

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 21-003634CF10A
JUDGE: MARTIN FEIN

STATE OF FLORIDA,

Plaintiff,

vs.

ROBERT RUNCIE,

Defendant

**MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE,
MOTION FOR STATEMENT OF PARTICULARS**

COMES NOW, ROBERT RUNCIE, by and through undersigned counsel, and pursuant to Fla.R.Crim.Pro. 3.190 (b) and 3.140 (o), and respectfully moves this Honorable Court for an Order dismissing the instant Indictment or, in the alternative, moves under Fla.R.Crim.Pro. 3.140 (n) for an Order compelling the Statewide Prosecutor to furnish a Statement of Particulars to the single count of the instant Indictment, and as grounds therefore says as follows:

1. Mr. Runcie is presently charged by Indictment with one count of Perjury in an Official Proceeding under Fla.Stat. 837.02(1).
2. The instant Indictment is attached and incorporated by reference to this Motion.

3. The Indictment avers the charged conduct took place between March 31, 2021 and April 1, 2021, which correlates to the two days that Mr. Runcie appeared before the Twentieth Statewide Grand Jury.

MOTION TO DISMISS UNDER 3.190 (c) and 3.140 (o)

4. The Indictment provides no specificity whatsoever as to what statement is attributed to Mr. Runcie that constitutes the basis for the underlying allegation.

5. The Indictment provides no specificity as to the subject matter of the statement relating to the allegation within the charging document. The Indictment does not aver that the subject statement involved a material matter.

6. The Indictment even fails to specify during which of the two days of Mr. Runcie's testimony the statement is alleged to be made.

7. The instant charge is unique in that, unlike other crimes, any and all of the answers provided by Mr. Runcie in his Grand Jury testimony, based upon the present Indictment, could be subject to prosecution for the charge as set forth in the Indictment.

8. Fla.R.Crim.Pro. 3.140 (o) provides:

(o) Defects and Variances. No indictment or information, or any count thereof, shall be dismissed or judgment arrested, or new trial granted on account of any defect in the form of the indictment or information or of misjoinder of offenses or for any cause whatsoever, **unless the**

court shall be of the opinion that the indictment or information is so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense. (Emphasis added)

9. Mr. Runcie respectfully moves this Honorable Court for an Order dismissing the instant Information because, as presently comprised, it is “so vague, indistinct and indefinite” that it would mislead him in the preparation of his defense and creates a substantial danger of a new prosecution for the same offense even after acquittal. In the context of testimony over two full days and approximately 18 hours, the Indictment as currently comprised constitutes an example of charging “hide and seek.”

10. The substantial danger of the lack of specificity in the Indictment as to what Mr. Runcie purportedly said that constitutes the charge is that he could be re-charged over and over for statements made in his testimony, even after acquittal. As currently comprised, not only does the Indictment provide no notice to Mr. Runcie as to what statement is at issue, but would literally permit the prosecution to conform the charge to whatever evidence is presented at a trial, as opposed to present evidence conforming to the charge. The Indictment is thus so vague, indistinct and indefinite that Mr. Runcie would be prejudiced in preparing his defense for trial.

11. Alternatively, Mr. Runcie moves to dismiss the Indictment because

of the lack of any specificity as to what statement is averred to be false, so that on its face, the Indictment does not assure that the legally mandated minimum of 12 grand jurors concurred on a particular statement to constitute the charge.

12. As composed, without express specificity confirming that the minimum number of grand jurors concurred that a particular statement violated the perjury statute, the present Indictment could subject Mr. Runcie to prosecution for the present charge, for example, if 6 grand jurors concurred that one statement was false, while a different 6 grand jurors concurred that some other statement was false. Because of the lack of specificity in the Indictment that at least 12 grand jurors concurred on the conduct in question, Mr. Runcie moves to dismiss the Indictment.

13. As an aside, Mr. Runcie anticipates that the prosecution may suggest that the conventional remedy for this lack of specificity falls under Fla.R.Crim. Pro. 3.140 (n), regarding a motion for statement of particulars.

14. However, because the Twentieth Grand Jury has concluded its service, no further authority exists for a superseding Indictment and an Indictment is not otherwise subject to amendment after its return, any statement of particulars would thus be generated solely by the assigned Statewide Prosecutor and not by the grand jurors. Mr. Runcie is prejudiced

by the employment of that remedy, which would permit the Statewide Prosecutor to determine which statement(s) constitutes the basis for the charge and should be included in the statement of particulars as purportedly false, as opposed to guaranteeing a specific determination by at least 12 grand jurors as what conduct comprises the charge as required by the Florida Grand Jury laws.

15. What makes this issue especially unique is that an Indictment of a charge of perjury resulting from a 2-day, 18 hour interrogation- unlike a discrete act like homicide, burglary, drug trafficking, etc.- does not clearly correlate to one specific, discrete act that would be clearly contemplated the same by all the grand jurors and subsequently discernible by the parties.

16. Without a showing on the face of the Indictment that at least 12 grand jurors concurred that a violation of the perjury statute occurred **as to a specific statement**, Mr. Runcie respectfully suggests the lack of specificity in the Indictment is fatal for failing to demonstrate that the true bill is in conformance with Fla.Stat. 905.23, requiring an "indictment shall not be found without the concurrence of 12 grand jurors." A statement of particulars under such circumstances permitting the substitution of the prosecutor's assessment of what constitutes the statement at issue is contrary to that statute and implicates due process concerns. Mr. Runcie respectfully argues

the appropriate remedy for these deficiencies is order of dismissal.

THE STATEMENT OF PARTICULARS ARGUMENT

17. Assuming, *arguendo*, that the Court does not grant Mr. Runcie's Motion to Dismiss, he alternatively moves- subject to his arguments raised *supra*- for the Court to order the furnishing of a statement of particulars.

18. Fla.R.Crim.Pro. 3.190 (n) governs an accused's right to be noticed of the particulars of the offense for which he is charged. That rule, in pertinent part, reads as follows:

(n) **Statement of Particulars.** The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.

19. As referenced within this Rule, "[r]easonable doubts concerning the construction of this rule shall be resolved in favor" of the accused.

20. Mr. Runcie respectfully contends that instant Indictment fails to sufficiently inform him of the particulars of his offense to prepare a defense in this case. Fla.Stat. 837.02, the instant statute, requires proof beyond a reasonable doubt not only that the statement at issue is false, **but that the**

witness knew the statement was false when made. Good faith mistake or belief that a statement is true is an absolute defense to this charge. Absent specificity as to what statement is at issue, the charging document provides inadequate notice to Mr. Runcie to prepare his defense, especially where his testimony at the proceeding lasted approximately eighteen (18) hours and spanned a two-day period.

21. The crime of perjury further requires proof that the statement involves a “material matter.” By failing to identify the statement at issue in the Indictment, Mr. Runcie is denied adequate notice to address the materiality of the statement at issue.

22. Mr. Runcie hereby alternatively moves this Court for an Order requiring the Statewide Prosecutor to provide with particularity the specific question(s) and answer(s) from the Grand Jury testimony comprising the allegation as well as the specific date of the statement(s) at issue.

23. Other grounds to be argued, *ore tenus*, if necessary. Mr. Runcie reserves the right to separately address other issues via separate motions to dismiss.

I HEREBY CERTIFY that a copy of the foregoing was filed with the Clerk of Court via the Florida Courts E-Filing Portal, with a copy furnished to Richard Mantei at richard.mantei@myfloridalegal.com of the Statewide

Prosecutor's Office on this 23rd day of April, 2021.

Respectfully submitted,

DUTKO & KROLL, P.A.

Attorneys for the Defendant
600 South Andrews Avenue
Suite 500

Fort Lauderdale, FL 33301-2845
954-595-3900; Fax: 954-764-5040

jeremy@dutkoandkroll.com

elina@dutkoandkroll.com

BY: /s/ *Jeremy J. Kroll*

Jeremy J. Kroll, Esq.

Florida Bar No. 0096466

And

DUTKO & KROLL, P.A.

Counsel for Defendant
600 South Andrews Avenue
Suite 500

Fort Lauderdale, FL 33301
954-595-3900; 954-764-5040 (fax)

michael@dutkoandkroll.com

jean@dutkoandkroll.com

By: /s/ *Michael E. Dutko, Sr.*

Michael E. Dutko, Sr., Esq.

Florida Bar No. 434957

And

JOHNNY L. McCRAY, Jr., P.A.

Counsel for Defendant
400 E Atlantic Blvd
Pompano Beach, FL 33060

954-781-3662; 954-786-2289 (fax)

mccraylaw@gmail.com

By: /s/ Johnny L. McCray, Jr.

Johnny L. McCray, Jr., Esq.

Florida Bar No. 342319

1A

**IN THE SUPREME COURT OF FLORIDA
CASE NUMBER SC19-240**

STATE OF FLORIDA

**TWENTIETH STATEWIDE GRAND
JURY INDICTMENT NO. 2
BROWARD COUNTY
CASE NO.:
OSP CASE NO.: 2021-0126-FLL**

Plaintiff,

vs.

ROBERT W. RUNCIE

Defendant.

_____ /

BILL OF INDICTMENT

**Count 1: Perjury in an Official Proceeding
Fla. Stat. § 837.02(1)
3rd Degree Felony**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

**COUNT 1
Perjury in an Official Proceeding**

The GRAND JURORS of the Twentieth Statewide Grand Jury for the State of Florida, duly called, impaneled, and sworn to inquire and true presentment make, upon their oaths, do present and charge that beginning on or about March 31, 2021 and continuing to on or about April 1, 2021, in the Eleventh, Fifteenth, and Seventeenth Judicial Circuits of Florida to wit: Miami-Dade, Palm Beach, and Broward Counties, Defendant **ROBERT W. RUNCIE**, while testifying under oath in an official proceeding, to wit: the Twentieth Statewide Grand Jury, which was impaneled to investigate:

- (a) whether refusal or failure to follow the mandates of school-related safety laws, such as the Marjory Stoneman Douglas Public Safety Act, results in unnecessary and avoidable risk to students across the state;
- (b) whether public entities committed-and continue to commit-fraud and deceit by accepting state funds conditioned on implementation of certain safety measures while knowingly failing to act
- (c) whether school officials committed-and continue to commit-fraud and deceit by mismanaging, failing to use, and diverting funds from multimillion dollar bonds specifically solicited for school safety initiatives; and
- (d) whether school officials violated-and continue to violate state law by systematically underreporting incidents of criminal activity to the Department of Education.

Received, Clerk, Supreme Court

B. Hall
APR 15 2021

did make a false statement which **ROBERT W. RUNCIE** did not believe to be true, in regard to a material matter, in violation of Sections 837.02(1) of the Florida Statutes.

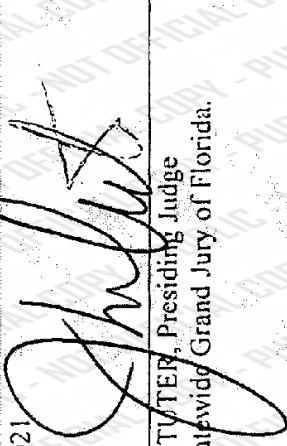
AND ALL SAID OFFENSES OCCURRED IN TWO OR MORE JUDICIAL CIRCUITS IN THE STATE OF FLORIDA AS PART OF A RELATED TRANSACTION OR SAID OFFENSES WERE CONNECTED WITH AN ORGANIZED CRIMINAL CONSPIRACY AFFECTING TWO OR MORE JUDICIAL CIRCUITS IN THE STATE OF FLORIDA.

Dated this 15 day of April 2021.



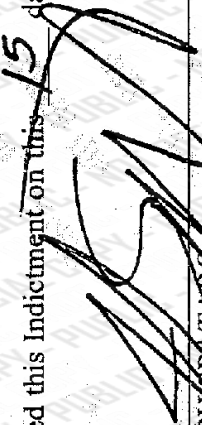
Foreperson
Twentieth Statewide Grand Jury of Florida

THE FOREGOING Bill of Indictment by the Twentieth Statewide Grand Jury was returned to me in open court this 15 day of April, 2021.



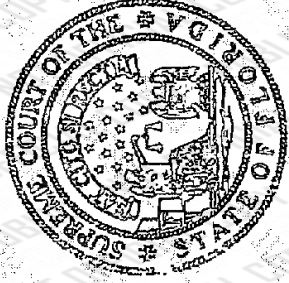
HON. JACK TUTTER, Presiding Judge
Twentieth Statewide Grand Jury of Florida.

I, Joseph Spataro, Chief Assistant Statewide Prosecutor and Assistant Legal Advisor to the Twentieth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this Indictment on this 15 day of April, 2021.



JOSEPH SPATARO
Chief Assistant Statewide Prosecutor
Twentieth Statewide Grand Jury of Florida

Filed in the Supreme Court of Florida, this 15 day of April 2021.



Clerk of the Supreme Court of Florida
Deputy Clerk

Filed in the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida, this ___ day of April, 2021.

Clerk of the Circuit Court
Deputy Clerk

DEFENDANT'S BIOGRAPHICAL DATA

NAME: ROBERT WELLINGTON RUNCIE
RACE: BLACK
SEX: MALE
D/O/B: 05/29/1961
SSN: [REDACTED]
LKA: [REDACTED]