

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

STATE OF FLORIDA,

CASE NO. 05-2013-CF-064037-AXXX-XX

Plaintiff,

vs.

MITCHELL A. NEEDELMAN,

Defendant.

**DEFENDANT MITCHELL A. NEEDELMAN'S
MOTION TO DISMISS COUNTS 1 AND 3 OF THE INFORMATION**

Defendant, Mitchell A. Needelman (hereafter "Mr. Needelman"), through his undersigned legal counsel and pursuant to Florida Rule of Criminal Procedure 3.190(b), moves to dismiss Counts 1 and 3 of the Information filed on August 13, 2013, and in support thereof, states the following.

INTRODUCTION

The state has charged Mr. Needelman, and the other co-defendants in an eight-count Information charging various offenses, one of which is conspiracy to commit bribery.

As set forth below, both the substantive and conspiracy to commit bribery counts must be dismissed since the counts are marred by numerous deficiencies and because such defects create allegations that are so vague, indistinct, and indefinite, they necessarily impair Mr. Needelman's ability to adequately prepare his defense. See Fla. R. Crim. P. 3.140(o). Said deficiencies also expose Mr. Needelman, after conviction or acquittal, to substantial danger of a new prosecution. Id. As a result, Counts 1 and 3 must be dismissed .

ACCUSATIONS SET FORTH IN THE CHARGING DOCUMENT

As noted above, Counts 1 and 3 charge Mr. Needelman with Bribery (F.S. §§ 838.015(1) and 838.015(3) (Count 1) and as a principal with conspiracy to commit bribery contrary to F.S. §§ 777.04(3), 777.04(4)(d), 838.015(1), and 838.015(3) (Count 3). Counts 1 and 3 involve allegations that occurred somewhere in Brevard County, over a time period spanning approximately nine months. In particular, Count 3 alleges in pertinent part, that Mr. Needelman:

IN THE COUNTY OF BREVARD, STATE OF FLORIDA, on or between March 16, 2012 and January 7, 2013, **MITCHELL NEEDELMAN**, a public servant to wit: CLERK OF THE COURT IN AND FOR BREVARD COUNTY, FLORIDA and WILLIAM MATTHEW DUPREE, ROSE HARR did knowingly and unlawfully agree, conspire, combine, or confederate with **MITCHELL NEEDELMAN**, WILLIAM MATTHEW DUPREE, NICHOLAS GEANEY, ROSE HARR, 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, contrary to Sections 777.04(3), 777.04(4)(d), 838.015(1), and 838.015(3) Florida Statutes,

See Information at pg. 2.

Throughout its eight counts, the State provides no detail or identifying facts to determine the specific role or act of any named defendant.

SUMMARY OF THE ARGUMENT

By failing to identify any predicate acts allegedly involving distinct and separate defendants and by using broad statutory language alleging the conduct of Mr. Needelman

and his codefendants, the State has effectively stripped Mr. Needelman of his constitutional right to an adequate defense.

ARGUMENT

The technical defects of Counts 1 and 3 justify dismissal under Rule 3.140. On a motion to dismiss focused on technical deficiencies of the 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).

Among the requirements for the allegations in an indictment to be sufficient are 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); Victor v. State, 174 So. 2d 544 (Fla. 1965); and State v. Jones, 312 So. 2d 483 (Fla. 4th DCA 1975)).

An indictment or information charging a crime substantially as defined in the statute is sufficient only where the statutory language and the descriptive details state the nature and cause of the accusation without misleading the defendant. If such an information as a whole is vague, indefinite, inconsistent, or calculated to mislead the defendant in the preparation of his defense or expose him to the risk of a second prosecution, it is insufficient and should be dismissed, State Covington, 392 So.2d 1321 (Fla. 1981). Thus, the state must provide "sufficient precision and clarity" of the particular factual allegations against a defendant. Id. Furthermore, Mr. Needelman has a 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(0). The convoluted language of Count 3 as a whole reveals that Mr. Needelman has been denied any real opportunity to defend himself against clear and concise charges.

As the currently stand, Counts 1 and 3 of the Information provide a "rich tapestry" of vagueness, confusion, and innuendo.^{1/} An analysis of the language of Counts 1 and 3

^{1/} In Count 3, the allegations are virtually identical to those in Count 1, 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. LLC v. JDC Ohio Management, LLC, No. 2:08-cv-895, 2011 WL 53166

demonstrates an approach by the state to throw every possible allegation against the wall with the fervent hope 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. Needelman. Such a result not only violates the Defendant's statutory rights, but is antagonistic to his fundamental constitutional right to prepare an adequate defense.

1. The bribery and conspiracy to commit bribery counts fail to properly inform the defendants of the charges against them.

Section 838.015(1), Florida Statutes, provides that " 'Bribery' 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).

(S.D. Ohio Jan. 6,2011). In considering this issue, it is important to note that it is well settled that Informations that include a conspiracy offense are subject to heightened scrutiny to determine the sufficiency of the allegations. See State v. Covington, 392 So. 2d 1321 (Fla. 1981); see also, Goldberg v. State, 351 So. 2d 332 (Fla. 1977).

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 v. State, 351 So. 2d 332, 333 (Fla. 1977) (1981). Such a requirement prevents the "shot-gun approach of a conspiracy charge" from amounting to "a prosecution for general criminality resulting in a finding of guilt by association." Id. at 333.

2. The Possible Theories of Prosecution in the Information as Pled Establish the Failure of the State to Plead with Specificity.

In the instant case, the fatal defects in Counts 1 and 3 are underscored by their failure to plead with requisite specificity. For example, Count 3, alleging conspiracy to commit bribery, fails to demonstrate:

A. 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;

B. whether the "request, solicit, accept, or agree to accept for himself or another" was done by Defendant Mitchell Needelman, Defendant Matthew Dupree, Nicholas Geaney, or Defendant Rose Harr^{2/};

C. whether the "aid, abet, counsel, hire, or otherwise procure a public servant" action was done individually or jointly by the co-defendants;

D. the specific wrongful act by Defendant Mr. Needelman; and

2/ Indeed, is the pronoun "he" used throughout the Information to encompass behavior of the male defendants, as well as the female Defendant, or to encompass behavior only of the male Defendants?

E. the elusive and mysterious Nicholas Geaney named in Count 3 does not identify whether he is a payor or a payee, nor any role he allegedly partook in the conspiracy.

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.

CONCLUSION

For the reasons stated above, Counts 1 and 3 of the Information against Mr. Needelman should be dismissed in their entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2013, a true copy of the foregoing was filed utilizing the Florida Courts E-Filing Portal and was served via electronic mail to: Office of the State Attorney, Felony Division, 2725 Judge Fran Jamieson Way, Bldg. D, Viera, FL 32940, at BrevFelony@sa18.state.fl.us; to Mark L. Horwitz, Esquire, Law Offices of Mark L. Horwitz, P.A., 17 East Pine Street, Orlando, Florida 32801, at mark@mlhorwitzlaw.com; and to Fritz Scheller, Esquire, Fritz Scheller, P.L., 200 East Robinson Street, Suite 1150, Orlando, Florida 32801, at fscheller@flusalaw.com.

s/ Warren W. Lindsey
WARREN W. LINDSEY, of
LAW OFFICE OF WARREN W. LINDSEY, P.A.
1150 Louisiana Avenue, Suite 2
Winter Park, FL 32789
Mail: P.O. Box 505
Winter Park, FL 32790
Telephone: (407) 644-4044
Facsimile: (407) 599-2207
Attorneys for the Defendant.
warren@warrenlindseylaw.com
Attorney No. 299111