

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

Case No. 23SC188947

v.

ROBERT DAVID CHEELEY, ET AL.,

Defendants.

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**DEFENDANT ROBERT DAVID CHEELEY'S  
PRELIMINARY MOTION TO SEVER**

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COMES NOW, Defendant Robert David Cheeley, by and through counsel, and hereby files this Preliminary Motion to Server, as follows.

By Order dated September 9, 2023, the Court ordered that all motions, other than motions *in limine*, be filed by January 8, 2023.

At the December 1, 2023 hearing on certain defendants demurrers, the Court stated that it intended to sever the remaining defendants into two or more trial groups, as selected by the State. However, to date, neither the Court nor the State has indicated which defendants will form the various trial groups.

The sprawling, 98-page Indictment brings 41 charges against the remaining 15 defendants, as four defendants already have pleaded guilty. Those 41 charges include allegations of forgery, impersonating an officer, conspiracy to commit computer theft and trespass, influencing witnesses, and perjury along with everything in between. Given the breadth and scope of the Indictment and the inclusion of various defendants and unrelated

alleged actions under the umbrella of a Georgia RICO charge, Defendant Cheeley anticipates that a severance from one or more of the remaining defendants will be necessitated by law and fact. *See Morris v. State*, 204 Ga. App. 437, 437 (1992) (“Whether or not a motion for severance should be granted rests in the sound discretion of the trial court, but severance should be granted before or during the trial whenever it appears necessary to achieve a fair determination of the guilt or innocence of a defendant.”) (quotation omitted); *see also* O.C.G.A. § 17-8-4.

More specifically, defendant Cheeley asserts that the number of defendants will confuse the jury as to the evidence and the law applicable to each defendant; even with cautionary instructions from the court, there is a danger that evidence admissible against one defendant will be improperly considered against another defendant; and the defenses of the defendants potentially are antagonistic to each other or to each other's rights of due process. *See Crawford v. State*, 148 Ga. App. 523, 526 (1978); *see also Price v. State*, 155 Ga. App. 844, 844 (1980), *rev'd on other grounds*, 247 Ga. 58, (1980).

However, as the Court and State have not designated which defendants will be grouped into which trial groups, defendant Cheeley cannot make a more specific showing as to the prejudice that would result from being tried in any particular group.

Accordingly, defendant Cheeley files this Preliminary Motion to Sever and reserves the right to make a more particularized showing once the trial groupings have been determined.

Respectfully submitted, January 8, 2024.

*/s/ Christopher S. Anulewicz* \_\_\_\_\_

Christopher S. Anulewicz

Georgia Bar No. 020914

Wayne R. Beckermann

Georgia Bar No. 747995

**BRADLEY ARANT BOULT CUMMINGS**

**LLP**

Promenade Tower

1230 Peachtree Street NE

Atlanta, GA 30309

E-mail: [canulewicz@bradley.com](mailto:canulewicz@bradley.com)

Téléphonai: (404) 868-2030

Facsimile: (404) 868-2010

*/s/ Richard A. Rice, Jr.* \_\_\_\_\_

Richard A. Rice, Jr.

Georgia Bar No. 603203

**THE RICE LAW FIRM, LLC**

3151 Maple Drive, NE

Atlanta, Georgia 30305

Email: [richard.rice@trlfirm.com](mailto:richard.rice@trlfirm.com)

Telephone: 404-835-0783

Facsimile: 404-481-3057

*Attorneys for Defendant Robert David Cheeley*

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have, this 8<sup>th</sup> day of January 2024, served a true and correct copy of the within and foregoing DEFENDANT ROBERT DAVID CHEELEY'S PRELIMINARY MOTION TO SEVER via electronic filing.

/s/ Richard A. Rice, Jr.

Richard A. Rice, Jr.

Georgia Bar No. 603203

**THE RICE LAW FIRM, LLC**

3151 Maple Drive, NE

Atlanta, Georgia 30305

Email: [richard.rice@trlfirm.com](mailto:richard.rice@trlfirm.com)

Telephone: 404-835-0783

Facsimile: 404-481-3057

*Attorney for Defendant Robert David Cheeley*