

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CRIMINAL DIVISION

STATE OF FLORIDA,

CASE NO. F22-15009

Plaintiff,

v.

ROBERT LEE WOOD,

Defendant.

_____ /

ORDER ON MOTION TO DISMISS

The present prosecution is brought, not by the Miami-Dade State Attorney’s Office, but by the Office of the Statewide Prosecutor (“OSP”). OSP is empowered to bring criminal prosecutions in Florida when one of two conditions is met: either the demised crime must have occurred “in two or more judicial circuits as part of a related transaction,” or the crime must be “connected with an organized criminal conspiracy affecting two or more judicial circuits.” Fla. Stat. § 16.56(1)(a). Claiming that neither condition is met here, Robert Lee Wood moves to dismiss for lack of statutory authority to prosecute on OSP’s part.¹ Thus the issue before me is not whether Mr. Wood committed the crimes charged, nor even whether he is amenable to prosecution for the crimes charged. The very narrow issue raised by the present motion is whether Mr. Wood is amenable to prosecution *by OSP* for the crimes charged.

My task is made easier – a little easier – because the experienced and scholarly attorneys

¹ Mr. Wood’s pleading is captioned a “motion to dismiss for lack of subject-matter jurisdiction.” Strictly speaking, the issue is not one of jurisdiction but of statutory authority. *State v. Tacher*, 84 So. 3d 1131, 1132 (Fla. 3d DCA 2012).

on both sides of this case have very helpfully entered into a *Joint Stipulation of Facts* (“JS”), eliminating any need for evidentiary hearings and fact-finding with respect to the defendant’s motion. According to the stipulation, Robert Lee Wood is a Miami domiciliary who, on September 30, 2020, filled out a voter application form in Miami-Dade County. JS ¶1. That application, as is the case with all such applications, was transmitted to the Miami-Dade County Supervisor of Elections, JS ¶2, and thence to the Office of the Secretary of State in Tallahassee. JS ¶3. The following month the Secretary of State notified the Miami-Dade Supervisor of Elections that it had verified Mr. Wood’s voter application, JS ¶4, and the Supervisor of Elections then issued a voter ID card to Mr. Wood. *Id.* Mr. Wood voted at his local polling place in Miami in the general election of November, 2020. JS ¶5. Like all ballots cast in Florida, Mr. Wood’s was forwarded to the Division of Elections in Tallahassee for tabulation. JS ¶6. At no time material to these charges did Mr. Wood “physically enter the Second Judicial Circuit” – Leon County, the Tallahassee area – “nor did he himself mail or electronically transfer anything to” that circuit. JS ¶7.

The parties’ final stipulation is that, “The acts charged in the State’s Information did not involve a criminal conspiracy.” JS ¶8. In the language of § 16.56, the charged offenses are not “connected with an organized criminal conspiracy affecting two or more judicial circuits.” If OSP is possessed of authority to bring the present prosecution, it must be because the crimes charged occurred “in two or more judicial circuits as part of a related transaction.”

The Information charges two crimes. Count I alleges that Mr. Wood gave false information in the filling out of his voter application form. Count II alleges that Mr. Wood voted in the general election knowing that he was not a qualified elector. These acts – the filling out of

the voter application form in September, and the actual voting in November – were Mr. Wood’s acts and no one else’s. They were performed by him, and they were performed by him at or near his place of residence in Miami. Neither he, nor anyone on his behalf, traveled out of Miami-Dade County to perform them.

OSP argues, however, that the requirement of multi-jurisdictionality is met as to Count I because “it would be reasonably foreseeable to anyone who filled out [a voter] application that it would automatically invoke the participation of a government entity in” Tallahassee. *State’s Motion to Strike and Legal Response to Defendant’s Motion to Dismiss* (“M/Dism”) p. 2. The same rationale is offered as to Count II: “Defendant’s unqualified, illegal vote, which occurred in the Eleventh Judicial Circuit, was tallied with other legal votes and sent up to the Second Judicial Circuit as part of a vote tallying and election certification process.” *Id.* p. 4.

Thus on OSP’s version of affairs, it is unnecessary for Mr. Wood to commit a crime in any but his home jurisdiction in order for him to be subject to prosecution by an entity intended to prosecute only multi-jurisdictional crimes. Voter application forms, and completed ballots, are, as a matter of course, shipped off to Tallahassee from all corners of Florida for tabulation. That, without more, according to OSP, causes any voting-related offense to “occur[] . . . in two or more judicial circuits,” as required by Fla. Stat. § 16.56. As to this point OSP minces no words: “In the State of Florida, it is impossible to complete either the act of registering to vote or the act of participating in an election within a single circuit.” *M/Dism* p. 4.² It follows, on OSP’s

² Ironically – and unmentioned by OSP – the only exception would be for voter fraud perpetrated in the state capital. A Leon County domiciliary can, on OSP’s interpretation of the statute, commit voter fraud to his heart’s content without fear of prosecution by OSP. Such a fraudfeisor’s ballots would be cast, and tabulated, within a single circuit.

version of affairs, that OSP has a general power to prosecute voter crimes in Florida. And OSP does not blink in asserting that power: “*all* criminal cases dealing with voter registration and elections necessarily involve multi-circuit conduct” and are therefore subject to prosecution by OSP. *M/Dism* p. 6 n. 5 (emphasis in original).³

Both parties in their pleadings direct me to *State v. Tacher*, *see supra* n. 1. In *Tacher*, one of four coconspirators brought illicit drugs from New Jersey to Miami. In Miami, he conveyed them to the second conspirator, who delivered them to the *Tacher* defendants – the third and fourth coconspirators – who then sold them. *Tacher*, 84 So. 3d at 1132. The defense argued that because the first coconspirator – the one who transported the drugs from New Jersey through Florida to Miami – never sold or distributed anything until he got to Miami, the entire criminal misconduct took place in Miami-Dade County. Of course that argument failed. The first coconspirator “traveled by bus through seven judicial circuits while possessing the drugs in furtherance of the conspiracy.” *Id.* His act of possession in multiple Florida counties was itself a crime in those counties. He committed that crime as part of the larger criminal enterprise. It was his role in that larger criminal enterprise.

Compare the very different facts at bar. Robert Lee Wood’s misconduct, if misconduct it was, consisted in registering to vote, and voting, in his county of residence. Yes, his voter application and his ballot were transported to another Florida jurisdiction. But they were not transported by him, nor by any putatively criminal co-perpetrator. They were not transported by

³ OSP does not argue that it was the intent of the legislature, in creating a statewide prosecutorial authority, to vest that authority with plenary power to prosecute all election-related crimes in all Florida counties except Leon County, and no power whatever to prosecute election-related crimes there. *See* n. 2, *supra*. It does not attempt to reconcile that incongruity.

someone whose role in Mr. Wood's crime was to transport them. They were not transported at Mr. Wood's behest or bidding. The statutory requirement for OSP's prosecutorial authority is that the demised crime must have occurred "in two or more judicial circuits as part of a related transaction." Here the crime, if there was one, occurred exclusively in Miami. The "related transaction" – the merely ministerial transmission of completed forms to Tallahassee – was not a crime.

OSP describes it as "foreseeable" that the filing of a voter-application form, or the casting of a ballot, would, in due course, "invoke the participation of a governmental entity in the Second Judicial Circuit." *M/Dism* p. 2. Undoubtedly that is true. From every criminal act emanate in a thousand directions ripples of harm that may make themselves felt in a thousand places. But the statute defining and limiting OSP's prosecutorial powers does not seek to know where, jurisdictionally, a given criminal act provokes reaction or involvement. It does not ask whether the sequelae of crimes committed in one jurisdiction are felt in another. It demands that the crime itself *occur*, that it *be committed*, in more than one jurisdiction. For a crime to be prosecutable by OSP, it is that crime, and not its mere consequences or related activities, that must occur in two or more Florida jurisdictions. *See, e.g., Carbajal v. State*, 75 So. 3d 258, 262 (Fla. 2011) ("Carbajal is correct that if his *criminal* activity in Florida" – not his activity, but his *criminal* activity – "actually occurred in only Lee County, Florida, the OSP was not authorized to prosecute") (emphasis added). Even assuming that Mr. Wood's passive role in the transmission of his voter application form and completed ballot to Tallahassee is "activity" that can be ascribed to him, it is not his "criminal activity."

One wonders how far OSP is willing to take its argument. Mr. Wood's paperwork

traveled, presumably by U.S. mail, from Miami-Dade County through a host of Florida counties until it reached Leon County. Are the mail carriers who transported that paperwork to be analogized to the drug conspirator in *Tacher* who, expressly for the purpose of trafficking in contraband, transported drugs through the state to Miami-Dade? If that is the analogy that OSP offers, I submit that the analogy fails. Indeed it hardly invites rebuttal.

OSP cites to federal authorities, e.g. *Pereira v. United States*, 347 U.S. 1 (1954); *United States v. Reed*, 773 F. 2d 477 (2nd Cir. 1985), see *M/Dism* pp. 5, 6. These cases deal, respectively, with jurisdiction and venue in the federal system. The case at bar deals with neither. The sole question before me at this point in these proceedings is whether the statute pursuant to which OSP exists empowers it to prosecute, as having occurred in two or more Florida jurisdictions, the one act of one Miami resident who once voted in Miami.⁴

Counsel for OSP quite properly directs my attention to *King v. State*, 790 So. 2d 477, 479 (Fla. 5th DCA 2001) for the proposition that courts should, “broadly construe the prosecutorial authority of the statewide prosecutor.” I am willing to construe the prosecutorial authority of the statewide prosecutor to the very limits of the statutory language creating that authority – to those limits, and not a jot further. The *King* case, relied upon by OSP, makes a useful study in contrast with the case at bar. In *King*, the defendant operated a “chop shop” in Orange County, the Ninth Circuit, as part of which business he obtained stolen motorcycles and parts from Volusia County, the Seventh Circuit. *King*, 790 So. 2d at 479. Undoubtedly the prosecution of such a criminal

⁴ Just to provide context: The official website of OSP provides that it “focuses on complex, often large scale, organized criminal activity.” See <https://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693>. Mr. Wood’s crime, if he committed one, is the very antithesis of that “complex, . . . large scale, organized criminal activity” upon which OSP quite properly “focuses.”

enterprise – a “chop shop which had tentacles reaching across judicial circuit lines,” *id.* – is precisely what OSP was created for. There, criminal misconduct, by the same criminals or their confederates, took place in two Florida counties. Here, all the criminal misconduct, if there was any, was performed by one man in one county.

It is an old truth that all politics is local.⁵ OSP seeks to stand that old truth on its head. It seeks, by its own frank admission, authority to prosecute “*all* criminal cases dealing with voter registration and elections,” wherever in Florida they may be, however local they may be.

M/Dism p. 6 n. 5 (emphasis in original). That plenary power – the power to invigilate all Florida elections, whether federal, state, or municipal – is not consigned to OSP by § 16.56.

“His arms spread wider than a dragon’s wings,” says Shakespeare’s Duke of Gloucester about Henry V. Wm. Shakespeare, *The First Part of King Henry VI*, Act I sc. 1. How much wider even than that does OSP seek to extend its reach? In the case at bar the answer is simple: wider than the enabling statute contemplates, and therefore too wide.

Defendant Robert Lee Wood’s motion to dismiss is respectfully granted.

SO ORDERED in chambers in Miami, Miami-Dade County, Florida, this 21st day of October, 2022.



Hon. Milton Hirsch
Judge, 11th Judicial Circuit

cc: counsel of record

⁵ See https://en.wikipedia.org/wiki/All_politics_is_local