

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 COMBINED RESPONSE TO DEFENDANT CHESEBRO'S MOTIONS
TO QUASH COUNTS 9, 11, 13, 15, 17, AND 19**

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Kenneth John Chesebro's Motions to Quash Counts 9, 11, 13, 15, 17, and 19. The Defendant asks this Court to quash these counts based upon the sufficiency of the language in the indictment and evidence outside of the indictment. Defendant's motions are based upon misreading the statutes and case law and often cite no authority to support his positions. For the reasons set forth below, the Court should summarily deny the Defendant's motions.

Introduction

Generally, the State notes to the Court that Defendant's motions to quash should be construed as general demurrers. "A motion to quash is the equivalent of a general demurrer, attacking the validity of the indictment. *Pennington v. State*, 323 Ga. App. 92, 96 n.9, 746 S.E.2d 768, (2013).

Defendant's motions are improperly comprised of arguments based upon evidence outside the indictment, which are improper speaking demurrers. "As a general matter, a demurrer (whether general or special) must allege some flaw on the face of the indictment itself; a demurrer ordinarily cannot rely on extrinsic facts that are not alleged in the indictment." *State v. Williams*, 306 Ga. 50, 53, 829 S.E.2d 117 (2019). A demurrer must be determined without reaching matters outside the four corners of the indictment. *State v. Grube*, 293 Ga. 257, 258, 744 S.E.2d 1 (2013). *But see Williams*, 306 Ga. at 53 (noting the exception to this rule when the State agrees or stipulates to the facts that form the basis of the charges in the general demurrer).¹ "Speaking demurrers present no legal authority for quashing an indictment. Speaking demurrers are void." (citation and punctuation omitted) *State v. Givens*, 211 Ga. App. 71, 72, 438 S.E.2d 387 (1993). Defendant is attempting to try the case by motion rather than wait for the jury trial that he has demanded to begin soon. The arguments relying upon outside evidence in support of his motion are improper and should not be considered by the Court.

Counts 13 and 19

The only viable paragraphs within Defendant's motion challenging counts 13 and 19 are paragraphs 4 and 5. Count 13 charges Defendant with the false statements and writings from the

¹ The State does not stipulate to any of the additional facts or evidence presented by Defendant that are beyond the four corners of the indictment

submission of the fake elector's "Certificate of the Votes of the 2020 Electors from Georgia." Count 19 charges Defendant with the same offense but from the submission of the "RE: Notice of Filing Electoral College Vacancy."

The indictment tracks O.C.G.A. § 16-10-20:

A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state.

As the indictment tracks the criminal statute, the indictment is sufficient to withstand a general demurrer. *State v. Wyatt*, 295 Ga. 257, 260, 759 S.E.2d 500 (2014) ("[A]n indictment couched in the language of the statute alleged to have been violated' is not subject to a general demurrer.") (quoting *Carter v. State*, 252 Ga. 502, 504, 315 S.E.2d 646 (1984)).

Defendant's remaining arguments that the fake electors were qualified are speaking demurrers as they incorporate evidence beyond the indictment. Thus, this Court should not consider Defendant's remaining arguments.

Count 9

Count 9 charges the Defendant with impersonating a public officer under O.C.G.A. § 16-10-23. The indictment more than sufficiently sets out the elements of the crime. Count 9 specifies the public office in question as "the duly elected and qualified presidential electors from the State of Georgia." The indictment clearly sets out that Defendant conspired to cause the fake electors to hold themselves out as the "duly elected and qualified presidential electors." Thus, this claim fails because Defendant could admit all the allegations in the indictment and be guilty of a crime. *State v. Mondor*, 306 Ga. 338, 341, 830 S.E.2d 206 (2019).

Defendant's further claims incorporating evidence to support his argument is an improper speaking demurrer. These remaining arguments about who the Fake Electors held themselves out to be are for the jury to consider. These arguments are inappropriately raised before this Court by Defendant and cannot be considered.

Count 15

Defendant's challenge that the indictment does not properly allege a "document" within the meaning of O.C.G.A. § 16-10-20.1(a) also fails. The Defendant's motion refers to the statute using a title from a *prior version*, "Filing False Lien or Encumbrance." The statute was extensively amended several years ago and re-titled "Filing False Documents," as charged in the indictment. Ga. L. 2014, p. 741. A certificate of vote meets the definition of "document" within O.C.G.A. § 16-10-20.1(a) because it is a representation of fact in a tangible medium that could be kept within the records of a court. Defendant's reliance to *Yates v. United States*, 574 U.S. 528 (2015), is a red herring, as it ignores the rest of O.C.G.A. § 16-10-20.1 and its legislative history. To restrict the meaning of "documents" to writings relating to "some effort to encumber, improperly, another person's interest in some property", as Defendant asserts, would too narrowly constrict the definition. Obviously, the General Assembly included the catchall "or other records, statements, or representations of fact, law, right, or opinion." The narrower definition would render useless O.C.G.A. § 16-10-20.1(b)'s criminalization of filings in federal courts because property records, such as deeds or liens, are not recorded in federal courts. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 689, 681 S.E.2d 122 (2009) (explaining that statutes must be construed so that an interpretation does not render a section or provision meaningless).

The legislative history supports that O.C.G.A. § 16-10-20.1 embraces a broader definition of document. The Georgia Supreme Court has stated: "[S]tatutes are presumed to be enacted by

the legislature with full knowledge of the existing condition of the law and with reference to it. [W]hen a statute is amended, from the addition of words it may be presumed that the legislature intended some change in the existing law.” (citations and punctuation omitted) *Nuci Phillips Mem'l Found. v. Athens-Clarke Cty. Bd. of Tax Assessors*, 288 Ga. 380, 383, 703 S.E.2d 648 (2010). The legislature explicitly broadened the documents contained within this code section from “liens or encumbrances” to the broad definition in O.C.G.A. § 16-10-20.1(a) and *re-titled the statute* to reflect that broader purpose. Ga. L. 2014, p. 741.² The current definition, which was changed in 2014, broadened the subject documents from liens and encumbrances to the current definition. The General Assembly also removed the requirement that the writing be “against the real or personal property.” The deletion of these phrases constraining the statute to apply to property interests and adding a broader definition of documents shows that the legislature clearly intended a broad definition. Thus, the list in O.C.G.A. § 16-10-20.1(a) pertains to a broad type of documents including the certificate of votes. Finally, the indictment sufficiently alleges that the Defendant conspired to “file, enter, and record” the fake certificate of vote executed by his co-conspirators. The indictment sufficiently alleges a crime.

Counts 11 and 17

Defendant’s motion pertaining to counts 11 and 17 should be denied because the indictment sufficiently tracks the language of the statute. In *Wilkes v. State*, 293 Ga. App. 724, 726, 667 S.E.2d 705 (2008) (overruled on other grounds), the Georgia Court of Appeals upheld an indictment as

² The original O.C.G.A. § 16-10-20.1 applied to “a false lien or encumbrance in a public record or private record that is generally available to the public against the real or personal property of a public officer or public employee on account of the performance of such public officer or public employee’s official duties.” O.C.G.A. § 16-10-20.1(b) (2013).

sufficient to withstand a general demurrer when it tracked the language of O.C.G.A. 16-9-1.³ This indictment uses the statutory language to charge Defendant in counts 11 and 17, which has already been upheld by the Georgia Court of Appeals as sufficient to charge a crime.

Defendant also wrongly states that an essential element is that the “document was used to defraud anybody in particular.” Defendant has not provided any authority supporting his interpretation. The statute requires a person (1) with intent to defraud, (2) knowingly makes, (3) any writing other than a check, (4) purporting to have been made by authority of one who did not give such authority, and (5) utters or delivers such writing. Count 11 alleges that the writing was delivered to the Archivist of the United States and count 17 alleges it was delivered to the Archivist and the Governor. The intent clause clearly covers the remaining elements of the sentence when read. Thus, the indictment sufficiently apprises Defendant that the writings were sent to the Archivist and Governor with the required intent to defraud.

Defendant’s further arguments incorporate evidence and should not be considered as they are improper speaking demurrers.

Conclusion

For the reasons set forth above, the Defendant’s motions should be summarily denied without a hearing. The indictments are clearly sufficient to charge Defendant with crimes. His incorporation of evidence are improper at this stage and cannot be consider by this Court at this time.

Respectfully submitted this 27th day of September 2023,

FANI T. WILLIS
District Attorney

³ *Wilkes* refers to O.C.G.A. § 16-9-1 (a) but that code section was re-codified as subsection (b) in the current code. Ga. L. 2012, p 889, § 3-5/HB 1176. The current code tracks the language of the prior code.

Atlanta Judicial Circuit

/s/ F. McDonald Wakeford

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **STATE'S COMBINED RESPONSE TO DEFENDANT CHESEBRO'S MOTIONS TO QUASH COUNTS 9, 11, 13, 15, 17, AND 19**, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 27th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ Alex Bernick

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