

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR ORANGE COUNTY,
IN THE FALL TERM THEREOF,
IN THE YEAR OF OUR LORD, TWO THOUSAND AND FIVE.

RE: ABSENTEE BALLOT PROCUREMENT

PRESENTMENT OF THE GRAND JURY

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

the Grand Jurors of the State of Florida, empaneled and sworn to inquire and true presentment make, in and for Orange County, upon their oaths do hereby present the following report concerning the procurement of absentee ballots in Orange County.

The Grand Jury met March 9th and 10th, 2005 at the request of the Brad King, State Attorney of the Fifth Judicial Circuit, to inquire into alleged of violations of Florida Statute 104.047.

For the public to understand the Grand Jury's role in this matter, we feel compelled to respond to the suggestion raised in the press that the grand jury "would indict a ham sandwich" if told to by the prosecutor. So that the public will know, the twenty one members of the grand jury are all citizens of Orange County who live, work, and have a substantial stake in our community. In evaluating the cases that come before us, we take our obligation to review facts and determine whether other citizens should be charged with crimes very seriously. In this particular investigation, we are well aware that we have no legal duty to hear and resolve this case. We choose to look into the matter of absentee ballot procurement, as that term is defined below, because we are concerned about the our elective process. We evaluated this matter based on the facts that were presented, the

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THIS 10 DAY OF March, 2005
Lydia Gardner, Clerk
BY M. Felton D.C.
Sealed 4:57pm

law as the State Attorney explained it to us, and our own common sense and good judgement. We brought to this matter our collective wisdom and concern about our community. We are offended that the uninformed would suggest that we, as a body or individually, would be led or told by anyone to make such an important decision as this which is not in keeping with our own sense of justice and fairness based upon the law and the facts. Our legal advisor has put before us the testimony of those persons with knowledge of this matter and has shown and explained to us the law that applies to this case; both as to criminal charges that could be brought and instructions concerning the weighing of evidence and determining the credibility of witnesses. He has also laid out for us our various courses of action that we can determine to take in this matter. While some or all of the competing interests or groups in this matter may be happy with our determination, we wish to make clear that our obligation is not to make any group satisfied. Our obligation is to determine what the facts are and apply those facts to the law using our collective sense of what is fair and right. We have done this knowing that our actions have serious and potentially life altering impact on those persons whose actions we have been required to judge.

Florida statute 104.047 on its face prohibits persons from giving or receiving pecuniary benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots. Hereafter we will generally refer to these various different activities of distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots as “absentee ballot procurement”.

The Grand Jury heard from more than 10 witnesses regarding this matter. In summary it is clear that the campaigns of various political candidates at the municipal, county, circuit, and state

levels from 1998 forward gave pecuniary benefit, directly or indirectly, to campaign workers who were involved in the process of assisting absentee voters request from or deliver back to the supervisor of elections of Orange County their absentee ballots. At the heart of this controversy are the activities of Mr. Ezzie Thomas. By his own account he worked for a fee in political campaigns where his main function was to encourage older African American voters to participate in the elective process by absentee ballots. He did this by contacting voters that he had come to know would vote by absentee ballot and encourage them to order, vote and return their absentee ballots. In the course of this activity he assisted in ordering, requesting, collecting and possessing absentee ballots. The campaigns of Mayor Buddy Dyer, Circuit Judge Alan Apte, Senator Gary Siplin, and candidates clearly paid money to Mr. Thomas for him to work in their campaigns. Since the statute of limitations precludes criminal action on any activity that occurred prior to March, 2002, several of the earlier instances of this activity were not addressed by us.

INTERPRETATIONS OF FLORIDA STATUTE 104.047

It has been suggested that the actions of Mr. Thomas, even if known to the various campaigns or candidates who paid him, would not have violated Florida Statute 104.047. This suggestion is clearly unfounded given the straight forward wording of the statute. The statute by its clear language makes it a crime for a person to provide or accept any pecuniary gain or benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing absentee ballots. Given the wide dissemination of this controversy, we expect future candidates to heed the prohibitions contained herein or seek a definitive determination of the matter in the courts.

ELECTED OFFICIALS NOT ASSISTING US

As a final note, we express our great concern with the decision of Judge Apte and Senator Siplin not to come forward and assist our determination of this matter. While we understand that persons accused of crimes have the right not to testify against themselves, we believe also that obtaining a position of public trust, especially when that trust involves making or ruling on the law brings with it higher obligations. We were informed that Judge Apte was too “busy” with his workload to assist us unless subpoenaed to testify. We see through this subterfuge. Senator Siplin refused to testify without a subpoena. When that subpoena was issued by the State Attorney, Senator Siplin claimed that his service in Tallahassee was more important than his appearance before us and asked us to continue our investigation to a time convenient to him. We believe his obligation here to be of greater significance than the third day of legislative session. We are offended that while we gave time and energy at the expense of our own private occupations to hear this matter, Judge Apte and Senator Siplin were not considerate of our efforts to serve the court system.

OTHER ISSUES TO BE INVESTIGATED

We heard testimony that causes us concern that Councilwoman Wyman regularly used her office at city hall for campaign purposes in the 2004 election. Although the councilwoman denied these statements we believe that there is sufficient testimony to warrant an investigation into the use of her office for campaign purposes.


SUMMARY

In this report, we have tried to clearly explain our decisions in this matter. We are not allowed to detail the testimony of the persons who appeared before us nor are we allowed to name and criticize ordinary citizens who are called before us to give testimony unless they are charged with a crime by us. We recognize that the report may not answer every question that every person may have concerning this matter. We have done our best to resolve and explain the matters as they were before us. The secrecy provisions of grand jury proceedings prohibit the grand jurors from ever commenting publicly on this matter except for this official report.

A TRUE PRESENTMENT


FOREMAN OF THE GRAND JURY

I HEREBY CERTIFY that as authorized and required by law, I have advised the Grand Jury returning this Presentment.


BRAD KING
ASSIGNED STATE ATTORNEY
FIFTH JUDICIAL CIRCUIT OF FLORIDA
19 NW PINE AVE
OCALA, FL 34475
352-620-3700
Florida Bar No. 341045

PRESENTED AND FILED in Open Court this 10 day of March, 2005.

LYDIA GARDNER
CLERK OF THE COURT

BY: M Felton D.C

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR ORANGE COUNTY

Re: ABSENTEE BALLOT PROCUREMENT

STATE OF FLORIDA'S MEMORANDUM REGARDING
JOHN DYER, JR'S SECOND RESPONSE TO THE GRAND JURY PRESENTMENT

Comes now the State of Florida, by and through its Assigned State Attorney, and herein sets forth its argument of the law applicable to the second response of John Dyer, Jr., (hereinafter Dyer) to the grand jury's presentment concerning absentee ballot procurement.

STANDING AND JURISDICTION

In this regard, Dyer, in his second response to the grand jury presentment, asks the court to effectively rule on a discovery matter which by the Supreme Court order 2005-48 would be more properly submitted to Judge Kornstein who has been appointed to proceed to the Ninth Circuit and "hear, try, and determine" the cause of the State of Florida v. Dyer. Judge Kornstein would have authority under Florida Statute 905.27 to determine this matter and it would appear that to avoid conflicting orders and promote judicial economy this matter should be left to him.

GRAND JURY INSTRUCTIONS AND TESTIMONY

By law there is a clear division of authority and duty to the grand jury. The court is to charge the grand jury concerning their duties. Florida Statute 905.11. The state attorney is to give the grand jury legal advice. Florida Statute 905.19. Contrary to Dyer's bald suggestion, there is no provision for the court to entertain a review of the legal advice given to the grand jury.

In order to obtain any portion of the grand jury proceedings, Dyer is required to make a showing of a particularized need. Pleas v. State, 659 So. 2d 700 (Fla. 1st DCA 1995). A torturous reading of different parts of the grand jury's report, or a bald assertion of inability to make a full argument will not suffice under the law to violate the secrecy of the grand jury proceedings.

Wherefore, since Dyer has shown no legal cause why the secrecy of the grand jury should be violated, the State of Florida respectfully submits that the court should deny Dyer's request for

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THIS 8 DAY OF Apr 2000

Lydia Gardner, Clerk

BY *[Signature]*

portions of the grand jury proceedings.

Respectfully submitted this 7th day of April, 2005.

Brad King
Brad King
Assigned State Attorney
19 N. Pine Ave.
Ocala, Fl. 34471
(352) 620-3704
Florida Bar number: 341045

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been furnished by faximile this ^{PM} 7th day of April, 2005 to Robert A. Leventhal and Harrison T. Slaughter, counsel for the defendant, 111 N. Orange Avenue, Suite 700, Orlando, Florida 3280.

Brad King
Brad King