

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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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 RESPONSE TO DEFENDANT CHESEBRO'S MOTION TO DISMISS
THE INDICTMENT UNDER O.C.G.A. § 16-3-20(5) & (6)**

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 Motion to Dismiss the Indictment Under O.C.G.A. § 16-3-20(5) & (6). The Defendant asks this Court to dismiss the indictment against him or grant him immunity from prosecution on the basis that his conduct was justified pursuant to O.C.G.A. § 16-3-20. This motion, like many of the motions filed by the Defendant to this point, cites to no law in support of its position. It conflates dismissal of an indictment or a finding of immunity with the assertion of an affirmative defense, and it

demonstrates a fundamental misunderstanding of the limited statutory authority to grant immunity provided by law. For the reasons set forth below, the Court should deny the Defendant's motion.

I. The justification defenses set forth in O.C.G.A. § 16-3-20 are affirmative defenses to be raised at trial and to be decided by the jury—should the Defendant produce evidence to support the charge.

O.C.G.A. § 16-3-28 plainly states that a “defense based upon any of the provisions of this article is an affirmative defense.” The pertinent article—Article 2 of Chapter 3 of Section 16 of the Official Code of Georgia—includes such affirmative defenses as use of force in defense of self or others, use of force in defense of habitation, use of force in defense of property other than a habitation, entrapment, coercion, reasonable fulfillment of duties as a government employee, reasonable discipline of a minor, rendering emergency care at the scene of an accident, and catch-all defenses including “[w]hen the person’s conduct is justified for any other reason under the laws of this state ...” and “[i]n all other instances which stand upon the same footing of reason and justice as those enumerated in this article.” O.C.G.A. § 16-3-20. The Defendant broadly relies on the catch-all provisions to assert his position that the statute permits dismissal of the indictment against him or grant him immunity. His reliance is misguided and unsupported by law.

“When a defendant raises an affirmative defense that is supported by some evidence, the State has the burden of disproving that defense beyond a reasonable doubt. *It is for the jury to determine* whether the State has met its burden in this respect.” *Clark v. State*, 307 Ga. 537, 539 (2019) (emphasis added); *see also Mosley v. State*, 300 Ga. 521, 524 (2017) (holding that “[t]he question of [the defendant’s] justification was for the jury to determine”). Affirmative defenses, with limited exceptions concerning statutes that expressly provide for immunity, discussed *infra*, are determinations of fact to be made by the jury. They cannot be raised prior to trial. Indeed, they can only be raised at trial and considered by a jury if there is some evidence presented at trial to

support them. *See Noel v. State*, 297 Ga. 689, 701 (2015) (holding that trial court correctly declined to instruct the jury on defense of justification in a child homicide case where the evidence before the jury could not support such a defense). The Defendant has cited to no statute, no case, and no other provision of law that would authorize this Court to dismiss the indictment or grant him immunity based on a pre-trial assertion of the purported justification defenses raised in his motion, and the Court should deny his motion.

II. A trial court can only grant immunity from prosecution when explicitly authorized by law, and the affirmative defenses relied on by the Defendant do not authorize a grant of immunity.

A trial court is authorized to grant immunity from prosecution prior to trial to “a person who uses threats or force in accordance with Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24” O.C.G.A. § 16-3-24.2. The Georgia Supreme Court determined that, in this limited circumstance, a trial court may grant such relief because the Georgia General Assembly’s use of the words “*shall* be immune from prosecution” bars all criminal proceedings against such a person, and whether a person is immune under O.C.G.A. § 16-3-24.2 “must be determined by the trial court [as a matter of law] before the trial of that person commences.” *Fair v. State*, 284 Ga. 165, 166 (2008). Here, the provisions of O.C.G.A. § 16-3-24.2 cannot apply because the Defendant is not charged with using threats or force. And unlike that code section, O.C.G.A. § 16-3-20, the statute relied upon by the Defendant in his motion, does not use the words “immune” or “immunity.” Accordingly, because O.C.G.A. § 16-3-20 makes no reference to immunity, whether a defendant is entitled to raise a justification defense is not a matter that should (or even can, as pointed out *supra*) be addressed prior to the conclusion of the presentation of evidence at trial.

For the reasons set forth above, the Defendant’s motion should be denied without a hearing. The issue he raises concerning the affirmative defense of justification is a matter for the jury to

decide at the conclusion of the presentation of evidence, should some evidence be presented at trial that would support such an affirmative defense. Further, the Defendant has cited to no case that would support his conclusion that the Court can grant him immunity from prosecution based on the affirmative defenses he raises under O.C.G.A. § 16-3-20.

Respectfully submitted this 26th day of September 2023,

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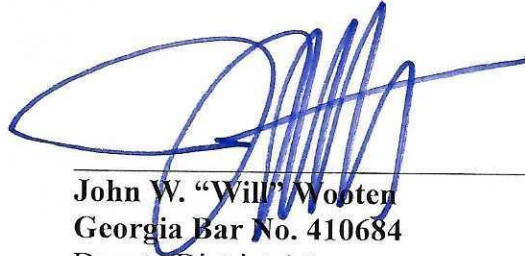
23SC188947

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT CHESEBRO'S MOTION TO DISMISS THE INDICTMENT UNDER O.C.G.A. § 16-3-20(5) & (6), upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 26th day of September 2023,

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