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CIRCUIT COURT, EIGHTEENTH
JUDICIAL CIRCUIT, IN AND FOR
SEMINOLE COUNTY, FLORIDA.

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

STATE OF FLORIDA,

Plaintiff,

vs.

SHELLIE ZIMMERMAN,

Defendant.

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
12 NOV 30 AM 11:56
BY SEMINOLE CO. FL.
D.C.

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF QUO WARRANTO**

The Defendant, SHELLIE NICHOLE 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 cause. 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), the Defendant 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 filing perjury charges against the defendant in the above-styled cause. As grounds therefore, Defendant states:

1. Prior to the filing of an Information in the above-styled cause, 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 the death of Trayvon Martin.

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 NICHOLE 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 is 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. Defendant asserts that, by charging the Defendant with perjury, Special Prosecutor COREY has acted improperly and in excess of her constitutional and statutory authority. Specifically, Special Prosecutor COREY has acted outside the scope of the power granted to her by the executive order signed by Governor RICK SCOTT. More specifically, Special Prosecutor COREY has no authority to prosecute the Defendant for alleged perjury at George Zimmerman's bond hearing, as it is not related to “the investigation and all matters pertaining to the **death** of Trayvon Martin”. (Emphasis added)

5. 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), invests in 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.

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) and Carey v. State, 349 So.2d 820 (3d DCA 1977).

Additionally, in State v. Viscito, 349 So.2d 196 (Fla. 3d DCA 1977), the State of Florida appealed the trial court's dismissal of Informations charging the defendants with various gambling violations. The trial judge dismissed the Informations on the ground that the executive order, similar to the one in the above-styled cause, was invalid. The appellate court reversed and remanded the dismissals because the authority of the assigned state attorney should have been tested by quo warranto proceedings. To their detriment, the defendants failed to pursue this method in attacking the Informations, thus losing in the appellate court.

6. Article V, Section 17 of the Florida Constitution provides, in pertinent part, as follows:

In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law....

Likewise, Section 27.01, Florida Statutes (2012), provides that "[t]here shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits...." Section 27.02 further provides that "[t]he state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party...." Thus, by constitutional and statutory mandate, the citizens of a particular judicial circuit are entitled to have any alleged offenses committed within that circuit prosecuted by the State Attorney whom they elect.

7. Section 27.14 of the Florida Statutes provides a limited exception to this rule. That section permits the Governor to assign a state attorney from one circuit to discharge the duties of the state attorney in a second circuit when the state attorney for the second circuit is disqualified to represent the state, or "for any other good and sufficient reason." Fla. Stat. §27.14(1). The scope of the assigned state attorney's authority to investigate and prosecute is necessarily circumscribed by the language of the executive order of assignment. Hall v. State, 187 So. 392, 398-99 (Fla. 1939). That is, the assigned state attorney is clothed with the powers and privileges of the incumbent prosecutor only to the extent "necessary to fully effectuate the intent and purpose of" the executive order. *Id.* at 399.

8. Importantly, Governor SCOTT did not give Special Prosecutor COREY blanket authority to file additional charges against other individuals for any alleged crimes committed within the Eighteenth Judicial Circuit. Nor could he, because there did not exist a "good and sufficient reason" for so expansively usurping the will of the citizenry who elected State Attorney WOLFINGER. See Fla. Stat. §27.14(1). Rather, Special Prosecutor COREY'S authority was

limited 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.

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. See Fla. Stat. §27.14(1).

9. A special prosecutor can exceed her authority, which is limited by the executive order.

In Hardy v. Rundle, 846 So. 2d 1174 (Fla. 2d Dist. 2003), the court held:

Paul Hardy and Leo Salvatori seek review of the final judgment dismissing their complaint for writ of quo warranto. The complaint sought to prevent a special prosecutor from prosecuting count fourteen of criminal information which charged Hardy and Salvatori with money laundering. We conclude that the executive order issued by the governor giving the special prosecutor the authority to prosecute certain matters did not encompass the claim for money laundering asserted in count fourteen. Accordingly, we reverse.

10. Defendant/Petitioner contends that Special Prosecutor COREY has exceeded her authority under Governor SCOTT'S Executive Order by filing perjury charges against the Defendant based on the **Defendant's testimony at George Zimmerman's bond hearing**. Although George Zimmerman has been charged in the death of Trayvon Martin, **the Defendant has not**. Perjury at a bond hearing clearly does not "relate to the investigation in all matters **pertaining to the death of Trayvon Martin.**" (Emphasis added.) At the time of the Defendant's alleged perjury, Trayvon Martin was already dead. Special prosecutors' appointments are for specific matters and for a specific period of time. There are valid reasons for these limitations. Here, Special Prosecutor COREY has exceeded her authority.

11. If Special Prosecutor COREY is permitted to prosecute the Defendant in this cause,

would there be any limits to her authority? Could she prosecute veniremen summoned who fail to appear for jury duty? Would she be allowed to prosecute individuals who are arrested outside of the Seminole County Courthouse for protesting against any of the parties associated with this matter? Would she be allowed to seek charges against members of the media for their coverage of the unfolding events? Clearly not.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, the Defendant/Petitioner respectfully requests this Honorable Court grant this her motion to dismiss or, in the alternative issue a writ of quo warranto to preclude Special Prosecutor, ANGELA COREY, State Attorney for the Fourth Judicial Circuit of Florida, from prosecuting the Defendant in the above-styled cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile/hand/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 29th day of November, 2012.


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