

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. 22008077CF10A DIVISION: FO JUDGE: Odom - FO, George, Jr. (FO)

State of Florida

Plaintiff(s) / Petitioner(s)

v.

Hubbard, Terry Lewis

Defendant(s) / Respondent(s)

_____ /

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS DUE TO LACK OF SUBJECT
MATTER JURISDICTION**

THIS CAUSE is before the Court upon the Defense Motion To Dismiss Information Predicated Upon Lack Of Subject Matter Jurisdiction in this case. The Court has carefully reviewed the Defendant's Motion and The Motion To Strike And Legal Response To Defendant's Motion To Dismiss filed by the Office of the Statewide Prosecutor for the State of Florida. The Court has carefully reviewed all supplemental opposing and supplemental supporting submissions filed by the parties, the record in this case and the applicable law. The Court takes judicial notice pursuant to F.S. §90.202 of the court orders on defendants (Robert Lee Wood and Ronald Lee Miller) motions to dismiss due to lack of subject matter jurisdiction, in case numbers F2215009 and F2215012 from the Eleventh Judicial Circuit, Miami-Dade County, Florida and is otherwise fully advised. For the reasons set forth below, the Defendant's Motion To Dismiss is **GRANTED**.

I. BACKGROUND

The Office of the Statewide Prosecutor for the State of Florida (hereafter "OSP") on August 17, 2022, initiated a two count Information against Terry Lewis Hubbard (hereafter "Defendant") pursuant to authority granted under §16.56(1)(a), Fla. Stat. The Defendant was charged with one count of False Affirmation in Connection with Election and one count of Voting by Unqualified Elector in Violation of §§ 104.011(1) and 104.15, Fla. Stats. As to Count I, the Defendant is alleged to have completed a Florida voter application on or about July 31, 2019. The application contained his name, date of birth, and listed residence. The application was completed by the Defendant in Broward County, Florida. The completed application was subsequently transmitted to the office of the Broward County Supervisor of

Elections (hereafter “BSOE”). The completed application was forwarded by the BSOE to the Florida Secretary of State (hereafter “FSOS”) whose office is located in Leon County, Florida. The Defendant’s only acts occurred in Broward County and he took no affirmative role or actions in disseminating his completed voter application to Leon County, Florida.

Additionally, the Defendant is alleged to have completed a second Florida voter application on or about February 14, 2020. The application contained his name, date of birth, and listed residence. The Defendant, while completing the application in Broward County, affirmed he was a convicted felon and his voting rights had been restored pursuant to Florida law. See *Fla. Const. Art. VI, § 4*. See also: *Advis. Op. to the Gov. Re: Implementation Of Amendment 4, The Voting Rest. Amendment*, 288 So. 3d 1070 (Fla. 2020). The completed application was subsequently transmitted to the BSOE. The completed application was forwarded by the BSOE to the FSOS whose office is located in Leon County, Florida. The Defendant’s only acts occurred in Broward County and he took no affirmative role or actions in disseminating his completed voter application to Leon County, Florida. The OSP has in their care, custody, and or control certified documents confirming the Defendant became a registered voter on or about August 17, 2019 in Broward County, Florida. The existence of these documents is undisputed. The Defendant was assigned a voter identification number. As a result of the above actions, the OSP charged the Defendant in Count II. The BSOE has in their care, custody and control certified records reflecting the Defendant voted in the 2020 election cycle in Broward County, Florida. The OSP seeks to prove the Defendant was not a qualified elector. The Defendant is alleged to have voted only in Broward County. The parties stipulated that the Defendant did not and or has not voted in Leon County, Florida during the applicable time frame.

Accordingly, the Defense Motion To Dismiss Information Predicated Upon Lack Of Subject Matter Jurisdiction (hereafter “Motion”) asserts the following relief: The OSP lacks subject matter jurisdiction authorized pursuant to §16.56(1)(a), Fla. Stat. to prosecute said claims as filed in the Information.

II. PARTIES JOINT STIPULATION OF FACTS

The following facts are stipulated to by both parties. The Defendant filled out a Florida Voter Registration Application (hereafter “FVRA”) in Broward County, Florida on or about July 31, 2019. The FVRA contained his name, date of birth, and listed his residence in Broward County, Florida. (OSP Joint Stipulation. ¶ 1). The Defendant’s FVRA was submitted by him in Broward County and was transmitted to the BSOE located in Broward County, Florida located in the Seventeenth Judicial Circuit on August 7, 2019. (OSP Joint Stipulation. ¶ 2). The BSOE forwarded the Defendant’s application information from Defendant's FVRA via internet to the FSOS located in Leon County, Florida located

in the Second Judicial Circuit. The Defendant's application was submitted by the BSOE to the FSOS for review on August 8, 2019. (OSP Joint Stipulation. ¶ 3). On August 9, 2019 after the FSOS concluded their review, the BSOE issued the Defendant a voter identification card with Voter ID Number 127072399. (OSP Joint Stipulation. ¶ 4).

Furthermore, the Defendant filled out a second FVRA in Broward County, Florida on or about February 14, 2020, again containing his name, date of birth, and listing his residence in Broward County, Florida. (OSP Joint Stipulation. ¶ 5). That FVRA was also submitted by the Defendant in the Seventeenth Judicial Circuit and was transmitted to the BSOE on February 18, 2020. Information from this second FVRA was not shared with the FSOS located in Leon County, Florida. (OSP Joint Stipulation. ¶ 6). On March 3, 2020, the BSOE issued the Defendant a second voter identification card under the same voter ID Number: 127072399. (OSP Joint Stipulation. ¶ 7). The Defendant voted by mail in the November 3, 2020 general election. The Defendant's ballot was mailed to the BSOE. (OSP Joint Stipulation. ¶ 8). The Defendant's ballot along with all of the other ballots from that precinct, were forwarded to the Florida Supervisor of Elections (hereafter "FSOE") for the purposes of determining the outcome of the November 2020 election. The election included candidates for federal and statewide offices. (OSP Joint Stipulation. ¶ 9). At no point between, on, or about February 14, 2020 nor on or about November 3, 2020, did the Defendant physically enter the Second Judicial Circuit, located in Leon County, Florida. The Defendant did not mail or electronically transfer any documents to the Second Judicial Circuit located in Leon County, Florida. (OSP Joint Stipulation. ¶ 10). The acts charged in the State's Information does not involve a criminal conspiracy. (OSP Joint Stipulation. ¶ 11).

III. LEGAL STANDARD

The Defendant filed his Motion on September 9, 2022. The OSP filed State's Motion To Strike And Legal Response To Defendant's Motion to Dismiss (hereafter " State's Response") on October 14, 2022. All defenses available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the ... information, whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense. *Fla. R. Crim. P. 3.190(b);(c)*. See also *Winter v. State*, 781 So. 2d 1111, 1113 (Fla. 1st DCA 2001). Every pretrial motion and pleading in response to a motion shall be in writing and signed by the party making the motion or the attorney for the party. This requirement may be waived by the court for good cause shown. *Fla. R. Crim. P. 3.190(a)*. The OSP withdrew, in part, State's Response concerning Defendant's Motion being unsworn when filed. The reasons stated on the record. The OSP did not withdraw or waive their legal arguments opposing the Defendant's Motion on the merits as written and renewed grounds also stated on the record. The hearing was held on December 19, 2022 around 10:30 a.m. and all relevant parties were physically present.

Lack of jurisdiction may be raised at any time; *Winter*, 781 So. 2d at 1113 (Fla. 1st DCA 2001). If the Court finds the OSP lacks subject matter jurisdiction to prosecute the Defendant. The Court's jurisdiction is not divested over the felony offense. See *Carbajal v. State*, 75 So. 3d 258 (Fla. 2011); See also *F.S.A. Const. Art. 4, § 4(b)*; *F.S.A. §§ 16.56(1)(a); 26.012(2)(d)*. As a general rule, all allegations in a well-pleaded complaint must be accepted as true when ruling on a motion to dismiss. *Smith v. 2001 S. Dixie Highway, Inc.*, 872 So.2d 992, 993 (Fla. 4th DCA 2004). See *Gomez v. Fradin*, 41 So. 3d 1068, 1070 (Fla. 4th DCA 2010). In this case, the Defendant and the OSP have stipulated to facts which eliminates the need for an evidentiary hearing and fact-finding by this Court concerning the Defendant's Motion. See *State v. Yarn*, 63 So. 3d 82, 84 (Fla. 2d DCA 2011). See *Section II Parties Joint Stipulation of Facts*.

Thus, the Defendant's initial burden of demonstrating the nonexistence of any genuine issue of material fact is satisfied. Furthermore, the parties have conceded on certain facts and thus the OSP does not need to come forward with counterevidence sufficient to reveal a genuine issue. *State v. Kalogeropolous*, 758 So. 2d 110, 112 (Fla. 2000); *Landers v. Milton*, 370 So.2d 368, 370 (Fla.1979). The parties have stipulated to the factual matters which would establish OSP's jurisdiction. See *Luger v. State*, 983 So. 2d 49, 51 (Fla. 4th DCA 2008). In addition, the parties agreed on the record that the statute is clear and unambiguous. Yet, they come to two separate interpretations concerning the meaning of the law and whether the law grants the OSP the prosecutorial authority the OSP seeks to exercise. *Art. IV, § 4, Fla. Const and § 16.56, Fla. Stat.* The interpretation of the law is purely a legal matter. *Williams v. State*, 121 So. 3d 524 (Fla. 2013); *Davila v. State*, 75 So. 3d 192 (Fla. 2011); *Marrero v. State*, 71 So. 3d 881 (Fla. 2011); *Kasischke v. State*, 991 So. 2d 803 (Fla. 2008). It is emphatically the province and duty of the judicial department to say what the law is. See *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

The Defendant's Motion asserts and pinpoints the precise defect in the OSP indictment. *State v. Crafton*, 575 So. 2d 777 (Fla. 5th DCA 1991); *Goodson v. State*, 29 Fla. 511, 10 So. 738 (1892). This Court has discretion to provide the appropriate remedy concerning the Defendant's Motion. *State v. Fried*, 357 So. 2d 211 (Fla. 3d DCA 1978); *Murray v. State*, 154 Fla. 683, 18 So. 2d 782 (1944). A motion to dismiss the information in a criminal case is similar to a motion for summary judgment in a civil case, and, as such, should be granted sparingly. *State v. Brabson*, 7 So. 3d 1119 (Fla. 2d DCA 2008); *Govoni v. State*, 17 So.3d 809 (Fla. 4th DCA 2009); *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015).

IV. JURISDICTION OF THE OSP

The OSP did not exist in Florida common law. F.S. § 2.01. Legislative conversations concerning the creation of the OSP date back to around 1977. See (*Volume 13, Issue 3, R. Scott Palmer and Barbara Linthicum, The Statewide Prosecutor: A New Weapon against Organized Crime, Article 7, Pg.3: Florida State University Law Review, Fall 1985*). In 1985, through the passing of a House Joint Resolution the OSP and its finely tailored limited scope of authority was created. *Art. IV, § 4, Fla. Const.* The OSP's jurisdiction was subsequently codified into law. Roughly twenty-one years later, the legislature authorized the OSP to prosecute crimes involving voter registration and voting. The legislature expanded OSP's scope of authority involving these crimes which became effective on January 1, 2006. § 16.56, Fla. Stat. The legislature is authorized to enact general laws relating to the OSP's scope of jurisdiction. *Id.* The OSP has concurrent jurisdiction with the local 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 law. *Art. IV, § 4(b), Fla. Const.* In this case, the parties have stipulated that the OSP is not seeking prosecution of the Defendant based on an organized criminal conspiracy existing. (OSP Joint Stipulation. ¶ 11).

OSP argues the following, one that the defendant took an affirmative role or action in committing the crimes, two that both Broward and Leon Counties were affected by the Defendant's actions, and three that the crimes were part of a related transaction which affected two or more judicial circuits. The parties stipulated that the Defendant took affirmative action only in Broward county in committing the crimes. Thus, issues two and three remain in dispute. The Defendant's Motion and State's Response focuses a bulk of their legal arguments on issues two and three. The OSP defends that they have subject matter jurisdiction based on the crimes affecting two or more judicial circuits and being related transactions. Again, the relevant facts are not in dispute but the lawyers disagree as to the interpretation and application of the law to these sets of facts. Therefore, the Court has narrowed its focus on the mutually existing issues disputed by the parties concerning whether the crimes as charged, affected multiple jurisdictions and or are they related transactions.

In other words, did the Defendant's actions affect Broward and Leon County and or are they related transaction involving both Broward and Leon counties thus triggering OSP's authority to prosecute. In reading *Art. IV, § 4(b), Fla. Const.* and § 16.56, Fla. Stat., this Court does not interpret the law to allow the OSP to execute jurisdiction over the Defendant. The Court to find otherwise would be expanding the prosecutorial authority of the OSP which is determined by the Florida legislature and not the courts. § 16.56, Fla. Stat. As Judge Jay Bybee said, "Just as we may not, as we are often reminded, "legislate from the bench," neither may the Executive legislate from the [Capital] Office. (E. Bay Sanctuary

Covenant v. Trump, 909 F.3d 1219, 1250 (9th Cir. 2018), superseded, 932 F.3d 742 (9th Cir. 2018).

The information charges the Defendant of two offenses which OSP alleges occurred in the Seventeenth and Second Judicial Circuits of Florida. The Seventeenth being in Broward County and the Second in Leon County. The allegations are general and in violation of Florida laws. F.S. § 104.011(1); 104.15. The legislature made it clear, the OSP has jurisdiction, in part, only in cases where two or more judicial circuits are affected as part of a related transaction. *State v. Cisneros*, 106 So. 3d 42 (Fla. 2d DCA 2013) (State failed to prove that defendant had ties to any other county). The OSP can file charges if a criminal violation occurred in two or more judicial circuits as part of a related transaction. Florida law limits the authority of OSP to prosecute crimes. The legislature has not given the OSP unfettered authority to prosecute any crime throughout any judicial circuit located in the State of Florida. See *Fla. Const. Art. VI, § 4.*; §16.56(1)(a), Fla. Stat.; See (*Volume 13, Issue 3, R. Scott Palmer and Barbara Linthicum, The Statewide Prosecutor: A New Weapon against Organized Crime, Article 7, Pg.3*: Florida State University Law Review, Fall 1985). The OSP does have exclusive jurisdiction to prosecute offenses that span multiple counties. *Spaulding v. State*, 965 So. 2d 350 (Fla. 4th DCA 2007).

The OSP is correct in that the policy behind the creation of the OSP demands that we broadly construe the prosecutorial authority of the statewide prosecutor. See *King v. State*, 790 So. 2d 477, 479 (Fla. 5th DCA 2001). Various tools of statutory construction have been used by the courts when deciphering the scope of authority of the OSP when the criminal statute charged is unclear and or ambiguous. Yet, where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. See *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This is one of those cases. Furthermore, with respect to criminal statutes, one of the most fundamental principles of law is that penal statutes must be strictly construed according to their letter. F.S.A. § 775.021(1). *Polite v. State*, 973 So. 2d 1107 (Fla. 2007), as clarified (Jan. 24, 2008). As Justice Oliver Wendell Holmes put it: “We do not inquire what the legislature meant; we ask only what the statute means.” In addition, the courts having found, if there exists any ambiguity or situation in which statutory language is susceptible to differing constructions. The court’s interpretation must be resolved in favor of the Defendant charged with an offense. *Owens v. State*, 303 So. 3d 993 (Fla. 1st DCA 2020); *State v. Mounce*, 866 So. 2d 132 (Fla. 5th DCA 2004). In this case, the Court finds the statute is clear and unambiguous on its face leaving no room for ambiguity. The OSP does not have jurisdiction over the Defendant.

The OSP argues they have jurisdiction because the crimes could not be committed without the “involvement” and or the Defendant being aware that his actions would affect and or require the actions

of multiple jurisdictions. In their words, it is impossible to complete the crimes in Count I and II of the information within a single circuit. The OSP indirectly arguing the Defendant had the criminal intent to cause a wrong to both the people of Broward County and Leon County. The OSP would have any person who fraudulently submits a Florida Voter Registration Application to their local supervisor of elections and or votes fraudulently at their local supervisor of elections office subjected to their prosecutorial authority. The OSP argues their authority would be lawful because by nature, the Defendant's actions would have an automatic triggering and or "domino" affect on two or more counties. In other words, the Defendant's criminal actions affected two or more judicial circuits as provided by general law. See *Fla. Const. Art. IV, § 4*. This legal argument is incorrect. The nature and history of criminal law dates back ages. Although the said crimes are not of common law, the traditional principles of crime predate the ratification of the United States Constitution in 1788. Here the elements of the crimes and the OSP's jurisdiction to prosecute the same are solely defined and authorized by the legislature. § 16.56, Fla. Stat. Ann. In simple terms, the legislator enacted crimes in F.S. § 104.011(1); 104.15 which are considered public wrongs. They are both acts or omissions forbidden by the laws of the State of Florida in which the State has proscribed a punishment in Its name.

Once a person willfully swears or affirms falsely on their voter registration affidavit in order to vote they have committed the crime. F.S. § 104.011(1) is a general intent crime which requires that the defendant intended to commit an illegal act that constitutes the crime. If this has been established, the defendant can be prosecuted by only the Broward County, State Attorney. The local prosecutor could proceed with prosecution even if the Defendant never intended to violate the law, affect another jurisdiction, did not know that his act was criminal and even if he did not know his application would be transmitted to FSOS for review and or approval. This includes even if the Defendant's voter's registration application was or was not approved by the FSOS. In other words, the Defendant could be found guilty of the completed crime even if his voter registration affidavit never left Broward County. On the contrary, in 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. The latter is critical because in order for the OSP to have jurisdiction to prosecute they must be able to show that the Defendant's actions affected 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.

The OSP’s argument concerning F.S. § 104.15 is also incorrect on the same bases as above. Once a person who knows they are not a qualified elector, willfully votes in any election. They have committed a crime. *Id.* F.S. § 104.15 is also a general intent crime which requires that the defendant intended to commit an illegal act that constitutes the crime. If this has been established, the defendant can be convicted in the Circuit of which they voted, by the appropriate body, even if they never intended to violate the law, did not know that their act was criminal or even if their vote did not count. The United States Postal Service may have been delayed in mailing the Defendant’s ballot, delivering the Defendant’s ballot or the Defendant’s candidates may have lost the election. The Defendant could still be convicted of the crime in Broward County but clearly not in Leon County. A conviction could follow even if the Defendant relied on the BSOE and or FSOE to advise him that he could not vote. The effect the Defendant’s vote may have had or may have on multiple circuits is fathomless. Yet, the authority granted to the OSP requires the Defendant’s actions to have affected two or more circuits. The OSP’s abstract belief is insufficient in this case under the law to establish jurisdiction. Also, these are not crimes alleged by the OSP to involve a conspiracy, a single scheme causing statewide commerce to be affected or the Defendant’s overt actions perpetuating the felonious intent of the original act throughout multiple counties within the State.

The OSP further argues collaterally, that F.S. § 97.053(2) defines once a person has “accomplished” the act of registering to vote. Thus making F.S. § 97.053(2) and its elements part of the criminal code punishable under F.S. § 104.011(1) and 104.15. Hence, an element of the crime in order for it to be completed would require, in part, the FSOS to take an overt action to review the fraudulently submitted application. Thus, only then would the Defendant be subject to prosecutorial danger by the OSP of the crime. This is untrue. The Defendant could be prosecuted but not by the OSP. The same goes for if a person is ineligible to vote. If said ineligible person votes in an election but their ballot never gets counted, then they can still be convicted for fraudulently voting no matter what effect their vote did or did not have on any other county. Yet, OSP would not have jurisdiction because nor the actions of the FSOS or FSOE triggers jurisdiction under § 16.56, Fla. Stat.

In this case, the local prosecutor has the authority to prosecute under the law but not the OSP. Criminal laws are not enacted to prevent the effect of one’s felonious actions but to deter the initial thought which may result in a felonious action. “Men are not hanged for stealing horses, but that horses may not be stolen.” *George Savile Halifax, Lord* (1633-95), English statesman, author. Political, Moral, and Miscellaneous Thoughts and Reflections, "Of Punishment" (1750).

If the Court accepts OSP's arguments then the Court must ignore hundreds of years of *stare decisis* and the foundation of our legal system. Not to mention, the State would have to become a "co-conspirator", which is highly improbable, and the parties have already stipulated there are no co-conspirators. Furthermore, the FSOE in this case pursuant to F.S. §97.053(2) serves in a ministerial duty capacity. The FSOE may learn that one is not eligible to vote. Thereby triggering a number of actions and or notifications by the FSOE to the Defendant, including but not limited to the Defendant's ineligibility to hold public office, right to obtain a concealed weapons permit, employment rights, financial and contractual rights and the right to vote. These notifications would be triggered despite the Defendant's intent when registering to vote.

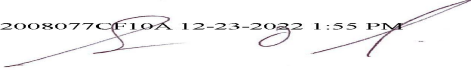
The OSP's argument as to Count II in the information concerning Florida Administrative Code 1S-2.053 (2022) sinks under the same premise. In an effort to avoid redundancy, once a person votes if done so in violation of the law. The crime has been committed and completed in the jurisdiction of where the registration application was submitted and or where the Defendant submitted his vote. Thereafter, it doesn't matter who or what entity moves or transmits the fraudulent ballot. The original taint of the illegal vote once cast by the Defendant keeps its felonious taint no matter who handles it thereon or who benefits from it thereafter.

Lastly, neither of the crimes as charged in Counts I & II are related in compliance with § 16.56, Fla. Stat. Ann. n, See *Spaulding v. State*, 965 So. 2d 350, 351 (Fla. 4th DCA 2007); *Snyder v. State*, 715 So. 2d 367 (Fla. 5th DCA 1998). The legislature very carefully chose to use the word related and not one such as "identical" when establishing the scope of the OSP. These crimes charged by the OSP are no doubt identical to other acts committed throughout the state of Florida. However, this case and this Defendant's charges are not related to two or more judicial circuits triggering the OSP's jurisdiction to prosecute the Defendant. The Defendant's actions do not constitute related transactions as intended by the legislatures or the case law reviewed by this Court. The courts play an integral role in maintaining the rule of law, particularly when they hear the grievances voiced by minority groups or by those who may hold minority opinions. See *The Federalists papers No. 78*.

V. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:
The Defendant's Motion to Dismiss is **GRANTED**.

DONE AND ORDERED in Chambers at Broward County, Florida on 23rd day of December, 2022.

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Hon. George Odom

CIRCUIT COURT JUDGE

Electronically Signed by George Odom

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