IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, Plaintiff, v. DONALD JOHN TRUMP, RANDOLPH WILLIAM LOUIS GIULIANI, JOHN CHARLES EASTMAN, MARK RANDALL MEADOWS, KENNETH JOHN CHESEBRO, JEFFREY BOSSERT CLARK, JENNA LYNN ELLIS, RAY STALLINGS SMITH III, JENNA LYNN ELLIS, MICHAEL A. ROMAN, DAVIS 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. 23-SC-188947

SPECIAL PROSECUTOR NATHAN WADE'S MOTION TO QUASH SUBPOENA OF MICHAEL ROMAN

Defendant Roman continues to abuse the legal system by subpoenaing the personal and law-firm bank records of Special Prosecutor Wade to fish for irrelevant information unconnected to the criminal charges against Roman. *See* Ex. A (Synovus Bank's refusal to comply with Roman's subpoena). Harassing opposing counsel is nothing new for Roman—he subpoenaed *eight* others representing the State of Georgia here including District Attorney Fani Willis, Executive District Attorney Daysha Young, Deputy District Attorney Sonya

Allen, Deputy District Attorney Dexter Bond, Assistant Chief Investigator Michael Hill, Deputy Executive Assistant Tia Green, Chief of Investigations Capers Green, and Assistant Chief Investigator Thomas Ricks. Roman did this not for relevancy, but to harass, bully, oppress, and intimidate his opponents in the desperate attempt to delay the criminal case against him. Each of the above people has rightfully moved to quash the illegal and irrelevant subpoenas issued by Roman against them.

The wrongful subpoena of Wade's personal and law-firm bank records is beyond "overly broad," it is limitless—it requests "any and all documents in Synovus Bank's possession related to Nathan J. Wade, Nathan J. Wade, P.C., Nathan J. Wade, P.C., and/or Wade, Bradley & Campbell Firm, LLC." (Ex. A.) No dates are given. No scope is provided. No reason for requesting these documents is mentioned. And no connection to the criminal charges against Roman is cited. Nor is there any possibility that these records would—or could—aid Roman in his criminal defense even were these records discoverable, which they are not.

This Court's job is not to help Roman and his attorney sift through the personal records *of the prosecuting attorney* in hopes of finding something they could spin into salaciousness for a tabloid. In short, nothing would be—or could be—gained from allowing production of these records. This Court should end Roman's ploy to disrupt justice by quashing his subpoena for Wade's personal and law-firm bank records, which Wade moves to do under O.C.G.A. § 7-1-360(c).

Standard of Review

The trial court has the discretion to quash a subpoena that is unreasonable or oppressive. See O.C.G.A. § 24-10-22(b)(1). When a motion to quash is filed, "the party serving the subpoena has the initial burden of showing the documents sought are relevant." *Bazemore v. State*, 244 Ga. App. 460, 460

(2000); see also *Tuttle v. State*, 232 Ga. App. 530, 531–32 (1998) ("The defense must make a prima facie showing that the requested materials are relevant to his defense and that he has a right to the materials."). This standard is tested by the peculiar facts arising from the subpoena itself and other proper sources. *Walker v. Bruhn*, 281 Ga. App. 149, 151 (2006). Roman has come nowhere close to proving that Wade's bank records are relevant to the criminal charges against Roman. And even had Roman carried this burden, which he has not, the subpoena must still be quashed for being oppressive, harassing, burdensome, overly broad, and an invasion of privacy.

I. The documents requested are irrelevant because they involve known facts and have no connection to the criminal charges against Roman.

The definition of "relevant evidence" is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See* O.C.G.A. § 24-4-401. Items that are neither pertinent nor relevant need not be produced. *Horton v. Huiet*, 113 Ga. App. 166, 169 (1966). Relevant evidence is that "which logically tends to prove or disprove a material fact which is at issue in the case." *Owens v. State,* 248 Ga. 629, 630 (1981).

There is nothing in Wade's personal or law-firm bank records that would prove or disprove *anything* about the criminal charges against Roman. Nor does Roman pretend there is. In fact, he cites no reason for requesting Wade's records. Worse, Roman hid the subpoena from Wade by sending a copy only to Synovus in the diabolical attempt to obtain these records without Wade's knowledge. Wade had to learn about this subpoena from *Synovus*, which alerted Wade of its correct refusal to produce these records. Had Synovus not timely notified Wade, Roman would be dreaming of ways to turn Wade's purchase of toner into proof that Wade is an architect of the deep state.

Wade's relationship with Willis is also *known*. Thus, there is nothing that the subpoena would—or could—*uncover* that is not already public record. Nor does that relationship disqualify Wade from prosecuting the charges against Roman. *See* Ex. B (Amicus brief from seventeen ethics experts refuting the notion of any conflict of interest here).

When facts are known—or could be obtained from different sources—our appellate courts have routinely affirmed the quashing of subpoenas. *In the Interest of N.S.M.*, 183 Ga. App. 398, 399 (1987) (holding that trial court did not abuse its discretion in refusing to allow witness to testify in termination action when all information sought by petitioners had been obtained through other sources and at best cumulative); *Cronan v. JP Morgan Chase Bank, N.A.*, 336 Ga. App. 201, 203 (2016) ("Because the allegations in the affidavits of title simply described either the relationship of the parties or other objective facts [],the trial court did not abuse [its] discretion in effectively granting the motion to quash the subpoena for the bank's counsel and refusing to allow the property owner to question the bank's counsel.").

As Wade's bank records have no bearing on Roman's guilt or innocence—and are irrelevant to Roman's criminal case—the subpoena must be quashed. *Britt v. State*, 282 Ga. 746, 749 (2007) ("[T]he Council correctly argues that the trial court erred in denying its motion to quash the documents requested here because they have no bearing on Sanders' guilt or innocence and are entirely irrelevant to Sanders' criminal case."); see also *Anderson v. Mergenhagen*, 283 Ga. App. 546, 549 (2007) (finding that trial court did not abuse its discretion in quashing subpoena for cell-phone records that were "not relevant [] or reasonably calculated to lead to the discovery of admissible evidence. See O.C.G.A. § 24-10-22(b)(1).").

II. The records requested are harassing, unreasonable, oppressive, and intimidating because they involve opposing counsel and not the crimes alleged against Roman.

There is no generalized right of discovery in criminal cases. See *Anderson v. State*, 258 Ga. 70, 72 (1988); *Boatright v. State*, 192 Ga. App. 112, 113 (1989). The standard "unreasonable and oppressive" is tested by the peculiar facts arising from the subpoena itself and other proper sources. *Kamensky v. S. Oxygen Supply Co.*, 127 Ga. App. 343, 343 (1972).

Roman seeks to disrupt and delay the criminal charges against him by harassing Wade and *eight others* here including Willis. Our highest courts have routinely refused similar attempts to harass, bully, burden, and intimidate opposing counsel. *Goodwin v. State*, 320 Ga. App. 224, 231 (2013) ("The practice of trial attorneys testifying is not approved by the courts except where made necessary by the case."); *Cronan v. JP Morgan Chase Bank, N.A.*, 336 Ga. App. 201, 203 (2016) ("Under these circumstances, we cannot conclude that the trial court abused its discretion in refusing to allow Cronan to question Chase's counsel."); *Castell v. Kemp*, 254 Ga. 556, 557 (1985) ("[T]he advocate as a witness poses innumerable threats to the integrity and reliability of the judicial process."). So too with prosecuting attorneys: "[C]ourts have properly refused to permit a prosecutor to be called as a witness unless there is a compelling need." *United States v. Roberson*, 897 F2d 1092, 1098 (IV)(F) (11th Cir. 1990)

Courts have also repeatedly quashed subpoenas that sought to harass or bully opposing counsel. *Cartagena v. Medford*, 2022 Ga. State LEXIS 4468, *1 ("It is appropriate to quash the subpoena served upon Swift Currie as depositions of opposing counsel are opportunities to harass the attorneys and parties and can disrupt and delay the case. The Court does not find that the information sought is critical and that it cannot be obtained in another way."); *see Cronan*, 336 Ga. App. at 205 (holding that trial court did not abuse discretion in quashing subpoena to opposing counsel regarding subjective intent of

clients); *King v. State*, 300 Ga. 190, 196 (2016) (affirming trial court's quashing of subpoena to prosecutor where other witnesses could provide same or similar information related to receipt of evidence).

III. The subpoena is overly broad because it does not limit the records requested.

Whether a trial court should quash a subpoena "depends on the nature and scope of the discovery request." *In re Whittle*, 339 Ga. App. 83, 85 (2016). The subpoena here is limitless—it seeks "any and all documents in Synovus Bank's possession related to Nathan J. Wade, Nathan J. Wade, P.C., Nathan J. Wade, P.C., and/or Wade, Bradley & Campbell Firm, LLC." (Ex. A.) There are no dates listed, no foundation given, no reasons mentioned for requesting this information, and no hint of how these records bear on the culpability of Roman for the crimes charged against him.

Courts in this state have repeatedly quashed similar open-ended requests for superfluous information. *Hilley v. State*, 344 Ga. App. 58, 62 (2017) ("Hilley sought the evidence concerning Special Agent Hillman's activities for the single, impermissible purpose of impeaching him after trial. Further, as Hilley has not specified that the evidence he is seeking actually exists, it is clear that he is engaged in a fishing expedition."); *In re Frost,* 366 Ga. App. 45, 50 (2022) ("Malick sought to use the subpoena as an instrument of discovery; the broadly-worded subpoena did not, however, provide the specificity required to show the relevance of the documents sought, or that this was something other than a fishing expedition into records held by a third party."); *Plante v. State,* 203 Ga. App. 33, 34 (1992) ("It is thus clear that the purpose of the subpoena was not to obtain any specific item of evidence for introduction at trial but to enable the appellant to search through the hospital's records in hopes of obtaining information that might impeach the child's credibility. In other

words, the appellant sought to use the subpoena as an instrument of discovery.).

The Supreme Court of the United States agreed: "In short, the Confrontation Clause only guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. *Pennsylvania v. Ritchie*, 480 U. S. 39, 52-53 (III) (A) (1987) (rejecting claim that Confrontation Clause afforded criminal defendant right to pretrial discovery of investigative records containing impeachment evidence); accord *United States v. Sardinas*, 386 Fed. Appx. 927, 940-941 (IV) (B) (11th Cir.) (2010).

IV. To allow the subpoena would invite endless delay, distraction, and disruption.

In the discovery process, "the competing interest in an individual's right to privacy must be accommodated [.]" *Dikeman v. Mary A. Stearns, P.C.*, 253 Ga. App. 646, 648 (2002). And "this is particularly true where the information pertains to nonparties." *Id*. See *Borenstein v. Blumenfeld*, 151 Ga. App. 420, 421 (1979) (holding that "interests of justice do not require production of tax returns in the face of a motion for protective order where other discovery methods are available to obtain the same information.").

Roman cites no case—because none exists—in which a court allowed production of a prosecuting attorney's bank records where no reason existed to even *request* that information. The privacy of banking records is protected by statute. Except in the very limited circumstances in O.C.G.A. § 7-1-360, a financial institution "is not required to disclose or produce to third parties, or permit third parties to examine any records pertaining to a deposit account, loan account, or other banking relationship[.]" Indeed, nothing in O.C.G.A. § 7-1-360(a) requires production of bank records by a prosecuting attorney. And Roman cites no authority permitting a criminal defendant to access the bank

records of an opposing counsel—much less to do so without cause or connection to the criminal charges against that defendant.

To allow a *criminal defendant* to access the bank records of the *prosecuting attorney* on a whim would invite endless mischief. It would inspire other criminal defendants to do the same. It would annihilate Wade's constitutional right to privacy as a nonparty and prosecuting attorney. And it would impede—not further—this case by encouraging Roman to use additional spurious tactics to harass, oppress, and intimidate Wade. It is not—and has never been—the law to allow criminal defendants to fish for material unrelated to their criminal charges in hopes that the mere appearance of impropriety could curry favor with a court. Simply put, there is no need for the information requested. And Roman never says otherwise. *See Hilley*, 344 Ga. App. at 63 (2017) (holding that effort to uncover potentially impeaching evidence of State's witness not a proper use of subpoena).

CONCLUSION

This Court should end Roman's scheme to abuse the laws by quashing his harassing attempt to unlawfully access Wade's bank records.

Dated: February 8, 2023.

Respectfully submitted,

/s/ Andrew C. Evans
Andrew C. Evans
Georgia Bar No. 251399
Counsel for Nathan Wade

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CERTIFICATE OF SERVICE

I certify that I have this day served Defendant's attorney with *Special Prosecutor Nathan Wade's Motion to Quash Subpoena of Michael Roman* by electronic delivery through the Odyssey e-filing system and by depositing a copy in the United States mail in a properly addressed envelope with adequate postage, addressed to:

Ashleigh B. Merchant
The Merchant Law Firm, P.C.
701 Whitlock Avenue SW, Suite J-43
Marietta, GA 30064

Dated: February 8, 2023.

Respectfully submitted,

/s/ Andrew C. Evans
Andrew C. Evans
Georgia Bar No. 251399
Counsel for Nathan Wade

EXHIBIT A

P|S PageScrantom

Page, Scrantom, Sprouse, Tucker & Ford, P.C.

ALAN G. SNIPES
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February 1, 2024

VIA U.S. MAIL AND VIA EMAIL:
ashleigh@merchantlawfirmpc.com

Ashleigh B. Merchant
The Merchant Law Firm, P.C.
701 Whitlock Avenue, S.W., Suite J-43
Marietta, Georgia 30064

Re: *State v. Michael Roman*
Superior Court of Fulton County
Case No.: 23SC188947

Dear Ms. Merchant:

This firm represents Synovus Bank. We are in receipt of a subpoena (the "Subpoena") from you related to the above matter. The Subpoena seeks, *inter alia*, any and all documents in Synovus Bank's possession related to Nathan J. Wade, Nathan J. Wade, P.C., Nathan J. Wade, P.C., Attorney at Law, and/or Wade, Bradley & Campbell Firm, LLC.

Synovus Bank conducted a diligent search of its records and was able to locate certain account records related to two accounts associated with the Wade, Bradley & Campbell Firm, LLC. Late yesterday, I received notice via e-mail that one of the authorized signatories on these accounts, Nathan Wade, objected to the the Subpoena and to the production of the account records at issue. Mr. Wade further advised via e-mail that his counsel intended to move to quash the Subpoena.

Pursuant to O.C.G.A. § 7-1-360(a), a financial institution is not required or permitted to disclose financial records except under limited circumstances. Notice to the affected account holder is required, and O.C.G.A. § 7-1-60(c) allows the account holder to "file in the court issuing an order or subpoena for the records or the Georgia or federal court where the civil matter is being heard or, the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order..." Because the account holder has indicated an intent to object to the Subpoena and file a motion to quash as set forth in O.C.G.A. § 7-1-360(c), Synovus Bank is presently unable to provide the responsive records to you.

Synovus Bank takes no position on the ability of your client to request the records set forth in the Subpoena, nor whether any objection or motion to quash the Subpoena would be meritorious. If and when a ruling is provided on any objection and/or motion to quash, Synovus Bank will, of course, promptly comply with any court order regarding the matter. In that regard, please be advised that Synovus Bank has gathered the responsive records and will be in a position to produce them immediately upon resolution of any objection or motion to quash.

If you have any questions regarding this matter, please let me now.

Yours very truly,

PAGE, SCRANTOM, SPROUSE,
TUCKER & FORD, P.C.

By:
Alan G. Snipes

cc: Mr. Nathan Wade (via email)
Synovus Bank

EXHIBIT B

Ethics experts back up Fulton DA in Trump conflict-of-interest dispute

Allegations irrelevant to racketeering case, they say

By Tamar Hallerman

Feb 6, 2024

District Attorney Fani Willis does not have any conflicts that warrant her disqualification from the Fulton County election interference case, according to a group of 17 ethics experts, former prosecutors and defense attorneys.

The coalition – which includes former Georgia-based federal prosecutor Amy Lee Copeland, onetime DeKalb DA J. Tom Morgan and Richard Painter, the top White House ethics lawyer during the George W. Bush administration – filed a "friend of the court" brief late Monday laying out why Fulton Superior Court Judge Scott McAfee should dismiss multiple court motions alleging Wills acted improperly.

"Disqualifying conflicts," the group wrote, "occur when a prosecutor's previous representation of a defendant gives the prosecutor forbidden access to confidential information about the defendant or a conflict otherwise directly impacts fairness and due process owed a defendant."

"That kind of conflict is not at issue here," they said.

Five defendants in recent weeks, led by former Donald Trump campaign official Michael Roman, have argued that Willis has an untenable conflict of interest created by a previously undisclosed romantic relationship with Nathan Wade, the outside attorney she hired to spearhead the racketeering probe. Trump and 14 other defendants currently remain in the case.

Willis acknowledged a personal relationship with Wade in a court filing last week but contended that she did not improperly benefit financially. She has urged McAfee to cancel a previously-announced evidentiary hearing scheduled for February 15.
The ethics experts, who said they have no independent knowledge of Willis and Wade's personal relationship, backed up the DA, arguing that even if all of the defendants' allegations were true, they "do not even come close" to mandating her removal because they're irrelevant to the underlying case.

They said judges typically view motions for disqualification skeptically, given the significant costs to taxpayers and the delays that typically result as new prosecutors try to get up to speed. Prosecutors, they said, are typically "trusted to fulfill their duties despite competing personal interests."

They added that the defendants have similarly not provided adequate evidence to merit their other significant ask: that the criminal charges against them be dropped.

“Defendants have not shown that their constitutional rights were violated or that these proceedings were rendered fundamentally unfair due to any relationship between DA Willis and Wade. Nor can Defendants establish that they were actually prejudiced, so as to warrant this relief,” the group stated.

The former officials also defended Willis against criticism of her remarks last month at a historic Black church in Atlanta. Attorneys for Trump and others said Willis’ suggestion that her critics were playing the “race card” represented a “calculated effort to foment racial bias” into the case that could prejudice a jury.
The former prosecutors and ethics experts said Willis’ remarks are not disqualifying because they were not directed at a particular defendant, nor were they focused on the alleged guilt of any defendant or the merits of the case. They said the jury selection phase of the case was the most appropriate place to address whether Willis’ comments might have impacted the jury pool.

Even though they said there’s nothing to merit disqualification, they argued that if McAfee disagrees, Willis should be allowed to resolve the conflict – by reimbursing Wade for any shared expenses or changing his role in the case – so the prosecution can keep advancing in a timely manner.