IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,	**CASE NO: F22-15009**
Plaintiff,	**JUDGE: HIRSCH**
vs.	**OSP NO.: 2022-0277-MIA**
ROBERT LEE WOOD	
Defendant(s).	

_____/

STATE'S MOTION TO STRIKE AND LEGAL RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW the State of Florida, by and through the undersigned Chief Assistant Statewide Prosecutor, who files this Motion to Strike and Legal Response to Defendant's Motion to Dismiss and avers as follows:

MOTION TO STRIKE

Defendant has filed an unsworn motion alleging facts both within and without his personal knowledge. This Court should strike his motion pursuant to Tacher v. State, 84 So.3d 1131 (Fla. 3d DCA 2012). In that case, the Third District dealt with a motion to dismiss challenging to the authority[1] of the OSP in a manner similar to Defendant's challenge here. In rejecting that defendant's challenge and reversing the circuit judge's order of dismissal, that court made the following observations:

> We also conclude the procedure used to attack the OSP's authority to prosecute the charged offenses may have led the trial court to err. **We suggest that such a motion be filed as a sworn motion to dismiss**, similar to those filed under rule 3.190(c)(4), Florida Rules of Criminal Procedure, and stating that there are no material disputed facts and the undisputed facts do not establish the authority of the OSP to prosecute the charged offenses. Upon the filing of such a motion, the OSP may traverse or demur to the motion, and unless specifically denied by the OSP in the traverse, the factual matters alleged in the motion to dismiss shall be considered admitted. If the OSP files a traverse that, with specificity, denies under oath the material fact or facts alleged in the sworn motion to dismiss, the motion shall be denied. If the OSP files a demur or otherwise admits the factual allegations, the trial court should conduct a hearing to address the merits of the motion. We believe this procedure will provide the trial court with a more complete recitation of the facts, better enable

[1] See Tacher, 84 So.3d at 1131 ("Tacher's motion to dismiss[was] incorrectly characterized as an issue of the OSP's jurisdiction rather than its authority . . . .").

> the trial court to make an informed decision, and provide this Court with a more complete record.

Tacher, 84 So.3d at 1136. Admittedly, the Third District's language of "we suggest" is not legally binding, but this Court has the power to ratify Tacher's suggestion and insist on sworn facts from the Defendant and a demurrer from the State before proceeding to the legal issues raised in Defendant's motion, both to assist its own determination of the law and to provide a clear record for appeal by either side. Given that Tacher is a recent opinion that comes directly from this Court's supervisory district, the Undersigned avers that it would be sound practice for this Court to strike Defendant's unsworn motion without prejudice and take it up again once Defendant provides a sworn statement of facts within his personal knowledge that can survive a traverse and allow this Court to reach the legal issues Defendant raises. To the extent that this motion involves facts concerning the mechanics of Florida's voting and elections systems that are beyond Defendant's personal knowledge, the State will supplement the record with its own material facts. See, e.g., State v. Terma, 997 So.2d 1174, 1178 (Fla. 3d DCA 2008) ("It is sufficient for the State to file, under oath, a traverse through the state attorney or a designated assistant state attorney specifically denying a material fact alleged in a Rule 3.190(c)(4) motion to dismiss or asserting additional material facts that establish a prima facie case.").

LEGAL RESPONSE

Alternatively, should this Court elect to proceed to the legal merits of Defendant's motion without requiring Defendant to swear to facts within his personal knowledge as required by Florida Rule of Criminal Procedure 3.190(c)(4), the State responds as follows:

FACTS

Even though Defendant's motion is unsworn, the State mostly agrees with his formulation of facts with the exception of Numbers 5 and 8.

Defendant's Fact Number 5 says that "[w]ithout any affirmative role or action by Mr. Wood, the application was forwarded by the Miami-Dade Supervisor of Elections to the Florida Secretary of State in Leon County, Florida." The State disagrees that Defendant's Florida Voter Application was forwarded to Leon County "[w]ithout any affirmative role or action" by Defendant. The participation of the Secretary of State in the approval process of a Florida Voter Application is a matter of statute, and it would be reasonably foreseeable to anyone who filled out such an application that it would automatically invoke the participation of a governmental entity in the Second Judicial Circuit.

Defendant's Fact Number 8 alleges that "[t]he criminal acts charged in the Information occurred in a single circuit: Miami-Dade County. Any alleged actions taken by Mr. Wood occurred solely in Miami-Dade, were not part of *any* related transactions elsewhere, and did not involve any criminal conspiracy". The State disagrees that the acts charged in the Information were "not part of *any* related transactions", but Defendant's formulation is really more of a legal conclusion than a fact, and the question of whether any "related transactions" did occur is the primary focus of the State's legal argument below.

ARGUMENT

Article IV, Section 4(b) of the Florida Constitution gives the OSP authority to "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." The "general law" governing the OSP's prosecutorial authority is Section 16.56, Florida Statutes (2020), which enumerates specific statutes[2] over which the OSP will have concurrent power with local state attorneys, and further limits the OSP's authority within those statutes to circumstances where an enumerated 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." When interpreting the language of Section 16.56, "[t]he policy behind the creation of the Office of Statewide Prosecution demands that [courts] broadly construe the prosecutorial authority of the statewide prosecutor." King v. State, 790 So.2d 477 (Fla. 5th DCA 2001).

In our case, Defendant's motion relies heavily on the First District's reasoning in Winter v State, 781 So.2d 1111, 1116 (Fla. 1st DCA 2001) (rev'd on other grounds in Carbajal v. State, 75 So.3d 258 (Fla. 2011)). This reliance is problematic because Winter is limited to "that part of [Section 16.51] allowing the OSP to prosecute an offense 'connected with an organized criminal conspiracy affecting two or more judicial circuits.'" The instant case, however, has only one defendant; and the Undersigned does not intend at this juncture to present evidence of a criminal agreement or conspiracy. Rather, the Information alleges that each offense occurred in both the Eleventh and Second judicial circuits "as part of a related transaction"—an additional, parallel ground of authority under Section 16.56. There are a number of Florida cases interpreting this "related transaction" language in the context of ostensibly single circuit acts. See King v. State,

[2] Section 16.56(1)(a)13, Florida Statutes (2020) grants the OSP the authority to investigate and prosecute "[a]ny crime involving voter registration, voting, or candidate or issue petition activities[.]"

790 So.2d 477 (Fla. 5th DCA 2001) (holding OSP authority was proper over single-circuit burglaries that related to a multi-circuit "chop shop" operation conducted by coconspirators); State v. Tacher, 84 So.2d 1131 (Fla. 3d DCA 2012) (holding OSP authority was proper over single-circuit drug deals based on one codefendant's act of transporting drugs through multiple Florida circuits); Snyder v. State, 715 So.2d 367 (Fla. 5th DCA 1998) (holding multiple counterfeit check transactions involving different victims were "related transactions" based on evidence showing the transactions were committed pursuant to a single scheme).

Turning to the instant Information, Count I alleges Defendant "did willfully affirm falsely to an oath or affirmation in connection with or arising out of voting of elections." The document containing this false affirmation is a Florida Voter Registration Application that was signed and submitted by Defendant in the Eleventh Judicial Circuit and was forwarded to the Second Judicial Circuit as part of statutorily-mandated voter approval processes the undersigned will describe in detail below. Similarly, Count II of the Information alleges Defendant "did willfully vote in an election knowing he is not a qualified elector". Defendant's unqualified, illegal vote, which occurred in the Eleventh Judicial Circuit, was tallied with other legal votes and sent up to the Second Judicial Circuit as part of a vote tallying and election certification process. In the State of Florida, it is impossible to complete either the act of registering to vote or the act of participating in an election within a single circuit.[3]

With respect to Count I, Section 97.053(2), Florida Statutes (2022) dictates that "[a] voter registration application is complete and becomes the official voter registration record of that applicant when all information necessary to establish the applicant's eligibility . . . is received by a voter registration official **and verified pursuant to subsection (6)**." (emphasis added). Subsection 6 reads as follows:

> A voter registration application, including an application with a change in name, address, or party affiliation, may be accepted as valid only after the **department** has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant.

[3] Because it would be impossible for Defendant to either register to vote or for his vote to be counted without some electronic, mail or telephonic communication between the Eleventh and Second Judicial Circuits as outlined in the statutes below, circuit court jurisdiction for this case would also lie in the Second Judicial Circuit pursuant to Section 910.15, Florida Statutes (2022) ("A person charged with committing a crime facilitated by communication through use of the mail, telephone, or newspaper or by radio, television, Internet, or another means of electronic data communication may be tried in the county in which the dissemination originated, in which the dissemination was made, **or in which any act necessary to consummate the offense occurred**.") (emphasis added).

(emphasis added).[4] Thus, a person cannot accomplish the act of registering to vote without the involvement of the Florida Department of State. Therefore, if a defendant swears to false information on a Voter Registration Application, that false information does not stop at the office of the locally-elected Supervisor of Elections. Rather, until the application containing said false information is forwarded to and verified by the Florida Department of State—which physically lies within the Second Judicial Circuit—the voter cannot be approved, making the entire offense an inherently multi-circuit crime.

With respect to Count II, Florida Administrative Code 1S-2.053 (2022) mandates that "[a]fter the polls close on the day of the election, the Supervisor on behalf of the county canvassing board shall transmit the summary election results to the Division [of Elections]." Those summary results necessarily include votes cast by unqualified electors like Defendant that are transmitted to the Florida Department of State's Division of Elections, which, once again, is physically located in the Second Judicial Circuit. Concurrently, the Administrative Code's reporting requirement is a prerequisite to the work of the Elections Canvassing Commission, which, per Section 102.111, Florida Statutes (2022), "shall meet at 9 a.m. on the 9th day after a primary election and at 9 a.m. on the 14th day after a general election to certify the returns of the election for each federal, state, and multicounty office." This body is also located in the Second Judicial Circuit.

An instructive set of circumstances can be found Pereira v. United States, 347 U.S. 1 (1954), where the United States Supreme Court dealt with the question of whether defendants who cashed a stolen check drawn against an account in California at a bank in Texas could be charged with Mail Fraud, 18 U.S.C.A. § 1341 and violations of the National Stolen Property Act, 18 U.S.C.A. § 2314. With respect to the charges of Mail Fraud, the defendants argued that the Government could not prove an element of the crime because it was the bank, not the defendants, who actually mailed the stolen check to California. The Supreme Court rejected this argument, holding that "[w]here one does an act with knowledge that the use of the mails will follow in the ordinary course of business, **or where such use can reasonably be foreseen**, even though not actually intended, then he 'causes' the mails to be used." Pereira, 347 U.S. at 8 (emphasis added). Similarly, with respect to the charge under 18 U.S.C.A. § 2314, an element of which requires the Government to prove that a defendant "transport[] in interstate or foreign commerce any . . .

[4] Per Section 97.021(8), Florida Statutes, "'Department' means the Department of State."

money, . . . knowing the same to have been stolen, converted or taken by fraud[,]" the Supreme Court held that:

> When [the defendant] delivered the check, drawn on an out-of-state bank, to the El Paso bank for collection, he 'caused' it to be transported in interstate commerce. **It is common knowledge** that such checks must be sent to the drawee bank for collection, and it follows that Pereira intended the El Paso bank to send this check across state lines.

Pereira, 347 U.S. at 9 (emphasis added).

Once again, both of the crimes in this case may have begun in the Eleventh Judicial Circuit, but they could not have been completed without the involvement of governmental entities within the Second Judicial Circuit.[5] Thus, they are inherently multi-circuit as part of a "related transaction", similar to the ones described in King, Tacher and Snyder. False statements on Florida Voter Applications and votes by unqualified electors necessarily implicate a series of "related transactions" involving the circuits from which those applications and votes originated, as well as the circuits where the various governmental entities tasked with vetting those applications and collecting those votes reside, and the triggering of these legal obligations is as reasonably foreseeable as any other legal obligation in the Florida Statutes.[6] By swearing to a false statement in his application and again by actually voting, Defendant toppled the first domino in a series of cooperative events between the locally-elected Supervisor of Elections in Miami-Dade County and state-level officials with the Florida Department of State, which is physically located in the Second Judicial Circuit, and the OSP has the authority to prosecute those crimes.

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[5] Although this argument reaches beyond what is necessary to decide this motion, the Undersigned further avers that **all** criminal cases dealing with voter registration and elections necessarily involve multi-circuit conduct. After all, every ballot cast in every Florida election contains some item of statewide import, whether it be a decision regarding a state officeholder, an amendment to the Florida Constitution or any number of other ballot items that concern stakeholders throughout the State of Florida. To formulate this reality in terms of Section 16.56(1), the instant charges of "False Affirmation in Connection with Election" and "Voting by Unqualified Elector"—as well as any other charges that arise from voting or elections—are hopelessly entangled with a lengthy, regular series of "related transactions" that occur throughout the State of Florida: Statewide Elections.

[6] Federal courts employ similar reasoning in their determination of venue. In United States v. Reed, 773 F.2d 477 (C.A.2 1985), the Second Circuit dealt with a defendant who was charged in the Southern District of New York for perjuring himself in a deposition that physically occurred in San Francisco. Noting that all parties agreed that the deposition would be "'taken pursuant to notice and . . . the applicable rules . . . of the United States District Court for the Southern District of New York[,]'" the Second Circuit rejected the defendant's improper venue argument, holding that "where the acts constituting the crime and the nature of the crime charged implicate more than one location, the constitution does not command a single exclusive venue." Id. at 478-480; see also United States v. Kirk Tang Yuk, 885 F.3d 57 (C.A.2 2018) ("As far-reaching communications and travel are now easy and common, the 'acts constituting the offense' can, unsurprisingly, span a geographic range that extends far beyond the physical borders of a defendant's district of residence.").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent via Florida Courts E-Filing Portal on this 29 day of September 2022, to Counsel listed below.

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