in one circuit but that persons actions "affected", no matter how directly or indirectly, those in another circuit. Where does it end.

(R. 85–86).

Furthermore, there is no plausible argument that Mr. Hubbard could be prosecuted in Leon County for merely registering to vote and voting in Broward County. Leon County is a locale to which Mr. Hubbard has no connection, never physically entered or contacted in the relevant period, and in which his alleged criminal conduct did not occur in any way, shape or form. *Martin* explained that venue for criminal prosecution depends exclusively on where the crime's overt acts took place. *Martin v. State*, 488 So. 2d 653, 655 (Fla. 1st DCA 1986). "[P]rosecution for a criminal conspiracy may be brought in the county where the unlawful combination is formed or in any county where the overt act is committed by any of the conspirators in furtherance of the unlawful confederacy." *Id*. Here, it is stipulated that there is no conspiracy so the only place the prosecution can be brought is Broward County, and by the Broward County State Attorney.

Furthermore, the notion that criminal activity transiting counties constitute multi-jurisdictional crimes for which the OSP has authority to prosecute fails under *State v. Cisneros*, 106 So. 3d 42, 44–45 (Fla. 2d DCA 2013) ("The State argues that the statewide prosecutor may pursue charges

against a defendant anywhere in the state as long as the crimes involved two or more judicial circuits [b]ut such authority does not apply . . . where the State failed to prove Cisneros had ties to any county outside of Lee County.").

Just as Broward County is the sole county in which the alleged crimes were committed, so, too, is Mr. Hubbard's prosecution limited to Broward County and the proper authority of its State Attorney.

II.

THE CHARGED VOTING CRIMES DO NOT AFFECT MULTIPLE CIRCUITS AS PART OF ANY RELATED TRANSACTION.

The crimes with which Mr. Hubbard has been charged define his acts and his acts alone. The Information exclusively alleges acts by Mr. Hubbard, not actions by the Secretary of State or other unidentified government entities. Count 1 charges Mr. Hubbard with falsely signing voter registration material and deals with **his** alleged act of signing. The Information charged him as follows:

> **104.011 False swearing; submission of false voter registration information; prosecution prohibited. —**
>
> (1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out

> of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Similarly, Count 2 charges Mr. Hubbard with the act of voting. Like Count 1, the Information focuses exclusively on his alleged act of voting. The Information charges him as follows:

> **104.15 Unqualified electors willfully voting. —**
>
> Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Every act with which Mr. Hubbard is charged occurred in Broward County, a single judicial circuit. By concluding there was "actual impact," the Fourth District establishes a new law without record support that all voting related crimes affect the whole state, and by extension, every judicial circuit. Such a conclusion is inconsistent with the constitutionally mandated limited jurisdiction of the OSP. Taking Fourth District's hodling to its logical conclusion would mean that in all voting crimes cases, the OSP may prosecute a defendant in any circuit in the state.

The State's attempt at fashioning an ever-expanding OSP jurisdictional universe was rejected in *Winter v. State*. 781 So. 2d 1111, 1116 (Fla. 1st DCA, rev. denied, 799 So. 2d 219 (Fla. 2001), disapproved on other grounds, *Carbajal v. State*, 75 So. 3d 258 (Fla. 2011) (challenge to OSP jurisdiction barred by time limitations of Rule 3.850). Faced with similar facts, the First

District Court of Appeal, however, flatly disagreed with the State's expanded notion of OSP jurisdiction and explained the State:

> . . . falls short of the showing required to invoke an OSP prosecution. The State concedes that appellant's acts occurred in Leon County and that the Fund is housed in Leon County. Absent some clear proof of an actual impact in other judicial circuits, the statutory requirement of "affecting two or more circuits" is not satisfied. No such proof or stipulated facts appear in this case. The legislative grant of OSP authority applies "only" when an offense enumerated in the statute has occurred in two or more judicial circuits as part of a related transaction or, as is relevant here, when "connected with an organized criminal conspiracy affecting two or more judicial circuits." § 16.56(1)(a), Fla. Stat. We find that the Legislature has purposefully limited OSP jurisdiction, and we therefore decline to give the expansive reading advanced by the State.

Id. at 1116.

Furthermore, this Court held in *Carbajal*, that OSP jurisdiction is based on where the defendant's charged criminal activity occurred. 75 So. 3d 258, 262 (Fla. 2011). This Court plainly held that if a defendant's "criminal activity in Florida actually occurred in only Lee County, Florida, the OSP was not authorized to prosecute charges arising from that conduct." *Id*. at 262.

In other words, the locus of the alleged criminal activity is paramount. *See id*. When the factual location of Mr. Hubbard's charged acts and the stipulated facts are considered, it becomes clear that the OSP is without jurisdiction to proceed because the relevant action occurred in only one judicial circuit. A defendant's criminal activity occurring in a single judicial

circuit cannot give rise to OSP jurisdiction merely because there might be governmental bureaucratic action in a different circuit. *Winter,* 781 So. 2d at 115.

Winter is particularly instructive here. Here, as in *Winter*, the defendant's activity was limited exclusively to one circuit. Additionally, there is a ministerial entity maintaining a ministerial function. Just like *Winter*, conduct exclusively done in one circuit cannot be extrapolated to another circuit based solely on that existence of a ministerial function. Taking the lessons from *Winter* and *Carbajal*, the Fourth District's opinion seems to miss the forest for the trees. Mr. Hubbard's forest is exclusively located in Broward County. It matters not, for OSP jurisdiction, that a leaf might fall from a tree in Leon County.

The stipulated facts here establish that Mr. Hubbard did not leave Broward County and all alleged acts occurred in Broward County. (R. 68–69). This is starkly different than the conduct that created OSP jurisdiction in *Tacher*. There, the defendants were charge with a drug trafficking conspiracy. *Tacher*, 84 So. 3d 1131, 1132 (Fla. 3d DCA 2012). The OSP specifically alleged that one of the coconspirators brought the drugs by bus through seven circuits. *Id.* Tacher argued his conduct occurred only in one circuit: Miami-Dade County. *Id.* The Third District Court of Appeal held that

the co-conspirator's travel through various circuits amounted to a conspiratorial crime in each of those circuits. *Id.* at 1135. That conduct was "sufficient evidence to establish the OSP's authority under the first theory provided in section 16.56(1)(a)." *Id.* at 1134.

Given the evident action of Tacher's co-defendant traveling through Florida while in possession of the contraband they were conspiring to sell, the Third District's opinion is uncontroversial. However, the facts of *Tacher* bear zero resemblance to the facts here. Tacher had record evidence that a confederate traveled throughout multiple Florida circuits with the contraband at the center of the conspiracy. In Mr. Hubbard's case, the record stipulates that there was no conspiracy and Mr. Hubbard never left Broward County or entered Leon County. The voting crimes that the OSP charged Mr. Hubbard with involve only his conduct which occurred in a single circuit.

While local crimes are deemed to occur in two or more circuits, for OSP purposes, when they happen as part of' a statewide or multi-circuit related transaction. But, for this proposition to apply here, the Secretary of State would have to be a co-conspirator, like the co-conspirator transporting drugs in *Tacher*. Tacher never left the circuit he was in and the only reason the court found OSP jurisdiction was because his co-defendant was committing the crime with him physically in other circuits. The only way, consistent with

Tacher, to find multi-circuit conduct here is, as the trial court aptly noted, to have the Secretary of State to "become a "co-conspirator." However, this by definition is not the case here because the parties have stipulated there are no co-conspirators. (R. 87). Thus, like in *Winter* and *Carbajal*, all essential elements of the voting crimes occurred, if at all, in Broward County. The OSP's limited authority does not extend to these single circuit voting offenses.

There is no question, given the stipulated facts, that this case is bereft of any criminal enterprise across jurisdictions. To the contrary, the stipulated facts establish that Mr. Hubbard, acting alone, filled out his Florida Voter Application in Broward County in July 2019 and again acting alone, voted in Broward County in November 2020. (R. 41-42; R1. 68–69). There is no record evidence that Mr. Hubbard was engaged in any act with any other person, entity, co-defendant or co-conspirator. Because the State stipulated that Mr. Hubbard acted on his own, its new claims that his act of voting was part of a broader, statewide conspiracy, cuts against its own rationale: for the State's position to have any credibility, it would need to, at the very least, indict the Secretary of State as a co-conspirator, which it will unlikely do.

There is no support in the Florida Constitution or any relevant statute establishing that the OSP has the authority to prosecute a solitary voter whose conduct occurred exclusively in a single judicial circuit.

It has long been the law in Florida that the State Attorneys have the exclusive responsibility to prosecute crimes and the discretion to determine which crimes to prosecute. See *In Interest of S.R.P.*, 397 So. 2d 1052 (Fla. 4th DCA 1981) ("[A] state attorney is vested with discretionary authority to file an information . . . ."). Nothing in the mechanisms that created the OSP alters this fact. Indeed, the OSP is ancillary to the long-standing authority of States Attorneys in specifically defined multi-circuit matters. This does not change where the alleged crime involves election or voting offenses. State Attorneys in Florida have routinely and regularly prosecuted election law violations without interference from the OSP, and the State presents no valid reason why State Attorneys cannot be trusted to carry out their mandate. The amorphous need to prevent voter distrust should not be a reason to expand OSP jurisdiction in violation of Florida's Constitution and laws.

CONCLUSION

Based on the forgoing arguments and authorities, Petitioner, Terry Hubbard, respectfully requests this Court to reverse the Fourth District Court of Appeal and enter an order dismissing the charges against him because

the Statewide Prosecutor lacks the requisite authority and jurisdiction to prosecute Mr. Hubbard for voting-related issues.

Respectfully submitted,

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Arial 14-point font and contains words in compliance with the requirements of Florida Rule of Appellate Procedure 9.210(a).

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic mail to counsel for the State of Florida, Assistant Attorney Solicitor General, Alison E. Preston, Allison.prestron@myfloridalegal.com this 22nd day of May 2025.

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