

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
v.	)	Case No.: 23SC188947
	)	
STEPHEN CLIFFGARD LEE,	)	
	)	
Defendant.	)	

**GENERAL AND SPECIAL DEMURRER TO INDICTMENT**

Now comes Reverend Stephen Cliffgard Lee, defendant in the above-stated case and file his General and Special Demurrer to the Indictment. For the reasons stated below, the indictment (i) sets forth facts that if true, could comprise lawful conduct, and (ii) fails to set forth sufficient facts to enable him to prepare for trial and moves for an order quashing the indictment against him in this action or such other action as the Court deems appropriate.

**BACKGROUND**

Defendant Reverend Stephen Lee has been swept into a case alleging a nationwide RICO conspiracy to overturn election results. The indictment fails in large part to indicate a connection between Defendant Lee and most of the other defendants. Rather, Defendant Lee is charged based on some alleged actions involving efforts to contact Ruby Freeman. Apart from the geographically untethered RICO claims, the State has charged Defendant Lee with four counts (Counts 20 & 21, Criminal Attempt to Commit Influencing Witnesses; Count 30, Conspiracy to

Commit Solicitation of False Statement and Writings; and County 31, Influencing Witnesses) and they allege vaguely that Reverend Lee traveled to Georgia, that he spoke once with Ruby Freeman's *neighbor*, that he knocked on Ruby Freeman's door, and that he asked Harrison Floyd for help to speak with Ruby Freeman, all of which attempts were *unsuccessful*. The indictment does not charge that Reverend Lee *ever spoke* with Ruby Freeman or communicated with her by other means. This activity alleged in four out of those five counts has no discernable connection with the vast majority of the claims in the other counts against other defendants.<sup>1</sup>

## ARGUMENT

### 1. GENERAL DEMURRER:

“Now, the rule as to the sufficiency of an indictment is this: if all the facts which the indictment charges can be admitted, and still the accused be innocent, the indictment is bad; but if, taking the facts alleged as premises, the guilt of the accused follows as a legal conclusion, the indictment is good.”

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<sup>1</sup> The fifth count is a sweeping RICO claim contending that Reverend Lee, along with 18 other defendants, “associated with an enterprise” to “conduct and participate in” such enterprise which functioned “as a continuing unit for a common purpose of achieving the objectives of the enterprise” “through a pattern of racketeering activity.” The indictment never explains the objective of the enterprise. However, it goes on to identify Reverend Lee’s miniscule involvement which was, according to the state, limited to the unsuccessful attempts to contact Ruby Freeman described above, and several attempted telephone calls with codefendants Harrison William Prescott Floyd, Trevian Kutti and Robert Cheeley, the nature and content of which remain completely ambiguous. There are no other allegations of conduct or involvement on the part of Reverend Lee in any “enterprise”.

*Newman v. State*, 63 Ga. 533, 534 (1879); *Hassell v. State*, 212 Ga. App. 432, 433, 442 S.E.2d 261, 263 (1994)

In *Newman* an individual was charged with buying alcohol without his mother's permission, and the fact that the indictment was silent on whether his father gave permission was a fatal flaw, because if he father had given permission then the acts would have been perfectly legal. Likewise, in *Dukes v. State*, 9 Ga. App. 537, 71 S.E. 921, 922 (1911), the court granted a general demurrer against an indictment for possessing cocaine, because the indictment did not state that the cocaine was sold without a lawful prescription and thus the actions alleged could have been lawful.

Here the indictments are fatally flawed. As to Counts 20 and 21 (Criminal Attempt to Commit Influencing Witnesses) under O.C.G.A. 16-10-93(b)(1)(A), an "offer of help" connotes no criminal activity; every day people offer help to each other and this alone is not a hallmark of a crime. Even if Defendant Lee "traveled to the home of Ruby Freeman" and conveyed an "offer to help" there is nothing in that act which is misleading. Thus, the facts alleged here could have been true and the matter not violated the law. Following the rule laid down in *Newman*, because the facts could be admitted and the actions still lawful, the indictment should be quashed.

As to Count 30 (Conspiracy to Commit Solicitation of False Statement and Writings) under O.C.G.A. § 16-10-20, whether Ruby Freeman may have made a statement that was or was not false concerning events "at State Farm Arena", such

statements require that they be made “in any matter within the jurisdiction” of an applicable state or county agency.” Even if Defendant Kutti “traveled to Fulton County” and “placed a telephone call”, and Ruby Freeman thereafter made statements that she knew to be untrue, unless they were made in a “matter within the jurisdiction” of an appropriate agency, the statute could not have been violated. Thus, she might have, e.g., made such statements in her home, or to her coworkers, or even on Facebook, and yet they would not violate the statute. Applying the rule in *Newman*, because the facts could be admitted and the actions still lawful, such lawful activity could not be prosecuted under O.C.G.A. § 16-10-20.

As to Count 31 (Influencing Witnesses) under O.C.G.A. § 16-10-93(b)(1)(A), Defendant Lee, individually or through others, could well have stated that Ruby Freeman needed protection, or have offered to help, and either of those actions as described by the State, could well be the acts of a generous nature, or pastoral counseling, neither of which would violate the cited statute. Applying the rule in *Newman*, because the facts could be admitted and the actions still lawful, such lawful activity could not be prosecuted under O.C.G.A. § 16-10-93(b)(1)(A).

Each of the State’s counts in its indictment allege facts that, if Defendant Lee took them, could be perfectly lawful behavior. Thus, the indictment fails, and his General Demurrer should be sustained.<sup>2</sup>

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<sup>2</sup> To the extent that Counts 20, 21, 30 and 31 allege criminal acts that fail as a matter of law, Defendant Lee also demurs to Count One of the indictment.

## 2. SPECIAL DEMURRER

A defendant is entitled to be tried on a perfect indictment and may file a special demurrer seeking greater specificity or additional information concerning the charges contained in the indictment. *Jones v. State*, 289 Ga. 111, 115, 709 S.E.2d 773, 777 (2011) A defendant is entitled to a charging instrument that is perfect in form as well as substance, and the proper method to challenge the form of such instrument is a special demurrer. *City of Peachtree City v. Shaver*, 276 Ga. 298, 300, 578 S.E.2d 409, 412 (2003) “The real test. . . is whether the indictment states the elements of the offense and “sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.” *State v. Delaby*, 298 Ga. App. 723, 724–25, 681 S.E.2d 645, 647 (2009) “Where the statutory definition of an offense includes generic terms, the indictment must state the species of acts charged; it must descend to particulars.” *Id.*

### Counts 20 & 21: Criminal Attempt to Commit Influencing Witnesses

Here, the indictment for the alleged crime of attempt to influence a witness fails to offer particulars from which Defendant Lee could intelligently prepare his defense. The indictment alleges only that he attempted to “knowingly engage in misleading conduct toward Ruby Freeman” by “purporting to offer her help.” There are simply no particulars in this generic description of an offer to help from which Defendant Lee is able to discern what would have been the “misleading conduct”

toward Ruby Freeman for which the State believes it is justified in bringing a felony criminal charge.

In *State v. Delaby, supra*, the court considered a special demurrer against an indictment for influencing a witness under O.C.G.A. § 16-10-93(b)(1), finding in that case that the indictment's description of "intimidation with intent to influence" the testimony of the witness failed to adequately apprise the defendant of the nature of the acts underlying the accusation. Likewise, here the state has alleged only that there was an effort to contact Ruby Freeman and offer her help. Defendant Lee is unable based upon this threadbare description to discern the facts that would have comprised something misleading to Ruby Freeman. He is therefore unable to effectively prepare a defense to the charge.

Count 30: Conspiracy to Commit Solicitation of False Statement and Writings

Here the indictment charges that one or more persons conspired to request Ruby Freeman to knowingly and willfully make a false statement concerning events on November 3, 2020. The falsity or truth of such statements is an essential part of the alleged violation, and thus critical to the Defendant Lee's preparation of a defense to these charges. See O.C.G.A. § 16-10-20 Proof that the alleged statements would have been true is a defense to this count. However, the indictment contains no description of the content of the allegedly false statements, where they may have been made, to whom, and in what, if any proceeding. The indictment gives little more detail than "somebody said something to somebody

about something”.

Furthermore, the indictment fails to identify “any matter within the jurisdiction of” an applicable state or county department or agency. O.C.G.A. § 16-10-20 The State’s reliance upon statewide jurisdiction generally ignores, and disregards, the “matter” requirement. Without details on the “matter” which the State relies to support its indictment, Defendant Lee is unable to prepare his defense. It is not possible from the indictment to determine whether venue is proper or if the count should be dismissed or transferred for lack of venue. See *Tesler v. State*, 295 Ga. App. 569, 573, 672 S.E.2d 522, 526 (2009)(conviction reversed where record failed to establish proper venue)

As presently drafted, the State’s indictment fails to fairly inform Defendant Lee of the nature of the charges against which he must prepare a defense, and would amount to mere “trial by ambush”. Defendant Stephen Lee is entitled to sufficient details in this indictment in order to prepare his defense to the charges. Because none of the counts provide sufficient details for the Defendant to understand what he must defend against, his special demurrer should be sustained.

Count 31: Influencing Witnesses

Here, the indictment for the alleged crime of influencing a witness fails to offer particulars from which Defendant Lee could intelligently prepare his defense. The indictment alleges only that he attempted to “knowingly engage in misleading conduct toward Ruby Freeman” by “purporting to offer her help.” There are simply no particulars in this generic description of an offer to help from which Defendant

Lee is able to discern what would have been the “misleading conduct” toward Ruby Freeman for which the State believes it is justified in bringing a felony criminal charge. Defendant Lee is entitled to sufficient details regarding the nature of the alleged misleading conduct in order to be able to prepare his defense.

WHEREFORE, Defendant Lee respectfully requests that this Court

1. GRANT his General Demurrer and Quash the indictment; but if not then
2. GRANT his Special Demurrer against the indictment.

This 8<sup>th</sup> day of January, 2024.

OLES LAW GROUP

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STEPHEN CLIFFGARD LEE,	)	
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Defendant.	)	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this date served a true and correct copy of the within and foregoing General and Special Demurrer to Indictment via the Court's electronic filing service, addressed as follows:

Fani T. Willis, Esq.  
District Attorney  
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Atlanta GA 30303

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THIS 8<sup>th</sup> day of January, 2024.

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