

*In 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

**STATE'S MOTION TO EXCLUDE UNTIMELY  
DISCLOSED FINANCIAL EXPERT TESTIMONY**

Comes now, the State of Georgia, by and through Fani T. Willis, District Attorney for the Atlanta Judicial Circuit, and files this Motion to Exclude Defendant's Introduction of Financial Expert Testimony, and shows as follows:

**INTRODUCTION**

On February 12, 2024, this Court held a hearing as it related to outstanding issues concerning witness subpoenas and the quashal of the same. Without any prior notice at the very

end of the hearing Defendant declared their intention to present previously unannounced expert testimony as it relates the analysis and summary of “financial records.” Defendant’s failed notice in this case is untimely, incomplete, and in direct violation of this Court’s case management order (SEE Exhibit A). Compounding the foregoing acts of flagrant bad faith, the Defense has prejudiced the State by foisting this alleged testimony on the eve of the February 15, 2024, motions hearing previously scheduled by the Court on January 18, 2024. Clearly, the Defendants delayed revelation prevents and precludes the State from adequately preparing for this expert witness. Furthermore, the deliberate actions of the defense come at a time and circumstance when a continuance would be unavailing.

This Court should, therefore, exclude any and all evidence and reference to expert testimony regarding the forensic analysis and summary of financial records by the Defense at the February 15, 2024, evidentiary hearing.

### **ARGUMENT AND CITATION OF AUTHORITY**

The Defendant’s bad faith is demonstrated in their deliberate contravention of this Court’s standing case management order for criminal cases, in which this Court details the schedule for deadlines and hearings. Specifically, the Court ordered that its requirements for the disclosure of expert testimony.

#### **Discovery:**

4. Experts. Any party seeking to rely on expert testimony at trial (or any evidentiary hearing) must provide written notice to the opposing party. This notice must include a meaningful summary of the expert's testimony as well as his or her qualifications to serve as an expert witness. The notice must be provided at least 14 days before the Final Plea/Trial Calendar Call and seven days before any evidentiary hearing requiring expert testimony.

The Defendant's perfunctory oral notice is not only statutorily deficient but is also in clear and open violation of this Court's Scheduling Order and the Court's Standing Case Management Order for Criminal Cases. Tellingly, the Defendant's notice was done obliquely and in passing responding to an unrelated question to the Court. The notice was not in writing. Nor was it a formal announcement on the record. The Defendants provide no reason for these or any other of their failings.

The Defendant's quasi disclosure, in sum, is clearly untimely and fails to reveal all statutorily required and court ordered information. The Defendant has provided no explanation for these fatal shortfalls. The expert testimony should therefore be excluded, *ab initio*.

The Defendant's delay in supplying this information to the State and failure to strictly adhere to the very basic statutory requirements and this Court's Scheduling and Standing Case Management Orders was undoubtedly caused by bad faith. It also comes at a time when a continuance is untenable. These deficiencies, individually and collectively, clearly prejudiced the State's ability to investigate and rebut the alleged expert conclusions or otherwise prepare in anyway. That prejudice is compounded by the "Eleventh Hour" oral notice, mere days before the prescheduled evidentiary hearing.

### **CONCLUSION**

Georgia appellate decisions remind that adherence to procedural statutes is a proverbial "two-way street."

Contrary to the view of some, our legal system is not simply an elaborate game of "Gotcha!" This Court does not endorse acquittal by ambush on the part of a defendant any more than it does trial by ambush on the part of the State. Nor

do we condone induced error. The object of all legal investigation is the truth, and procedural rules are in place to further such goal in an orderly fashion.<sup>1</sup>

Bad faith is evident from the Defendant's apparent stonewalling in contravention of both statutory mandates and the requirements of this Court. That said, the untimeliness and deficiencies in the Defense "notice" alone are sufficient to merit exclusion of any reference to alibi on the part of the Defendant at the trial of this case.<sup>2</sup>

WHEREFORE, the State respectfully prays to this Court that:

1. It enter a pre-trial order exclude any and all introduction, questioning, argument, and/or reference of or pertaining to any of the above described expert opinion evidence; and
2. It enter an order for such other relief that it deem just and proper.

Respectfully submitted this 14<sup>th</sup> day of February 2024.

Fani T. Willis  
District Attorney  
Atlanta Judicial Circuit  
Georgia Bar No. 371088

/s/ Adam Abbate  
Chief Deputy District Attorney  
Atlanta Judicial Circuit  
Georgia Bar No. 516126

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<sup>1</sup> Price v. State, 245 Ga. App. 128, 134, 535 S.E.2d 766 (2000) *cert. denied at* 2000 Ga. LEXIS 831 (Ga. Oct. 27, 2000). See generally, United States v. Yepa, 608 F. App'x 672, 681 (10th Cir. 2015) and Broeker v. BNSF Ry. Co., No. 19-CV-79-ABJ, 2021 U.S. Dist. LEXIS 228247, (D. Wyo. Aug. 9, 2021).

<sup>2</sup> See generally, O.C.G.A. § 17-16-6.

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the within and foregoing Motion to Dismiss and Exclude Defendant's Introduction of Financial Expert Testimony, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system in addition to by email.

This 14<sup>th</sup> day of February 2024.

/s/ Adam Abbate  
Chief Deputy District Attorney  
Atlanta Judicial Circuit  
Georgia Bar No. 516126

# EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

FILED IN OFFICE

AUG 24 2023

IN RE: PROCEDURE FOR ALL  
CRIMINAL CASES ASSIGNED  
TO JUDGE MCAFEE'S DIVISION

JUDGE SCOTT MCAFEE

CHÉ ALEXANDER  
Clerk of Superior Court

Fulton County, Georgia

2023-EX-000227

**AMENDED<sup>1</sup> STANDING CASE MANAGEMENT ORDER FOR  
CRIMINAL CASES IN JUDGE SCOTT MCAFEE'S DIVISION**

For all criminal cases assigned to this division, the Court HEREBY ORDERS that the following deadlines, policies, and procedures govern. Absent express permission from the Court, no exceptions, extensions, or waivers to the requirements set forth herein are allowed.

**COMMUNICATING WITH THE COURT**

1. General. While the Court encourages counsel to communicate with Chambers, such communication shall be in writing and emailed to Litigation Manager Cheryl Vortice (cheryl.vortice@fultoncountyga.gov) with copies of such communication also provided to all counsel of record unless the matter is a proper *ex parte* filing.
2. Email. The Court, via the Litigation Manager, communicates with counsel via email whenever possible. At the entry of appearance of counsel, attorneys are required to provide an email address through the filing or by subsequently emailing Litigation Manager Cheryl Vortice. If you do not personally check your emails, you must arrange to have your emails forwarded to someone in your office who will be responsible for checking them and informing you of the messages/documents that have been sent. To avoid inappropriate *ex parte* communications, submit all questions, explanations, or discussions concerning your case by email, with a copy to opposing counsel. Appropriate *ex parte* communications are excepted from this rule. To prevent miscommunications and inappropriate *ex parte* communications, avoid telephoning chambers except in exceptional circumstances.

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<sup>1</sup> This Order supersedes Standing Case Management Order for Criminal Cases in Judge Scott McAfee's Division, 2023-EX-000227 (Feb. 16, 2023).

## **PLEA AND ARRAIGNMENT**

1. Appearance and Waiver. Each new case assigned to this division will be set for a Plea and Arraignment hearing date. Unless expressly excused by the Court, no later than 48 hours prior to the hearing date, counsel may file a Waiver of Arraignment personally signed by the defendant indicating that the defendant is entering a plea of Not Guilty and waiving formal arraignment. If properly waived, defendants are not required to appear at arraignment.
2. Bond Motions/Hearings: Motions for bond will not be heard at arraignment unless filed no later than 48 hours prior to the arraignment date. All bond motions must be filed with the Office of the Clerk of the Superior Court. Any bond motions filed prior to the docketing of the charging document (indictment/accusation) must be refiled or will be deemed withdrawn. Parties filing motions are required to deliver a courtesy copy to opposing counsel and to Litigation Manager Cheryl Vortice. The State shall provide notice to victims or other interested parties as required by law.
3. Scheduling Order. At the time of arraignment and entry of a Not Guilty plea (whether by waiver or announcement), the Court will enter a separate Case Specific Scheduling Order ("CSSO") in each defendant's case setting the specific deadlines for discovery and motions. Re-indicted cases are bound by the CSSO dates, notices, and published calendars for the originally indicted case absent good cause shown and further order of this Court.
4. Reciprocal Discovery: Any defendant opting into reciprocal discovery shall provide written notice to the prosecuting attorney at or prior to arraignment. O.C.G.A. 17-16-2(a).

## **DISCOVERY**

1. General. The parties shall promptly and completely comply with the requirements of O.C.G.A. § 17-16-4 by the specific Discovery Date deadline as set forth in the separate CSSO entered in each defendant's case. Any supplemental discovery must be supplemented as soon as practicable, but in any event no later than five business days after receipt of any additional information, documents, reports, or other matters which are subject to disclosure pursuant to applicable criminal discovery statutes.
2. Extensions. Any request for an extension of the Discovery Date deadline shall be submitted by written motion to the Court by the Discovery Date deadline.



Such motions must provide a detailed, fact-based explanation of the need for the extension including the amount of time needed to provide outstanding discovery, along with a proposed order for the Court's consideration. As with all motions, a courtesy copy of any motion for extension must be provided to Judge McAfee's Chambers via email to Litigation Manager Cheryl Vortice. Any outstanding forensic testing requested by either party must be brought to the Court's attention by way of a timely request for extension filed prior to the Discovery Deadline to prevent delays in the trial and other Court dates and deadlines.

3. Compelling Discovery. The parties are directed to comply with all discovery obligations. The parties are ordered not to file "form" motions seeking an order compelling the generalized disclosure of discoverable materials or the general exclusion of evidence. Any such non-specific "form" motions will not be considered by the Court. Should a party need to file a motion to compel discovery, the party shall itemize the articulable and case-specific instances in which the party believes the opposing party has failed to comply with discovery obligations. Such motion may be filed any time after the Discovery Date deadline has passed and no later than the Motions Due Date which is identified in the separate CSSO entered in each defendant's case. Complaints concerning untimely discovery will not be considered as a basis to delay trial unless the issue has been previously raised with the Court.
4. Experts. Any party seeking to rely on expert testimony at trial (or any evidentiary hearing) must provide written notice to the opposing party. This notice must include a meaningful summary of the expert's testimony as well as his or her qualifications to serve as an expert witness. The notice must be provided at least 14 days before the Final Plea/Trial Calendar Call and seven days before any evidentiary hearing requiring expert testimony.

### **CASE MANAGEMENT/PRETRIAL CONFERENCE**

1. General. A Case Management/Pretrial Conference will be scheduled in the CSSO to take place at the close of the specific Discovery and Motions deadlines. All discovery and reciprocal discovery shall be completed prior to the Case Management/Pretrial Conference. Cases ready for the Final Plea/Trial Calendar Call and without filed pretrial motions may be removed from this calendar at the request of the parties by contacting Litigation Manager Cheryl Vortice. Defendants that are represented are not required to appear at the Case Management/Pretrial Conference.

2. Order to Confer in Advance. The Court hereby orders the parties to confer before the Case Management/Pretrial Conference to determine whether any outstanding motions or issues can be narrowed or resolved by agreement.
3. Discussion. Parties should be prepared to discuss the production and review of discovery (including whether the State can inform the Court and defense counsel that all discovery has been produced), evidentiary and other legal issues expected to be raised pretrial, probability of disposition of the case without trial, whether either party anticipates introducing any expert testimony, any logistical concerns (such as out-of-state witnesses) relating to the scheduling of trial, and any other matters requiring the Court's attention.

## **MOTIONS**

1. General. The due date for all motions is the specific Motions Due Date deadline as set forth in the separate CSSO entered in each defendant's case. Motions filed after that date are untimely and will not be considered, absent a showing of just cause for the late filing. *Copeland v. State*, 272 Ga. 816, 817 (2000); USCR 31.1. All motions, proposed orders, and other submissions to the Court shall be printed or typed with not less than double-spacing between the lines, except in block quotations or footnotes. Margins shall be no less than one inch at the top, bottom, and sides. The type size shall not be smaller than 12-point Courier or Times New Roman font.
2. Application. The motion filing requirements and deadlines apply to all motions and notices, including but not limited to: immunity motions under O.C.G.A. § 26-3-24, demurrers, pleas in bar or abatement, State's notice of O.C.G.A. §§ 24-4-404(b), 24-4-413, and 24-4-414 evidence, State's notice of intention to use child hearsay, defendant's notice of intent to raise issues of incompetency, insanity, or mental illness, defendant's notice of intent to raise alibi defense, and defendant's notice of intent to introduce evidence of specific acts of violence by victim against third parties. These deadlines do not apply to motions *in limine* involving discrete evidentiary issues, the significance of which is not readily apparent until focused trial preparation. However, untimely motions improperly cast as motions *in limine* which are not true *in limine* motions, such as motions to suppress, to dismiss, or to sever defendants, will not be permitted after the Motions Due Date deadline absent a showing of just cause.
3. Filing, Courtesy, and Service Copies. All motions must be filed with the Office of the Clerk of the Superior Court. Parties filing motions are required to deliver



a courtesy copy to opposing counsel and to chambers via email to Litigation Manager Cheryl Vortice. The courtesy copies of motions must be received in Chambers the same day that the motions are filed in the Clerk's office.

Particularization Required. Only those motions sufficiently particularized as to provide legal notice to the opposing parties will be considered by the Court. Generalized and omnibus motions are not to be filed, and if filed will be denied as vague, dilatory, and in violation of this order. Motions must specify, with particularity, the item, statement, or event at issue and must be tailored to the facts of the case at hand. Each motion shall be limited to a single issue and filed separately. Thus, a general motion seeking to suppress all statements or all evidence is insufficient and will be denied. The motion must identify the specific statement or evidence that the movant is seeking to suppress, and must provide a theory of suppression.

4. Published Motions Hearing Calendar. The Court will publish a calendar for the Motions Hearing Date identified in the separate CSSO entered in each defendant's case, which will be held prior to the time set for the Final Plea/Trial Calendar Call. If no motions which require a hearing are timely filed, the case will not appear on the Motions Hearing Calendar.
5. Motions and Orders in Re-indicted Cases. If a case is re-indicted, all timely filed motions and all orders from the previously indicted case are adopted and effective in the newly indicted case unless the prior motion or order was addressed by the new indictment (*e.g.*, a demurrer to the original indictment).

## **FINAL PLEA AND TRIAL CALENDAR CALL**

1. General. A Final Plea and Trial Calendar Call will be held on a date determined by the Court, which will typically occur at the Case Management/Pretrial Conference. The State will not be allowed to place the case on the Dead Docket or re-indict after the Final Plea Calendar absent good cause shown and further order of this Court. Reductions in charges will be handled by the Court on a case-by-case basis. Attorneys and defendants must appear at the Final Plea Calendar unless the case has been previously resolved. The Final Plea Date shall not be reset absent good cause shown and express order of this Court. If a party has announced "ready for trial" at a previous Trial Calendar Call, in-person appearance at any subsequent Trial Calendar Call may be waived upon approval by the Court.

2. Order to Confer in Advance. The Court hereby orders the parties to confer before the Final Plea Date to determine the State's offer and whether the defendant will enter a plea of guilty or move forward to trial.
3. Entering Guilty Pleas. Negotiated or non-negotiated pleas may be entered at any time prior to the Final Plea Date. The parties are directed to contact Litigation Manager Cheryl Vortice to schedule a date for entry of a plea prior to the Final Plea Hearing. The Final Plea Date is the last opportunity to present a non-negotiated plea which can then be withdrawn at the option of the defendant at the time of sentence pronouncement. This right of withdrawal must be exercised on the record in open Court and expires when the Court adjourns for that day. The Court will afford a defendant one opportunity to enter a non-negotiated plea up until the Final Plea date. If a non-negotiated plea has been withdrawn by the defendant, the defendant will not be allowed to withdraw a guilty plea at any point in the future.
4. Accountability Court Sentence Recommendations. A defendant must have been interviewed and accepted by the Accountability Court program (Drug Court, Behavioral Health Treatment Court, or Veteran's Court) prior to sentencing for the Court to consider the recommendation.
5. Continuance/Request for Status Conference. In the event a party intends to seek a continuance or has any other problem with going forward with trial on the assigned Final Plea and Trial Date due to incomplete production of discovery, incomplete witness information, client difficulties, a request for a psychological evaluation, or otherwise, that party must notify the court by written request for a continuance and/or a status conference at least seven days before the Final Plea/Trial Date absent good cause shown. The written request must specifically identify the grounds for the continuance, conference, or other problems with going forward with trial.

#### **APPEARANCE AT ALL CALENDARS AND HEARINGS**

1. Attorneys. No attorney shall appear in that capacity before the Court until the attorney has filed an entry of appearance that fully complies with U.S.C.R. 4.2 or a notice of substitution of counsel that fully complies with U.S.C.R. 4.3(3). Attorneys are required to appear at all published calendars and properly noticed court appearances unless a proper Leave of Absence in accordance with U.S.C.R. 16.1 or 16.2, or a proper conflict letter in accordance with U.S.C.R. 17.1, is timely filed, or the attorney is otherwise expressly excused by the



Court. Note that any Leave of Absence not filed or served pursuant to U.S.C.R. 16.1 or 16.2, or filed *prior to entry of appearance of counsel in the case at issue* and not *served upon chambers*, stands denied under U.S.C.R. 16.4. Note that unless U.S.C.R. 17.1 is followed in all its subsections, then the attorney shall not be deemed to have a conflict pursuant to U.S.C.R. 17.1(A).

2. Defendants. Unless expressly excused by the Court, defendants must appear at all calendar calls and properly noticed court dates for his or her case even if his or her attorney has a properly filed conflict letter, leave of absence, or other expressly excused absence. Failure to report shall result in forfeiture of any bond which may have been set and issuance of a bench warrant for the arrest of the defendant.
3. Virtual Appearance. All calendars issued by the Court will specify whether the proceeding is “In-Person Only,” “Virtual Only,” or “Virtual and/or In-Person.” Counsel and parties may appear in any manner specified by the published calendar. The Court may authorize counsel and/or the parties to appear in a manner different than specified on the calendar, but only upon specific request and authorization by the Court. Witnesses may appear virtually if agreed by the parties and authorized by the Court. *See* U.S.C.R. 9.1-9.2. Video links provided for a hearing shall not be shared with anyone for any reason absent express permission from the Court.

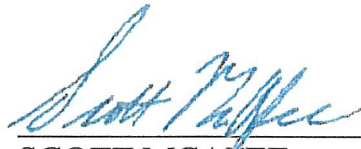
## MISCELLANEOUS

1. Withdrawal. If a defendant procures new counsel, it shall be the duty of the defendant’s previous attorney to provide all discovery to the new attorney as soon as practicable. Defendants must exercise their right to counsel of their choosing with reasonable diligence. Substitution of counsel shortly before trial will not be adequate grounds for a continuance. *See also* U.S.C.R. 4.3(3) (“substitution shall not delay any proceeding”).
2. Live-Streaming: To facilitate public access and open judicial proceedings, the Court may live-stream its proceedings and subsequently post recordings on its county-provided YouTube channel. Parties are directed to raise any concerns regarding this practice with the Court in advance of any hearing.<sup>2</sup>

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<sup>2</sup> Available at <https://www.youtube.com/@judgescottmcafee/streams>.

**SO ORDERED**, this 24<sup>th</sup> day of August, 2023.



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SCOTT MCAFEE  
FULTON COUNTY SUPERIOR COURT  
ATLANTA JUDICIAL CIRCUIT