

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

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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

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**STATE’S RESPONSE TO DEFENDANT SIDNEY POWELL’S GENERAL  
DEMURRER AND MOTION TO DISMISS COUNTS 1, AND 32-37 FOR  
PROSECUTORIAL MISCONDUCT AND *NAPUE VIOLATIONS***

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Sidney Powell’s General Demurrer and Motion to Dismiss Counts 1, and 32-37 for Prosecutorial Misconduct and *Napue* Violations. The Defendant asks this Court to dismiss the indictment against her based on an unfounded and speculative allegation of prosecutorial misconduct. This motion, filed as a “general demurrer,” is another in a series of improper and void speaking demurrers. As to the allegations of prosecutorial misconduct, the motion has no basis other than speculative, unfounded claims premised upon

Defendant's own self-serving and incomplete version of the facts. For the reasons set forth below, the Court should deny the Defendant's motion.

**I. This motion is another improper and void speaking demurrer.**

Defendant Powell's motion to dismiss merely amounts to an attempt to try this case by motion, disguised as a demurrer and, arguably, a *Giglio* motion. Defendant's motion sets out her version of the facts, which is incomplete and imbalanced. As a demurrer, it is an improper speaking demurrer, 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) (emphasis added)). Defendant is welcome to present her version of the facts to the jury at her upcoming trial. *See Id.* ("There "is no authority" for attempting "to convert . . . [a] demurrer into what, in civil practice, would be termed a motion for summary judgment.>"). The trial court should summarily deny her motion as it is a void speaking demurrer.

**II. The allegations of prosecutorial misconduct are based upon unfounded speculation because there has been no prosecutorial misconduct.**

Defendant's prosecutorial misconduct claim is not supported by evidence or authority. "A charge of prosecutorial misconduct is a serious charge and is not to be lightly made; having raised it, appellant has the duty to prove it by the record and by legal authority." *Moclaire v. State*, 215 Ga. App. 360, 364, 451 S.E.2d 68 (1994). The Defendant's claim here amounts to the argument that the State *must have* engaged in misconduct in order to obtain her indictment because her own assessment of the facts unassailably proves her innocence. To prevail on a *Giglio* claim, a defendant must show (1) the contested statements were false, (2) the State knew they were false, and (3) the statements were material. *Washington v. Hopson*, 299 Ga. 358, 363, 788 S.E.2d 362

(2016) (citing *United States v. Clarke*, 442 Fed. Appx. 540, 543-44 (11th Cir. 2011)). Defendant hypothesizes that evidence must have been misrepresented or withheld from the grand jury, because, unsurprisingly, she claims that her version of the facts removes her from any of the alleged criminal acts. She alleges no specific acts of misconduct beyond her conjecture and unfounded speculation, and she must do so because there has been no prosecutorial misconduct.<sup>1</sup> This is nothing more than an attempt to avoid the upcoming jury trial, based on the actual evidence, by presenting a distorted version of facts.

Furthermore, in her motion, Defendant continues to suppose that the State must have presented false statements to the indicting grand jury or else it would not have been able to obtain an indictment against her. Her attempted fishing expedition into the evidence presented to the grand jury is expressly prohibited by Georgia law. *Young v. State*, 305 Ga. 92, 99, 823 S.E.2d 774 (2019) (“[W]here a competent witness is sworn properly and testifies before the grand jury, and where the defendant is thereafter found guilty beyond a reasonable doubt by a trial jury, the sufficiency of the evidence to support the indictment is not open to question.”) (quoting *Smith v. State*, 279 Ga. 48, 50, 610 S.E.2d 26 (2005)). Moreover, unlike Federal Rule of Criminal Procedure 6, Georgia law does not require a court reporter to record grand jury proceedings, and no court reporter was present at the grand jury that indicted Defendant.<sup>2</sup> O.C.G.A. § 15-12-83. See *Thomas v. State*, 331 Ga. App. 641, 656, 771 S.E.2d 255 (2015) (quoting *Ruffin v. State*, 283 Ga. 87, 88,

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<sup>1</sup> Additionally, dismissing the indictment is not a proper remedy. “Remedies should be tailored to the injury suffered from the constitutional violation alleged and should not unnecessarily result in dismissal of the indictment where the criminal proceeding can proceed with full recognition of defendant's right to a fair trial.” *Jordan v. State*, 247 Ga. 328, 332, 276 S.E.2d 224 (1981) (citing *United States v. Morrison*, 449 U.S. 361 (1981)).

<sup>2</sup> The State notes that Defendant’s motion is almost exclusively supported by federal, not Georgia, law.

656 S.E.2d 140 (2008). Defendant's expedition into the grand jury based upon federal law is without support under Georgia law.

For the reasons set forth above, the Defendant's motion should be denied without a hearing. Her allegations of prosecutorial misconduct are founded upon speculation and present no specific issues for which this Court can rule upon. Thus, this Court should deny Defendant's general demurrer and motion to dismiss the indictment.

Respectfully submitted this 4th day of October, 2023,

**FANI T. WILLIS**  
District Attorney  
Atlanta Judicial Circuit

/s/ F. McDonald Wakeford  
**F. McDonald Wakeford**  
**Georgia Bar No. 414898**  
Chief Senior Assistant District Attorney  
Fulton County District Attorney's Office  
136 Pryor Street SW, 3rd Floor  
Atlanta, Georgia 30303  
fmcdonald.wakeford@fultoncountyga.gov

/s/ Alex Bernick  
**Alex Bernick**  
**Georgia Bar No. 730234**  
Assistant District Attorney  
Fulton County District Attorney's Office  
136 Pryor Street SW, 3rd Floor  
Atlanta, Georgia 30303  
alex.bernick@fultoncountyga.gov

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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 SIDNEY POWELL'S GENERAL DEMURRER AND MOTION TO DISMISS COUNTS 1, AND 32-37 FOR PROSECUTORIAL MISCONDUCT AND NAPUE VIOLATIONS, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 4th day of October, 2023,

**FANI T. WILLIS**  
District Attorney  
Atlanta Judicial Circuit

/s/ Alex Bernick

**Alex Bernick**

**Georgia Bar No. 730234**

Assistant District Attorney

Fulton County District Attorney's Office

136 Pryor Street SW, 3rd Floor

Atlanta, Georgia 30303

[alex.bernick@fultoncountyga.gov](mailto:alex.bernick@fultoncountyga.gov)