

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

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**STATE'S RESPONSE TO DEFENDANT JOHN CHARLES EASTMAN'S  
SPECIAL DEMURRER ON COUNT 1 (RICO)**

**INTRODUCTION**

Defendant Eastman argues that the indictment should be dismissed because it does not sufficiently allege an enterprise or a nexus between an enterprise and racketeering activity. He is incorrect on both counts, and his special demurrer should be overruled and denied.

**I. Allegation of an enterprise is not an element of a RICO conspiracy offense, but in any event, the indictment sufficiently alleges an enterprise.**

Eastman contends, citing *Boyle v. United States*, 556 U.S. 938 (2009), that a RICO enterprise must have at least three structural features: a purpose, relationships among those

associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose.<sup>1</sup> Eastman's argument suffers from four initial flaws. First, no Georgia court has adopted *Boyle*. Second, *Boyle* was not a federal RICO conspiracy case—it was a substantive case involving a violation of 18 U.S.C. § 1962(c). Third, *Boyle* was a jury instruction case—it did not involve a challenge to an indictment. Fourth, an enterprise is not an element of a RICO conspiracy case. *United States v. Applins*, 637 F.3d 59, 75 (2<sup>nd</sup> Cir. 2011). Consequently, even if *Boyle* were to be adopted by the Georgia courts, it would not be relevant to a challenge to a Georgia RICO conspiracy indictment.

But if it is assumed that the existence of an enterprise is an essential element of a Georgia RICO conspiracy violation—and it is not—the indictment is still sufficient. Indeed, as Eastman acknowledges, the indictment tracks the very language from *Boyle* that Eastman invokes:

The Defendants and other members and associates of the enterprise had connections and relationships with one another and with the enterprise. The enterprise constituted an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. The enterprise operated in Fulton County, Georgia, elsewhere in the State of Georgia, in other states, including but not limited to Arizona, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin, and in the District of Columbia. The enterprise operated for a period of time sufficient to permit its members and associates to pursue its objectives.

Indictment at 15.

While Eastman denigrates this allegation as “parroting” the statute, in doing so, he ignores O.C.G.A. § 17-7-54(a), which provides in relevant part that an indictment which states the offense terms and language, the relevant code language “shall be deemed sufficiently technical and correct.” The provision, now well over 150 years old “was obviously intended to sweep away all technical exceptions to indictments ... .” *Studstill v. State*, 7 Ga. 2, 12 (1849).

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<sup>1</sup> Special Demurrer at 5, quoting *Boyle*, 556 U.S. at 946.

*United States v. Turkette*, a case cited with approval by Georgia courts, provides that an association in fact enterprise under RICO is nothing more than “a group of persons associated together for a common purpose of engaging in a course of conduct.” 452 U.S. 576, 580, 583 (1981). Notably, federal courts have consistently held that the *Boyle* sub-elements need not be alleged in an indictment. *See, e.g., United States v. Kelly*, 462 F.Supp.3d 191, 196-97 (E.D.N.Y. 2020). Requiring the State to allege acts in support of every sub-element confuses the standards of pleading with the standards of proof at trial. *Id.*; *United States v. Reniere*, 384 F.Supp.3d 282, 301 (E.D.N.Y. 2019) (“Reniere posits that an indictment must spell out why RICO conspiracy predicate acts are both horizontally and vertically related. These arguments confuse the standards of pleading with standards of proof.”).

Here the federal courts are fully aligned with the Georgia courts in concluding that a defendant may not assert a challenge to the sufficiency of the government’s evidence in the guise of a pre-trial motion to dismiss. *Kelly*, 462 F.Supp.3d at 97 (collecting cases). As a result, an indictment that explains who participated in the enterprise, what they did, and describes the enterprise’s purpose, means, and methods, is sufficient. *United States v. Torres*, 191 F.3d 799, 806 (7<sup>th</sup> Cir. 1999). Here the indictment identifies the defendants and unindicted co-conspirators who participated in it (the identities of the unnamed, unindicted co-conspirators having been provided to the defendants in discovery) and states the purpose of the enterprise, which was to unlawfully change the outcome of the November 3, 2020, presidential election in favor of Donald Trump. Indictment at 14. The indictment details the methods of the enterprise, *Id.* at 16-19, and it sets forth what course of conduct was engaged in by the Defendants to achieve their common purpose, Indictment at 20-71. Nothing more is required. *See, e.g., United States v. Johnson*, 825 Fed. App’x 156, 171 (5<sup>th</sup> Cir. 2020) (indictment sufficient where it identified the criminal enterprise,

established the time in which it operated, named the co-conspirators, and listed the numerous violations that constituted predicate offenses along with the co-conspirator who performed each act and the date it was performed).

The suggestion that Eastman is somehow left uncertain as to how he connects to the enterprise is belied by the specific overt acts alleged against him. Nine of those sixteen overt acts are alleged to have been committed by Eastman in conjunction with at least one other Defendant of the enterprise. These include acts committed together with Trump, Giuliani and Ellis,<sup>2</sup> with Giuliani, Ellis and Smith,<sup>3</sup> with Ellis,<sup>4</sup> and with Chesebro.<sup>5</sup>

## **II. The indictment alleges a nexus between the enterprise and the racketeering activity.**

Relying primarily upon *Kimbrough v. State*, 300 Ga. 878 (2017), Eastman contends that the indictment fails to allege a nexus between the enterprise and the racketeering activity. He is wrong for multiple reasons.

First, Eastman’s reliance on *Kimbrough* is misplaced. The indictment in *Kimbrough* alleged a violation of O.C.G.A. § 16-14-4(b). As the Supreme Court recognized, “[a]n essential element of this offense is a connection or nexus between the enterprise and the racketeering activity.” 300 Ga. at 882. The case now before this Court, however, is a conspiracy case, and in contrast to O.C.G.A. § 16-14-4(a) and (b), the provision alleged to be violated in this indictment—O.C.G.A. § 16-14-4(c)—contains no reference to a pattern of racketeering activity. Because a pattern of racketeering activity is not an essential element of a RICO conspiracy violation, it cannot be an essential element of a RICO conspiracy that there be a connection between an enterprise and

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<sup>2</sup> Indictment at Acts 44, 108, 123, and 131.

<sup>3</sup> *Id.* at Act 39.

<sup>4</sup> *Id.* at Act 23.

<sup>5</sup> *Id.* at Acts 94, 109, and 124.

a pattern of racketeering activity that is not required. *See, e.g., United States v. Alonso*, 740 F.2d 862, 871 (11th Cir. 1984) (a RICO conspiracy conviction does not require the government to prove that two acts of racketeering activity were actually committed: “The government need not prove in a conspiracy case that a substantive crime was actually committed, but instead need demonstrate that some ‘overt act’ was taken in furtherance of a conspiracy to commit a substantive crime.”).

As the 2<sup>nd</sup> Circuit put it:

“Importantly, the crime of RICO conspiracy ‘centers on the act of *agreement*.’ *United States v. Applins*, 637 F.3d 59, 81 (2<sup>nd</sup> Cir. 2011) (emphasis in original). Thus, in contrast to RICO’s substantive offenses, *see, e.g.* 18 U.S.C. §1962 (c), ‘the government need not establish the existence of an enterprise’ to ‘prove RICO conspiracy,’ [*United States v.*] *Arrington*, 941 F.3d [24] at 36. Nor must it establish that a pattern of racketeering activity actually took place. *See United States v. Zemlyansky*, 901 F.3d 1, 11 (2<sup>nd</sup> Cir. 2018) (‘To prove the pattern element, the government must show that two or more predicate acts were, or were intended to be, committed as part of the conspiracy.’). Rather, the government ‘need only prove that the defendant knew of, and agreed to, the general criminal objective of a jointly undertaken scheme.’ *Arrington*, 941 F.3d at 36-37.

*United States v. Delgado*, 972 F.3d 63, 79 (2<sup>nd</sup> Cir. 2020).

Second, even if a connection between a pattern of racketeering activity and an enterprise were an element of a RICO conspiracy violation—and it is not—the indictment in this case more than satisfies any such requirement. No specific “magic words” are required to allege a connection between an enterprise and a pattern of racketeering activity. Instead, as *Kimbrough* itself acknowledges, “[t]he connection between an enterprise and racketeering activity may be proved in a myriad of way.” 300 Ga. at 883 n.16. All that is required is a connection between the enterprise and the predicate acts committed by the defendants. *Dorsey v. State*, 279 Ga. 534, 540 (2005). Indeed, the indictment in *Kimbrough* was held insufficient only because it said “*nothing at all* about the nature of the connection.” 300 Ga. at 884.

That is not the situation here. The indictment in this case alleges that the defendants

knowingly and willfully joined a conspiracy to unlawfully change the outcome of the 2020 presidential election in favor of Trump.<sup>6</sup> In the language of *Kimbrough*, this was the “raison d’être” of the enterprise. *Kimbrough*, 300 Ga. at 883 n.16 (quoting *United States v. Starrett*, 55 F.3d 1525, 1548 (11th Cir. 1995) (connection existed between motorcycle club enterprise and predicate acts of drug distribution because the drug activity furthered the anti-social lifestyle that was the “raison d’être” of the motorcycle club and monies earned from drug sales contributed to the purchase of a clubhouse for the enterprise.)).

The overt acts (including those that constitute acts of racketeering activity) committed by the defendants were designed and intended to further the objective of unlawfully changing the outcome of the election in favor of Trump. These included the making and use of false statements and writings to government officials, impersonating public officers, forgery, filing false documents, influencing witnesses, computer theft, computer trespass, computer invasion of privacy, conspiracy to defraud the State, acts involving theft, and perjury.<sup>7</sup> The indictment lays out in detail, by category and specific act (the later in chronological order), the manner and methods used by the defendants and other members and associates of the enterprise to further its goals and to achieve its purposes. *Id.* at 16. *Kimbrough* looks to federal authority regarding the nexus requirement, and numerous federal courts hold that requirement is satisfied if acts of racketeering activity are related to the activities of the enterprise, even if they are not in furtherance of the enterprise’s activities (which these acts certainly are). *See, United States v. Vernace*, 811 F.3d 609, 615-16 (2d Cir 2016); *United States v. Carlisle*, 287 Fed. App’x 516, 518 (6<sup>th</sup> Cir. 2008) (this requirement can be established where the offense was related to activities of the enterprise).

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<sup>6</sup> Indictment at 14.

<sup>7</sup> Indictment at 15.

Both specifically as to Eastman and generally as to all of the Defendants, the indictment alleges conduct sufficient to establish a nexus between overt acts (including acts of racketeering activity) and the alleged enterprise.

Specifically as to Eastman, the indictment alleges that he acted together with and was in regular communication with multiple co-conspirators. Eastman's activities in furtherance of the enterprise's objectives included communications to Georgia government officials, communications with conspirators in Georgia, and efforts at unlawfully changing the outcome of the election that went to the highest levels of government and involved direct coordination with Defendant Trump. In Georgia, together with Giuliani, Ellis, and Smith, Eastman unlawfully solicited, requested, and importuned elected members of the Georgia General Assembly to violate their oaths of office.<sup>8</sup> Acting together with Trump, Eastman also sought to have individuals meet and cast electoral votes for Trump in states, including Georgia, where Trump lost in the November 3, 2020, election.<sup>9</sup> Eastman also participated with Trump in filing false documents in a case in Fulton County, Georgia.<sup>10</sup> And throughout, Eastman regularly communicated with other conspirators, including Cheeley<sup>11</sup> and Chesebro,<sup>12</sup> about the enterprise's efforts.

The most direct connection between Eastman's activities and the enterprise's objective of changing the outcome of the election in favor of Trump centers around Eastman's efforts to persuade Vice President Mike Pence to either reject electoral votes from certain states or to delay the joint session of Congress on January 6, 2021, at which those electoral votes were to be counted. This included a January 4, 2021, meeting in which both Trump and Eastman attempted to persuade

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<sup>8</sup> *Id.* at Act 23.

<sup>9</sup> *Id.* at Act 44.

<sup>10</sup> *Id.* at Act 108.

<sup>11</sup> *Id.* at Acts 34, 35, 36.

<sup>12</sup> *Id.* at Acts 94, 109, and 124.

Vice President Pence,<sup>13</sup> a January 5, 2021, meeting between Eastman and Pence,<sup>14</sup> a January 5, 2021, telephone call in which Trump and Eastman again tried to persuade Pence to reject slates of presidential electors,<sup>15</sup> a January 6, 2021, speech in which Eastman called upon Pence to delay the joint session of Congress,<sup>16</sup> and an e-mail that same day from Eastman to Pence’s counsel again calling for a 10-day adjournment of the counting of electoral votes mere hours after hundreds of rioters breached the United States Capitol.<sup>17</sup> Each of these acts was directly aimed at unlawfully changing the outcome of the election in favor of Trump by either invalidating the votes of legitimate electors or preventing certification of the election for Trump’s opponent.

Here it may be useful to look at decisions of the Supreme Court of Georgia applying the Street Gang Act, O.C.G.A. § 16-15-1, *et seq.* In *Rodriguez v. State*, 284 Ga. 803, 807 (2009) the Court held that a Street Gang Act violation requires some nexus between acts of criminal street gang activity and gang. Subsequent decisions hold that a defendant’s association with a gang and participation in its activities may “provide the required nexus between the criminal acts and the intent to further the gang’s interests.” *Hayes v. State*, 298 Ga. 339, 342-43 (2016). *See also, Rodriguez*, 284 Ga. at 807 (“Management of or participation with others in ... criminal street gang activity necessarily implies knowledge of the gang’s criminal activities and the specific intent to further its criminal purposes.”). Communication between gang members during the period in which their criminal activity took place can also establish a nexus between the charged crimes and an intent to further the gang’s objectives and interest. *Poole v. State*, 312 Ga. 515, 521-22 (2021). The same is true when, as alleged in this indictment, members of the gang worked together to

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<sup>13</sup> *Id.* at Act 125.

<sup>14</sup> *Id.* at Act 129.

<sup>15</sup> *Id.* at Act 131.

<sup>16</sup> *Id.* at Act 137.

<sup>17</sup> *Id.* at Act 141.



engage in criminal activity. *Boyd v. State*, 306 Ga. 204, 211 (2019). *See also, Overstreet v. State*, 312 Ga. 565, 574 (2021) (defendants’ planning and execution of acts of criminal street gang activity together with other gang members sufficient to establish nexus); *Drennon v. State*, 314 Ga. 854, 865 (2022) (defendant’s encouragement of other gang members to commit murder evidenced nexus between criminal acts and an intent to further the gang’s interests).

More generally, the indictment alleges that various defendants (including Eastman) appeared before members of the Georgia General Assembly on December 3, 2020, December 10, 2020, and December 30, 2020, during which members of the enterprise made false statements concerning allegations of fraud in the November 3, 2020 presidential election. *Id.* at 16. As alleged in the indictment, “[t]he purpose of these false statements was to persuade Georgia legislators to reject lawful electoral votes cast by the duly elected and qualified presidential electors from Georgia.” *Id.* If successful, this would have furthered the enterprise’s objective by preventing the winning candidate from receiving those electoral votes.

Time and again the conspirators made false statements and used false writings in an effort to persuade someone in power to change the outcome of the election in favor of Trump. These acts, and the other acts related to them, focused on creating a false narrative that Trump had won the election. The false statements made and false writings used in these meetings concerned knowing and willful misrepresentations regarding mail-in ballots and voting equipment,<sup>18</sup> felons voting illegally, underage people voting, illegally registering to vote, unregistered persons casting votes, persons illegally using post office boxes to cast votes, dead people voting and election workers ordering poll watchers and members of the media to leave a tabulation area,<sup>19</sup> knowing

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<sup>18</sup> Indictment at Act 24.

<sup>19</sup> *Id.* at Act 25.

and willful misrepresentations regarding a video taken at State Farm Arena,<sup>20</sup> and knowing and willful misrepresentations regarding the supposed fraudulent counting of certain ballots.<sup>21</sup> These falsehoods were then used to provide cover for the solicitation of Georgia legislators to unlawfully appoint their own presidential electors to cast electoral votes for Trump. Indictment at 16. This conduct was directly related to and in furtherance of the “conspiracy to unlawfully change the outcome of the election in favor of Trump.” *Id.* at 14.

The Defendants’ false statements to state officials were not limited to legislators. For example, in a telephone call to Georgia Secretary of State Brad Raffensperger, Georgia Deputy Secretary of State Jordan Fuchs, and Georgia Secretary of State General Counsel Ryan Germany, Trump knowingly and willfully made false statements and representations.<sup>22</sup> These included false statements about the improper counting of ballots, unregistered voters casting ballots, fraudulent ballot counts, the voting of dead persons, ballot box stuffing, and other misconduct that never occurred.<sup>23</sup> Like the false statements to legislators, these were aimed at unlawfully changing the outcome of the election in favor of Trump. For example, in connection with making these false statements, Trump unlawfully solicited, requested, and importuned Raffensperger, a public officer, to violate his oath as a public officer by unlawfully altering, unlawfully adjusting, and otherwise unlawfully influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia.<sup>24</sup>

Members of the enterprise also harassed poll workers including Ruby Freeman, seeking to

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<sup>20</sup> *Id.* at Act 56.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at Act 113.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at Act 112.

intimidate her into falsely confessing to elections crimes that she did not commit.<sup>25</sup> The objective of this effort was to discredit the vote count in Fulton County and provide a basis to call a special legislative session or, if that effort was unsuccessful, a basis for the Vice President to reject the electoral count and declare Trump the winner of the election.

These and the other overt acts—a substantial number of which also constitute acts of racketeering activity—were committed to further the purpose of the enterprise and unlawfully change the outcome of the election in favor of Trump. If a nexus is required in a conspiracy case, these allegations are more than sufficient to satisfy that requirement.

### **CONCLUSION**

Eastman's Special Demurrer should be overruled and denied.

Respectfully submitted this 19th day of January 2024,

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<sup>25</sup> *Id.* at 17, and *id.* at Acts 87, 88, 119, 121.

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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 JOHN CHARLES EASTMAN’S SPECIAL DEMURRER ON COUNT 1 (RICO) upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 19th day of January 2024,

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