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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 2013-CF-064037-BXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM MATTHEW DUPREE,

Defendant.

_____/

DEFENDANT WILLIAM MATTHEW DUPREE'S MOTION TO DISMISS INFORMATION UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.190(b)

Defendant, WILLIAM MATTHEW DUPREE, by counsel and pursuant to Rule 3.190(b), of the *Florida Rules of Criminal Procedure*, moves to dismiss Counts 2 and 3 of the Information filed on August 13, 2013, and in support thereof states the following:

I. INTRODUCTION.

The state has charged Mr. Dupree, and the other co-defendants, in an 8-count Information charging various offenses, including: bribery, conspiracy to commit bribery, bid tampering, and unlawful campaign contribution in name of another.

As set forth below, both the substantive and conspiracy bribery counts must be dismissed since the Counts are marred by numerous deficiencies. Because such defects create allegations that are so vague, indistinct, and indefinite, they necessarily impair Mr. Dupree's ability to adequately prepare his defense. *See* Fla. R. Crim. P. 3.140(o). Said infirmities also expose Mr. Dupree, after conviction or acquittal, to substantial danger of a new prosecution. *Id.* As a result, Counts 2 and 3 must be dismissed.

II. ACCUSATIONS SET FORTH IN CHARGING DOCUMENT.

Count 2 charges Mr. Dupree with principal to commit bribery under F.S. §§ 777.011 and 838.015. Count 3 charges Mr. Dupree with conspiracy to commit bribery under F.S. §§ 777.04 and 838.015. Counts 2 and 3 involve allegations that occurred at an undisclosed location in Brevard County, over a time period spanning approximately nine months. In particular, Count 2 alleges in pertinent part, that Mr. Dupree and the other named defendants:

> "did knowingly and unlawfully aid, abet, counsel, hire, or otherwise procure a public servant to wit: MITCHELL NEEDELMAN CLERK OF COURT IN AND FOR BREVARD COUNTY, FLORIDA, to unlawfully and corruptly request, solicit, accept, or agree to accept for himself or another, a pecuniary or other benefit not authorized by law, to wit: MONEY, with the intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, to wit: ENTERING CONTRACT(S) INVOLVING BLUEWARE LLC, BLUEGEM LLC, AND/OR ROSEWARE LLC."

See Information at p. 1.

The Information provides, throughout its multiple counts, no further defining facts to delineate the role or specific acts of any named Defendant.[1]

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[1] In considering the confusing over breadth of Count 2, the words of the philosopher John Locke seem particularly appropriate:

> *I will not deny, but possibly it might be reduced to a narrower Compass than it is; and that some Parts of it might be contracted: The way it has been writ in, by Catches, and many long Intervals of Interruption, being apt to cause some Repetitions. But to confess the Truth, I am now too lazy, or too busy to make it shorter.*

John Locke, *An Essay Concerning Human Understanding,* (1690). *See also* Blaise Pascal, *Lettres Provinciales* (1657)(stating *"Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte" translated as "I have made this longer than usual because I have not had time to make it shorter.").*

III. SUMMARY OF ARGUMENT

By failing to identify any predicate acts allegedly involving distinct and separate defendants, and by using broad statutory language alleging the defendant's conduct, the State has effectively and necessarily placed Mr. Dupree in a dark wood, where his constitutional right to an adequate defense is lost.[2]

IV. ARGUMENT

The technical defects of Counts 2 and 3 justify dismissal under Rule 3.140. On a motion to dismiss focused on technical deficiencies of an information, this Court must ensure that the "information on which the defendant is to be tried shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fla. R. Crim. P. 3.140(b). The critical nature of this Court's determination of the sufficiency of an information cannot be overemphasized.

As stated by the Florida Supreme Court:

> It is so well settled as to need no citation of authority that every person accused of crime is entitled to be informed of the nature of the accusation against him. This right required that the charge be stated with such clearness and necessary certainty as to apprise the accused of the charge he will be called on to meet at the trial, so that he will not be misled in the preparation of his defense and so that he will be protected after conviction or acquittal from substantial danger of a new prosecution for the same offense.

Cooper v. City of Miami, 36 So. 2d 195, 196 (Fla. 1948). Dismissal is the appropriate remedy for a defendant who is accused by a charging document that does not sufficiently inform a defendant of the charges against him in plain and concise language such that he can defend himself. *Goldberg v. State*, 351 So. 2d 332, 334-35 (Fla. 1977).

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[2] *See* Dante Aligheni, *La Divina Commedia, Inferno*, Canto I, (1472) (Midway through this Life we are borne upon; I found myself in a dark wood, Where the way of truth was wholly lost and gone).

"Among the requirements for the allegations in an indictment to be sufficient are (1) the specificity test, i.e., does the indictment contain all the elements of the offense pleaded in terms sufficient enough to apprise the accused of what he must be prepared to meet, and (2) is the indictment pleaded in such a manner as to enable the defendant to plead prior jeopardy as a defense if additional charges are brought for the same offense." *Battle v. State*, 365 So. 2d 1035, 1037 (Fla. 3d DCA 1978)(*citing Russell v. United States*, 369 U.S. 749, 82 S. Ct. 1038 (1962); *State v. Smith*, 240 So. 2d 807 (Fla. 1970); *Victer v. State*, 174 So. 2d 544 (Fla. 1965); *State v. Jones*, 312 So. 2d 483 (Fla. 4th DCA 1975)).

Courts have denounced the practice of merely tracking the statutory language in a charging document. *See State v. Covington*, 392 So.2d 1321, 1323-1324 (Fla. 1981). It is without dispute that an information that is vague or calculated to mislead the accused necessarily fails in the face of a motion to dismiss. *Id.* Thus, the state must provide "sufficient precision and clarity" of the particular factual allegations against a defendant. *Id.* Furthermore, Mr. Dupree has the right to a clear and definite statement of the charges against him so that he is not misled or embarrassed in preparing his defense. *See* Fla. R. Crim. P. 3.140(b) and 3.140(o). The convoluted language of Count 2 and 3 as a whole reveal that Mr. Dupree has been denied any real opportunity to defend himself against clear and concise charges.

As it currently stands, Counts 2 and 3 of the Information provide a "rich tapestry" of vagueness, confusion, and innuendo.[3] An analysis of the language of Counts 2 and 3 demonstrate an approach by the State to throw every possible allegation against the wall with the fervent

[3] In Count 3, the allegations are virtually identical to those in Count 2, with the addition of a few words that might perhaps infer that a conspiracy is being charged. As a result, the fatal defects that require the dismissal of the substantive bribery count also mandate the dismissal of the bribery conspiracy charge. *See, e.g., HMV Properties v. IDC Ohio Management,* Case No. 2:08-cv-895 at 21 (S.D. Ohio Jan. 11, 2011)(Opinion and order granting dismissal).

expectation that something may stick.

The foregoing demonstrates that the bribery counts do not provide a clear and precise statement of facts as required under the Florida Rules of Criminal Procedure. Rather the bribery counts are characterized by a vague and undefined laundry list of every conceivable means to charge Mr. Dupree. Such a result not only violates the defendant's statutory rights, but is antagonistic to his fundamental and constitutional right to prepare an adequate defense.

1. The principal to commit bribery and conspiracy to commit bribery counts fail to properly inform the defendant of the charges against him.

Section 838.015(1), *Florida Statutes*, provides that "'[b]ribery' means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty." Fla. Sta. § 838.015(1). "Conspiracy" entails "[a] person who agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy . . ." Fla. Sta. § 777.04(3).

Regarding the pleading of a conspiracy in an information, the law requires a pleading which informs the defendants of the allegations against them to prevent confusion, unfair punishment, and unfair disadvantages. *See Goldberg*, 351 So. 2d at 333. Courts have required this practice to prevent "[t]he shot-gun approach of a conspiracy charge [that] could amount to a prosecution for general criminality resulting in a finding of guilt by association." *Id.*

2. *The various possible theories of prosecution in the Information demonstrate the Information's failure to plead with specificity.*

In the instant case, the fatal defects in Counts 2 and 3 are underscored by their failure to plead facts with requisite specificity. For example, Count 3, alleging conspiracy to commit bribery fails to demonstrate:

(1) whether it charges that all defendants jointly conspired, or whether there were two conspiracies, one between some of the defendants and the other between the remaining defendants;

(2) whether the "request, solicit, accept, or agree to accept for himself or another" act was done by Defendant Rose Harr[4] or Defendant Matthew Dupree or Defendant Mitchell Needleman or Nicholas Geaney;

(3) whether the "aid, abet, counsel, hire, or otherwise procure a public servant" act was was done individually or jointly by the co-defendants;

(4) the specific wrongful act by Defendant Dupree, who is not identified in relationship to either a public office or to "Blueware LLC, Bluegem LLC, and/or Roseware LLC;"

(5) whether Nicholas Geaney named in Count 3 is a payor or a payee.

Such a myriad of possibilities only emphasizes the same shot-gun approach renounced in *Goldberg*. *See id.* Indeed, without further particularity, none of the defendants are able to ascertain the specific allegations against him (or her).[5]

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[4] Indeed, is the pronoun "he" throughout the Information used in a unisex context to refer to the female *and* male defendants? Or is the pronoun "he" throughout the Information used in an exclusive context to refer *only* to the male defendants?

[5] *See infra*, n.4.

IV. CONCLUSION.

For the reasons stated above, Counts 2 and 3 of the Information against Mr. Dupree should be dismissed in their entirety.

DATED this 6th day of November, 2013.

Respectfully Submitted,

/s/ Fritz Scheller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant Dupree's Motion to Dismiss Information Under Florida Rule of Criminal Procedure 3.190(b) has been furnished via electronic delivery to: Office of the State Attorney in and for Brevard County, Florida, via brevfelony@sa18.state.fl.us this 6th day of November, 2013.

/s/ Fritz Scheller

Fritz Scheller, Esquire