

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 EMERGENCY RENEWED MOTION FOR
PROTECTIVE ORDER OVER DISCOVERY MATERIALS**

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and on an **EMERGENCY BASIS** renews its prior request that this Court enter a protective order over all discovery materials produced by the State to any defendant in this matter in order to protect witnesses and to safeguard sensitive and confidential information. Such information includes but is not limited to statements of witnesses, personal identifying information of witnesses, confidential communications, confidential business records, documents obtained

under sealed orders, records from outside government agencies, and grand jury materials. In support of this motion the State says as follows:

1. On September 27, 2023, the State filed the underlying Motion for a Protective Order over Discovery Materials. *See Exhibit A*, “State’s Motion for a Protective Order over Discovery Materials.” The Court has neither ordered a hearing on the State’s motion nor entered the requested order, but the State has nevertheless complied with all discovery deadlines imposed by the Court.
2. In its motion, the State emphasized the need for a protective order, stating to the Court that “[p]ublic release of information contained within discovery *could subject witnesses to harassment and threats prior to trial*, which could discourage cooperation and candor. Premature public discussion or release of information *could also affect the jury pool*.” Mot. at 2.
3. On November 13, 2023, confidential video recordings of proffers conducted by the State with certain witnesses pursuant to guilty plea agreements were published by ABC News and other media outlets. These confidential video recordings were not released by the State to any party other than the Defendants charged in the indictment, pursuant to the discovery process as required by law.
4. On November 14, 2023, counsel for Defendant Harrison William Prescott Floyd sent an e-mail to the State, members of the defense, and the Court that stated, “It was Harrison Floyd’s team.” *See Exhibit B*, November 14, 2023, e-mail from T.A. Harding. This e-mail was sent in response to an e-mail from another defense attorney inquiring into whether the State publicly released the confidential video recordings. The State previously indicated that it did not publicly release the confidential video

recordings. Counsel for Defendant Harrison William Prescott Floyd then sent a subsequent e-mail stating that his prior e-mail was a “typo” and that Defendant Floyd’s team did not communicate with the media.

5. All Defendants have been previously released on bond with conditions of release prohibiting them from (1) performing any act to intimidate any person known to them to be a codefendant or witness in this case, (2) communicating in any way about the facts of this case with any person known to them to be a codefendant or witness in this case, and (3) otherwise obstructing the administration of justice.
6. The release of these confidential video recordings is clearly intended to intimidate witnesses in this case, subjecting them to harassment and threats prior to trial, constitutes indirect communication about the facts of this case with codefendants and witnesses, and obstructs the administration of justice, in violation of the conditions of release imposed on each defendant.
7. Going forward, the State will not produce copies of confidential video recordings of proffers to any defendant to prevent further public disclosure. Instead, defendants must come to the District Attorney’s Office to view confidential video recordings of proffers. They may take notes, but they will be prohibited from creating any recordings or reproductions.

8. In light of the release of these confidential video recordings, the State requests that the Court (1) enter a temporary order prohibiting disclosure of any discovery materials by any party, (2) schedule an emergency hearing on the State's motion filed September 27, 2023, and (3) at the conclusion of the hearing, enter a permanent order prohibiting disclosure of any discovery materials by any party.

Respectfully submitted this 14th day of November 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

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Chief Senior Assistant District Attorney
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/s/ John W. "Will" Wooten
John W. "Will" Wooten
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Exhibit A

IN THE SUPERIOR COURT OF FULTON COUNTY
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Defendants.

CASE NO.

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**STATE'S MOTION FOR A PROTECTIVE ORDER
OVER DISCOVERY MATERIALS**

COMES NOW, the State of Georgia, by and through the District Attorney FANI T. WILLIS, and requests this Court enter a protective order over discovery materials to protect witnesses and safeguard sensitive, private, and confidential information. Such information includes identifying information of witnesses, confidential business records, documents obtained under sealed orders, records from other governmental entities, special purpose grand jury materials, and witness statements.

In criminal proceedings, this Court may enter a protective order denying, restricting, or deferring discovery. The legislature clearly contemplated that trial courts could issue protective orders and control the process of discovery. O.C.G.A. § 17-16-4 (d) states: “Upon a sufficient showing that a discovery required by this article would create a substantial threat of physical or economic harm to a witness, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make such other order as is appropriate.” Further, Uniform Superior Court Rule 21.6 provides that filings and pleadings with personal and confidential information may be filed under seal.

The circumstances of this case necessitate a protective order to direct the defendants’ dissemination of confidential discovery. Already, there have been numerous instances of “doxing” (i.e., the release of confidential or personal information without consent for the purpose of harassment) of the grand jurors and the District Attorney. Public release of information contained within discovery could subject witnesses to harassment and threats prior to trial, which could discourage cooperation and candor. Premature public discussion or release of information could also affect the jury pool. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1070 (1991) (“The outcome of a criminal trial is to be decided by impartial jurors, who know as little as possible of the case, based on material admitted into evidence before them in a court proceeding. Extrajudicial comments on, or discussion of, evidence which might never be admitted at trial . . . obviously threaten to undermine this basic tenet.”).

The State’s proposed order balances the privacy and security interests of the State and its witnesses with the discovery rights of the defendants. The State is not asking that the defendants and their counsel be prohibited from viewing or using the discovery to prepare in their defense but asks merely for the defendants and their counsel not to disseminate it for any reason aside from

trial preparation. The proposed order also ensures that the defendants' rights to a fundamentally fair trial will not be threatened by extrajudicial statements of others.

Therefore, the State requests this Court issue a protective order over discovery in order to protect witnesses, confidential or sensitive information, and defendants' own rights to a fair trial.

Respectfully submitted this 27th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ F. McDonald Wakeford
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Chief Senior Assistant District Attorney
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/s/ Alex Bernick
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Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S MOTION FOR PROTECTIVE ORDER OVER CONFIDENTIAL DISCOVERY MATERIAL, 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

/s/ F. McDonald Wakeford

F. McDonald Wakeford

Georgia Bar No. 414898

Chief Senior Assistant District Attorney

Fulton County District Attorney's Office

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/s/ Alex Bernick

Alex Bernick

Georgia Bar No. 730234

Assistant District Attorney

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Exhibit B

Re: Proffers leaked to the media.

kamikazehitman

Tue 11/14/2023 9:13 AM

To: Nathan Wade; Steve Sadow

[Redacted]

This Message Is From an External Sender

This message came from outside Fulton County Government. Use caution with links/attachments.

Report Suspicious

It was Harrison Floyd's team.

Sincerely,

T. A. Harding, J.D.
Harding Law Firm, LLC
Attorneys at Law

[Redacted]

----- Original message -----

From: Nathan Wade
Date: 11/14/23 08:56 (GMT-05:00)
To: Steve Sadow

[Redacted]

[Redacted]

Subject: Re: Proffers leaked to the media.

The State had nothing to do with leaking any information to the media!

Nathan J. Wade

[Redacted]

Sent: Monday, November 13, 2023 at 7:30 PM

From: "Steve Sadow" [Redacted]

[Redacted]

Subject: Proffers leaked to the media.

Prosecutors

It appears that ABC News, CNN, and the Washington Post have obtained leaked copies of the video proffers of Powell, Ellis, and Chesebro. The proffers did not come from Jennifer or me, or anyone connected to my defense team.

Please state for the record whether the prosecution or anyone connected to the prosecution team had any hand in the disclosure of the proffers to the media.

Thank you.

Steve Sadow

[Redacted]



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This 14th day of November 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. “Will” Wooten

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