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IN THE CIRCUIT COURT,
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

CASE NO.: 21-003634CF10A

JUDGE: Hon. M. Fein

PEOPLE OF THE
STATE OF FLORIDA,
Petitioner,
vs.

ROBERT W. RUNCIE,
Defendant
_____/

STATE'S RESPONSE TO DEFENDANT'S "MOTION TO DISMISS"

The State of Florida, by and through the undersigned Assistant Statewide Prosecutor, hereby submits the following Response to Defendants' Motion of April 23, 2021:

I.

1. Defendant does not dispute that the Indictment issued by the Twentieth Statewide Grand Jury alleges each necessary element of Florida Statute 837.02(1), or that it contains a numerical citation to that statute.

> The information contained all of the material elements of the false imprisonment statute and referred to the statute by number. ***Where an [Indictment] refers to a statute and tracks its language, it is generally held sufficient.***

State v. Graham, 468 So. 2d 270, 271 (Fla. 2d DCA 1985). Indeed, this has been well-established in this State for more than a century, as has the potential remedy for a Defendant seeking more information:

Where the allegations of an indictment are in substantial conformity to the statute

> defining the crime alleged, and are sufficient to show the nature and cause of the accusation against the defendant, it is not error to deny a motion to quash the indictment. A bill of particulars may be awarded to a defendant in a criminal prosecution, where he is entitled to more detailed specifications of the ultimate facts alleged in the indictment.

Ellis v. State, 76 So. 698 (Fla. 1917).

2. Defendant omits that the Indictment specifically narrows the potential statements in question to four (4) specific areas; he cannot legitimately claim it has "no specificity whatsoever." He was not alleged to have lied under oath regarding a trivial matter, but rather about one deemed worthy of investigation by a Statewide Grand Jury convened by order of the Florida Supreme Court.

3. Defendant essentially argues that the Indictment should have essentially quoted his false statements. Such a recitation would have required an Indictment spanning several pages (see section IV, *infra*). Defendant, who was in possession of the Indictment since its issuance and who was permitted to elect the time, place, and date of his surrender for booking thereon, omits that premature release of said testimony could have resulted in prejudice to any investigations ongoing at that time, or to himself.

4. Most pertinently, though, Defendant ignores the law. As another Broward County Schools employee is presumably now well aware, absent a motion and accompanying Court order, disclosure of testimony (indeed, even the identity of witnesses) before the Statewide Grand Jury is ***prohibited*** (especially while the Statewide Grand Jury is in session, which it was at the time of the Indictment), and to do so constitutes a felony:

> ***Unless pursuant to court order***, it is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person outside the statewide grand jury room, any of the proceedings or identity of

persons referred to or being investigated by the statewide grand jury.

§ 905.395, Florida Statutes. Further, even if this were a local instead of a Statewide Grand Jury, absent authorization "Section 905.27(2) bars the communication of ***the gist of a witness' grand jury testimony to anyone 'in any manner whatsoever.'***" Barber v. Interim Report of the Grand Jury Spring Term 1995, 689 So. 2d 1182, 1185 (Fla. 4th DCA 1997).

Defendant's argument, in effect, is that ***the State should have violated the law in order to describe his crime to his preferred level of detail*** and he should therefore go scot-free. No court should countenance such absurdity.

5. Defendant essentially claims that he does not know how much of his testimony was false and/or that he made multiple false statements, so the State should tell him which one(s) are the subject of prosecution. He claims that this alleged lack of knowledge might subject him to being "misled or embarrassed" in his defense or subject to additional prosecution.[1] The State makes no further comment on whether Defendant should feel embarrassed, but the obvious rejoinder is that Defendant should not have made ***any*** false statements under oath to the Grand Jury, let alone so many as to not know which one is the subject of prosecution.

II.

Defendant asserts, as a basis for seeking dismissal, that "[t]he Indictment does not aver that the subject statement involved a material matter." (Defendant's Motion, paragraph #5). Indictments need not allege things that are not elements of the crime charged; and as the Florida

[1] Defendant claims to fear "danger of a new prosecution" despite the fact that he also notes that the Twentieth Statewide Grand Jury's term has ended and thus, that body can no longer issue additional charges.

Supreme Court held decades ago, materiality is not an element of perjury:

> In sum, ***"materiality" is not an element of the crime of perjury*** in Florida as Ellis proposes, but rather is a threshold issue that a court must determine prior to trial, as with any other preliminary matter. Just as the Florida Legislature could have defined materiality as an affirmative defense that the defendant must raise, that body is within its rights in designating "material matter" as a threshold issue for the court.

State v. Ellis, 723 So. 2d 187, 189–90 (Fla. 1998).

Moreover,

> materiality in this context means the testimony must have ***some relevance*** to the subject matter of the grand jury investigation..

State v. Swofford, 318 So. 2d 423, 424 (Fla. 4th DCA 1975).

> ***When testimony is capable of misleading, influencing, or even deterring a grand jury in the conduct of its investigation, it is material.***

Wheeler v. State, 311 So. 2d 713, 715–16 (Fla. 4th DCA 1975).

III.

Defendant has not yet been arraigned but immediately seeks to invoke the "nuclear option" of dismissal. Yet,

> Dismissal of an information or indictment is "an action of such magnitude that resort to such a sanction should only be had when no viable alternative exists[.]"

State v. Del Gaudio, 445 So. 2d 605, 608 (Fla. 3d DCA 1984) (limitation of holding on other grounds recognized in McKinney v. Yawn, 625 So.2d 885, 888 n. 1 (Fla. 1st DCA 1993)).

According to Defendant, a Statement of Particulars cannot be issued since the Statewide Grand Jury itself would not do so (instead, the particulars would be described by the Office of Statewide Prosecution). Once again, the law is contrary to Defendant's assertion.

The Florida Rules of Criminal Procedure expressly contemplate just such a scenario:

> "The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the ***indictment or information…"***

Fla. R. Crim. P. 3.140. Indeed, Florida's courts have interpreted the law in similar fashion:

> The **indictment** charged that Mrs. Ciambrone committed felony murder because her son's death occurred at the end of an extended period of aggravated child abuse. The **State filed a statement of particulars** in her case claiming that Lucas died within forty-eighthours[.]

Ciambrone v. State, 93 So. 3d 1176, 1177 (Fla. 2d DCA 2012).

> With the advent of Florida's liberal discovery rules in criminal cases[2], along with the availability of a statement of particulars, a defendant is no longer forced to obtain information about the charge only from the **charging document**. While these discovery tools generally cannot cure a fatally vague **charging document**, they do reduce the danger of a defendant's being in doubt as to the specifics of his alleged wrongdoing or of his being subjected to a new charge arising from the same act.

State v. Dilworth, 397 So. 2d 292, 294 (Fla. 1981).

IV.

If the Court ***were*** to direct the State to file a Statement of Particulars-- now that some portions of grand jury testimony have been approved for limited release-- it would contain at least some of the following information (and possibly more) likely to rain on Defendant's narrative parade:

Defendant Anthony ("Tony") Hunter (**Broward County Case Number:** 21000201CF10A) was a cabinet-level Chief over technology matters, ultimately reporting to Runcie while employed at the Broward County Schools. He was indicted by the Twentieth Statewide Grand Jury and his felony charges were pending when Runcie testified to

[2] Defendant has yet to file any documents indicating an interest in obtaining discovery in this matter. Though that is of course his choice, "parties taking inconsistent positions will not be allowed to have their cake and eat it too.' Miami-Dade County v. Miami Gardens Square One, Inc., 45 Fla. L. Weekly D2480 (Fla. 3d DCA Nov. 4, 2020).

that body, and remain pending. Hunter was charged with, essentially, rigging the process of awarding "piggyback" purchase contracts for hundreds of thousands of dollars of technology equipment (a component of the District's $800 million Safety and Technology ("SMART") bond). Pursuant to "Policy 3320" these contracts get exempted from normal purchasing controls and are supposedly justified by "post-board memos". Defendant Runcie's duties included reporting the purchases to the School Board.

On April 1, 2021, the Twentieth Statewide Grand Jury questioned Defendant about these matters, including his knowledge thereof, his sources of information, and his part in the process. Initially, Defendant was asked whether he knew of the Hunter indictment. He stated that he did, and knew "the subject of the issue there."

However, Defendant was also asked "Did you talk to anybody who would have information about the Hunter situation to prepare for any questions about that, given it's a pending felony indictment?" and whether he had "communications related to any of the issues that are part of the Hunter indictment?" His answer was "No, not that -- not that I'm aware of." Further, he was asked:

Q. What about the contracting issues? Like, all the deals with the after-board memos and all the contract issues that came up with Hunter?

A. No, I don't -- no.

Q. No prep on that?

A. No. I haven't done no prep on that, other than having a copy of the audit report.

Q. Phone calls? E-mails? Text messages? Smoke signals?

A. No, not that -- I am trying -- no. No, I haven't talked to anyone specifically about that.

When asked about one of the contracts, Defendant swore that "I haven't had any conversations about it." Defendant claimed that the only source of his knowledge of such things was a workshop he attended several years prior. Defendant also denied having any third-party communications "with anyone regarding anything about these proceedings," again answering "No." He then was asked if he had been "coached" or given "advice" on how to testify or answer questions. Again, he responded in the negative, other than to say he consulted with his current counsel.

Each and every one of Defendant's statements is false. In fact, not only did Defendant personally contact one or more ***listed witnesses*** in the Hunter case[3] for information regarding "piggyback contracts" and "post-board memos," he did so ***on the evening of March 29, 2021.*** He asked for and was given specific examples of piggyback contracts; less than three days later, he repeated those specific examples along with specific references to "Policy 3320" in his testimony on April 1, 2021--- unprompted. Further, School Board General Counsel Barbara Myrick also contacted one or more listed Hunter witnesses on the evening of ***March 31, 2021***, regarding the same matters. Myrick stated she was not supposed to disclose the fact, but she was assisting Defendant's attorney to prepare Defendant's Grand Jury testimony. She received the same information.

Phone records substantiate these phone calls as well as calls between Myrick and counsel for Defendant on the evening of March 31 and the morning of April 1, 2021—the dates of

[3] Discovery exhibits in that case were filed in February, 2021. Interested parties may want to keep in mind § 914.23, Florida Statutes.

Defendant's testimony. Further, Defendant stated that Myrick had disclosed to him other witnesses who had been summoned.

The Twentieth Statewide Grand Jury was investigating, as set forth in the Indictment, "fraud and deceit by mismanaging, failing to use, and diverting funds from multimillion dollar bonds specifically solicited for school safety initiatives." In that vein it was continuing to investigate the matters surrounding Defendant Anthony Hunter, whom it had previously indicted-- including the extent of Defendant's involvement in the process. The materiality threshold has clearly been met. Others may be willing to simply overlook multiple barefaced falsehoods and obstructive statements under oath by Defendant; the Twentieth Statewide Grand Jury was not.

CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished to Attorneys for Defendant by eservice this 26 day of April, 2021.

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