IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. DONALD JOHN TRUMP, RUDOLPH WILLIAM LOUIS GIULIANI, JOHN CHARLES EASTMAN, MARK RANDALL MEADOWS, KENNETH JOHN CHESEBRO, JEFFREY BOSSERT CLARK, JENNA LYNN ELLIS, RAY STALLINGS SMITH III, ROBERT DAVID CHEELEY, MICHAEL A. ROMAN, DAVID JAMES SHAFER, SHAWN MICAH TRESHER STILL, STEPHEN CLIFFGARD LEE, HARRISON WILLIAM PRESCOTT FLOYD, TREVIAN C. KUTTI, SIDNEY KATHERINE POWELL, CATHLEEN ALSTON LATHAM, SCOTT GRAHAM HALL, MISTY HAMPTON a/k/a EMILY MISTY HAYES Defendants.	CASE NO. 23SC188947

STATE'S RESPONSE IN OPPOSITION TO DEFENDANT CHESEBRO'S MOTION TO SPEAK WITH GRAND JURORS

COMES NOW, the State of Georgia, by and through the District Attorney FANI T. WILLIS, and submits this response in opposition to Defendant Chesebro's motion to speak with grand jurors "to determine whether the indictment was procured in substantial compliance with required safeguards for the accused's rights." As stated below, the State opposes Defendant Chesebro's attorneys and their staff from contacting the grand jurors.

1. **Defendant seeks to illegally inquire into secret grand jury deliberations**

Defendant Chesebro's motion seeks to inquire as to "whether the grand jurors read and understood the indictment before it was returned as a true bill." Def's Mot. at 2. This inquiry falls within the province of grand jury deliberations, which is expressly disallowed by statute and case law.

Whether the grand jury read and understood the indictment is no different than asking whether a grand jury considered an indictment as part of its deliberations. *See Deliberations*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/deliberation (last accessed Sep. 13, 2023) ("a discussion and consideration by a group of persons (such as a jury or legislature) of the reasons for and against a measure"). Defendant Chesebro's proposed inquiry is aimed directly at whether the grand jury deliberated about the indictment, an inquiry that has been flatly forbidden time and again.

First, the statutory scheme concerning grand jury proceedings prohibits inquiries into the deliberations of the grand jurors. The current grand jury oath requires grand jurors to "keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law in this state." O.C.G.A. § 15-12-67 (b). The Georgia Supreme Court recognized in *Olsen v. State*, 302 Ga. 288, 290, 806 S.E.2d 556 (2017), that this statute *expressly prohibits* inquiry into the grand jury's deliberations. Moreover, O.C.G.A § 15-12-73 explicitly states: "admissions and communications among grand jurors are excluded as evidence on grounds of public policy." Thus, the Georgia grand jury statutes demonstrate that the General Assembly never intended for the defense to be able to speak to grand jurors about their deliberations, which is the subject of defendant's proposed inquiries.

2. O.C.G.A. 24-6-606(b) prohibits defendant's proposed inquiry into deliberations

Even more explicitly, O.C.G.A. § 24-6-606(b) prohibits jurors from testifying about the jury deliberations or their mind as to their vote on the indictment (or verdict for petit jurors), except for the limited lines of inquiry of "whether extraneous prejudicial information was improperly brought to the juror's attention, whether any outside influence was improperly brought to bear upon any juror, or whether there was a mistake in entering the verdict onto the verdict form." While Federal Rule of Evidence 606(b), which the new Georgia evidence provision is based upon, permits juror testimony in three narrow instances, such testimony may only relate to the existence of the particular type of misconduct and not as to the effect of the misconduct on deliberations or any particular juror's state of mind. *United States v. Lawson*, 677 F.3d 629 (4th Cir. 2012). *See Beck v. State*, 305 Ga. 383 (2023) (considering the Georgia rule closely tracks its federal counterpart). The Seventh Circuit noted that "Rule 606(b) draws a line in the sand between evidence of outside influences on the jury's deliberative process and evidence of the jury's own internal processes." *United States v. Torres-Chavez*, 744 F.3d 988, 997 (7th Cir. 2014). The statute explicitly prohibits defendant Chesebro's proposed inquiries into the grand jury's internal processes.

It is in poor form for defendant to ask to rely on a decision that has been vacated and renounced. Defendant's main case about whether an inquiry can be based upon return of an indictment due to the limited time used to considered, *United States v. Sigma Int'l*, 244 F.3d 841 (11th Cir. 2001), cannot even be properly considered because the Eleventh Circuit explicitly vacated it. In subsequent proceedings, the Eleventh Circuit described the vacated opinions as "having no legal effect whatever . . . *[and n]one of the statements made in either of them has any remaining force and cannot be considered to express the view of this Court.*" *United States v.*

Sigma Int'l., Inc., 300 F.3d 1278, 1280 (11th Cir. 2002) (emphasis added). This Court should provide the same deference to *Sigma Int'l.* as the Eleventh Circuit affords it, which is none at all.

Further, under O.C.G.A. § 24-4-403, defendant Chesebro has not identified any particular relevant evidence that could be provided from an inquiry into the grand jury's deliberations. As stated above, grand jury deliberations is a prohibited subject of inquiry. The sufficiency of evidence before an indicting grand jury also cannot be inquired into. *Felker v. State*, 252 Ga. 351, 366, 314 S.E.2d 621, 636 (1984). Thus, defendant's proposed inquiries fall outside the realm of admissible evidence.

Defendant Chesebro has not identified any particular outside misconduct and supplied only unfounded and irrelevant conjectures about the grand jury's internal deliberations. Defendant's complaint that the grand jurors could not have considered the indictment in one day is also unavailing because it could be indicative of a strong case, similar to a quick verdict. *See United States v. Van Engel*, 809 F. Supp. 1360, 1367 (E.D. Wis. 1992). His mere speculation that the grand jury did not read and consider the indictment is not a proper inquiry as it goes to the internal grand jury deliberations.

3. Public policy disfavors intruding upon the grand jury's internal deliberations.

Public policy concerns disfavor inquiry into the grand jury's deliberations. The Georgia Supreme Court observed:

> The grand jury as a public institution serving the community might suffer if those testifying today knew that the secrecy of their testimony would be lifted tomorrow. This indispensable secrecy of grand jury proceedings, must not be broken except where there is a compelling necessity.

(cleaned up) *Kesler v. State*, 249 Ga. 462, 474, 291 S.E.2d 497 (1982). Keeping grand juror deliberations confidential and free from baseless scrutiny ensures that the grand jury can be free when it discusses the charges and votes on the indictment. *Douglas Oil Co. v. Petrol Stops Nw.*,

441 U.S. 211, 219 n.10 (1979). *See* Richard M. Calkins, *Grand Jury Secrecy*, 63 MICH. L. REV. 455, 456-57 (1965) ("[O]f paramount importance is the maintenance of secrecy concerning the deliberations and votes of the grand jurors themselves both during and subsequent to a hearing."). This reasoning includes that grand jurors should not be harassed for their votes by their neighbors. Nancy Mader, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 Iowa L. Rev. 465, 516 (1997). As the Eleventh Circuit observed, "[t]he state's interests in the confidentiality of the grand jury proceeding are interests 'of the highest order.'" *Henry v. AG*, 45 F.4th 1272, 1284 (11th Cir. 2022). (quoting *Doe v. Bell*, 969 F.3d 883 (8th Cir. 2020)). These interests included interfering with the grand jury's deliberations. *Id.*

The privacy and security concerns of the grand jurors is directly in play in this case already. Numerous articles have been published about this case, not only in local news outlets, but also in national and international media outlets. Immediately following the filing of the indictment, anonymous individuals on conspiracy theory websites shared list of the 23 grand jurors who approved the indictment with their supposed full names, ages and addresses with the intent to harass and intimidate them.[1] **Exhibit A.** This resulted in grand jurors being contacted in harassing and threatening manners. A website operated by a Russian company has openly stated that they are doxing these grand jurors due to the indictment. This incident has resulted in law enforcement officials, including the Atlanta Police Department, Fulton County Sheriff's Office, and other police departments in the jurisdiction, putting plans in place to protect the grand jurors and prevent harassment and violence against them.

[1] The State previously filed a motion to protect juror identity which has laid out in more detail the security concerns surrounding this trial and has the attached affidavit in Exhibit A.

This Court has a duty to protect jurors from unwanted harassment. *United States v. Scrushy*, 2005 U.S. Dist. LEXIS 42127 (N. Dist. Ala. 2005) (citing *United States. v. Brown*, 250 F.3d 907 (5th Cir. 2001); *United States v. Edwards*, 823 F.2d 111, 120 (5th Cir. 1987)). Courts have acknowledged that allowing grand jurors to testify about their service disturbs their privacy and safety interests. *United States v. Awadallah*, 401 F. Supp. 2d 308 (S.D.N.Y. 2005) *affirmed at United States v. Awadallah*, 436 F.3d 125 (2d Cir. 2006) ("Grand jurors whose service was completed three years ago have been drawn into this litigation. Their privacy has been disturbed. They have been subject to pressure from both sides to revisit the decisions they made in indicting Awadallah."); *United States v. Wiggan*, 700 F.3d 1204 (9th Cir. 2012) ("Whatever the ultimate validity of any particular decision to admit testimony from members of a grand jury that issued an indictment against a defendant might be, admitting that evidence is sensitive and even dangerous. It is redolent of peril to the fairness of the trial itself…It also implicates some of the concerns reflected in Federal Rule of Evidence 606(b)."). Even after the investigation has ended, the need for secrecy continues. *Henry*, 45 F.4th at 1284. Allowing contact by attorneys to question their deliberations would run afoul of the grand jury's privacy interests and the State's interest. Thus, the grand jury's privacy and security concerns, which have already been implicated, must be taken into account before allowing attorneys to contact them about their deliberations.

4. **Defense has shown no case law to support attorneys speaking to grand jurors because he never has had any law on his side.**

Defendant has not shown any case law that allows attorneys to speak to grand jurors, likely because there is none. Federal case law prohibits attorneys from speaking with grand jurors. *See United States v. Dalton*, No. 1:17CR00024, 2018 U.S. Dist. LEXIS 4502, at *17 (W.D. Va. Jan. 10, 2018); *United States v. Ailsworth*, 867 F.Supp. 980 (D. Kansas 1993); *United States v. Van Pelt*, Case No. 92-40042-01-SAC, 1993 U.S. Dist. LEXIS 1603, at *38 (D. Kan. Jan. 13, 1993).

Attorney Arora may well have brought this motion because he has been admonished in the past for speaking to grand jurors without prior authorization. **Exhibit B**. Meagan Matteucci, *Dekalb School Official's Lawyer Barred from Contacting Grand Jurors*, THE ATLANTA JOURNAL-CONSTITUTION, June 16, 2010, https://www.ajc.com/news/local/dekalb-school-official-lawyer-barred-from-contacting-grand-jurors/mpcN3wZX52Qgtv66iceifK/. Arora admitted in the news article that "The law says if you are going to challenge an indictment you have to do that before arraignment. That's what we're doing." *Id.* DeKalb County Superior Court Judge Cynthia Becker signed a temporary protective order prohibiting Arora and his staff from contacting grand jurors. *Id.* This motion is no more than an attempt to get permission to perform an illegal investigation.

Finally, should this Court decide an inquiry is necessary, which the State does not concede is necessary or supported by precedent, this Court should conduct the questioning of the grand jurors. *Isaacs v. State*, 259 Ga. 717, 720, 386 S.E.2d 316 (1989) ("the [trial] court conducted a limited voir dire of the grand jury concerning possible bias."). This way the trial court could limit questioning to permissible avenues and prevent defendant from harassing grand jurors.

CONCLUSION

Thus, the State requests this Court deny Defendant Chesebro's motion to speak with the grand jurors.

Respectfully submitted this 14th day of September 2023,

FANI T. WILLIS
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Atlanta Judicial Circuit

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE IN OPPOSITION TO DEFENDANT CHESEBRO'S MOTION TO SPEAK WITH GRAND JURORS TO DETERMINE WHETHER THE INDICTMENT WAS PROCURED IN SUBSTANTIAL COMPLIANCE WITH REQUIRED SAFEGUARDS FOR THE ACCUSED'S RIGHTS, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 14th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ F. McDonald Wakeford
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EXHIBIT A

State of Georgia

County of Fulton

I, Darin Schierbaum, am currently serving as the Chief of Police for the City of Atlanta and have served in that role since June 2022.

I have served as a sworn police officer for the City of Atlanta since 2003.

Prior to joining the Atlanta Police Department, I served as a Deputy Sheriff in in Johnson County, Illinois for approximately ten years.

In August 2023, I became aware that the identities of members of one of the Fulton County Grand Juries serving for the July-August term of court had been listed on a website known to be a location where information for "doxing" people is listed. Those listings called for harassment and violence against the grand jurors.

I was able to determine that members of the Fulton County Grand Jury who returned a true bill of indictment against 19 people, including Defendant Donald J. Trump, on charges of racketeering and other felony allegations, were being contacted by people in harassing and/or threatening manners. The doxing included home addresses of the grand jurors whose names were found on the doxing website.

As a result of determining that doxing had occurred, the Atlanta Police Department enacted an operational plan to protect those that resided in the city of Atlanta. The Atlanta Police Department also contacted the Fulton County Sheriff's Office who in turn coordinated efforts with the other police departments where grand jurors resided outside the City of Atlanta. The Sheriff, the Atlanta Police Department, and other police departments with jurisdiction where grand jurors live coordinated to ensure that safety measures were put in place to prevent harassment and violence against the grand jurors.

On August 30, 2023, the Atlanta Police Department was able to determine that the Fulton County District Attorney and her family were doxed in a similar manner as the grand jurors. The doxing of the District Attorney established it was due to her indictment of Defendant Donald J. Trump.

A website where both the Grand Jurors who returned the indictment against Donald J. J. Trump and the Fulton County District Attorney is operated by a Russian company. They openly state on the website that the reason they are doxing the Fulton County District Attorney and the Grand Jury individuals is due to the indictment of Donald J. Trump.

The Russian company that is housing the doxing has refused to remove doxing information and the Federal Government has been unsuccessful in having such

information removed. Thus, the doxing of both the grand jurors and the District Attorney are permanent.

The actions taken by local law enforcement to protect the grand jurors, as well as the District Attorney and her family members, require a significant devotion of our capacity and represent a strain on law enforcement resources to allow them to complete their civic duty without being subjected to unnecessary danger.

Signed:

Darin Schierbaum
Chief of Police
City of Atlanta
226 Peachtree Street, SW
Atlanta, GA 3030

Subscribed and sworn to before me, this 5th day of September, 2023.

Signature of Notary:

PATRICIA A FREEMAN
NOTARY PUBLIC
DEKALB COUNTY, GEORGIA
MY COMMISSION EXPIRES
OCTOBER 20, 2024

Printed Name of Notary:

Patricia A. Freeman

EXHIBIT B

The Atlanta Journal-Constitution

DeKalb school official's lawyer barred from contacting grand jurors

LOCAL NEWS

By Megan Matteucci

June 16, 2010

A DeKalb County judge has issued a temporary protective order barring the lawyer for an indicted school administrator from contacting members of the grand jury.

The district attorney's office said it sought the order against attorney Manny Arora on Tuesday after grand jurors complained he was knocking on their doors.

"They are claiming they are being harassed," Chief Assistant District Attorney Don Geary told The Atlanta Journal-Constitution. "None of them indicated they were fearful, but they are concerned about them [the lawyers] and the defendants knowing where they live. ... All we want him to do is stop."

Arora represents Patricia Reid, a former DeKalb schools chief operating officer also known as Pat Pope.

A grand jury indicted Reid, along with former schools Superintendent Crawford Lewis, Reid's former husband Tony Pope and her secretary Cointa Moody, last month on charges of racketeering and bribery.

Arora said his defense in the case includes tracking down evidence and talking to jurors.

"The law allows us to contact grand jurors," Arora told the AJC. "We went to their homes and identified ourselves. In most cases, they welcomed us in. But I guess the prosecutor took offense to that."

The order prevents Arora or his staff from talking to any grand jurors. A hearing is set for July 12.

Arora, who is in North Carolina as part of a federal trial, said he was not present Tuesday when Superior Court Judge Cynthia J. Becker signed the order, but he said he received several calls about it.

"The law says if you are going to challenge an indictment, you have do that before arraignment. That's what we were doing," said Arora of the Atlanta firm Arora & LaScala.

Geary, a prosecutor for 20 years, said he is not aware of any laws that allow attorneys to contact grand jurors.

"They take an oath to keep secret what's done in grand jury," Geary told the AJC. "What would be the purpose of contacting them unless you are trying to convince them to violate their oath?"

Reid remains free on bond. She currently works at the district, assigned to "special projects," but her employment ends June 30. The conditions of her bond prevent her from contacting jurors.

In addition to the criminal investigation into bid tampering, bribery and theft, the grand jury is now conducting a civil investigation into school board operations, Geary said.

The civil investigation cannot result in charges.

About the Author

Megan Matteucci

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