Election Law
People v. Anderson, 5768/08
Supreme Court, New York County
Justice Michael Obus
Decided: Oct. 30, 2009

Defendants, Nora Anderson and Seth Rubenstein, stand charged with four counts of offering a false instrument for filing in the first degree (PL §175.35); two counts of falsifying business records in the first degree (PL §175.10); two counts of campaign contribution to be under true name of contributor (Election Law §§14-120[1] and 14-126[2]) and two counts of knowingly and willfully violating the contribution limits of the Election Law (Election Law §14-126[3]). The charges all relate to Anderson's successful 2008 campaign for Surrogate of New York County and the People's assertion that the defendants evaded campaign contribution limits by illegally funneling "massive amounts of funds" from Rubenstein into Anderson's campaign coffers and then misrepresenting the source of those funds in the required financial disclosure reports. Though Anderson won the September primary and was ultimately elected to this office, she was suspended by the New York State Court of Appeals[1] after the filing of this indictment and before she was slated to take office on January 1, 2009.

Both defendants now move to dismiss the indictment on numerous grounds. For the reasons stated below, this Court agrees with defendants' argument that it lacks geographical jurisdiction over counts one, three, four, and six through ten of the indictment, and those counts are hereby dismissed, without consideration of defendants' alternative arguments regarding those charges. However, the Court finds defendants' challenges to the remaining counts, two and five, unavailing, and defendants' motions to dismiss those counts are denied.

Background

Campaign Finance Rules

In New York State, campaign finance is governed by Article 14 of the Election Law. The enforcement unit of the New York State Board of Elections ("NYSBOE") is charged with monitoring compliance with Article 14, as is the New York City Board of Elections ("NYCBOE") for elections within New York City. As William J. McCann Jr, Special Deputy Counsel for Enforcement at the NYSBOE, explained to the grand jury, a candidate running for elected office may establish a campaign committee to act on his or her behalf by managing the campaign's finances and filing the required campaign finance disclosures with the NYSBOE and NYCBOE. The individual contribution limit for individuals for the 2008 New York County Surrogates Court primary election was approximately $33,000, a figure arrived at by multiplying five cents times the number of registered Democrats in New York County. There is no limit, however, to how much a candidate or candidate's spouse may contribute to his or her own campaign, as such contributions generally do not implicate the issue of undue influence or create an appearance of impropriety.

Campaign committees are also permitted to borrow money from individuals, but such loans are governed by campaign contribution limits to the extent that any loans outstanding on election day (defined as either a primary or general election) may not exceed the applicable contribution limits. In other words, any borrowed amount in excess of the contribution limit must be repaid to the lender by election day, lest it be deemed an over contribution for limit purposes.

Disclosure Rules

In order to monitor compliance with Article 14, both the NYSBOE and the NYCBOE require the filing of a series of administrative disclosure forms ("disclosure reports") at various intervals during the campaign so that the Boards, and consequently the public and the candidates' opponents, can see how much a candidate is raising and spending in a particular election. Although the burden is placed on the candidates to disclose the source and amounts of money raised or spent on their behalf, the actual reporting is generally delegated to an authorized political committee.

All candidates, upon registering with the NYSBOE, receive general information and a referral to the NYSBOE website, which contains educational materials on the disclosure rules. In the event the NYSBOE undertakes an investigation of a campaign finance violation, and finds sufficient reason to believe that an Election Law violation has occurred, it may refer the matter to the appropriate District Attorney's office for criminal prosecution.

The required disclosure reports for the 2008 New York County Surrogates primary election consisted of the following: 1) the July 2008 "periodic report," 2) the "thirty-two day pre-primary report," 3) the "eleven day pre-primary report," and 4) the "ten day post-primary report." With respect to the NYSBOE, the forms are required to be filed electronically, via diskette or e-mail. They may be filed on paper only if an exemption is granted. The NYCBOE requires the forms to be filed by hard copy only.

The Campaign

The Contributions

According to the evidence before the grand jury, Anderson established her campaign committee, "Anderson for Surrogate" ("the Committee"), in April of 2008 by filing the appropriate documents with both the NYSBOE and the NYCBOE. By so doing, she authorized the Committee to receive contributions and make expenditures on her behalf and to file the financial disclosure reports required periodically by both the NYSBOE and NYCBOE. The Committee was headquartered in Rubenstein's Court Street law office in Kings County and Janice Dawson, Rubenstein's long time office manager, was named as Treasurer. Dawson testified in the grand jury that her duties included depositing contributions, paying the bills and reconciling the bank statements. Both she and Rubenstein had signatory authority over the Committee's bank account which Dawson opened in April, 2008 at Signature Bank with a $25,000 contribution from Rubenstein. On April 18, 2008, Rubenstein gave Dawson a second check for $225,000 payable to the Committee, which he characterized as a loan to "start the campaign rolling." A brief loan agreement was prepared and signed by Dawson stating that the Committee would re-pay Rubenstein's loan by the primary on September 9, 2008, as required by the Election Law.

Following this infusion of funds from Rubenstein, various fundraisers were held between April and August of 2008, all of which Dawson characterized as "unsuccessful." She described the health of the campaign's finances at this point as "poor," a fact which troubled Rubenstein and which he and Dawson discussed "continuously." In early August a meeting was held during which campaign manager Michael Oliva stated, in essence, that it would be impossible for Anderson, as an "unknown black woman," to win the election without undertaking six "targeted mailings" to raise awareness of her candidacy and get the vote out on primary day. Dawson learned from "Strategic Persuasion," a political consulting firm hired by the Committee, that each such mailing would cost $50,000 to $60,000.

Shortly after this meeting, Rubenstein informed Dawson that he had "gifted" Anderson some money and that Anderson had decided to take $100,000 of this gift and make a contribution to the campaign. In fact, the evidence before the grand jury established that, by check dated August 12, 2008, Rubenstein had given Anderson exactly $100,000. On or about August 20, 2008, a check dated August 19, 2008, in the amount of $100,000 drawn on Nora Anderson's personal Chase bank account and payable to "Anderson for Surrogate" appeared on Dawson's desk. When Dawson asked Rubenstein how she should report it to the NYSBOE and NYCBOE, he directed her to report it as a contribution to the campaign from Anderson.

Several days later Rubenstein informed Dawson of his intention to lend Anderson an additional $150,000 from

his brokerage account with First Allied/Bear Stearns, an amount that Anderson would, in turn, lend to the campaign. In the grand jury, Dawson identified two documents as letters of authorization from First Allied/Bear Stearns, which, in order to effectuate the transfer of the $150,000 to Anderson and then to the Committee, required the signatures of Rubenstein and Anderson. Dawson was directed by Rubenstein and Anderson, who were not present in the office when the letters arrived, to sign their names and fax the forms back to First Allied/Bear Stearns. According to Dawson, this transaction was conducted on August 26, 2008, via wire transfer, rather than by check, because the money was needed immediately to pay for a targeted mailing.

Following this infusion of funds into the Committee, numerous checks in various amounts ranging from several hundred to $59,000 were written to Strategic Persuasion, including one check in the amount of $50,000 on August 22, 2008. Various other entities were also paid for printing services, mailings, distribution of flyers, targeted phone calls to registered voters as well as for "street money" – funds paid for people to hand out literature on election day. These payments included a check to Visibility Consulting Services for $20,000 on August 19, 2008, and $30,000 on September 4, 2008, for "election day service," which consisted of hiring three or four hundred people to distribute literature on election day. Musa Moore, the owner of the company, explained that his firm would not have offered the election day service unless it had been paid in advance. Following the $150,000 wire transfer into the Committee's account, on August 26, 2008, several large checks were written to Strategic Persuasion for various services.

The Committee's NYSBOE Filings

The NYSBOE maintains a filing inventory for every campaign in order to track when a given campaign files its disclosure reports and other required documents with the Board. The originals of all such filings are maintained at the NYSBOE's main office in Albany. A copy of the Anderson for Surrogate filing inventory revealed that the following disclosure reports were filed by the Committee with the NYSBOE:

• The Committee's July, 2008 "periodic report" filed on July 14, 2008, reflecting all monies received and expended by the Committee from the date of its registration to the cutoff date of July 11, 2008, including Rubenstein's $25,000 contribution on April 1, 2008, as well as his April 18th loan of $225,000.

• The "thirty-two day pre-primary report," as well as amended version of that report, filed on August 11th and 12th, respectively, which is one of the three pre-primary reports required by the NYSBOE. It reported, inter alia, that the full amount of Rubenstein's $225,000 loan was still outstanding as a debt of the Committee.

• The "eleven day pre-primary report" filed on September 2, 2008, encompassing the period from the cutoff date of the thirty-two day report (August 12, 2008) through and including August 25, 2008. This report disclosed that on August 20, 2008, Anderson herself had contributed $100,000 to her campaign. The report also indicated that the full amount of Rubenstein's $225,000 loan was still outstanding as a debt of the Committee.

• The "ten day post-primary report" filed on September 22, 2008, covering all transactions from August 26, 2008, through and including September 11, 2008. This report indicated, inter alia, that Anderson had lent the committee $170,000 and that Rubenstein's loan had been repaid in the amount of $22,100. The report also indicated that Rubenstein "forgave" $5,900 of the loan to the Committee, which amount was then considered a contribution to the Committee.

The Committee's NYCBOE Filings

With respect to the NYCBOE filings, the People called Joseph LaRocca, coordinator of the Board's candidate record unit. LaRocca explained that the NYCBOE is a depository agency that runs elections and handles all of the paperwork for the elections in the City of New York. The NYCBOE requires any candidate raising or spending more than $1,000 to prepare an itemized report to be filed with the Board. The candidate's authorized campaign committee may file on the candidate's behalf. The disclosures are required to be filed at the NYCBOE general office at 32 Broadway in New York County.

The NYCBOE requires three filings for both primary and general elections, two prior to the event and one after. The NYCBOE disclosure reports are identical to those of the NYSBOE except that in New York City only hard copies are accepted, whereas electronic filings are the norm with the State Board. LaRocca was familiar with the Anderson for Surrogate Committee and identified the following documents, filed by the Committee with the NYCBOE.

• An itemized filing received at the NYCBOE's Manhattan office on July 16, 2008 (the July periodic report).

• A "32 day pre-primary report' received in the general office on August 9, 2008.

• An amended copy of the "32 day pre-primary report" received in the general office on September 3, 2008.

• An "11 day pre-primary report" received in the general office on September 3, 2008.

• A "24 hour disclosure notice."

• A "ten day post-primary itemized disclosure report."

The New York County District Attorney's Investigation

Erika Figueroa, an investigator employed by the District Attorney of New York County, became involved with the Anderson-Rubenstein investigation in September of 2008. On September 22, 2008, she interviewed Rubenstein at his home. When asked by Figueroa about the $225,000 loan to Anderson, he replied that he gave her the money to "get the campaign going." She then showed Rubenstein the $100,000 check which he acknowledged having given Anderson as "a gift" with the assumption that she would use it for the campaign. When Figueroa asked him if he was aware that there was a limit to how much he could contribute to the campaign, Rubenstein's response was, in essence, "What, I can't give a gift?" Figueroa then asked him about the $150,000 loan, which Rubenstein described as a personal loan because the campaign was low on funds.

The Indictment

Counts one through three

The first three counts of the indictment pertain to the $100,000 which Rubenstein gave to Anderson on August 12, 2008, and which Anderson allegedly then transferred to the Committee. This amount was reported as a contribution from Anderson on both the NYSBOE and the NYCBOE disclosure reports. Thus, the crux of the first count, charging offering a false instrument for filing in the first degree, is that the defendants falsely reported the contribution to the NYSBOE as Anderson's when, in fact, it was an illegal, over the limit, contribution from Rubenstein. Count two charges the identical offense and conduct but in relation to the NYCBOE filing. Count three, charging falsifying business records in the first degree, alleges that the Committee's copy of the aforementioned report constitutes a false entry made in the business records of the Committee and retained in its Kings County office.

Counts four through six

These counts all pertain to the August 26, 2008, wire transfer of $150,000 from Rubenstein's brokerage account into Anderson's brokerage account and then into the Committee's bank account. This amount was reported as a loan from Anderson on both the NYSBOE and the NYCBOE 10 day post-primary disclosure reports. Thus, the crux of the fourth and fifth counts, charging offering a false instrument for filing in the first degree, is that the defendants falsely reported to the NYSBOE and NYCBOE, respectively, that these funds constituted a loan from Anderson. In fact, the People allege, the loan was an illegal, over the limit, contribution from Rubenstein, who knew that if he lent the money directly to the Committee it would be unable to re-pay him prior to the election. The sixth count, charging falsifying business records in

the first degree, alleges that the Committee's copy of the aforementioned report constitutes a false entry made in the business records of the Committee, also retained in its Kings County office.

Counts Seven and Eight

These counts allege that the defendants committed the Election Law misdemeanor of "campaign contribution to be under the true name of contributor" by misrepresenting, in the records of the Committee, the true source of the $100,000 contribution and the $150,000 loan respectively.

Counts Nine and Ten

The final two counts, charging the Election Law misdemeanor of "knowingly and willfully violating the contribution limits of the Election Law," also pertain to the $100,000 contribution and $150,000 loan, respectively. The crux of these charges is that Rubenstein contributed and lent money to the Committee through Anderson so that the defendants could conceal the fact that Rubenstein had exceeded the contribution limits.

Discussion

Geographical Jurisdiction

Defendants have moved to dismiss counts one, three, four and six through ten for the lack of venue, or geographical jurisdiction. Venue, though not an element of the charged offenses, must nonetheless be established before the grand jury, and the standard of proof on review is whether jurisdiction fairly and reasonably can be inferred from all the facts and circumstances adduced before that body. Matter of Steingut v. Gold, 42 NY2d 311, 316 (1977).

The gravamen of defendants' argument is that, with the exception of counts two and five, all of the charged conduct occurred not in New York County, but rather in Kings County where the Committee was based, or in Albany County where the NYSBOE disclosure reports were filed.[2] In response, the People assert two theories of jurisdiction. Initially, the People argue that jurisdiction lies because the defendants' conduct, with respect to each count of the indictment, had a "particular effect" on New York County within the meaning of CPL §20.40(2)(c). Alternatively, the People assert that jurisdiction lies under a "conspiracy" theory pursuant to CPL §20.40(1)(b).

Particular Effect Jurisdiction

Geographical jurisdiction is governed by CPL §20.40, which provides in pertinent part that:

> A person may be convicted in an appropriate criminal court of a particular county of an offense of which the criminal courts of this state have jurisdiction pursuant to section 20.20… when:
>
> 2. Even though none of the conduct constituting such offense may have occurred within such county: …
>
> (c) Such conduct had, or was likely to have, a particular effect upon such county or a political subdivision or part thereof, and was performed with intent that it would, or with knowledge that it was likely to, have such particular effect therein… .

"Particular effect of an offense" is defined in CPL §20.10(4) as follows:

> When conduct constituting an offense produces consequences which, though not necessarily amounting to a result or element of such offense, have a materially harmful impact upon the governmental processes or community welfare of a particular jurisdiction… such conduct and offense have a "particular effect" upon such jurisdiction.

Thus, "injured forum" jurisdiction may be had if the conduct of the defendants, though occurring in Kings County or Albany County, had "a particular effect" on New York County. In order to invoke injured forum jurisdiction the People must demonstrate that the conduct would have a "materially harmful impact upon the governmental processes or community welfare of the county seeking to assert jurisdiction." Matter of Steingut v. Gold, supra, 42 NY2d at 317. "Particular effect" jurisdiction is inapplicable to instances in which harm is caused only to individuals. Rather, the harmful impact must be to the well being of the community as a whole. Matter of Taub v. Altman, 3 NY3d 30, 33 (2004); People v. Fea, 47 NY2d 70,77 (1979). The "community" means residents of a particular county, not New York State or New York City residents generally. See Matter of Taub v. Altman, supra (no particular effect jurisdiction in New York County where false tax returns, though filed there, impacted four other boroughs as well); People v. Zimmerman, 9 NY3d 421, 426 (2007)(perjury committed in Ohio to mislead New York Attorney General in New York County anti-trust investigation did not give rise to particular effect jurisdiction in New York County or, indeed, in any particular county).

In this case, the People allege that the defendants knowingly engaged in a scheme to circumvent the Election Law's campaign contribution limits by transferring funds to falsify the true identity of the contributor and falsifying and filing the disclosure reports within Kings and Albany counties in an attempt to effect the outcome of a New York County election, thereby harming the governmental interests of New York County. The parties have called the Court's attention to only one case, Steingut v. Gold, supra, in which particular effect jurisdiction was invoked on the basis of conduct allegedly impacting an election.

In that case, Robert and Stanley Steingut were charged with the corrupt use of position or authority in violation of Election Law §448. The charges stemmed from a New York County luncheon between Stanley Steingut, then Speaker of the New York State Assembly, his son Robert Steingut, who was running for election as Councilman-at-Large in the City of New York from the County of Kings, and one Hans Rubenfeld, a retail merchant seeking appointment to the position of Advisor to the Civilian Complaint Review Board. During that luncheon, it was alleged, the Steinguts promised to assist Rubenfeld to gain the appointment in exchange for Rubenfeld's agreement to host a campaign fundraiser on behalf of Robert Steingut. The fundraiser was never held, though Robert Steingut was ultimately elected to the position.

Following their indictment, the Steinguts moved to dismiss on the ground that Kings County was without jurisdiction, since all of the alleged conduct occurred in New York County. The People conceded that all the pertinent discussions and transactions occurred in New York County, but claimed injured forum jurisdiction based on the fact that the election was to take place in Kings County. The motion was denied and the Steinguts initiated an Article 78 proceeding in the Appellate Division to enjoin the Kings County District Attorney's Office from proceeding on the indictment. That petition was granted.

In affirming the Appellate Division, the Court of Appeals rejected the People's reasoning, observing that "if the injured forum jurisdictional statute were to be triggered by the amorphous fact that the voters of the county would be called upon to vote in an election allegedly tainted by criminal activity localized in a single county, then if the election was one for a State wide office any county within the State would be able to assert jurisdiction." Steingut, supra at 317. Finding that such result was clearly not intended by the Legislature, the Court further explained that "[t]he type of injury or offense contemplated by the statute must be perceptible and of the character and type which can be demonstrated by proof before a grand jury." Steingut, supra at 317. The Court cited, as examples of perceptible injuries or offenses, the sale of illicit drugs in one jurisdiction for the purpose of resale in another and the example contained in the Practice Commentary to the statute of a culprit blowing up a dam in Putnam County thereby causing flooding in Westchester County, which he either intended or knew was likely to occur. Denzer, Practice Commentary, McKinney's Cons Law of NY, Book 11A, CPL §20.40, p. 55.

The defendants here, likening the facts of this case to those of Steingut, assert that Steingut is controlling and "fatal for much of the indictment," since "all of [the] conduct occurred outside the asserted forum county and the only claimed or arguable effect within

the forum county was the tainting of an election." The People, asserting that the only similarities between this matter and Steingut are that both cases involve the Election Law and corruption, argue that Steingut is clearly distinguishable on the facts.

No doubt, as the People point out, there are appreciable differences between the circumstances in Steingut and those at bar. These include the nature of the office in question. Here, the election was for a County Surrogate, who hears cases that are specific to New York County, though they can impact a wide variety of locations, as beneficiaries and litigants often reside outside the county. The election in Steingut, on the other hand, was for the Kings County member of the New York City Council, a city-wide body. Also, there is more evidence here that the defendants' fundraising conduct outside the forum county could have had some bearing on the outcome of the election in New York. These considerations, however, were not the stated basis for the decision in Steingut which, as the defendants argue, assumes the very facts the People claim distinguish it.

The Steingut Court based its holding that injured forum jurisdiction did not apply upon the premise that "the voters of the county would be called upon to vote in an election allegedly tainted by criminal activity localized in a single county." 42 NY2d at 317. Such a circumstance, it ruled, would not constitute the "perceptible material impact" required by the statute. Id. And, although the Court opined that a contrary interpretation would lead to the legislatively unintended result that efforts to taint an election for a State-wide office could then be prosecuted in any county, it did not suggest that the nature of the office at issue in Steingut was dispositive of that case. Rather, while the Court assumed an election in one county that was "tainted by criminal activity" in another, it nonetheless concluded that the injured forum statute "could have no application in a case of this sort." Id. at 318 (emphasis supplied). It then went on to state, in addition, that "even if we were to presume that the statute could have application in connection with an offense of this sort," the prosecutor failed to put before the grand jury the requisite evidence that a materially harmful impact upon the governmental processes of Kings County had occurred or was intended." Id.

The Court of Appeals reaffirmed its view that particular effect jurisdiction does not apply to this type of offense in People v. Taub, supra, 3 NY2d 30, where, in describing the Steingut decision, it stated, "Although Kings County was in some measure affected by [the conspiracy to corrupt an election there], we held that the mere fact that the allegedly tainted election was to take place in Brooklyn was insufficient to establish particular effect jurisdiction in Kings County. Id. at 35. That view was also confirmed more recently in People v. Zimmerman, supra, 9 NY3d 421. There, the Court noted its rejection in Steingut of the Kings County prosecutor's assertion that "particular effect venue" could be based on the fact that corrupt fund-raising in New York County was intended to affect an election in Kings. Rather, it had "concluded that where the election was to take place was an amorphous fact that the Legislature clearly did not intend to be dispositive in determining venue." Id. at 428.

In the instant case, as in Steingut, allegedly corrupt fund raising in a foreign county, intended to affect an election in the forum county, is the asserted basis for venue. Accordingly, notwithstanding the factual differences between the cases, this is the "sort of case" to which, under Steingut, "particular effect" jurisdiction does not apply.

Conspiracy Theory of Jurisdiction

As an alternate theory, the People argue that venue properly lies pursuant to CPL §20.40(1)(b), which provides in pertinent part that:

> A person may be convicted in an appropriate criminal court of a particular county, of an offense of which the criminal courts have jurisdiction pursuant to section 20.20 committed either by his own conduct or by the conduct of another for which he is legally accountable pursuant to section 20.00 of the penal law, when:
>
> 1. Conduct occurred within such county sufficient to establish: …
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> (b) an attempt or a conspiracy to commit such offense.

In support of this basis of jurisdiction, the People assert that the two filings with the NYCBOE (counts two and five) constitute overt acts in furtherance of an uncharged, overarching conspiracy "to illegally influence an election in New York County and elect Anderson as New York County Surrogate through false filings, falsifying business records, and knowingly and willfully giving and receiving excess contributions that were not in the true name of the contributor." In addition, the People assert jurisdiction because, they aver, the filings of the disclosures with the NYCBOE are not merely overt acts in furtherance of the overarching conspiracy, but also in furtherance of individual, uncharged conspiracies to commit each of the substantive offenses in the indictment. As such, the People argue that jurisdiction over each offense lies because "proof of an overt act pursuant to a conspiracy is sufficient to establish jurisdiction not only of the conspiracy, but also of the substantive crimes that were the object of the conspiracy." In support of this theory the People assert that all of the charged offenses are "inextricably intertwined" and that the commission of each offense was a necessary step towards realization of the ultimate goal of the larger conspiracy. Since some of the overt acts occurred in New York County, the People assert that New York County has jurisdiction over all of the crimes.

The defendants counter that jurisdiction pursuant to CPL §20.40(1)(b) cannot be triggered unless the indictment itself charges a conspiracy and, further, that even if a conspiracy charge were not required, jurisdiction would be conferred under the plain meaning of the statute only if the evidence establishes that the defendants, with respect to each count, engaged in conduct in New York County in furtherance of the commission of the specific offenses charged, not merely conduct in furtherance of a broad overarching conspiracy.

On the issue of whether the indictment must charge a conspiracy in order to invoke the provisions of CPL §20.40(1)(b), the law is not as clear as the defendants would have it. Article 105 of the Penal Law, defining the varying degrees of the crime of conspiracy, includes its own venue provision, CPL §105.25(1), which applies when a person is "prosecuted for conspiracy." In such a case, venue will lie "in the county in which [the defendant] entered into such conspiracy or in any county in which an overt act in furtherance thereof was committed."

Criminal Procedure Law §20.40, on the other hand, applies to the prosecution of any "offense of which the criminal courts of the state have jurisdiction" and, in subdivision (1)(b), provides for geographical jurisdiction in a county in which conduct occurred "sufficient to establish … [a]n attempt or a conspiracy to commit such offense" (emphasis supplied).

Thus, while there can be little doubt that there must be a charged conspiracy in order to invoke the authority of PL §105.25(1) and premise jurisdiction on an overt act in furtherance of that conspiracy, it is by no means as apparent from the language of the respective statutes that a pending conspiracy charge is a pre-requisite to the application of CPL §20.40(1)(b). Indeed, the language of that provision no more suggests the need for the accusatory instrument to include a conspiracy charge than it does a requirement that an attempt to commit an offense be separately alleged in order to invoke that alternative jurisdictional predicate under the same statute.

The primary appellate authority upon which the defendants rely in this regard is People v. Sosnick, 77 NY2d 858 (1991), a prosecution in which the indictment did include a conspiracy count and the issue before the Court of Appeals was whether the trial court's improper refusal to submit the question of venue to the jury could be deemed to be harmless error. Such a determination, it held, may be reached only if it appears from the jury instructions

that were given "or, in the absence of instructions on the subject, by necessary implication from the verdicts that the jury made a finding that venue was proper." Id at 860. In Sosnick, the error could not be held harmless "because defendants contested the evidence supporting venue and there [was] nothing in the jury's verdict from which it [could] be concluded that the jury decided the question against them." Id.[3] The Sosnick Court, noting that jurisdiction over the substantive crimes alleged "was predicated on the statutory exception prevailing in cases of conspiracy [see CPL 20.40(1)(b)]," went on to determine that

> reversal of the conspiracy charge also requires reversal of the substantive crimes because there remains no jurisdictional predicate for these charges in the absence of a finding of proper venue by the jury on the conspiracy charge.

Id at 861.

The defendants contend that this language from Sosnick may be read to suggest, as the court stated in People v. Taub, 2003 WL 1870239 (Sup. Ct. N.Y. Co.), reversed on other grounds sub nom Taub v. Altman, 3 NY3d 30 (2004), that "it is questionable whether venue may be predicated upon a conspiracy theory when the People do not charge conspiracy." However, it is also true that, in the absence of a finding by the Sosnick jury as to the jurisdictional predicate for the conspiracy charge, the only such predicate offered by the People at all, there remained no jurisdictional basis upon which the court could possibly uphold the convictions on any of the counts before it.

Accordingly, this Court, like the Court in People v. Leffler, __ M3d __ (Sup. Ct., N.Y. Co. 2003), aff'd on other grounds, 13 AD3d 164 (1st Dept. 2004), lv. den. 4 NY3d 800 (2005), is not convinced that there need be a conspiracy count in the indictment in order to invoke the provisions of CPL §20.40(1)(b). See also People v. Mattina, 106 AD2d 586 (2nd Dept. 1984)(where defendant pled guilty to attempted grand larceny, court stated in dicta that a charged conspiracy was not necessary to application of the conspiracy provision of §20.40[1][b]). Nevertheless, whether a separate conspiracy charge is filed or not, CPL §20.40(1)(b) does, by it terms, require that there be evidence of conduct within the forum county sufficient to establish a conspiracy to commit any substantive offense that is set forth in the indictment.

Here, the indictment charges neither an overarching conspiracy nor individual conspiracies to commit the substantive offenses of offering a false instrument for filing (counts one and four), falsifying business records in the first degree (counts three and six), campaign contribution to be under true name of contributor (counts seven and eight) or knowingly and willfully violating the contribution limits of the election law (counts nine and ten). But even if a conspiracy charge is not a prerequisite to "conspiracy theory jurisdiction," the People were still required to establish before the grand jury that the defendants' acts of filing the two disclosure reports with the NYCBOE in New York County, the only conduct alleged to have taken place in the forum jurisdiction, amounted to conduct sufficient to establish a conspiracy to commit each of the other object offenses. This they have not done.

While it is true that these filings may be seen as part of the defendants' overall effort to secure the election of defendant Anderson by various means, there is no such object crime, much less one that is alleged in the indictment. Further, the grand jury evidence of the separate NYCBOE filings does not "establish" any uncharged conspiracies to file other allegedly false instruments with the NYSBOE in Albany County or to collect excess campaign contributions and maintain false records thereof at the offices of the Committee in Kings County. Nor do these filings even constitute necessary overt acts in furtherance of any such arguably related but uncharged conspiracies.

Accordingly, for all of the reasons set forth above, all of the counts of this indictment with the exception of counts two and five are dismissed for lack of geographical jurisdiction.

Offering a False Instrument for Filing

Falsity of the Statements

In their motions, defendants seek the dismissal of counts one through eight of the indictment – the charges of offering false instruments for filing, falsifying business records and campaign contribution to be under true name of contributor – on the ground that the allegedly false statements concerning the identity of the contributor of certain funds were in fact truthful (Rubenstein Memorandum at pp. 6-17, 18-19). As stated, and insofar as remains relevant in light of this Court's conclusion regarding geographical jurisdiction, the theory underlying count two is that defendants offered a false instrument by filing with the NYCBOE an 11-day pre-primary report stating that defendant Anderson herself contributed $100,000 to the Committee on August 19, 2008, when defendant Rubenstein was the true contributor. Similarly, count five alleges that defendants committed that same crime by filing with the NYCBOE a 10-day post-primary report stating that Anderson was the source of the August 26, 2008, loan, when defendant Rubenstein was the actual lender.

On a motion to dismiss an indictment, the Court may consider only the legal sufficiency of the evidence, for the adequacy of the proof is the exclusive province of the grand jury. See, e.g., People v. Swamp, 84 NY2d 725, 730 (1994). Legally sufficient evidence, defined as "[c]ompetent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof," CPL §70.10(1), means a prima facie case, not proof beyond a reasonable doubt. Id. at 730, citing People v. Mayo, 36 NY2d 1002, 1004 (1975). As Swamp directs, this Court has considered "[w]hether the evidence, viewed most favorably to the People, if unexplained and uncontradicted – and deferring all questions as to the weight or quality of the evidence – would warrant conviction." People v. Swamp, supra, 84 NY2d at 730, citing People v. Mikuszewski, 73 NY2d 407, 411 (1989); People v. Jennings, 69 NY2d 103, 114-15 (1986). By this standard, the evidence before the grand jury, including the documentary evidence and testimony of Ms. Dawson and, as to defendant Rubenstein, the District Attorney's investigator regarding Mr. Rubenstein's admissions, was legally sufficient to support a finding that defendant Rubenstein gave and lent the funds at issue to defendant Anderson with the shared intent that the latter would promptly convey them to the campaign as her own. The evidence was also sufficient to establish that the 11-Day pre-primary and 10-Day post-primary reports listed defendant Anderson alone as the contributor and lender. Borrowing from a line of perjury cases, e.g., People v. Siggia, 163 AD2d 113, 115-16 (1st Dept. 1990), lv. den. 77 NY2d 842 (1991); People v. Rao, 53 AD2d 904, 916 (2nd Dept. 1976)(Titone, J., dissenting), however, defendants argue that as a legal matter, the statements in the filed reports were literally true because defendant Rubenstein gave only to defendant Anderson, not to the Committee, and defendant Anderson was the actual donor and lender to the Committee, as reflected in the reports.[4]

Defendants' authority and arguments in support of their position are not persuasive. The cited perjury cases serve as a source of the "literal truth" defense, but do not illuminate whether the reports at issue in this case were in fact true, literally or otherwise. Further, given defendants' argument elsewhere (Rubenstein Memorandum at pp. 19-25) that election law involves "a pervasive and complex regulatory plan" and a "complex and sophisticated area of the law reserved" to the Board of Elections, neither the language of perjury cases nor the generalized dictionary definitions they offer (id. at pp. 9-10), are particularly helpful.

Defendants' attempt to contrast federal and New York City election law – which expressly require the disclosure of intermediaries through whom donations pass, see 2 USC §441a(a)(8); 52 RCNY §4-01(b)(3)(ii) – and New York State election law, which defendants claim does not, is likewise unpersuasive. Defendants argue that State law

should be construed to permit limitless undisclosed gifts through candidate intermediaries because only federal and city law allow for matching public funds and thereby raise a risk that public money could be expended matching untoward contributions from individuals (Rubenstein Memorandum at pp. 11-13). By contrast, defendants conclude, as state elections involve no matching funds and therefore no such risk, the original source of donations need not be disclosed.

However, the legislative history of New York State's election laws reflects broader concerns than those underlying the enactment of the public financing option, which are to "encourag[e] the solicitation and making of small contributions" and to limit the expenditure of public matching funds to the modest contributions of many citizens. Friedlander, Louis and Laufer, The New York City Campaign Finance Act, 16 Hofstra L. Rev. at p. 3 (Winter 1988). Instead, the legislative history of the State Election Law, the statutes actually at issue in this case, reflects an ongoing effort to expose and limit the influence of large contributors, on both elections and elected officials' post-election conduct. See, e.g., Governor Malcolm Wilson approval Memorandum filed in connection with L. 1974, c.604, prior Election Law Article 16-A, precursor to current Election Law Article 14 (legislation designed to "restrict campaign contributions [and] tighten existing campaign finance reporting requirements"); Hon. David N. Dinkins May 4, 1992, letter to Hon. Mario Cuomo in support of 1992 Election Law Amendments, New York Legislative Service, L. 1992, c. 79, §26 (amendments necessary to "reduc[e] the risk and appearance that large contributors exercise undue influence, and [to] ensur[e] that large contributions do not distort the competitive balance among candidates by giving an inappropriate edge to those who refuse to abide voluntarily with reasonable contribution limits and more effective public disclosure requirements"). The absence of matching State public funds does not bespeak a legislative intent to permit limitless unattributed contributions by wealthy donors; instead, the provisions of the State Election Law statutes evince an attempt by the Legislature, however imperfectly executed, to expose and limit undue influence and the advantages of lopsided election funding.

It is true, as defendants point out, that despite widespread criticism, limited liability companies ("LLCs") have been deemed "individuals" for purposes of applying campaign contribution limits (Rubenstein Memorandum at pp. 13-16). Consequently, defendants contend, since one person, without revealing his or her own name, may contribute several times the ordinary limit to a candidate by funding and employing multiple LLC's, thereby legally evading any limitation on or attribution of individual contributions, so too could defendant Rubenstein bestow unlimited money on defendant Anderson's campaign by simply channeling his funds through the candidate herself, whose own contributions were not subject to regulation.

The critical flaw in defendants' argument is that Ms. Anderson was not an LLC, but a candidate with a political Committee,[5] and the statute, the Board of Election Rules and the single case to have examined the matter establish that a contributor may not avoid contribution limits and attribution by passing funds through a candidate intermediary.

Election Law §14-100, the definition section for Article 14, provides in subdivision one that a "contribution" means, inter alia, "any gift, subscription, outstanding loan… advance, or deposit of money or any thing of value, made in connection with the… election, of any candidate… ." The New York State Board of Elections Handbook of Instructions for Campaign Financial Disclosure for 2008, filed as an exhibit to defendant Rubenstein's Reply Affirmation, provides that a "contributor" is "an individual, corporation, political committee, unincorporated union or trade organization, PAC, or any other entity such as a league, association or club who makes a contribution" (id. at p. 6).

Election Law §14-120(1), campaign contribution to be under true name of contributor, with which defendants are charged in counts seven and eight, and which underscores the falsity at issue in counts two and five, provides that

> No person shall in any name except his own, directly or indirectly, make a payment or a promise of payment to a candidate or political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf or on behalf of any candidate, nor shall any such committee or any such person or candidate knowingly receive a payment or promise of payment, or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or person by whom it is made.

In addition, the State Board of Elections Handbook provides that

> It is the obligation of the Candidate to disclose the receipts and expenditures of their Campaign. They can do so in one (1) of three (3) ways:
>
> * * *
>
> 2. A candidate can choose to have an Authorized Committee which files the Disclosure Reports disclosing ALL receipts and expenditures of the Campaign. In such an instance, the Candidate can raise or spend money themselves, but such activity of the Candidate (who becomes an agent of the Committee) must be reported through their Authorized Committee.

(p. 13; capitalization in original, underlining supplied in both instances).

Finally, in People v. Norman, 9 M3d 1113(A)(S. Ct., Bx. Co. 2005), the court considered and rejected the type of stratagem employed in this case. In Norman, two entities, the Friends of Major Owens Committee and the Brooklyn Thurgood Marshall Democratic Club, each were prohibited by the Election Law from contributing $6,000 directly to defendant Norman's Committee to Re-elect Assemblyman Clarence Norman Jr. Nevertheless, defendant deposited two $3,000 checks drawn on the Owens Committee account, marked "contribution" and payable to the Marshall Club, into his personal account. He then wrote two $3,000 checks drawn on that personal account to his own re-election Committee account, which he recorded as a personal contribution. Although defendant had the authority to determine to whom the Marshall Club made contributions, and was not charged with theft of the Owens Committee contributions, the Norman Court concluded that his use of a personal account to avoid contribution limitations imposed on the source of the funds was unlawful.

As defendants state, the issue at hand does not turn on a factual dispute (see, e.g., Rubenstein Reply Memorandum at p. 3). Yet, the uncontested facts gave the grand jury an ample basis on which to conclude that defendant Rubenstein "directly," let alone "indirectly," "ma[d]e a payment… to a… person acting under [the] authority [of a political committee] or in its behalf" – here, the candidate and "agent of the Committee" defendant Anderson – and that both defendants "cause[ed] the same to be entered in the accounts or records of such committee, in [a] name other than that of the person… by whom it [was] made." Election Law §14-120(1); Handbook at p. 13. As in Norman, the use of defendant Anderson's personal accounts to cleanse or mask the prohibited contribution and loan by defendant Rubenstein did not render those donations lawful. More importantly for purposes of the remaining false filing counts, it did not alter the identity of the contributor. Thus, while the counts charging violations of Election Law §14-120(1) are no longer before this Court, the evidence in support thereof also supports the grand jury's determination that defendants knowingly filed disclosure forms with the NYCBOE containing false statements as to the true name of the contributor, with the intent to defraud that entity. PL §175.35.[6] Accordingly, defendants' motions to dismiss counts two and five of the indictment on this ground are denied.

"Citizens of New York County"

Defendants alternatively contend that the counts charging offering a false instrument for filing in the first degree

– counts one, two, four and five – must be dismissed because the People erroneously instructed the Grand Jury that "citizens of New York County" were among the victims protected by that statute (Anderson Memorandum at pp. 26-27).

As defendants state, first degree offering a false instrument for filing requires that the People establish, inter alia, that they "inten[ded] to defraud the state or any political subdivision, public authority or public benefit corporation of the state." PL 175.35. As they also state, when asked in defendants' demand to "identify the entity the People will claim [they] intended to defraud" with respect to these counts (Anderson Demand at para. 9 and 13), the People responded, "The New York State Board of Elections, the New York City Board of Elections, and the citizens of New York County" (People's Bill of Particulars at para 33, 37). While defendants are correct in their contention that the citizenry of Manhattan are not authorized victims within the ambit of the statute, the People never submitted such a theory to the Grand Jury, a fact reflected in the minutes of the Grand Jury presentation (pp. 294-96) and which the assigned Assistant District Attorney essentially revealed in oral argument (Minutes of May 22, 2009, at p. 69). Accordingly, the People are directed to strike from paragraphs 33 and 37 of their Bill of Particulars the reference to the "the citizens of New York County," see People v. Wright, 13 AD2d 803 (3rd Dept. 2004), lv. den. 4 NY3d 857 (2005) (amendment to bill of particulars which limited description of crime and did not prejudice defendant permissible), but defendants' motion to dismiss or reduce on this ground is denied.

Conclusion

For the above stated reasons, defendants' motions to dismiss are granted as to counts one, three, four, and six through ten, and denied as to counts two and five, both charging offering a false instrument for filing in the first degree. The People are directed to amend paragraphs 33 and 37 of their Bill of Particulars to strike the reference to "the citizens of New York" regarding the two remaining counts.

This shall constitute the decision and order of the Court.

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1. See In re Nora S. Anderson, 11 NY3d 894 (2008).

2. With respect to counts two and five, the defendants concede that jurisdiction lies in New York County based upon the filing of disclosure reports with the NYCBOE, which is located in Manhattan.

3. In the related case of People v. Ribowsky, 77 NY2d 284, 294 (1991), in which convictions on conspiracy and substantive charges were upheld, the Court concluded that, in view of the defendant's conviction for perjury committed in the forum county, "it necessarily follow[ed] that the jury passed on the question of venue."

4. Elsewhere in their motions (Anderson Memorandum at p. 37, n. 21), defendants argue that the People were obligated to inform the grand jury of defendant Rubenstein's largesse in bequesting defendant Anderson a large sum of money. To the extent this information might be considered exculpatory or even relevant to this issue, the Court disagrees. "[T]he People maintain broad discretion in presenting their case to the grand jury and need not seek evidence favorable to the defendant or present all of their evidence tending to exculpate the accused." People v. Mitchell, 82 NY2d 509, 515 (1993); accord People v. Brooks, 93 NY2d 862 (1999), aff'g for the reasons stated at 249 AD2d 572; People v. Lancaster, 69 NY2d 20, 25-26 (1986), cert. denied 480 US 922 (1987). Defendants have not shown that the additional evidence they propose would have materially influenced the grand jury's determination, People v. Bryan, 50 AD3d 1049 (2nd Dept. 2008); People v. Edwards, 32 AD3d 281 (1st Dept.), lv. den. 7 NY3d 901 (2006); People v. Williams, 298 AD2d 535 (2nd Dept.), lv. den. 99 NY2d 566 (2002), or that its non-introduction impaired the integrity of the proceeding. CPL §210.35(5).

5. Nor did the defendants share joint accounts, which might have allowed the nondisclosure of one of them on the forms at issue. See Rubenstein Reply Memorandum at pp. 8-10; New York State Board of Elections Handbook of Instructions for Campaign Financial Disclosure for 2008 at p. 37. Defendants have not disputed the allegations, which were fully supported by the evidence before the grand jury, that the funds at issue were successively channeled through their separate individual accounts.

6. Beyond that, as the perjury cases cited by both parties hold, the matter is one for a trial jury. See United States v. Schafrick, 871 F.2d 300, 304 (2nd Cir. 1989); United States v. Carey, 152 F.Supp.2d 415, 424 (S.D.N.Y. 2001); People v. Neumann, 51 NY2d 658, 667 (1980).