FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA, V. SIDNEY KATHERINE POWELL ET AL., DEFENDANTS.	CASE NO. 23SC188947 JUDGE MCAFEE

MOTION TO SEVER DEFENDANT SIDNEY KATHERINE POWELL

SIDNEY KATHERINE POWELL moves to sever her trial from all defendants pursuant to O.C.G.A. § 17-8-4(a) and the Sixth Amendment of the U.S. Constitution. She has no substantive connection with any other defendant regarding the charges in the Indictment.

FACTUAL BACKGROUND

Sidney Powell has been practicing law for forty-five years in the highest traditions of the Bar. She began her legal career in the United States Attorney's Office for the Western District of Texas as the youngest AUSA in the country. By ten years later, she had represented the United States in more than 350 appeals in the Fifth Circuit, served as Appellate Section Chief in the Northern and Western Districts of Texas, and distinguished herself at every turn. She was President of the Bar Association of the Fifth Federal Circuit and the American Academy of Appellate Lawyers; she edited the Fifth Circuit Reporter for twenty years; and, she frequently taught trial and appellate practice for national and state bar associations including the ABA, the Attorney General's Advocacy Institute for the Department of Justice,

the Texas Bar, the Appellate Practice Institute, and many others. After being a partner in a large regional firm, she opened her own appellate boutique in Dallas in 1993. Ms. Powell has been lead counsel in more than 500 federal appeals resulting in more than 180 published opinions.

Her most recent, unprecedented case was the defense of Lt. General Michael Flynn (Ret.) from charges completely concocted against him by a politicized FBI. In a long-fought battle, she ultimately moved to withdraw his guilty plea and persuaded the Department of Justice to dismiss the charges and admit the government had no basis to investigate Flynn, and it had committed stunning violations of *Brady v. Maryland*. She has been exposing prosecutorial and government misconduct for decades—as she did in the *Arthur Anderson* case, the Merrill Lynch Enron barge case, and then her book: *LICENSED TO LIE*: Exposing Corruption in the Department of Justice (2014). Her entire life and career have been built on integrity, the Rule of Law, and her love of Truth and Justice.

Contrary to widely publicized false statements in the media, Sidney Powell did not represent President Trump or the Trump campaign. She had no engagement agreement with either. She appears on no pleadings for Trump or the Campaign. She appeared in no courtrooms or hearings for Trump or the Campaign. She had no contact with most of her purported conspirators and rarely agreed with those she knew or spoke with. It cannot be disputed that Ms. Powell went her own way following the election, and she never reached an agreement on a course of action with any indicted or unindicted coconspirator—and certainly not any

illegal course of action. She was not part of any group "associated in fact", or an "ongoing organization" that functioned as a "continuing unit" for any purpose. Ind. Count I, "The Enterprise."

In an Indictment spanning 97 pages, Ms. Powell is falsely accused of participating in a RICO conspiracy because she attended a press conference exercising her First Amendment right to speak on a matter of great public interest and national importance; met with the President at the White House where she provided a legal opinion on Executive Order 13848; her typed name appears on a contract with a vendor for forensic work for Michigan and Arizona; and, after-the-fact, a non-profit she founded gratuitously paid SullivanStrickler's invoice. That is all she is accused of, and her name is mentioned just 14 times throughout the Indictment. The passing allegations of her "false statements" to the January 6 investigation by Congress—for which the State has no jurisdiction—are taken out of context, the allegations are themselves insufficient as a matter of law, and her statements were true. Ind. Act 159.

The vast majority of the so-called "Manner and Means of the Enterprise," "Acts of Racketeering Activity and Overt Acts in Furtherance of the Conspiracy," and Counts of the Indictment have absolutely nothing to do with her. She had no role in the alleged "False Statements to and Solicitation of State Legislatures," "Solicitation of High-Ranking State Officials," "False Electoral College Documents," Ruby Freeman, DOJ officials, or contact with the Vice President. Ms. Powell did not agree with any of her purported coconspirators to do anything improper, and many of her

purported coconspirators publicly shunned and disparaged Ms. Powell beginning in November 2020. Others she does not know or had no contact with at all.

As for the Coffee County charges in Counts 32-37, they fatally depend on demonstrably false premises of a "corrupt" conspiracy to "st[ea]l data," and that Ms. Powell executed a contract and agreed with unindicted coconspirators to obtain information from Coffee County voting machines without authorization. Ind. Pp 18, 90-95. The "evidence" underlying these charges was apparently collected by parties in *Curling v. Raffensberger* who used a carefully worded deposition of a corporate representative of SullivanStrickler, who knew nothing of the transaction, to implicate Ms. Powell because her name appeared *typed* on a contract for work the firm did in *Michigan*. There is no apparent reason that deposition would be needed or appropriate in the *Curling* case, and it seems to be the "evidence" underlying the prosecution's false charges against Ms. Powell.

In truth, as the prosecution should know:

(i) There was no contract for SullivanStrickler to conduct forensic imaging of the Coffee County Voting Systems.

(ii) Ms. Powell signed no such contract.

(iii) Ms. Powell did not plan or organize the Coffee County trip.

(iv) Ms. Powell did not request SullivanStrickler to undertake that project.

(v) Ms. Powell was not the attorney requesting or overseeing the Coffee County collection.

(vi) A unanimous Coffee County Election Board gave permission for the forensic inspection, and nothing was stolen.

Ms. Powell can receive a fair trial only if she is tried alone. The prejudice that would inure to her from a lengthy trial with any of those she was not involved and about the vast number of events she had no knowledge of or connection with would deny her Due Process. Assuming the prosecution does not realize its error in indicting her and agree to dismiss this wrongful prosecution before trial immediately, Ms. Powell can be tried alone in three days at most and should receive a judgment of acquittal when the State rests.

ARGUMENT AND CITATION TO AUTHORITY

When two or more defendants are jointly indicted, any defendant can be separately tried at the discretion of the trial court, and that decision will not be disturbed unless such discretion was abused. O.C.G.A. § 17-8-4 (2018). The trial court must consider three factors when deciding whether to sever the trial: (1) whether the number of defendants creates confusion as to the law and evidence to be applied to each; (2) whether a danger exists that evidence admissible against one defendant might be considered against the other notwithstanding instructions to the contrary; and (3) whether the defenses are antagonistic to each other or each other's rights. *Griffin v. State*, 273 Ga. 32, 33 (2000); *see also Brown v. State*, 262 Ga. 223, 224 (1992). A motion to sever should be granted whenever it appears "necessary to achieve a fair determination of the guilt or innocence of a defendant." *Baker v. State*, 238 Ga. 389, 391 (1977); *see also Padgett v. State*, 239 Ga. 556, 558 (1977).

If there is a danger that evidence incriminating one defendant will be considered against a co-defendant, or if the strength of the evidence against one

defendant will engulf the co-defendant(s) with a spillover effect, then the motion to sever must be granted. *See Jones v. State*, 277 Ga. App. 185 (2006). Where evidence of the defendant is so slight, he should not be convicted merely by association. *Price v. State*, 155 Ga. App. 844, 845 (1980) (motion to sever should have been granted because evidence against defendant was minimal, while that against his codefendant was substantial, and defendant's conviction more likely resulted from the evidence against his codefendant than from evidence against him); *see also Crawford v. State*, 148 Ga. App. 523, 526 (1978).

According to the Supreme Court, "[e]vidence that is probative of a defendant's guilt but technically admissible only against a codefendant also might present a risk of prejudice." *Zafiro v. United States*, 506 U.S. 534, 539 (1993). This danger of spillover is present where the "overwhelming majority of the evidence" is presented only against a co-defendant. *United States v. Pedrick*, 181 F.3d 1264, 1272 (11th Cir. 1999) (affirmed district court's granting of defendant's motion for new trial after the overwhelming majority of evidence presented at trial was directed at his co-defendant, spilling over in the minds of jurors and used against defendant).

Here, the prosecution's case rests on evidence against people with whom Ms. Powell had no agreement, no involvement, and no communications about Coffee County or anything else.[1] Had the prosecution not been determined simply to indict her, it would see this.

[1] Ms. Powell represented Cathy Latham in a federal lawsuit filed in Georgia, but she spoke with Latham in group calls about the case, Judge Batten granted a temporary

Moreover, Ms. Powell is one of only two who have requested a speedy trial. Mr. Chesebro, another attorney, requested a speedy trial. He is charged in unrelated counts. On August 24, 2023, the Court entered a Case Specific Scheduling Order establishing deadlines and an October 23, 2023, trial date for Mr. Chesebro. The Court made clear that the deadlines "do not apply to any-codefendant" – an apparent severance of his case from all other defendants. While the State requests the Court set Ms. Powell's trial date "on the same date as Defendant Chesebro's," State's Motion to Clarify at p. 2, it must be observed that Mr. Chesebro, aside from the RICO count, is charged with six other counts – conspiracy to commit impersonating a public officer (Count 9), conspiracy to commit forgery in the first degree (Count 11), conspiracy to commit false statements and writings (Count 13), conspiracy to commit filing false documents (Count 15), conspiracy to commit forgery in the first degree (Count 17), and conspiracy to commit false statements and writings (Count 19). All these counts are legally and factually unrelated to those pursued against Ms. Powell, and the State has not asserted or argued otherwise. In fact, Ms. Powell and Mr. Chesebro have no connection, no communications, no relationship. The only overlapping charge is the RICO offense, which as to Ms. Powell, will fail for multiple reasons—including the absence of evidence on Counts 32-37.

While lawyers and jurists have all heard and used the phrase that one cannot "un-ring the proverbial bell," imagine trying to un-ring it dozens of times on behalf of

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order to preserve voting machines for review, and she did not speak with Ms. Latham or any of the co-defendants about SullivanStrickler's Coffee County work.

Powell while evidence against the co-Defendants is flowing in. Limiting instructions will not and do not cure the problem. The simple fact that Ms. Powell would be forced to sit in a courtroom for weeks or months with co-defendants will cause tremendous prejudice to Ms. Powell. It defies human nature even to imply that an adverse spillover effect would not occur. To the contrary, the spillover effect is real and would be devastating to Ms. Powell.

Confusion of the evidence and law is a certainty where there are eighteen other defendants who, in total, face nearly 130 counts. Even if she is tried with just Mr. Cheseboro, the confusion created by evidence related to the charges against him, which have nothing to do with Ms. Powell, would undoubtedly confuse the jury and prejudice Ms. Powell. The majority of those counts are unrelated to those alleged by the State against by Ms. Powell. Furthermore, the jury will be forced to sit through the testimony of numerous witnesses and mountains of evidence unrelated and irrelevant to Ms. Powell. This contributes to the likelihood that evidence against one defendant would be considered against Ms. Powell, and that evidence inadmissible to Ms. Powell would overwhelm her trial. *See Howard v. State*, 279 Ga. 166, 171, 611 S.E.2d 3, 8 (2005).

Accordingly, given the number of defendants, the complexity of evidence for other aspects of the case, and the likelihood of prejudicial antagonistic defenses at trial, Ms. Powell moves for a severance of her case from all remaining defendants. It is only through severance that Ms. Powell's constitutional rights will be protected, and she can receive a speedy and fair determination of her innocence in this case.

CONCLUSION

For these reasons and any others that may appear to this Court after a hearing, Ms. Powell respectfully requests that the Court schedule and conduct an evidentiary hearing on Powell's Motion to Sever, sever the trial of Ms. Powell in this matter, allow her to be tried separately from the codefendants in this matter, and grant Ms. Powell such other and further relief as this Court deems just and appropriate.

This the 30th day of August, 2023.

/s/ Brian T. Rafferty
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CERTIFICATE OF SERVICE

I hereby certify the above styled **MOTION TO SEVER DEFENDANT SIDNEY KATHERINE POWELL** has been served, this day, by electronic mail These documents have been served by the Fulton County electronic filing system upon all parties.

This the 30th day of August, 2023.

/s/ Brian T. Rafferty
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