

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

STATE OF FLORIDA,

Plaintiff,

CASE NO. 2013-CF-064037-C

v.

ROSE HARR,

Defendant.

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**DEFENDANT ROSE HARR'S MOTION TO  
DISMISS COUNTS 2 AND 3 OF THE INFORMATION**

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

**INTRODUCTION**

The state has charged Ms. Harr, and the other co-defendants in a 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 Ms. Harr's ability to adequately prepare her defense. *See* Fla. R. Crim. P. 3.140(o). Said infirmities also expose Ms. Harr, after conviction or acquittal, to substantial danger of a new prosecution. *Id.* As a result, Counts 2 and 3 must be dismissed.

## ACCUSATIONS SET FORTH IN CHARGING DOCUMENT

As noted above, Counts 2 and 3 charge Ms. Harr with principal to commit bribery under F.S. §§ 777.011 and 838.015 (Count 2) and with conspiracy to commit bribery under F.S. §§ 777.04 and 838.015 (Count 3). Counts 2 and 3 involve allegations that occurred somewhere in Brevard County, over a time period spanning approximately nine months. In particular, Count 2 alleges in pertinent part, that Ms. Harr and the other named defendant:

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.

## 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 Ms. Harr in a dark wood, where her constitutional right to an adequate defense is lost.

## 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 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 her in plain and concise language such that she can defend herself. *Goldberg v. State*, 351 So. 2d 332, 334-35 (Fla. 1977).

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); *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 v. 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, Ms. Harr has a right to a clear and definite statement of the charges against her so that she is not misled or embarrassed in preparing her defense. See Fla. R. Crim. P. 3.140(b) and 3.140(o). The convoluted language of Counts 2 and 3 as a whole reveal that Ms. Harr has been denied any real opportunity to defend herself against clear and concise charges.

As they currently stand, Counts 2 and 3 of the Information provide a "rich tapestry" of vagueness, confusion, and innuendo.<sup>1</sup> An analysis of the language of Counts 2 and 3 demonstrates an approach by the state to throw every possible allegation against the wall with the fervent expectation that something may stick.

The foregoing demonstrates that the bribery counts do not provide a clear and precise

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<sup>1</sup>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. LLC v. IDC Ohio Management, LLC*, No. 2:08-cv-895, 2011 WL 53166 (S.D. Ohio Jan. 6, 2011). In considering this issue, it is important to note that it is well settled that Information 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).

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 Ms. Harr. Such a result not only violates the Defendant's statutory rights, but is antagonistic to her fundamental constitutional right to prepare an adequate defense.

***1. The principal to commit 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).

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 2 and 3 are underscored by their failure to plead 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" was done by Defendant Rose Harr<sup>2</sup> or Defendant Matthew Dupree or Defendant Mitchell Needelman or Nicholas Geaney;

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

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

(5) 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

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

ascertain the specific allegations against him or her.

**CONCLUSION**

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 5, 2013, I electronically filed the foregoing with the Clerk of the Court by using the E-Filing Portal which will send a notice of electronic filing to Robert Wayne Holmes, Office of the State Attorney, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940; [BrevFelony@sa18.state.fl.us](mailto:BrevFelony@sa18.state.fl.us), and to Warren Lindsey, Esquire, Law Office of Warren W. Lindsey, P.A., 1150 Louisiana Avenue, Winter Park, Florida 32790; [warren@warrenlindseylaw.com](mailto:warren@warrenlindseylaw.com).

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