Fulton County Superior Court
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	
v.	CASE NO. 23SC188947
KENNETH CHESEBRO, ET AL., DEFENDANTS.	JUDGE MCAFEE

DEFENDANT CHESEBRO'S REPLY BRIEF IN SUPPORT OF HIS MOTIONS TO QUASH COUNTS 9, 11, 13, 15, 17, AND 19

COMES NOW, Defendant Kenneth Chesebro, by and through undersigned counsel, and submits this reply to the State's Combined Response to the above-mentioned motions to quash. In its response, the State tells this Court that it should deny Mr. Chesebro's motions without a hearing. Because these motions may be dispositive of several charges, Mr. Chesebro respectfully requests this Honorable Court schedule a hearing on these motions. In support of thereof, Mr. Chesebro shows this Honorable Court as follows:

The State argues that Mr. Chesebro's motions are improper speaking demurrers as they reference evidence outside the indictment. The Georgia Supreme Court holds that "a demurrer ***ordinarily*** cannot rely on extrinsic facts that are not alleged in the indictment." *State v. Williams*, 306 Ga. 50, 53 (2019) (emphasis added). Thus, the Court has left open the possibility of courts to consider extrinsic facts on demurrers in specific circumstances. Indeed, as the State has acknowledged, Georgia courts recognize an exception to the general rule against consideration of extrinsic facts when both parties stipulate to the outside facts. *Id.* at 53. In its response brief, the State claims that it does

not stipulate to the additional facts in Mr. Chesebro's motions. Yet both of the exhibits attached to Mr. Chesebro's motions are copies of documents that were provided to Mr. Chesebro in the State's discovery.[1] Clearly, the State has *de facto* stipulated to these exhibits.

Regardless, the Georgia Supreme Court holds that a demurrer is not void if the challenge to the indictment can be determined "without reaching matters outside the four corners of the indictment." *State v. Grube*, 293 Ga. 257, 258 (2013). Even without considering the exhibits, Mr. Chesebro's motions still raise valid arguments to the substantive counts of the indictment. The relevant portions of the indictment take issue with the contingent Republican elector slate's statements about being "duly elected and qualified electors." The State contends that Mr. Chesebro's arguments about these statements lacking any falsehood rely entirely on extrinsic facts and thus should not be considered at all. But the indictment does not allege what the precise falsity of these statements were. Nor does it allege how or why the entirety of the statements should or could be considered false. The State, in its response brief, does not clarify or address these arguments.

Counts 13 & 19

The State claims that the only viable arguments against Counts 13 and 19 are in Paragraphs 4 and 5 of Mr. Chesebro's motion to quash those charges. Indeed, in those

[1] Exhibit A to Mr. Chesebro's motions is a certified copy of a transcript of the Republican contingent electors' meeting on December 14, 2020. This same transcript was in the subfolder labeled "Anne Hansen Production" that was turned over in the State's first batch of discovery. Anne Hansen was the certified court reporter who transcribed the contingent electors' meeting. Notably, she is also listed as a prosecution witness on the State's first witness list.

paragraphs, Mr. Chesebro argues that an essential element of O.C.G.A. § 16-10-20 is that the Georgia department to which the allegedly false statement is made must have the power to act on said statement. Those paragraphs further argue that the Georgia Secretary of State and Governor had no power to act on the allegedly false statements because those statements were made after the Safe Harbor deadline and thus, under the Electoral Count Act, only Congress had the authority to act on those statements. Notably, the State's brief fails to address this argument aside from acknowledging its validity.

Instead, the State pivots to argue that Counts 13 and 19 are sufficient because they track the language of O.C.G.A. § 16-10-20. But what the State fails to understand is that the indictment does not allege how the Governor or Secretary of State had authority to act on the statements at issue. Instead, "[t]he indictment in this case is based upon several assumptions of fact not set forth in the indictment." *Jackson v. State*, 301 Ga. 137, 141 (2017). If all that needed to be done to survive a demurrer was to copy and paste a statute into an indictment, then a myriad of situations exist in which defendants would be forced to go to trial over charges that were insufficient on their face. For example, suppose an indictment charges a defendant with making a false statement about an unsolved murder to the Georgia Secretary of State. The indictment tracks the language of the statute and asserts that the statement was made in a matter "within the jurisdiction of the Office of the Georgia Secretary of State." Clearly, a murder investigation is *not* within the jurisdiction of the Secretary of State's Office. Should a defendant be forced to go to trial simply because the indictment tracks the language of the statute? The sensible and judicially conservative answer would be "no."

Additionally, the State alleges that the rest of Mr. Chesebro's argument—specifically, that the statement regarding "duly elected and qualified electors" is ***not*** false—incorporates extrinsic facts and thus should not be considered at all. But even without considering the attached exhibits, Mr. Chesebro's argument is still viable. The indictment does not allege what the falsity of these statements were. Nor could it, as these statements were not false.

Counts 9, 11, & 17

The State's brief poses the same problems in its response to the challenges to Counts 9, 11, and 17. Mr. Chesebro asserts that those Counts do not contain any allegation that the contingent Republican electors were not truthful in calling themselves "duly elected and qualified" presidential electors.

Count 15

The State claims that Mr. Chesebro's motion to quash Count 15 calls O.C.G.A. § 16-10-20.1 by a title from a "*prior version*" of the statute. The State is correct that the statute was amended in 2014; however, it was not re-titled as "Filing False Documents." Despite citing to it, nowhere in Georgia Laws 2014 does it indicate that the statute was re-titled as part of the amendment. In fact, the page pincited by the State says in all caps, "Filing False Liens or Encumbrances."[2] Moreover, the act which amended O.C.G.A. § 16-10-20.1 states that the legislature is amending the statute "to expand the protection against the filing of ***false liens or documents*** to all citizens." *Id.*

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[2] Ga. L. 2014, p. 741. The State can access this document at http://dlg.galileo.usg.edu/do:dlg_ggpd_y-ga-bl407-b2014-bv-p1-belec-p-btext.

The State goes onto claim that the motion to quash ignores the legislative history of the statute and that the legislature did not intend the definition of "documents" in the statute to be too narrow because of the "catchall" language "or other records, statements, or representations of fact, law, right, or opinion." But the State ignores the important rules of statutory construction cited in the motion to quash. Under the canon of *ejusdem generis*, when a statute lists specific items or concepts followed by general terms, the general terms must be confined to things of the same kind as those specifically mentioned. *Warren v. State*, 294 Ga. 589, 591 n.2 (2014). Under the principle of *noscitur a sociis*, a word or phrase in a statute is given the same meaning as other words that accompany it. *Yates v. United States*, 574 U.S. 528, 543 (2015) (explaining that "a word is known by the company it keeps . . . to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words" (internal quotations omitted)).

Here, the general language "other records, statements, or representations of fact, law, right, or opinion" immediately follows "liens, encumbrances, documents of title, instruments relating to a security interest in or title to real or personal property." *See* O.C.G.A. § 16-10-20.1(a). The latter list of items all relate to a property right or interest. Accordingly, the "catchall" language the State cites must refer to items within the same category.

The State argues that because the legislature added this general phrase to the statute, that there is a presumption that the legislature intended to broaden the statute's

reach.[3] But if the legislature truly intended to expand the statute from "liens or encumbrances" and similar documents to any kind of writing, then the legislature could have simply omitted the reference to deeds, liens, and other property records entirely. Or it could have incorporated another statute's definition of "document."[4] Or it could have omitted the definition altogether, leaving the presumption that "document" is to have its ordinary meaning. The fact that the legislature still chose to define "document" and, in defining it, list specific items regarding a property interest or right shows that the legislature intended this statute to apply to situations involving some improper effort to encumber another person's interest in some property.

CONCLUSION

WHEREFORE, Mr. Chesebro respectfully requests this Court schedule a hearing on his motions to quash the substantive counts and thereafter grant his motions to quash Counts 9, 11, 13, 15, 17, and 19.

Respectfully submitted, this 5th day of October, 2023.

/s/ Scott R. Grubman
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[3] The State also argues that a narrow definition of "document" would render subsection (b)'s criminalization of filing such documents in federal court meaningless because property records are not recorded in federal court. But subsection (b) proscribes not just recording these documents, but also filing or entering them as well. And liens *can* sometimes be filed in federal courts (for example, a *lis pendens*).

[4] *E.g.*, O.C.G.A. § 11-5-102(6); O.C.G.A. § 16-9-1; O.C.G.A. § 44-2-36(2).

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Reply Brief in Support of Motions to Quash Counts 9, 11, 13, 15, 17, and 19* upon counsel for the State of Georgia via the e-filing system.

ON THIS, the 5th day of October, 2023.

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