OFFICE MEMORANDUM

STATE ATTORNEYS OFFICE -15TH JUDICIAL CIRCUIT

TO: AL JOHNSON AND BRIAN FERNANDES

FROM: MICHAEL RACHEL

DATE: 1/29/2013

RE: INDICTMENT OF ERNEST BROWN ON FEBRUARY, 16, 2012 AND ACCOMPANYING GRAND JURY REPORT

On January 8th, 2012, Assistant State Attorney Stern notified me that he had serious concerns about the indictment of Ernest Brown. The focus of his concerns was the lack of evidence gathered to prove either Organized Fraud or Official Misconduct against Mr. Brown. I took it upon myself to review the entire case file to see if his concerns were justified. Based upon my extensive review of the file and discussions with investigators and auditors, I believe that the prosecution is barred by the statute of limitations and, further, there is insufficient evidence to sustain a prosecution in this matter.

I recommend the case be Nolle Prossed for the following reasons:

1) **AT THE TIME OF THE GRAND JURY INDICTMENT IN FEBRUARY 16, 2012, THE STATUTE OF LIMITATIONS OF 3 YEARS HAD ALREADY RUN- AN ABSOLUTE BAR TO PROSECUTION.** It is clear from the audit process of Susy Miller that the Palm Beach County School Board knew of the general facts and allegations of the Paris trip, the shortfall in the band budget, and the reasons for the shortfall as early as the Fall of 2008, and at the latest, by February 11, 2009. The facts giving rise to the audit ended on June 30, 2008, with the reallocation of the school's other club monies by former principal Crutchfield to cover the band deficit. The State has the burden of proving that it commenced prosecution before the limitation period of the Statute of Limitations ended. Based upon my review of applicable statutes and case law, I believe that the State cannot meet this burden.

2) **EVEN IF THE STATUTE OF LIMITATIONS WAS NOT A BAR TO PROSECUTION, THE STATE COULD NOT PROVE THAT ERNEST BROWN COMMITTED AN ORGANIZED SCHEME TO DEFRAUD**. There are no identifiable victims in this case. First, the State cannot prove that any student band member of Suncoast High School was prevented from going on the Paris trip solely for inability to pay. Second, the State does not have the names of club donors (possible victims) who contributed to the many club accounts that were allegedly misallocated by former principal Crutchfield to cover the band deficit in both 2007 and 2008. The only other theoretical victim in this case is the Palm Beach County School District. The district, however, suffered no monetary loss from the actions of Crutchfield, Brown and others.

It should be noted that the School District rules in place at the time of the alleged offenses did not prohibit the actions of the Defendant that form the basis of these charges. Although Ernest Brown and others did issue promissory notes for parents to pay the fees, there is no proof that Brown knew that promissory notes were prohibited unless approved by the School District. Further, the school principal had complete knowledge of the deficits created by the international trips and approved the trips, notwithstanding the deficits. She ratified her approval by diverting funds from other school accounts to cover the deficits, which was within her discretion under the rules in place at the time. The decision to allow the trips, with knowledge of the deficit, was within the authority of the principal. She could have, and should have, interceded under the rules but chose not to do so. It was not until a new principal took over that an audit was requested.

3) **EVEN IF THE STATUTE OF LIMITATIONS WAS NOT A BAR TO PROSECUTION, THE STATE COULD NOT PROVE THAT ERNEST BROWN COMMITTED THE CRIME OF OFFICIAL MISCONDUCT**. There is no proof that Ernest Brown, with corrupt intent, falsified, concealed, or destroyed or caused anyone else to falsify, conceal or destroy any official document or any information relating to the commission of a felony involving a public agency or entity. The facts indicate that there was no manipulation of official records or documents to cover up his actions. The promissory notes in question were not official documents as they were not recognized or authorized by the School Board.

THE INDICTMENT AND THE GRAND JURY REPORT

Ernest Brown is charged with one count of **organized scheme to defraud**, a 3rd degree felony, and with one count of **official misconduct**, a 3rd degree felony.

To prove organized scheme to defraud the State needs to prove beyond a reasonable doubt that Brown engaged in a scheme constituting a systematic, ongoing course of conduct with intent to defraud one or more persons, or to obtain property from one or more persons by false or fraudulent representations, or promises and did obtain property from one or more of such person ... . FS. 817.034(4)(a)(3).

To prove official misconduct the State needs to prove beyond a reasonable doubt that Brown, while a public servant, did unlawfully, and with corrupt intent to obtain a benefit for himself or another person, or to cause harm to another, conceal, cover up, destroy, mutilate, alter, or falsify or caused another to falsify any official record or document, a public record. FS 838.022

For both counts the times alleged are January 1, 2006 through October 15, 2010

THE BASIC FACTS:

For the New Year's Holiday 2006-2007, the Suncoast High School Marching band was invited to attend and perform at a ceremonial parade in London. The total cost for the trip was $292,438, and the amount raised for the trip was $247,038, leaving a shortfall of $45,400. In the spring of 2007 this shortfall/deficit was eliminated by the actions of then principal, Dr. Gloria Crutchfield. Sometime in June of 2007, Dr. Crutchfield authorized the transfer of funds from other earmarked activities to cover this deficit. According to Crutchfield, she told Brown in early 2007 that he should continue his efforts of fundraising and collection to make up for the shortfall. Crutchfield claims that she was given permission to transfer the funds to cover the deficit by Melanie Pitts, an employee of the School District. It should be pointed out that there is no documentary proof to show Ernest Brown committed any illegal act for this time period of 2006 through 2007, but this time period is included in the indictment.[i] According to School District Auditor Suzy Miller, the records for this trip no longer exist.

Subsequent to this, the band is invited the next winter season to the Paris, France parade and celebration for 2007-2008. According to sworn statements of then principal Dr. Gloria Crutchfield, who also went on the Paris trip free of charge[ii], all students had to pay or obtain a hardship exception. The Suncoast Band Paris trip had a total cost of $254,543. The amount actually raised was $198,513, leaving a deficit of $62,495. By June 30, 2008, Dr. Crutchfield authorizes the transfer of funds from 44 other school club/activity accounts to fully eliminate the band account deficit. She will then leave her position and a new principal, Dr. Cartlidge, will take over. Dr. Cartlidge claims that upon seeing the school accounts in disarray, she called for an audit of the school accounts. This claim is supported by auditor Susy Miller, in a meeting at the State Attorney's Office on January 28, 2013.

1) **AT THE TIME OF THE GRAND JURY INDICTMENT IN FEBRUARY 16, 2012, THE STATUTE OF LIMITATIONS OF 3 YEARS HAD ALREADY RUN -- AN ABSOLUTE BAR TO PROSECUTION.**

Pursuant to FS 775.15(2)(b), a prosecution for a 3rd degree felony must be commenced within 3 years after it is committed. A felony is committed when every element has occurred, and the time starts to run the day after the offense is committed. F.S. 775.15(3). The problem with determining the end date in this case is due to the complete lack of clarity regarding which act was fraudulent. The prosecution file is devoid of any indication on the theory and relevant time frame for this case. For instance, is the fraudulent act the misallocation of funds on June 30, 2008 by principal Crutchfield, or was it the issuing of promissory notes or fee waivers before and after the trip by band bookkeeper Linda Phillips and Ernest Brown from December 2007 through May of 2008, or is it the lack of records kept and transmitted to the School Board Auditor Susy

Miller in the fall of 2008 continuing through early February 2009? Or is the case really about the fact that Brown's family members and other non-students went on the Paris trip without paying while other band members did pay during the time period of December 2007 through January 2008? Regardless of what we think the factual basis for any charge might be, all of these activities were completed at least three years before the indictment of February 16, 2012, and were therefore time barred from prosecution.

Further, in this case, it appears that the only identifiable aggrieved parties, Suncoast High School or the Palm Beach County School District, became aware of the alleged improper transfer of funds and the reasons for the shortfall in the band fund in the middle of 2008 through February 2009. It would be impossible for the State to allege that the victim or the aggrieved party did not have notice of the above activities during that time period. Additionally, any alleged fraud would have been completed by this time.

In cases where the offense involves fraud or a breach of fiduciary duty, a prosecution may be commenced "within 1 year after discovery of the offense by an aggrieved party... but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years." F.S. 775.15(12)(a). However, with the use of 775.15(12)(a), the key issue is when the one year trigger provision comes into play. To use this fraud extender provision, the State must establish the date the offense is discovered. In Maguire v. State, 453 So. 2d 438 (Fla. 2nd DCA 1984), the court stated:

{ It} is not the defendant's burden to establish that the State could not rely on the three-year extension set forth in 775.15(3)(a); rather, the burden is on the State to establish the date of the discovery of the offense by the aggrieved party, in this case Collier County.

The issue of when the aggrieved party was on notice of the fraud was brought up for the first time on appeal in Maguire; it was not barred for failure to raise the issue at the trial court level and subsequently many of the counts that Maguire was convicted on were dismissed by the appellate court.

What is the chronology of events in this case?

Fall of 2007 – On September 21, 2007, Dr. Crutchfield and Ernest Brown sign the contract with Youth Music of the World to organize the trip. Within the next 3 months, the school will have to make large money transfers to Youth Music, and the band will have to raise a significant amount of money.

December 2007- Promissory notes are issued by Brown and Phillips to 9 parents of band students that we know of, or for which we have actual copies. These parents were later interviewed by SAO investigators. (These promissory notes were given to Auditor Susy Miller, sometime during her audit process in late 2008 to February 2009).

December 28 – January 4, 2008 – The band trip to Paris.

February 2008 – Ernest Brown and Linda Phillips (the voluntary band bookkeeper of 16 years and not a School Board employee) send letters to various parents to collect on the monies owed. Linda Phillips, who signed some of the promissory notes and sent the collection letters, ~~will state in her 3/16/2009 interview to Detective Munoz that she had no idea that promissory notes were prohibited unless approved by the District. (As of this time period, only principals of~~ schools received actual notice that only the District could approve promissory notes).

From the fall months of 2007 that proceeded the trip, and continuing through June 30, 2008 - Former Principal Crutchfield received monthly reports of the status of the band account and the status of the other clubs and activities accounts in writing, and had to sign off on these reports. (See the recorded statements and deposition of official school bookkeeper Lynn Gold and the recorded interview of the new principal, Dr. Cartlidge). Based on interviews of Dr. Cartlidge and Lynn Gold, it is clear that the principal was the "gatekeeper" of the funds. Dr. Crutchfield, therefore, could have and should have stopped the trip if funds were lacking. They both suggest that the acting principal had to have known of the shortfall of collected funds before and after the trip. Also of great importance, Principal Crutchfield had to have known of the failure to raise adequate monies for the trip. According to Auditor Susy Miller, fundraisers had to be approved by the principal. Therefore, she was certainly aware of a lack of fundraising applications. The former principal was on notice of the financial disarray of the band account before and after the Paris trip culminating in her decision to reallocate funds from 44 other clubs/activities accounts to pay down the band trip debt. Again, this same method was used by Dr. Crutchfield a year earlier to pay for the 2007 London Trip deficit.

July of 2008 – Crutchfield leaves her position and the new principal, Dr. Cartlidge, sees the account discrepancies, and requests that the school board perform a school audit. In her recorded statement to ASA Angela Miller on **2/10/12**, Dr. Cartlidge states she started as principal July 1, 2008. Cartlidge recalls that when she first got there, Detective Munoz was coming around and asking questions about the Paris trip. Based upon his inquiries and the account deficits she discovered, she called for the audit. Because of the band deficit, she nixed any suggestions of a band trip to Madrid that coming winter (08-09). Dr. Cartlidge stated the principal of the school should be the "gatekeeper of the funds" and that the principal approves everything. According to Cartlidge and others, there is a monthly accounting of where funds are going. She stated that she could not understand how the Paris trip got approved. "If the funds aren't there you stop the trip." (She is referring to what Dr. Crutchfield should have done.) When asked to speculate on why promissory notes were created and why Brown granted fee waivers to some students, she hesitated to assign a bad motivation behind these acts and further stated that Brown is a fantastic teacher who has changed kids lives for the better in the community.

June 26, 2008- Brown writes a letter to Crutchfield acknowledging the band fund debt (approximately $66,000), and also pledges to continue fund raising so that the other clubs can be reimbursed. "Our goal is to raise and reimburse the various club accounts by May 2009," he says.

THE AUDIT AND THE GATHERING OF INFORMATION STARTS

According to auditor Susy Miller, the new principal, Dr. Cartlidge, requested the audit. Her audit was conducted from **October 2008 to January 2009**. On 12/16/2008, she interviewed Brown with Cartlidge. She asked about fee waivers regarding certain persons. Brown denied there were fee waivers in place, but said there were payment plans in place for some individuals. (The promissory notes contain a payment schedule.)

January 2009 – In a continuation of a request for documents from the 12/16/08 meeting by Susy Miller, Ernest Brown replies by email sending attached documentation of who attended the Paris event, what their roles were, and who owed how much. Brown tells her that the band bookkeeper, Phillips, has the rest of the records and is out of town.

February 11, 2009 – a rough draft of the audit of the Suncoast Band Paris trip reaches School Superintendant Art Johnson. A copy must have been sent to Brown because he replies to it on February 18, 2009 by memorandum.

February 18, 2009 – Ernest Brown writes a 3 page memorandum to new principal Linda Cartlidge. In it, he explains why his family members were given complimentary travel and why others went on the trip under certain arrangements without having to pay (i.e. band personnel, chaperones, etc). Some of this information is contained in the attached documents from his January 2009 email to Susy Miller. It should be noted that having non-school personnel travel on field trips for a specified purpose was not prohibited under the School Board rules in place at the time.

February 24, 2009- New Principal Cartlidge responds to the band audit in written memorandum to the chief Auditor and states (among other things) that the following preventative measures will be put in place:

> *6. Specific criteria for fee waivers will be developed and followed to assure equitable treatment for all participants*
>
> *7. A Suncoast Band trip will be Suncoast students.*

March 4, 2009 – The final memorandum of the audit reaches James Kelly, Chief of School Police. According to Susy Miller, this version is no different from the previous versions going back to February 11, 2009.

Assuming, arguendo, that a fraud occurred here, it is almost impossible for the State to argue that the aggrieved party (the District) did not know about **it** (assuming **it** was the fraudulent use of monies of the other clubs) on either June of 2008 and continuing through to February 11, 2009, when the Superintendant of Schools received the findings.[iii] If **it** was the alleged misuse of the promissory notes and fee waivers by Brown and Phillips, or if **it** was the sending of non-Suncoast personnel without paying the fee (as all of those issues also came to light in the very same audit process), the State cannot carry its burden in proving that it indicted the defendant in a legally timely manner. The Statute of Limitations ran before February 16, 2012.

Further, the dates contained in the indictment counts (to October 15, 2010) appear to be without factual support. I cannot find, and the investigators who worked on this case have been unable to give, an answer as to the dates chosen for the indictment, other than that this was the date given on the Special Audit report. The Special Audit report is essentially no different in material substance from the earlier drafts prepared by auditor Susy Miller that go back to February 11th, 2009. (Per Susy Miller, all material facts reported in the Special Audit report were contained and disseminated in all earlier draft reports to the School Board dating back to February 11, 2009).

2) EVEN IF THE STATUTE OF LIMITATIONS WAS NOT A BAR TO PROSECUTION, THE STATE COULD NOT PROVE THAT ERNEST BROWN COMMITTED AN ORGANIZED SCHEME TO DEFRAUD.

The reasons for charging Brown for Organized Scheme to Defraud seems to be linked with various suppositions and unprovable assertions in the Grand Jury Report. The drafter(s) of the Grand Jury report state:

[t]he Grand Jury heard ample evidence of self-enrichment and misrepresentations regarding these official school band trips. To excuse or ignore such evidence would insult the many donors to other school activity funds whose generous contributions were used to finance Mr. Brown's family and friends trips to Europe and the Suncoast students who wished to go but could not because of cost". p12 GJR And,

"[as] a result, student band members who could not afford the trip were left behind" (p. 12 of GJR).

Those two statements above are without factual support. There is nothing in the prosecution file to support these claims. The SAO investigators assigned to this investigation state that they do not have, or could not find the names of donors or of students who fit the above statements. In fact, what the SAO investigators found seems to negate the above claims. For instance, at least 9 parents of band students who could not afford the trip fee signed promissory notes to pay later. All who interviewed said that they either paid nothing or a very small amount, but their children went on the trip.

From the interviews, it appears Brown was doing everything he could to get the band members to go on the trip. (See, recorded stmt of Kathy Richmond, taken 2/7/12.)

There is no admissible evidence that shows Brown engaged in a systematic scheme to defraud. The grand jury report is essentially a reproduction of the **SPECIAL AUDIT OF THE SUNCOAST HIGH SCHOOL BAND ACCOUNT'S DEFICIT FOR FISCAL YEAR 2008.** According to the audit "all the information presented in this report came from the school's collection records and invoices for the internal accounts." See p. 4, Audit. These records are a collection of records receipts and invoices for the monies raised for the band trip to Paris. The other support for Susy Miller's findings are the spreadsheets and records provided by Linda Phillips and Ernest Brown.

The audit report states that eighteen (18) participants went on the trip free of charge, and that many others had partial fee waivers. Of these 18, seven (7) were the defendant and his six relatives. Those six are his wife, son, 2 daughters, a nephew and a niece. On February 18, 2009, Ernest Brown responded via a memorandum to the new principal, Dr. Cartlidge, stating the following regarding these participants:

Ernest Brown – his trip was complimentary per agreement,

R. Brown (spouse) – on the band staff and her trip was complimentary.[iv]

E. Brown (daughter) - brass performer and her trip was complimentary,

T. Brown (daughter) - auxiliary and reed performer and trip was complimentary,

T. Lovely (son) - band staff, cost waived as with all band staff,

K. Jones (nephew) – brass performer, cost waived as with all college participants, and

L. Knowles (niece) – drum major and reed performer, neither waived nor comp, she still owes.

As to the other trip participants that went free of charge, they include 7 non-band related adults who went as chaperones or performed other band related functions according to interviews with SAO investigators; the 4 college students (3 prior Suncoast grads) played with the band in Paris according to the SAO investigators. There was also one band student parent who attended for free.

The evidence suggests that these 18 persons did perform band related functions while on this trip. In essence, the State cannot prove, and COULD NEVER PROVE, that Brown was unjustly or criminally enriching himself and others on some type of luxurious

European vacation at the expense and to the detriment of eligible band members left behind. According to Susy Miller, the records reflect that Brown, per contract, was required to fill 100 spaces and that he was having difficulty obtaining the necessary number of participants, the band having far fewer members than required under the contract.

WHO IS THE VICTIM IN THIS CASE?

The indictment does not name one. The grand jury report states that Brown had nine (9) individuals sign promissory notes (parents of students) and that only 3 of the 9 made any payment whatsoever, and that payment was a small fraction of the fee. The report suggests that this debt could have caused graduation issues [v] but there is no proof that anyone was denied the graduation day ceremony. In fact, none were denied graduation based on any debt owed for this Paris trip. But the report states "[a}ccording to evidence received by the Grand Jury, Suncoast students who had not met or satisfied their obligations to the school (including payment of the band trips) could not participate in graduation. See GJR p.8. No such evidence appears in the file and to the contrary, statements by Kathy Richmond and Pauline Reid, who testified via sworn statements days before grand jury presentation, established that their band member sons had graduated without issue even though all or most of the debt was not paid in their cases.

The State has never been supplied with a name of any donor who claims to be a victim of the misallocation of funds (e.g., donor funds for the Brain Bowl, one of the clubs ultimately subsidizing the trip) by Dr. Crutchfield in June of 2008. The State has not one victim to call to testify in court.

EVEN IF THE STATUTE OF LIMITATIONS WAS NOT A BAR TO PROSECUTION, THE STATE COULD NOT PROVE THAT ERNEST BROWN COMMITTED THE CRIME OF OFFICIAL MISCONDUCT.

Did Ernest Brown, with corrupt intent, destroy, conceal, cover up, mutilate, alter or falsify official documents or cause another to do so in relation to the official misconduct charge?

There is nothing in the prosecution file to support this charge. Although they are not sure, the SAO investigators believe that the theory of the case for this charge is related to the use of promissory notes and fee waivers by Ernest Brown. This is based on discussions with prior prosecutors assigned, but nothing has been memorialized on this issue. However, even if some of these promissory notes were thrown away (an allegation which is not substantiated by the record), they were not official School Board documents. They were created by the band club and essentially were a nullity in regard to the School Board.

It appears clear that Brown did everything in the open. In the timeline above, there is nothing to suggest a cover up.

In the SAO meeting with Susy Miller on 1/28/13, Ms Miller could not point to any example of destruction, concealment or obstruction by Mr. Brown.

What rules were in place regarding band field trips and qualified participants if any?

In 2007 through 2008, there were no specific rules addressing the issue of non-band participants on out of town field trips. In the Grand Jury report, however, various rules were discussed and included in Exhibits 5 and 7 of the report. Exhibit 5 (October 10, 2006, Internal Accounts Procedures), is a document sent by the school district to **ALL PRINCIPALS.** There is no indication or proof that the defendant was privy to this document. This document includes a provision prohibiting promissory notes unless authorized by the school board. There aren't specific provisions as to band field trips and who is authorized to go. There are, however, several provisions regarding fund raising and control of funds that were apparently ignored by former Principal Crutchfield. Had Crutchfield followed provisions of this document sent to her back in 2006, there would have been no misallocation of funds.

As to the other documents listed in Exhibit 7 of the Grand jury report, they are either bulletins directed to the principals and/or school treasurers of the schools, or they are online printouts of rules and procedure that are computer dated January 2012, and thereafter. Almost all of these rules and procedures as shown to the Grand Jury were amended sometime after the Paris trip. Hence, the State cannot prove that Ernest Brown was, or could have been, on notice of any of the rules and procedures.

Conclusion:

In sum, the State is barred from prosecution because it did not timely bring charges against the accused. Statute of Limitations notwithstanding, I also believe there is insufficient evidence to continue to prosecute this matter. Therefore, I recommend that this case be nolle prossed.

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[i] Even the drafter of the grand jury report states that there is a lack of documentation for this time period. This admission begs the question: why are you charging fraud and official misconduct for 2006 and 2007?

[ii] Crutchfield utilized funds from a separate school account unrelated to the band account.

[iii] In the binder of material received by the School Board Police, there is the memorandum of audit to Art Johnson cover page with a date of January 11, 2009; there are also dated pages from Fall of 2008 through January 2009 with notations of findings by the auditor for the school board.

[iv] Dr Crutchfield also testified that Mrs. Brown was an auxiliary coach who helped with the band.

[v] See p. 7 of GJR.

INTERNAL MEMORANDUM II

TO: AL JOHNSON AND BRIAN FERNANDES

FROM: MICHAEL RACHEL

DATE: 1/24/2013

RE: INDICTMENT ON 2/16/12, AND GRAND JURY REPORT ON ERNEST BROWN/SUNCOAST

The following issues have come to light in this case:

1) AT THE TIME OF THE GRAND JURY INDICTMENT IN FEBRUARY OF 2012, HAD THE STATUTE OF LIMITATIONS RUN ALREADY? YES, it appears so. The dates in the indictment (1/1/2006 through 10/15/2010) are unrelated to the commission of any element of the alleged crime, or when the the 'crime' was discovered.

2) IS THERE ANY PROOF THAT ERNEST BROWN, WITH CORRUPT INTENT, FALSIFIED OR CAUSED ANOTHER TO FALSIFY, OR CONCEAL, OR DESTROY, OR MUTILATE ANY OFFICIAL DOCUMENT, OR OBSTRUCT, DELAY OR PREVENT THE COMMUNICATION OF ANY INFORMATION RELATING TO THE COMMISSION OF A FELONY INVOLVING A PUBLIC AGENCY OR PUBLIC ENTITY?

   NO, AT LEAST I CANNOT FIND ANY

   &

3) WERE THERE ANY RULES IN PLACE IN 2007 – 2008 THAT PROHIBITED NON-SUNCOAST STUDENT OR ADULTS FROM ATTENDING THIS TRIP IF THEY PROVIDED SOME FORM OF SERVICE RELATED TO THE TRIP?

   NO, ALTHOUGH THE GRAND JURY WAS SHOWN SEVERAL SCHOOL DISTRICT DIRECTIVES PRINTED ON OR AFTER JANUARY 2012, AND MOST OF THOSE WERE SENT ONLY TO SCHOOL PRINCIPALS. More on this later.

1) THE SOL ISSUE

Pursuant to FS 775.15(2)(b), a prosecution for a 3rd degree felony must be commenced within 3 years after it is committed. A felony is committed when every element has occurred, and the time starts to run the day after the offense is committed. FS 775.15(3). The problem with determining the end date in question in this case is due to the complete lack of clarity regarding which act was fraudulent. For instance, is the 'fraudulent act' the misallocation of funds in June 2008?, or was it the issuing of promissory notes or 'fee waivers' after the trip in December 2007 through May of 2008?, or is it the lack of records kept and transmitted to the School Board Auditors in 2008 continuing through early February 2009?, or finally is the case really about the

fact that Brown's family members and other non-students went on the Paris trip without paying while other band members did pay during the time period of December 2007 through January 2008? Regardless, all of these activities were completed at least three years before the indictment of February 16, 2012, and were therefore time barred from prosecution. But does that end the Statute of Limitations analysis?

In this case, it appears that the aggrieved party, either Suncoast High School or the School District, became aware of the alleged improper transfer of funds and the reasons for the shortfall in the band fund in the middle 2008 through February 2009. It would be impossible for the State to allege that the 'victim' did not have notice of the above activities.

In cases where the offense involves fraud or a breach of fiduciary duty, a prosecution may be commenced within one year after the discovery of the offense by an aggrieved party ..., but in no case shall this provision extend the period of limitation otherwise applicable for more than 3 years. See 775.15(12)(a). However with the use of 775.15(12)(a), the key issue is when the one year trigger provision comes into play. To use this fraud extender provision, the State must establish the date the offense is discovered. In Maguire v. State, 453 So. 2d 438 (Fl. 2nd DCA,1984), the court stated :

{ it} is not the defendant's burden to establish that the State could not rely on the three-year extension set forth in 775.15(3)(a); rather, the burden is on the State to establish the date of the discovery of the offense by the aggrieved party, in this case Collier County.

The issue of when the aggrieved party was on notice of the fraud was brought up for the first time on appeal in Maguire; it was not barred for failure to raise the issue at the trial court level and counts were dismissed by the appellate court.

In the case at bar, the chronology of events appears as follows:

Fall of 2007 – Fundraising and the collection of funds for the Paris trip;

December 2007- Promissory notes are issued by Brown and Phillips to @ 9 persons that we know of, or at least these are the ones that we have actual copies.

December 28 – January 4, 2008 – The band trip in Paris.

February, 2008 – Ernest Brown and Linda Phillips (the voluntary band bookkeeper of 16 years) send letters to various parents to collect on the monies owed. Linda Phillips, who signed some of the promissory notes and sent the collection letters, will state in her 3/16/2009 interview that she had no idea that promissory notes were prohibited by the District.

From @ January 2008 though and including June 2008- According to the deposition of school bookkeeper Lynn Gold taken June, 2012 – the Principal Gloria Crutchfield was given monthly

reports of the status of the school accounts leading up to the Paris trip and afterwards leading up to her June 2008 decision to misallocate the other club accounts to the band account.

In June of 2008, Crutchfield, knowing that the band account was in the red, signed off on the transfer of monies from 44 other school functions to cover the band fund deficit. (She had done the same sort of thing the previous year in 2007)

July of 2008 – Crutchfield leaves her position and a new principal comes in requiring a school audit. The new principal, Dr. Cartlidge requests the audit in or around July of 2008 when she sees the funding irregularities. (In her recorded statement to Angela Miller on **2/10/12** , Dr. Cartlidge states she started as principal July 1, 2008. When she first got in, Detective Munoz was coming around and asking questions about the Paris trip. Based upon the band deficits she discovered, she called for the audit. Based on the band deficit, she nixed any suggestions of a band trip to Madrid that coming winter (08-09). Cartlidge stated the Principal of the school should be the "gatekeeper of the funds" and that the Principal approves everything. There is a monthly accounting of where funds are going, and says she could not understand how the Paris trip got approved. "If the funds aren't there you stop the trip". (She is referring to what Dr. Crutchfield should have done). When asked about the promissory notes and the absolution of debt by Brown for some students, she attributes only good motives to Mr. Brown, and states he is a fantastic teacher who has changed kids lives.)

June 26, 2008- Brown writes a letter to Crutchfield acknowledging the debt that the band fund is in (@66,000), but also pledging to continue fund raising so that the other clubs can be reimbursed. "Our goal is to raise and reimburse the various club accounts by May 2009."

THE AUDIT AND THE GATHERING OF INFORMATION STARTS

According to Susy Miller, Auditor, the new principal, Cartlidge did request the audit. This was sometime after July 2008. On 12/16/2008, she interviewed Brown with Cartlidge. She asked about fee waivers regarding certain persons. Brown denied there were fee waivers in place, but said there were payment plans in place for some individuals. (The promissory notes contain a payment schedule.)

January 2009 – In a continuation of a request for documents from the 12/16/08 meeting by Susy Miller, Ernest Brown replies by email sending attached documentation of who attended the Paris event, and who owed how much. Brown goes on to state that the band bookkeeper, Phillips has the rest of the records and is out of town.

February 11, 2009 – a rough draft of the audit of the Suncoast Band Paris trip reaches School Superintendant Art Johnson. A copy must have been sent to Brown because he replies to it on February 18, 2009 by memorandum.

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February 24, 2009- New Principal Cartlidge responds to the band audit in written memorandum to the chief Auditor and States (among other things) that the following preventative measures will be put in place:

> *6. Specific criteria for fee waivers will be developed and followed to assure equitable treatment for all participants*
>
> *7. A Suncoast Band trip will be Suncoast students.*

March 4, 2009 – The final memorandum of audit reached James Kelly, Chief of School Police. This version is no different from the previous version.

Assuming, arguendo, that a fraud occurred here, it is almost impossible for the State to argue that the aggrieved party (the District) did not know about **it** (assuming **it** was the fraudulent use of monies of the other clubs) on either June of 2008 or continuing through to January 11, 2009 when the Superintendant of Schools received the findings.[i] If **it,** was the alleged misusage of the promissory notes and fee waivers by Brown and Phillips, that issue also came to light in the very same audit process. In sum that State cannot carry its burden in proving that the Statute of Limitations did not run before February 16, 2012.

It also needs to be pointed out that the dates contained in the indictment (to October 15, 2010) appear questionable. The Grand Jury report contains a chronology in footnote 1 that appears incorrect. The audit appears to have been completed in February 2009, not October 2010. This case was submitted to Angela Miller on October, 10, 2010 (see binder) not in April of 2011. I cannot find, and the investigators who worked on this case have been unable to give, an answer as to the dates chosen for the indictment.

2) **Did Ernest Brown, with corrupt intent, destroy or hide evidence or cause another to do so related to the official misconduct charge?**

There are no facts that I can identify from any statement from any witness to support this count at all. In fact, the band book keeper, Linda Phillips, tells the detective in March of 2009 that she kept the records, that the facts and figures the Detective received from the auditor for his questioning of her were substantially in error. (THIS CASE IS ESPECIALLY UNTENABLE IN THAT THE BASIS FOR IT, THE SCHOOL BOARD AUDIT , IS BASED HEAVILY ON THE RECORDS KEPT (OR NOT KEPT) BY LINDA PHILLIPS).

Furthermore, as indicated in the time line above, there is no indication or proof that Ernest Brown hid anything from anybody.

3) What rules were in place regarding band field trips and who could go or not go?

In the Grand Jury report, various rules are discussed and included in exhibits 5 and 7. Exhibit 5 (October 10, 2006, Internal Accounts Procedures), is a document sent by the school district to **ALL PRINCIPALS.** There is no indication or proof that the defendant was privy to this document. This document includes a provision prohibiting promissory notes unless authorized by the school board. There aren't specific provisions as to band field trips and who is authorized to go (perhaps for obvious reasons). However there are several provisions regarding fund raising and control of funds that were apparently ignored by the former Principal Crutchfield. Had Crutchfield followed provisons of this document sent to her back in 2006 there would have been no misallocation of funds.

As to the other documents listed in exhibit 7 of the Grand jury report, they are either bulletins directed to the Principals and/or School Treasurers of the schools, OR they are online printouts of rules and procedure dated January 2012 and later. The State cannot prove that Ernest Brown was on notice of any of the rules and procedures.

In sum, I cannot find a factual basis that would sustain a charge in this case. ~~I invite anyone/everyone to review this case and show that I am in error, as I would like to be~~ . In addition, I cannot see how this case was not time barred by the applicable Statute of Limitations before a grand jury ever heard this case on February 16, 2012. ~~I would like to be proven wrong here also, but fear I am not.~~

[i] In the binder of material received by the School Board Police, there is the memorandum of audit to Art Johnson cover page with a date of January 11, 2009 ; there are also dated pages from Fall of 2008 through January 2009 with notations of findings by the auditor for the school board.

INTERNAL MEMORANDUM

TO: BRIAN FERNANDES AND MICHAEL EDMONDSON

FROM: MICHAEL RACHEL

DATE: JANUARY 15, 2013

RE: THE GRAND JURY REPORT AND INDICTMENT OF ERNEST BROWN (SUNCOAST BAND DIRECTOR)

PROLOGUE: On January 8, 2013, I was approached by assistant state attorney Sam Stern who expressed concerns about the validity and/or provability of this case which he had been assigned in the fall of 2012. I spoke to the SAO investigators who worked on this case. In response to my questions about the validity of the case they have responded that, at best, the investigation was incomplete and hurried. The investigation culminated in a presentation to the grand jury in February of 2012, and in an indictment of one person – Ernest Brown, the Suncoast High School band leader. The Grand Jury report was signed by Michael McAuliffe, Paul Zacks and Angela Miller (see attached).

I have made an extensive review of the case in the past week, and conclude that the Grand Jury report contains misstatements of fact, substantial omissions, statements without any factual support and that the accompanying indictment case against Mr. Brown is lacking admissible courtroom evidence.

EVENT CHRONOLOGY:

According to the Grand Jury report on page 2, fn.1, the Palm Beach County school district completed their audit of Suncoast in October, 2010. The Palm Beach School Police completed and submitted their investigation in April 2011. (According to our investigator, Don Hughes, the case was woefully inadequate, a complete mess). Investigator Don Hughes and Investigator Eric Hutchinson were tasked with completing the investigation which ended in a flurry of activity by them in late January 2012 and early February 2012 to obtain actual sworn and recorded statements of witnesses just before the presentment to the grand jury that same month.

THE INDICTMENT AND THE GRAND JURY REPORT:

Ernest Brown is charged with one count of **organized scheme to defraud**, a 3rd degree felony, and with one count of **official misconduct**, a 3rd degree felony.

To prove organized scheme to defraud the State needs to prove beyond a reasonable doubt that Brown engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud one or more persons, or to obtain property from one or more persons by false or fraudulent representations, or promises and did obtain property from one or more of such person ... . FS. 817.034(4)(a)(3).

To prove official misconduct the State needs to prove beyond a reasonable doubt that Brown while a public servant did unlawfully, and with corrupt intent to obtain a benefit for himself or another person, or to cause harm to another, falsify or caused another to falsify any official record or document, a public record. FS 838.022

For both counts the times alleged are January 1, 2006 through October 15, 2010

THE BASIC FACTS:

For the New Year's Holiday 2006-2007, the Suncoast Marching band was invited to attend and perform at a ceremonial parade in London. The total cost for the trip was $292,438, and the amount raised for the trip was $247,038, leaving a shortfall of $45,400. In the spring of 2007 this shortfall/deficit was eliminated by the actions of then Principal, Dr. Gloria Crutchfield. Dr. Crutchfield authorized the transfer of funds from other earmarked activities to cover this deficit. She does so sometime in June of 2007. According to Crutchfield, she told Brown in early 2007 that he should continue his efforts of fundraising and collection to make up for the shortfall. Crutchfield claims that she was given permission to transfer the funds to cover the deficit by Melanie Pitts, an employee of the school district. It should be pointed out, that there is no documentary proof to show Ernest Brown committed any illegal act for this time period of 2006 through 2007, but this time period is included in the indictment.[1]

Subsequent to this, the band gets invited the next winter season to the Paris, France parade and celebration for 2007-2008. According to sworn statements of the Principal Dr. Gloria Crutchfield, who went on this trip for free, all students had to pay or obtain a hardship exception. The Suncoast Band Paris trip had a total cost of $254,543. The amount actually raised was $198, 513, leaving a deficit of $62,495. By June, 2008, Dr. Crutchfield will authorize the transfer of funds from 44 other earmarked accounts to bring that deficit to 0. She will then leave her position (it is unknown by me if she resigned), and a new principal will take over. Such a change called for a mandatory review of the school ledgers which led to this case.

[1] Even the drafter of the grand jury report states that there is a lack of documentation for this time period. This admission begs the question: why are you charging fraud and official misconduct for 2006 and 2007?

WHY WAS ERNEST BROWN CHARGED?

1) FALSE OR MISLEADING CLAIMS OF INEQUITY?

The drafter(s) of the grand jury report alleged that ... "generous contributions were used to finance Mr. Brown's family and friends trips to Europe and the Suncoast students who wished to go but could not because of cost" and "[as] a result, student band members who could not afford the trip were left behind" (p. 12 of GJR). **ACCORDING TO OUR INVESTIGATORS AND MY REVIEW OF THIS CASE THERE IS NO PROOF TO SUBSTANTIATE THAT CLAIM. IN FACT, ALL OF THE PARENTS OF STUDENTS INTERVIEWED BY THE SAO INVESTIGATORS STATE THAT THEIR CHILDREN WERE ALLOWED TO GO EVEN THOUGH THEY COULD NOT PAY AND LATER DID NOT PAY. THERE IS NO EVIDENCE THAT SHOWS THAT THERE WAS ONE BAND MEMBER WHO WAS DENIED ACCESS TO THE TRIPS BASED ON FINANCIAL ABILITY. THE OPPOSITE IS TRUE. IT APPEARS THAT ERNEST BROWN WANTED TO MAKE SURE THAT ALL OF THE BAND MEMBERS COULD GO.** See for instance the RECORDED STATEMENT OF PARENT KATHY RICHMOND TAKEN 2/7/2012.

2) WHAT IS THE EVIDENCE?

a) The grand jury report is essentially a reproduction of the **SPECIAL AUDIT OF THE SUNCOAST HIGH SCHOOL BAND ACCOUNT'S DEFICIT FOR FISCAL YEAR 2008.** According to the audit "all the information presented in this report came from the school's collection records and invoices for the internal accounts" See p. 4, Audit. Unfortunately, at this moment, we don't know what these collection records or invoices are or what they say because they were never subpoenaed by our office. Our office did subpoena records from the school itself and received a fraction of what was needed to verify the audit report. What was received are miscellaneous check requisition forms, and a partial spreadsheet from band bookkeeper Linda Phillips. Our office has a fraction of what is necessary to support the audit's findings. In sum, it appears we lack a corpus delicti; we have summaries based on summaries based on hearsay.[i]

3) WHAT IS IT THAT THE DEFENDANT WRONGFULLY TOOK?

The audit report states that eighteen (18) participants went on the trip free of charge. Of these 18, seven (7) were the defendant and six relatives. The other six are his wife, son, 2 daughters, a nephew and a niece. On February 18, 2009, Ernest Brown responded via a memorandum to the new principal, Dr. Cartlidge, stating the following regarding his relatives:

Ernest Brown – his trip was complimentary per agreement,

R. Brown (spouse) – on the band staff and her trip was complimentary.[ii]

E. Brown (daughter)- brass performer and her trip was complimentary,

T. Brown (daughter) - auxiliary and reed performer and trip was complimentary,

T. Lovely (son) - band staff, cost waived as with all band staff,

K. Jones (nephew) – brass performer, cost waived as with all college participants, and

L. Knowles (neice) – drum major and reed performer, neither waived nor comp., she still owes.

At this point, I have seen no evidence to disprove his claims above. In addition, our investigators have taken interviews of several parents who have also indicated their band children went on the trip for free after discussing their financial hardships with Mr. Brown. In these cases, the amount owed was formalized by a promissory note. As to the remaining persons making up the 18, no interviews were ever conducted and so their circumstances are not known.

4. WHO IS THE VICTIM IN THIS CASE?

The indictment does not name one. The grand jury report states that Brown had nine (9) individuals sign promissory notes (parents of students) and that only 3 of the 9 made any payment whatsoever. The report suggests that this debt could have caused graduation issues [iii] but there is no proof that anyone was denied the graduation day ceremony. But the GJR states "[a}ccording to evidence received by the Grand Jury, Suncoast students who had not met or satisfied their obligations to the school (including payment of the band trips) could not participate in graduation. See GJR p.8. It must be that the grand jury was not allowed to hear from Kathy Richmond or Pauline Reid, who testified via sworn statements days before grand jury presentation, that their band member sons had graduated without issue even though all or most of the debt was not paid in their cases.

Even with regard to the earmarked funds that Dr. Crutchfield transferred (like the Brain Bowl) to cover the Paris trip deficit, not one victim donor has ever been identified or mentioned. The State does not have a victim to testify.

SUMMARY

The Grand Jury presentment to make recommendations to the Palm Beach County Board School was merited. Indicting someone on summaries, hearsay, speculation, and the testimony of a witness, whose acts were instrumental in the account difficiencies, is something different. (I don't see how any criminal offense can be proven beyond a reasonable doubt.) see Bar Rules

I do not believe a good faith basis exists to ~~continue~~ maintain this prosecution

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[i] So why is it that the grand jury report indicates that the "State Attorneys Office ... received and reviewed a significant volume of documents, reports, school policies, administrative bulletins, school district audit report, bank records and other materials regarding ... the aforementioned trips ... . (GJR p. 2). The actual investigators tell me quite the contrary.

[ii] Dr Crutchfield also testified that Mrs. Brown was an auxiliary coach who helped with the band

[iii] See p. 7 of GJR

SOL = Discovery Extension?

Cf. I: 3 yr. from 2008

775.15. Fraud exception - 1 yr. discovery (2010) NOT exceed 3 yrs.

Cf. II: 3 yr. from 2008[5] - "public officer" "employee" necessary the 2 yrs were after so when left??

OFFICE OF THE STATE ATTORNEY
INTER-OFFICE MEMORANDUM

TO: A.S.A Angela Miller

FROM: Detective Robert Flechaus

RE: Suncoast (SAO inquiry)

DATE: December 22, 2011

I was given the task to interview several subjects who were listed as not paying for any of the trips.

Subject Joubert Delsoin was interviewed on 11/17/11 by phone. Delsion was currently attending the University of Florida. Delsion advised that he was a former Suncoast student and had graduated in 2006. Delsoin was a band member in 2006. Delsoin advised that he was asked by Mr. Brown if he wanted to go on both trips. Delsoin told Brown that he did not have the money to go on either trip. Delsoon advised that Mr. Brown had told him that he would take care of the trips expenses and all he had to do was bring spending money. Delsoin never paid for either trip. Mr. Brown authorized both trips.

Subject Jonathan Harvey was interviewed on 11/07/11 in person at his home. Harvey advised that he was a former Suncoast student and had graduated in 2005. Harvey was a band member in 2005. Harvey advised that he received a call from Mr. Brown sometime prior to the 2006 trip while he was at school in Tennessee. Harvey advised that Mr. Brown asked if he wanted to go on trip. Harvey told Brown that he did not have the money to go on the trip. Harvey advised that Mr. Brown had told him that he would take care of the trips expenses and all he had to do was bring spending money. Harvey said this happened again the next year and he went on both trips without paying for them. Harvey never paid for either trip. Mr. Brown authorized both trips.

✓ **Subject Sonja Kelly** was interviewed on 11/21/11 in person at the State Attorney's office. Kelly advised that she was a former student and graduated in 1996 and was a staff member for Suncoast in 2005. Kelly advised that she had left Suncoast in 2010. Kelly advised that she assisted with the band (Mr. Brown) from 2001 through 2010. Kelly advised that Mr. Brown had invited her for both trips. Kelly did not pay for either trip and thought that since she was a staff member she did not have to pay. Kelly did not pay for either trip. Mr. Brown authorized both trips.

✓ **Subject Anthony Barfield** was interviewed on 11/08/11 in person at the State Attorney's Office. Barfield advised that he was a teacher for an Elementary School in Palm Beach County however he has no affiliation with Suncoast. Barfield advised that he was friends with Mr. Brown. Barfield advised that Mr. Brown called him and invited him each year for both trips. Barfield said that he did not have the money to pay for the trip and Mr. Brown told him that he did not have to pay. Barfield said that Mr. Brown told him he could come as a chaperone and also take pictures of the trip(s). Barfield did not pay for either trip. He was considered a chaperone and photographer for both trips. Mr. Brown authorized both trips.

Subject Vera Byrd was interviewed on 12/20/11 by phone. Byrd advised that she does not have any affiliation with Suncoast. Byrd said that she was friends with Linda Phillips and that Phillips invited her to go on Paris trip. Byrd said that she did not go on the London trip. Byrd said that she did pay about $2,500.00 (unsure exactly) for the trip and thought that it was paid in full. Byrd said that she would try to obtain a copy of the check and call me if she obtained one.

Subjects Brittany Goodman and Jonathan Abner had not returned any of my calls. I have left several messages for them with relatives and/or left a message on their answering service.

Subject Candice Cox was unable to be located. The listed number for Cox was disconnected and she is believed to be residing in Georgia.