

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

CASE NO.

23SC188947

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.

**STATE'S RESPONSE TO DEFENDANT POWELL'S GENERAL DEMURRER
AND MOTION TO DISMISS COUNTS 32-37 AND RELATED ACTS**

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Sidney Katherine Powell's General Demurrer and Motion to Dismiss Counts 32-37 and Related Acts. The Defendant seeks dismissal of the indictment issued by a Fulton County grand jury on the grounds that either the State cannot prove the essential elements of the crimes charged against her or that outside facts prove that she is not guilty. These are not legal grounds upon which the Court can sustain a demurrer, and for the reasons set forth below, the Defendant's motion should be denied.

I. The Defendant's speaking demurrer as to Counts 32 through 37 presents no legal authority for quashing an indictment and is void.

Simply put, the Defendant's motion wholly disregards the grounds upon which a court can grant a demurrer under Georgia law. "A general demurrer challenges the sufficiency of the substance of the indictment. ... If all the facts which the indictment charges can be admitted [as true], and still the accused be innocent, the indictment is bad; but if, taking the facts alleged as premises, the guilt of the accused follows as a legal conclusion, the indictment is good." *State v. Cohen*, 302 Ga. 616, 617-618 (2017) (quoting *Lowe v. State*, 376 Ga. 538, 539 (2003)). Conversely, a "speaking demurrer" is one which "attempts to add facts not otherwise apparent on the face of the indictment by means of stipulation. ... 'Such a demurrer presents no question for decision, and should never be sustained.' Speaking demurrers present no legal authority for quashing an indictment. Speaking demurrers are void." *State v. Givens*, 211 Ga. App. 71, 72 (1993) (quoting *Walters v. State*, 90 Ga. App. 360, 365 (1954)). "A demurrer may properly attack only defects which appear on the face of the indictment, and a demurrer which seeks to add facts not so apparent but supply extrinsic matters must fail as a speaking demurrer." *State v. Holmes*, 143 Ga. App. 847, 848 (1977). There "is no authority" for attempting "to convert ... [a] demurrer into what, in civil practice, would be termed a motion for summary judgment." *Givens*, 211 Ga. App. at 72.

The Defendant's motion is an improper speaking demurrer that cannot be credited for any purpose. The Defendant repeatedly asserts in her motion that "the State cannot prove an essential element of each offense," which is not and never has been a ground upon which a general demurrer can be granted. Indeed, consideration of a general demurrer requires an assumption that all facts alleged in the indictment are true. *See Cohen*, 302 Ga. at 617. The Defendant dedicates pages and pages of her motion to her version of the facts, but once again, "a demurrer which seeks to add facts not so apparent but supply extrinsic matters must fail as a speaking demurrer." *Holmes*, 143

Ga. App. at 848. The seven excerpts from hearings and depositions in outside matters attached to the Defendant's motion can play no role in this Court's consideration of her demurrer. The purported facts alleged in those excerpts are "for the jury as the finder of fact to resolve" *Faulkner v. State*, 395 Ga. 321, 322 (2014) (internal quotations omitted).

Counts 32 through 37 allege the essential elements of each of the offenses charged. Each is a conspiracy charge that alleges: (1) that the Defendant conspired with another person; (2) to commit a criminal violation of Georgia law; and (3) that at least one co-conspirator committed an overt act in furtherance of the conspiracy in Fulton County, Georgia. That is all that is required to withstand a general demurrer. If each of the facts as alleged in the charges against the Defendant are taken as true, "the guilt of the accused follows as a legal conclusion [and] the indictment is good." *See Cohen*, 302 Ga. at 618. Accordingly, as the indictment properly alleges the essential elements of each offense, the Defendant's motion should be denied as to Counts 32 through 37.

II. Even if the overt acts alleged against the Defendant in Count 1 were stricken, which they should not be, Count 1 still survives a general demurrer.

The Defendant submits in her motion that "Count 1 must be dismissed because all other counts and acts fail." Def.'s Mot. at 9. As pointed out above, Counts 32 through 37 of the indictment are legally sufficient to survive a general demurrer, and the Defendant has provided the Court no legal ground upon which either those counts or the corresponding overt acts pled in Count 1 could be quashed or stricken. Still, even if the corresponding overt acts pled in Count 1 were removed from the indictment, the count would be legally sufficient to charge the Defendant with a violation of O.C.G.A. § 16-14-4(c) and would survive a general demurrer.

The Defendant incorrectly states that "[t]o prove a RICO violation, the State must show that the defendant committed two or more predicate criminal acts indictable under the RICO Act as part of an enterprise engaging in a pattern of racketeering activity." Def.'s Mot. at 10. Once

again, the Defendant disregards Georgia law. While an indictment charging a defendant with a violation of O.C.G.A. § 16-14-4(a) or O.C.G.A. § 16-14-4(b) must allege that the defendant personally engaged in a pattern of racketeering activity, here, the Defendant is charged with *conspiring* to violate the Georgia RICO Act, under O.C.G.A. § 16-14-4(c). Count 1 of the indictment alleges that she, along with 18 co-defendants and 30 unindicted co-conspirators, while associated with an enterprise, unlawfully conspired and endeavored to conduct and participate in that enterprise through a pattern of racketeering activity. “[E]ach actor in a [RICO] conspiracy is responsible for the overt actions undertaken by all the other co-conspirators in furtherance of the conspiracy. ... [T]here is no requirement in a [RICO] conspiracy case that the State prove that [a defendant] personally committed the underlying predicate offenses.” *Pasha v. State*, 273 Ga. App. 788, 790 (2005).

Accordingly, even if all of the overt acts involving the Defendant in Count 1 were stricken from the indictment, since 147 overt acts undertaken by her co-conspirators would remain, the indictment would be legally sufficient to survive a general demurrer. The Court should deny the motion as to Count 1.

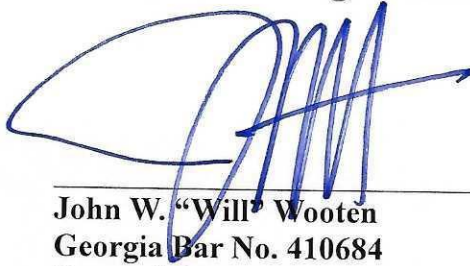
As set forth above, the Defendant has not demonstrated any grounds upon which the Court can sustain a general demurrer to the indictment against her, and her motion should be denied.

Respectfully submitted this 27th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ F. McDonald Wakeford
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A handwritten signature in blue ink, appearing to be 'Will Wooten', is written over a horizontal line. The signature is stylized with a large loop at the beginning and several vertical strokes.

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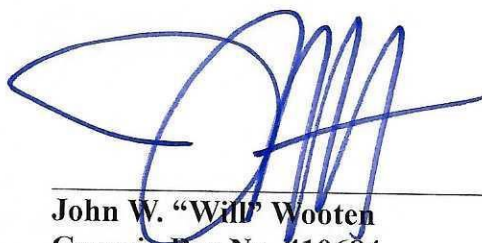
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT POWELL'S GENERAL DEMURRER AND MOTION TO DISMISS COUNTS 32-37 AND RELATED ACTS upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 27th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit



John W. "Will" Wooten

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