

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

SYDNEY KATHERINE POWELL

Indictment No.
23SC188947

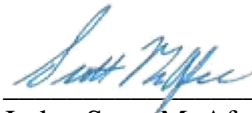
**ORDER ON DEFENDANT POWELL'S
MOTION TO DISMISS INDICTMENT FOR PROSECUTORIAL MISCONDUCT**

Defendant Powell seeks dismissal of the indictment pursuant to *Napue v. Illinois*, 360 U.S. 264 (1959) citing prosecutorial misconduct, specifically alleging that the State must have presented the grand jury with false and misleading evidence. (Powell Doc. 60). The State responded (Powell Doc. 70), to which Powell replied (Powell Doc. 77), and the Court heard arguments on October 5, 2023. The Court first finds that the motion is procedurally defective. In Georgia, *Napue* has only been applied to post-conviction proceedings challenging the evidence presented at trial. *See, e.g., Harris v. State*, 309 Ga. 599, 607 (2020). While the United States Court of Appeals for the Ninth Circuit extended *Napue* to grand jury proceedings in *United States v. Basurto*, 497 F.2d 781 (9th Cir. 1974), this case has never been adopted by Georgia appellate courts or the Eleventh Circuit. *See, e.g., Anderson v. Sec'y for the Dep't of Corr.*, 462 F.3d 1319, 1327 (11th Cir. 2006) (“If anything, Justice Rehnquist’s comments in [*Bracy v. United States*, 435 U.S. 1301 (1978)] seem to suggest Supreme Court precedent would support a holding that an indictment is not invalidated by the grand jury’s consideration of perjured testimony.”). The Defendant’s request is simply beyond the purview of this Court.

Moreover, Defendant cannot expect a weighing of the evidence to occur via pretrial motion. *See, e.g., Anthony v. State*, 298 Ga. 827, 829 (2016) (“As we have explained many times before, conflicts in the evidence ... are for the jury to resolve.”); *Jackson v. State*, 208 Ga. App. 391, 392 (1993) (“defendant is attempting to use the motion to dismiss as though it were a motion for

summary judgment, which does not exist in criminal procedure because, for one thing, the parties cannot be compelled to reveal the evidence on which their positions are based”). While Defendant thoroughly presents her evaluation of the State’s evidence in the motion and attachments, the State is not required to rebut at this stage, and the Defendant’s solitary assessment that the case lacks inculpatory evidence does not prove a claim of prosecutorial misconduct or violation of due process. The motion is DENIED.

SO ORDERED, this 9th day of October, 2023.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit