

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA, *
vs. * CASE NUMBER: 23SC188947
* Judge: Scott McAfee
RUDOLPH WILLIAM LOUIS GIULIANI, *
Defendant. *

DEFENDANT GIULIANI'S MOTION TO PERMIT AND REQUIRE ALL
CO-DEFENDANT'S WHO HAVE ENTERED A PLEA IN THIS MATTER TO
DISCUSS THE CASE WITH DEFENDANT GIULIANI'S COUNSEL
AND/OR INVESTIGATORS

WHEREAS, Defendant Giuliani's co-defendants Jenna Ellis, Kenneth Chesebro, Sidney Powell and Scott Hall have each entered guilty pleas in the above-styled matter; and

WHEREAS, it appears that a condition of co-defendants Jenna Ellis¹, Kenneth Chesebro, Sidney Powell and Scott Hall's plea agreements provide that they are not permitted to communicate with any other co-defendant concerning the facts or circumstances of this case; and

WHEREAS, it appears that a condition of co-defendants Jenna Ellis, Kenneth Chesebro, Sidney Powell and Scott Hall's plea agreements also requires that they cooperate with the Fulton County District Attorney's office and participate in additional interviews and assist the State in pretrial matters; and

WHEREAS, pursuant to O.C.G.A. § 17-16-4(a)(1), statements of coconspirators that are attributable to the defendant must be disclosed as if the statements were made by the defendant himself, and, to avoid the obligations of discovery in O.C.G.A. § 17-16-4,

¹ For example, in the plea colloquy with Jenna Ellis on October 24, 2023 in the Superior Court of Fulton County, Judge McAfee recited the terms of Ellis's plea to include the recitation of the plea conditions by the Assistant District Attorney that she "testify truthfully at all hearings or trials involving co-defendants, that [she] have no communication with co-defendants, witnesses, or the media until all cases have been closed" and that she "must continue to provide additional recorded statements and affidavits to the state as required. . . that [she] must continue to fully cooperate with prosecutors including, but not limited to, participating in interviews with prosecutors[,] appearing for evidentiary hearings, and assisting in pretrial matters". Judge McAfee further imposed the following condition: Ellis is "not to have any contact either personally or through other agents, uh, with the media or any co-defendants or witnesses".

the State must show that there is a substantial threat of physical or economic harm to a witness. O.C.G.A. § 17-16-4(d); and

WHEREAS, O.C.G.A. § 17-16-6 authorizes the Court to order the State to permit the discovery or inspection and the interview of witnesses. The purpose of the disclosure of witnesses prior to trial is to “prevent a defendant from being surprised at trial by a witness that the defendant has not had an opportunity to interview.” *Rose v. State*, 563 S.E.2d 865, 867 (2002). *See also Murray v. State*, 328 Ga. App. 192 (2014). Further, even where the judge allows an exception to the disclosure of a witness’s information prior to trial *for good cause*, which has not been presented in this case, O.C.G.A. § 17-16-8(a) nevertheless requires that counsel for the Defendant “be afforded an opportunity to interview such witnesses prior to the witnesses being called to testify.” *See also Lewis v. State*, 293 Ga. 110 (2013), where the Supreme Court held, where there is no tangible evidence to be produced in discovery, the lapse of information or perceived lack of fairness is remedied by allowing the defendants to interview the witness at issue. Georgia law provides trial courts with substantial discretion to ensure compliance with discovery, including the interviewing of witnesses, even going so far as to permit the exclusion of witness in the case of prejudice and bad faith. *Murray v. State*, 328 Ga. App. 192 (2014). The opportunity to interview witnesses prior to trial is the bare minimum that is required by Georgia law. Prohibiting interviews with counsel for co-defendants is in direct opposition to the plain language of the statutes and the clearly-stated policies and purposes of the discovery rules; and

WHEREAS, it is necessary that counsel for Defendant Giuliani be able to interview co-defendants Jenna Ellis, Kenneth Chesebro, Sidney Powell and Scott Hall in part because their video proffers have raised questions about the content and completeness of their individual statements; and

WHEREAS, counsel for Defendant Giuliani has previously reached out to the District Attorney’s office via e-mail with questions about the proffer videos and these questions have to date gone unanswered; and

WHEREAS, counsel for Defendant Giuliani will be unable to properly investigate the facts of this case or properly advise Defendant Giuliani about the potential evidence

in this case unless they are able to interview co-defendants Jenna Ellis, Kenneth Chesebro, Sidney Powell and Scott Hall.

WHEREFORE, Defendant Giuliani hereby prays that this Court enter an order not only expressly permitting, but requiring, that co-defendants Jenna Ellis, Kenneth Chesebro, Sidney Powell and Scott Hall be made available for interviews with Defendant's counsel and/or investigators for purposes of discovery.

Defendant Giuliani hereby further requests that this honorable Court schedule a hearing to determine the merits of this Motion.

This the 8th day of January, 2024.

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THE STATE OF GEORGIA,

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RUDOLPH WILLIAM LOUIS GIULIANI,
Defendant.

*

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing DEFENDANT GIULIANI'S MOTION TO PERMIT AND REQUIRE ALL CO-DEFENDANT'S WHO HAVE ENTERED A PLEA IN THIS MATTER TO DISCUSS THE CASE WITH DEFENDANT GIULIANI'S COUNSEL AND/OR INVESTIGATORS with the Fulton County Clerk of Court using Odyssey E-file Georgia electronic filing system that will send notification of such filing to all parties of record.

This the 8th day of January, 2024.

Respectfully Submitted,

/s/ L. Allyn Stockton, Jr.

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