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Reply to: Seminole County

May 10, 2023

Inspector Keith Riddick
Florida Department of Law Enforcement
Office of Executive Investigations
2331 Phillips Road
Tallahassee, FL 32308

RE: FDLE EI-32-0086

Dear Inspector Riddick:

The Office of the State Attorney for the Eighteenth Judicial Circuit has received your thorough investigation into allegations that current St. Lucie County Sheriff Kenneth Mascara, along with others, violated Florida law in promoting a straw candidate in the 2020 primary and general elections for St. Lucie County Sheriff. Our Office was assigned to this matter pursuant to two Confidential Executive Orders issued by Governor Ron DeSantis. After reviewing your Investigative Summary and all the accompanying items of evidence you have provided, we have determined that there is insufficient evidence to file charges in this matter and write to memorialize our findings.

The Facts:

St. Lucie County Sheriff Kenneth Mascara (Mascara) was first elected to office in November 2000. He has been re-elected five times, including in 2020 when he was the Democratic nominee facing opposition from a former political rival and Republican candidate, Richard Williams (Williams). Your investigation revealed that Mascara and others devised a plan in May 2020, to install a straw candidate to run against Williams in the Republican primary in the hope that Williams would lose the Republican nomination and be eliminated from running against Mascara in the general election.

Many people were approached about running against Williams in the Republican primary, including Kevin Carter (Carter), a retired St. Lucie County Deputy Sheriff and acquaintance of Mascara. Carter made it clear that he had no intention of actually campaigning for the position, did not expect to win the election, and fully intended to be in Pennsylvania for the vast majority of the campaign period where he had a second home. Assured that he would only be minimally involved in his campaign, Carter agreed to run against Williams in the Republican primary. Carter's candidacy was chiefly left in the hands of William Hardman

(Hardman), who was a then-Captain with the St. Lucie County Sheriff's Office (SLCSO) and a confidant of Sheriff Mascara. Hardman connected Carter with a campaign treasurer and spear-headed the collection of contributions to Carter's campaign.

Carter won the Republican primary election for Sheriff, decisively beating Williams for the nomination (Carter received 63.57% of the votes to Williams's 36.43%). Carter then faced off against Mascara in the November 3rd general election, after which Mascara was declared the winner (Mascara received 67.05% of the votes to Carter's 32.95%). Throughout much of Carter's campaign, gossip had been circulating that Carter had been installed as a straw candidate by Mascara and his supporters in order to knock Williams out of the Sheriff's race early. That gossip led to those close to Mascara to share what they knew about the effort, including Hardman, who after negotiating the offer of use immunity, provided an interview as part of your investigation in which he detailed his role, and that of others, throughout Carter's candidacy.¹

Of note, Hardman shared that Mascara left \$10,000 in cash in Hardman's office at SLCSO with an understanding that Hardman would distribute portions of that cash to various people who would write contribution checks to Carter's campaign for the individual amounts they received from Hardman. Hardman doled out the \$10,000 to his friends and neighbors, resulting in 11 contributions that were received by the Carter campaign and logged on campaign finance contribution forms that were submitted by Carter's unsuspecting campaign treasurer to the St. Lucie County Supervisor of Elections. None of the witnesses you interviewed, including the 11 individuals who received portions of the \$10,000 from Hardman, were able to provide direct evidence corroborating Hardman's account that Mascara was the origin of the cash.

Hardman also shared that he was responsible for delivering \$4,600 in cash to Kevin Carter at Mascara's behest and in appreciation for Carter's assistance during the election. Hardman said that the sum of \$4,600 was accumulated from the proceeds of checks that had been written by, and cashed against, the Carter campaign account and returned to either Hardman or Mascara.

Forty-one witnesses were interviewed during your investigation in an effort to corroborate Hardman's accounts of Mascara's alleged criminal conduct. While virtually all of

¹ Hardman insisted on being subpoenaed for his State Attorney Investigative Interview which triggered the State extending use immunity to him for his compelled, sworn statement. Use immunity means that a compelled, sworn statement cannot be used against the witness in a subsequent prosecution. While a witness's receipt of use immunity for a compelled, sworn statement does not prohibit the government from filing charges against said witness if evidence of the witness's crimes can be gathered from sources unrelated to the interview, we note that Hardman provided the blueprint for your investigation and the means by which you were able to focus on certain suspected criminal conduct committed by various individuals. We cannot parse out the information Hardman provided in his immunized interview from that which you subsequently learned. As a result, we have determined that there is no way for the government to charge Hardman with any of the offenses he committed during the straw candidate scheme. We note that you did not include Hardman in your list of subjects and surmise that is because you agree that the government cannot charge him with any of the offenses he committed in light of his receipt of use immunity for his compelled, sworn statement.

them were able to verify Hardman's role in the Carter campaign and provide evidence regarding Hardman's commission of the various criminal acts to which he admitted during his immunized interview, none of them were able to offer admissible, direct evidence regarding Mascara's involvement in the check cashing scheme, with the exception of two (2) witnesses. Those two (2) witnesses reluctantly testified during their compelled, immunized statements that they cashed checks written to them by the Carter campaign and gave the resulting money to Mascara, but neither witness could provide any evidence as to what Mascara intended to do with the cash.

Your investigation led to the discovery of an additional six (6) individuals who were believed to be part of this check cashing scheme. Of those six (6) individuals, one (1) witness testified that he had no recollection of receiving a check from the Carter campaign or cashing such a check; one (1) witness testified that she received a check from the Carter campaign but never gave the proceeds to Mascara or anyone else, opting to keep the money for herself; one (1) witness stated she was unaware of a check from the Carter campaign being issued to her, and did not endorse such a check; and the three (3) remaining witnesses were unable to provide any direct, admissible evidence linking Mascara to the check cashing scheme.

During his immunized interview, Hardman offered a compendium of various documents in support of his account, including various emails related to components of the Carter campaign, and text messages that he testified were between himself and Mascara. Unfortunately, there is no way for us to verify the authenticity of the text messages Hardman presented because after he memorialized them in a word processing document, he admittedly threw away the phone with which he used to communicate with Mascara.

The Law and Related Analysis:

You have suggested that Mascara, Carter, and a number of other individuals have committed a host of offenses in the scope of this alleged 2020 straw candidate scheme. The pertinent portion of the applicable statutes for those offenses, and the related analysis we have conducted regarding the viability of such charges, are as follows.²

Fla. Stat. s. 104.071 – Remuneration by candidate for services, support, etc.; penalty. –

(1) It is unlawful for any person supporting a candidate, or for any candidate, in order to aid or promote the nomination or election of such candidate in any election, directly or indirectly to: [. . .]

(c) Give, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate. [. . .]

² We note that you submitted additional suggested offenses of Aiding, abetting, advising, or conspiring in violation of the election code (Fla. Stat. s. 104.091) and Principal in the first-degree (Fla. Stat. s. 777.011), under the theory that the other individuals who assisted Mascara, Hardman, and/or Carter with the straw candidate scheme were criminally responsible for their roles in the matter. As will be explained, *infra*, we have determined there is insufficient evidence to charge the primary offenses you have suggested against Mascara, Carter, or Hardman. We are, therefore, unable to file charges of Principal to the commission of those primary offenses (per s. 777.011) or Aiding, abetting, advising or conspiring in violation of the election code (per s. 104.091) against those who allegedly assisted Mascara, Hardman, and/or Carter with the straw candidate plan.

- (2) *A candidate may give his or her own personal or business funds to another candidate, so long as the contribution is not given in exchange for a promise or expectation that the recipient will directly or indirectly do anything to aid or promote the candidacy of the contributor which the recipient would not have otherwise done.*
- (3) *Any person who violates any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, and from and after conviction shall be disqualified to hold office.*

The purpose behind this statute is to prohibit a candidate, or his/her supporters, from paying the candidate's opponent to bow out of a race, or to intentionally lose an election, thus paving the way for the first candidate to be elected to office. The State is unable to file this charge against Mascara or any of his supporters for three reasons.

First, the statute specifically requires that Mascara or his supporters offer a thing of value for the furtherance of Carter's candidacy. There is no evidence to corroborate Hardman's account that Mascara was the source of the \$10,000 in cash that was funneled to Carter's campaign. That is because none of the people to whom Hardman gave the \$10,000 were able to identify Mascara as the source of the money. Similarly, there is no evidence that any of Carter's supporters actually gave, paid, expended, or contributed any money or thing of value for the furtherance of Carter's candidacy.³

Second, the theory that Mascara amassed \$4,600 at the end of the election in order to pay Carter for his participation as a straw candidate is only supported by two witnesses, with the other six unable to offer direct, admissible evidence that Mascara received cash as part of the plan and paid it to Carter. This lack of cohesive evidence to support the government's theory of how the money was collected in order for the offense to occur will result in our inability to prove, beyond a reasonable doubt, that the crime occurred.

Third, the statute clearly allows a candidate (Mascara) to give his own personal funds to another candidate (Carter), "so long as the contribution is not given in exchange for a promise or expectation that the recipient [Carter] will directly or indirectly do anything to aid or promote the candidacy of the contributor [Mascara] which the recipient [Carter] would not have otherwise done." We note that nothing in this statute distinguishes between a candidate giving a financial contribution to another candidate in a different race versus a financial contribution to his or her opponent. So, while it may seem ridiculous for it to be legal for a candidate to contribute to his or her opponent's campaign, such an action is not illegal given the plain language of the statute.

³ Your investigation revealed that a number of individuals loyal to Mascara volunteered their time to Carter and his campaign. The term "thing of value" is not defined in Florida Statutes Chapter 104, but we note that the only other place in which that term appears in the chapter is in Fla. Stat. s. 104.012 – Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application – which states, in pertinent part, "(1) Any person who gives anything of value that is redeemable in cash to any person in consideration for his or her becoming a registered voter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or baby-sitting in connection with the absence of an elector from home for registering." It is clear that Chapter 104 envisions a "thing of value" to be an actual tangible thing, not a construct like volunteered time.

Taking the facts as they have been presented, your investigation revealed that Carter had absolutely no intention of ever campaigning in earnest for office or becoming the Sheriff of St. Lucie County. His goals all along were to siphon votes from Williams in the primary so that Williams never won the Republican nomination, thus resulting in Mascara being reelected as Sheriff. Even assuming, therefore, that there was direct, admissible evidence of either of the schemes resulting in a financial benefit to Carter or his campaign, neither enticed Carter to do something that he was not otherwise determined to do. As a result, we are unable to charge Mascara or any of his supporters with this offense.

Fla. Stat. s. 106.08 – Contributions; limitations on. –

- (1)(a) Except for political parties or affiliated party committees, no person or political committee may, in any election, make contributions in excess of the following amounts: [. . .]*
 - 3. To a candidate . . . for countywide office . . . , \$1,000. [. . .]*
- (5)(a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election. [. . .]*
- (7)(a) A person who knowingly and willfully makes or accepts no more than one contribution in violation of subsection (1) or subsection (5) . . . commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. [. . .]*
 - (b) Any person who knowingly and willfully makes or accepts two or more contributions in violation of subsection (1) or subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.3084. [. . .]*

Fla. Stat. s. 106.09 – Cash contributions and contribution by cashier’s checks. –

- (1)(a) A person may not make an aggregate cash contribution or contribution by means of a cashier’s check to the same candidate or committee in excess of \$50 per election.*
 - (b) A person may not accept an aggregate cash contribution or contribution by means of a cashier’s check from the same contributor in excess of \$500 per election.*
- (2)(a) Any person who makes or accepts a contribution in violation of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.*
 - (b) Any person who knowingly and willfully makes or accepts a contribution in excess of \$5,000 in violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*

Hardman provided immunized testimony during his interview that he took the \$10,000 in cash that Mascara purportedly gave to him and distributed it to 11 people who then wrote checks to the Carter campaign. None of those 11 individuals were able to provide direct evidence corroborating Hardman’s account that Mascara was the origin of the cash. Hardman’s testimony alone is insufficient to carry a guilty verdict given his direct involvement in the nefarious conduct at issue; any anticipated testimony he would offer would be impeached in light of his negotiated demand for use immunity; and Hardman was essentially forced to retire from the St. Lucie County Sheriff’s Office due to improper conduct discovered during the investigation of unrelated claims, a fact that will be cast as a motive for him to fabricate evidence impugning the reputation of his former employer.

I also note that the investigation did not discover a financial footprint tracing the \$10,000 in cash back to Mascara. While there was a working theory that Mascara received a large sum of

cash associated with the sale of real property that resulted in him possessing the \$10,000, that theory did not culminate in actual evidence of withdrawals or other financial transactions that proved Mascara was the source of the cash.

There is insufficient evidence to prove that Mascara made a contribution in excess of the \$50 statutory cap on cash contributions in any election; or that he made a contribution in excess of the \$1,000 statutory cap permitted per election to a candidate for countywide office; or that he made a contribution to Carter's campaign through or in the name of any or all of the 11 individuals who contributed to Carter's campaign using the funds Hardman gave them. As it relates to Carter, there is no evidence that he was aware that those 11 contributions were sourced from funds coming from Hardman or Mascara; or that he accepted a cash contribution in excess of the statutory cap from the same contributor, be it Mascara or Hardman. Accordingly, there is insufficient evidence to charge either Mascara or Carter with making or accepting a contribution through or in the name of another.

Fla. Stat. s. 817.155 – Matters within jurisdiction of Department of State; false, fictitious, or fraudulent acts, statements, and representations prohibited; penalty; statute of limitations.

– A person may not, in any matter within the jurisdiction of the Department of State, knowingly and willfully falsify or conceal a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false document, knowing the same to contain any false, fictitious, or fraudulent statement or entry. A person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations for prosecution of an act committed in violation of this section is 5 years from the date the act was committed.

In Florida, candidates for federal, state, and multi-county offices, certain judicial positions, and some multi-county special districts are required to qualify with the Division of Elections, which is a division of Florida's Department of State. See Fla. Stat. ss. 20.10(2), 99.061(1). Candidates for all other elected offices, including that of Sheriff for a particular county, are required to qualify with the Supervisor of Elections for the county in which the position is located. See Fla. Stat. s. 99.061(2). Florida law requires that candidates file campaign documents, including financial reports of all contributions received, and expenditures made, by or on behalf of the candidate, with the same officer before whom the candidate was required by law to qualify. See. Fla. Stat. s. 106.07(1), (2)(a)1.

Because the office at issue was that of Sheriff of St. Lucie County, Carter was required to qualify with the St. Lucie County Supervisor of Elections and file all of his campaign finance reports with that same officer. None of his campaign documents were ever submitted to the Department of State, Division of Elections. As a result of these facts, Fla. Stat. s. 817.155 does not apply to this fact pattern.

I note that there is an analogous provision in **Fla. Stat. s. 106.07 - Reports; certification and filing**, which bears analysis. That statute states, in pertinent part:

(5) The candidate and his or her campaign treasurer, in the case of a candidate . . . shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the

accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

This statute specifically criminalizes conduct committed by a campaign treasurer, candidate, or political committee chair. Your investigation revealed that Carter and his campaign treasurer were completely unaware that Mascara or Hardman were the purported sources of \$10,000 worth of financial contributions to the Carter campaign, and that both were unaware that money from checks cashed against the Carter campaign account were supposedly gathered together and used to pay Carter \$4,600 in thanks for his efforts in running as a straw candidate against Williams.

I find, therefore, that neither Carter nor his campaign treasurer violated this statute. Since this portion of the election code was not violated, we similarly find that there is no basis to charge any other individual (be that Hardman, Mascara, or any other individual) as a Principal in the first-degree (Fla. Stat. s. 777.011), or with Aiding, abetting, advising, or conspiring in violation of the election code (Fla. Stat. s. 104.091).

Fla. Stat. s. 934.215 – Unlawful use of a two-way communications device. – *Any person who uses a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any felony offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*

This Florida law is often implicated when individuals use cellular telephones to communicate with one another to commit a felony offense. We are unable to file this offense for two reasons. First, as has been explained in detail, *supra*, there is insufficient evidence to charge Mascara or anyone else with any offenses, including any of the aforementioned felonies. Second, this charge is dependent upon being able to authenticate, for purposes of admission into evidence, the text message communications that Hardman claimed he had with Mascara regarding installing Carter as a straw candidate in the 2020 Republican primary and general election for St. Lucie County Sheriff.

Hardman admitted in his interview that after he collected those alleged text messages and put them on a word processing document, that he threw away his personal cell phone. He admitted to tampering with evidence, in that he knew a criminal investigation was pending or was about to be instituted when he engaged in this behavior. As a result of Hardman's actions, the government has no way to independently verify or corroborate that the text messages Hardman offered are true or complete, and as such, we are confident that they will be excluded as evidence due to a lack of authenticity. The State cannot file this charge because of a lack of admissible evidence.

Fla. Stat. s. 106.15 – Certain Acts prohibited.⁴ – [. . .]

- (3) A candidate may not, in the furtherance of his or her candidacy for nomination or election to public office in any election, use the services of any state, county, municipal, or district officer during working hours.*
- (4) No person shall make and no person shall solicit or knowingly accept any political contribution in a building owned by a governmental entity. For purposes of this subsection, “accept” means to receive a contribution by personal hand delivery from a contributor or the contributor’s agent. This subsection shall not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fund raiser.*
- (5) Any person violating the provisions of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or S. 775.083.*

Subsection (3) of this statute makes it a crime for a candidate to use the services of a government employee when the government employee is working. Hardman alleged in his interview that he, Mascara, and other SLCSO employees engaged in activity designed to promote Carter’s campaign, and therefore ultimately Mascara’s candidacy, while they were physically at the SLCSO. Your interviews of the SLCSO employees who agreed to speak with you revealed that Hardman solicited their assistance with the Carter campaign; none of them said that Mascara had asked them to do so. There were also a number of emails and text messages that Hardman had offered to support his claims that Mascara was ultimately the one who was seeking SLCSO employee assistance, but there is no evidence to pinpoint whether those employees were actually working when their services were used for the Carter campaign; many of the dates and times of those communications were not during standard business hours; and none of the text communications can be independently verified.

I recognize that you have suggested the offenses of Aiding, abetting, advising, or conspiring in violation of the election code (Fla. Stat. s. 104.091) and Principal in the first-degree (Fla. Stat. s. 777.011) as a means by which others involved in this straw candidate scheme could be charged with criminal offenses, but those provisions cannot be used to apply subsection (3) of Fla. Stat. s. 106.15 to individuals who are not a candidate for two reasons.

First, the rule of lenity, as a rule of statutory construction, provides that when a law is clear or unambiguous, a court must apply the law in the manner that is most favorable to the defendant. Using this rule, the statute very clearly is aimed at criminalizing the conduct of a candidate, not the government employees who the candidate used to further his or her candidacy. This is likely because our Legislature did not want to put government employees in the position of having to pick between acquiescing to the pressure of assisting a candidate for office for whom they would likely work one day, versus refusing to do so and finding themselves at odds with a future employer.

Second, when a statute covering a particular subject area is in conflict with another statute that covers the same subject in more general terms, the narrowly tailored statute controls.

⁴ Although this statute was not submitted for review as part of your Investigative Summary, we believe it warrants discussion given the facts and circumstances learned during your investigation.

See Fla. Virtual Sch. v. K12, Inc., 148 So.3d 97, 102 (Fla. 2014) (“When reconciling statutes that may appear to conflict, the rules of statutory construction provide that a specific statute will control over a general statute.”); see also, McKendry v. State, 641 So.2d 45, 46 (Fla. 1994) (“a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.”). Accordingly, we find that Fla. Stat. s. 106.15(3) does not apply to the SLCSO employees Hardman alleged were used by Mascara to assist Carter’s campaign.

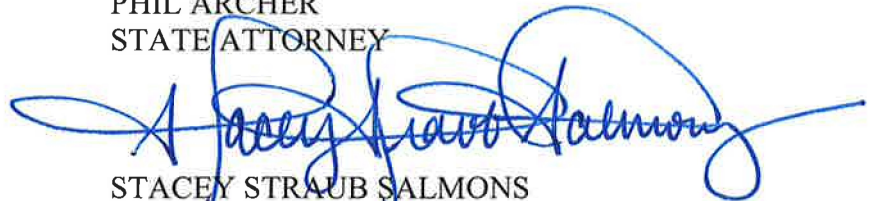
Subsection (4) of Fla. Stat. s. 106.15 criminalizes the conduct of any person who makes, solicits, or knowingly accepts a political contribution in a government-owned building. The language of this subsection is illustrative of the previous point because it demonstrates that the Legislature is fully capable of identifying the category of people whose conduct it intends to criminalize (“candidate” for purposes of Fla. Stat. s. 106.15(3) and “no person” for purposes of Fla. Stat. s. 106.15(4)). This subsection warrants discussion because Hardman claimed Mascara left \$10,000 in cash in Hardman’s SLCSO office, but as previously discussed, there is no evidence to corroborate Hardman’s account. There is no financial trail proving Mascara was in possession of that quantity of cash in the Summer of 2020; Hardman’s credibility will be attacked on grounds he had motive to impugn the reputation of his former employer given his forced departure from SLCSO; Hardman’s veracity will be challenged in light of his receipt of use immunity in exchange for his cooperation; and none of the 11 recipients of the \$10,000 in cash were able to tie it back to Mascara. Given the lack of evidence to substantiate Hardman’s account, the State cannot charge Mascara with making a \$10,000 political contribution in a government-owned building.

Conclusion:

Our office recognizes the tremendous amount of time, effort, and resources you and your fellow Florida Department of Law Enforcement, Office of Executive Investigations Inspectors spent investigating this matter. We thank you for the opportunity to review your completed investigation.

Sincerely,

PHIL ARCHER
STATE ATTORNEY



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