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

STATE OF FLORIDA,

CASE NO.: 59-2012-CF-001792-A

Plaintiff,

vs.

SHELLIE N. ZIMMERMAN,

Defendant.

FILED IN OFFICE
MAYYANNE MORSE
CLERK CIRCUIT COURT
13 APR 16 PM 4:33
BY SEMINOLE CO. FL. D.C.

MOTION TO DISMISS OR, IN THE ALTERNATIVE, PETITION FOR
WRIT OF QUO WARRANTO RE: EXECUTIVE ORDER NUMBER 12-279

The Defendant, SHELLIE N. ZIMMERMAN, by and through undersigned counsel and pursuant to Florida Rule of Criminal Procedure 3.190(b), hereby moves this Honorable Court for issuance of an order dismissing the charge in the above-styled case. In the alternative, and pursuant to Article V, Section 5 (b) of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(c)(3), Ms. Zimmerman petitions this Court for a writ of quo warranto finding that the Honorable ANGELA COREY, State Attorney for the Fourth Judicial Circuit of Florida, has exceeded her constitutional and statutory authority by continuing the prosecution of the Defendant in the above-styled cause. More specifically, Ms. Zimmerman contends that Executive Order Number 12-279 which went into effect March 23, 2013, and purports to extend COREY'S assignment in this cause is *void ab initio*. This Court should dismiss the perjury charge in this cause or, alternatively, issue a writ of quo warranto finding that the Honorable ANGELA COREY, State Attorney for the Fourth Judicial Circuit of Florida, has exceeded her constitutional and statutory authority. As grounds, Ms. Zimmerman states:

1. The Honorable NORMAN WOLFINGER, State Attorney for the Eighteenth Judicial Circuit of Florida, advised Governor RICK SCOTT that the death of Trayvon Martin was currently under investigation. The Honorable NORMAN WOLFINGER, to avoid any appearance of conflict of interest or impropriety, voluntarily disqualified himself and requested the executive assignment of another State Attorney with respect to the investigation of this case and all related matters.

2. On March 22, 2012, Governor Rick Scott, pursuant to Section 27.14, Florida Statutes (2012), issued Executive Order Number 12-72, assigning the Honorable ANGELA COREY, State Attorney for the Fourth Judicial Circuit of Florida, to "discharge the duties of the Honorable NORMAN WOLFINGER, State Attorney for the Eighteenth Judicial Circuit of Florida, as they relate to the investigation and all matters pertaining to the death of Trayvon Martin."

3. On June 12, 2012, the State of Florida charged SHELLIE N. ZIMMERMAN, the Defendant/Petitioner, with one count of perjury alleging that, on April 20, 2012, she did "knowingly make a false statement, which she did not believe to be true, under oath in an official proceeding, to wit: the Bond Hearing of George Zimmerman, regarding a material matter, contrary to the provisions of Section 837.02 (1), Florida Statutes." The information charging perjury was signed by John I. Guy, Designated Assistant State Attorney, under the authority of ANGELA COREY, the State Attorney for the Fourth Judicial Circuit of Florida. The State filed the Information in the Eighteenth Judicial Circuit, in and for Seminole County, Florida.

4. Ms. Zimmerman previously challenged COREY'S authority to prosecute this lawsuit contending that she acted improperly and in excess of her constitutional and statutory authority. Specifically, Ms. Zimmerman contended that COREY acted outside the scope of the power

granted to her by the executive order signed by Governor Rick Scott. More specifically, Ms. Zimmerman contended that COREY had no authority to prosecute her for perjury at George Zimmerman's bond hearing, which had no relation to "the investigation and all matters pertaining to the death of Trayvon Martin". This Court denied any relief in the prosecution of the Defendant, Shellie Zimmerman.

5. Executive Order, Number 12-72, assigned COREY, State Attorney for the Fourth Judicial Circuit of Florida, for a period of one year, "to and including March 22, 2013." On December 18, 2012, Governor Scott signed Executive Order Number 12-279, which purported to reaffirm Executive Order 12-72 and extend the time of COREY'S assignment for an additional period of one year, "to and including March 22, 2014." That extension, Executive Order Number 12-279, thus took effect on March 23, 2013. COREY has continued to prosecute Ms. Zimmerman under the purported authority of this extension.

6. Section 27.14(1), Florida Statutes (2012) provides:

(1) If any state attorney is disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney or order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, specified in general in the executive order of the Governor. Any exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such exchange or assignment. (Emphasis added.)

7. Since Governor Scott did not apply for, nor did the Supreme Court of Florida approve, the extension of the executive assignment of COREY in this cause for an additional year,

COREY has no authority or power to prosecute Ms. Zimmerman. This Court should grant this motion to dismiss or, in the alternative, issue a writ of quo warranto finding that COREY, State Attorney for the Fourth Judicial Circuit of Florida, has exceeded her constitutional and statutory authority by continuing the prosecution of Ms. Zimmerman in the above-styled cause.

8. This Court has jurisdiction. In addition to the fact that this Court is assigned to the above-styled case, Article V, Section 5 (b) of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(c)(3), gives all circuit courts original jurisdiction to issue writs of mandamus, prohibition, quo warranto, common law certiorari, and habeas corpus, and all writs necessary to the complete exercise of the court's jurisdiction.

9. Special Prosecutor COREY is a state officer. See Hall v. State, 187 So. 392, 398 (Fla. 1939). A petition for writ of quo warranto is the proper vehicle for a criminal defendant to challenge the scope of the authority of a state attorney assigned by the governor to prosecute a case in another circuit. See Austin v. State ex rel. Christian, 310 So.2d 289 (Fla. 1975); Carey v. State, 349 So.2d 820 (3d DCA 1977), and State v. Viscito, 349 So.2d 196 (Fla. 3d DCA 1977). See also, Johnson v. Office of the State Attorney, Etc., 987 So. 2d 206 (Fla. 5th DCA 2008) (Petitioner, who raised the issue in post-conviction, waived the right to challenge the authority of the prosecuting authority by not timely filing a direct quo warranto petition in the trial court.) As the Florida Supreme Court recently stated: "We continue to hold that a conviction resulting from an information signed by a state officer lacking authority is not void ab initio but is, at most, voidable upon timely challenge." Carbajal v. State, 75 So. 3d 258, 264 (Fla. 2011). Based on the foregoing authority, Ms. Zimmerman now, prior to trial and shortly after COREY's authority has expired, challenges her power and authority to continue the prosecution.

10. Section 27.14(1), Florida Statutes, provides a limited exception to this rule. The electorate of the Eighteenth Judicial Circuit is entitled to have its prosecutorial decisions made by its elected official unless that elected official is disqualified or there is a "good and sufficient reason" for the assignment of a Special Prosecutor. Additionally, the statute clearly states: "Any exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance...". The statute provides a time limit for a reason. "The purpose of the time limitation in the statute is to prevent the Chief Executive from frustrating the will of the voters of a judicial circuit by replacing any elected state attorney with one chosen by the Governor from another circuit." Finch v. Fitzpatrick, 254 So. 2d 203, 205 (Fla. 1971). The limitation on the length of time for the executive assignment of a special prosecutor, pursuant to Section 27.14, Florida Statutes, has gradually extended over the last several decades. The 1970 version of the statute provided for a 60 day limitation within one calendar year. Just like the language contained in the current statute, any excess of that time period required approval by order of the Supreme Court upon application of the Governor, showing good and sufficient cause for the extension of the assignment. Finch v. Fitzpatrick, 254 So. 2d 203 (Fla. 1971). By 1975, the length of the executive assignment had increased to six months with any extension requiring the identical procedure for application and approval by the Supreme Court. § 27.14, Fla. Stat. (1975).

CONCLUSION AND PRAYER FOR RELIEF

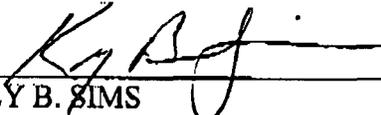
WHEREFORE, the Defendant/Petitioner, SHELLIE N. ZIMMERMAN, asks this Honorable Court to grant this motion to dismiss or, in the alternative issue a writ of quo warranto re: Executive Order No. 12-279 to preclude Special Prosecutor, Angela Corey, State Attorney

for the Fourth Judicial Circuit of Florida, from prosecuting her in the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile/mail delivery to the Honorable Angela B. Corey, State Attorney, Office of the State Attorney, Fourth Judicial Circuit, Duval County Courthouse Annex, 220 East Bay Street, Jacksonville, Florida

32202 and John I. Guy, Esquire, Office of the State Attorney, Fourth Judicial Circuit, Duval County Courthouse Annex, 220 East Bay Street, Jacksonville, Florida 32202, this the 16th day of April, 2013.



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