

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 RESPONSE TO DEFENDANT POWELL’S
MOTION TO PRODUCE *BRADY* MATERIAL**

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds to Defendant Sidney Katherine Powell’s Motion to Produce *Brady* Material. In her motion, the Defendant makes the sweeping and unfounded conclusion that she is “innocent of all charges alleged in the indictment” and that “[b]ecause of this, the State necessarily has possession of significant evidence that exonerates her of all charges.” Def.’s Mot. at 1. Notwithstanding that “the jury shall be the judges of the law and the facts,” Ga. Const. Art. I, § I, Para. XI, the State has fully complied with its obligations under *Brady*, and it has continued to

disclose all inculpatory and exculpatory evidence gathered after the expiration of the initial discovery deadline in this case. Accordingly, because there is nothing left to disclose at this time, the Court should deny the Defendant's motion to the extent that it requests that the Court order the State to disclose evidence that is either not in its possession, does not exist, or is non-discoverable attorney work product.

In her motion, the Defendant lists 37 categories of evidence that she has requested from the State and states to the Court that, "[t]o this day, Ms. Powell has not received any of the documents requested." Def.'s Mot. at 9. This broad declaration is false. The State has produced or made available to the Defendant every piece of discoverable evidence in its possession, and it should not be in dispute that the State has turned over multiple, voluminous batches of discovery to the Defendant. The State produced the first batch of discovery to the Defendant in open court on September 14, 2023. The State produced additional batches of discovery to the Defendant on September 20, 2023, and September 26, 2023. *See* "**Exhibit A**," Discovery Receipts. On October 2, 2023, the State came into possession of additional discovery materials from the Georgia Bureau of Investigation, and those materials, as well as certain witness transcripts from the Special Purpose Grand Jury and information related to a guilty plea entered by codefendant Scott Graham Hall, were immediately made available to the Defendant on October 3, 2023.¹ *See* "**Exhibit B**," October 3, 2023, E-mail to Attorney Brian Rafferty. These materials represent all of the discoverable evidence in the State's possession, including all *Brady* material requested by the Defendant, to the extent that such material exists.

¹ Since that time, there has been some difficulty with the hard drive provided to the State by the Defendant to facilitate transferring the GBI materials. The State is expeditiously working with the Defendant to make sure she is able to access all of the GBI materials.

The Defendant has also requested from the State certain materials that are not discoverable and that she is not entitled to. This includes “raw notes” made by prosecutors during witness interviews, “notes of any kind by any agent or prosecutor, or person working with them ... about Sidney Powell,” “communications of any kind between agents of the District Attorney’s office, including prosecutors themselves, and any attorneys or parties in the federal case *Curling v. Raffensperger*,” “communications between any employee or agent of the District Attorney’s office for Fulton County and any employee or agent of Dominion Voting Systems,” and other documents that clearly constitute non-discoverable work product. As the Georgia Supreme Court has held, “An attorney’s work product is generally non-discoverable. ... [N]on-exculpatory information in an attorney’s work product does not become discoverable simply because the opposing attorneys might find it strategically useful.” *Foster v. State*, 258, Ga. 736, 739 (1988). And since “much of a prosecutor’s work product will not fit the definition of exculpatory evidence subject to discovery under *Brady*,” only that work product that actually constitutes exculpatory evidence must be turned over to a defendant in discovery. *Waldrip v. Head*, 279 Ga. 826, 827 (2005). Here, any of the State’s work product that contains exculpatory information has already been turned over to the Defendant, and she is not entitled to the remainder.

Finally, the Defendant requests certain documents that the State does not possess. “To prevail on an evidence suppression claim [under *Brady*], one must show the State possessed evidence favorable to the defendant; the defendant did not possess the evidence nor could he obtain it himself with any reasonable diligence; the prosecution suppressed the favorable evidence; and had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceeding would have been different.” *Id.* at 826 (quoting *Burgeson v. State*, 267 Ga. 102, 104 (1996)). Here, the Defendant has repeatedly requested certain documents that the State does not

possess, and the State has communicated that fact to her. As an example, in her motion, the Defendant requests that the Court order the State to produce “[a]ny and all evidence regarding a written letter of invitation from Coffee County officials, leadership or representatives to Katherine Freiss, Rudolph Giuliani, or others, granting authorization to examine voting machines.” Def.’s Mot. at 13. Counsel for the Defendant contacted the State on September 14, 2023, requesting the purported “letter of invitation.” The State promptly responded that it had no such letter in its possession. Counsel for the Defendant then supplied a news story to the State that referenced the purported letter, and the State again responded that it had no such letter in its possession. *See* “**Exhibit C**,” September 18, 2023, E-mail to Attorney Brian Rafferty.

Curiously, the Defendant attached a letter purporting to have been written by codefendant Misty Hampton AKA Emily Misty Hayes as “Exhibit O” to a pleading titled “Powell’s General Demurrer and Motion to Dismiss Counts 1, and 32-37 for Prosecutorial Misconduct and *Napue* Violations.” The letter states, in part, “We have received your open record request, and I will be speaking with my board, and per Georgia Law I do not see any problem assisting you with anything y’all need accordance to Georgia Law. Y’all are welcome in our office any time.”² *See* “**Exhibit D**,” Excerpt of Powell’s General Demurrer and Motion to Dismiss. That pleading was filed on September 27, 2023, the same day as this *Brady* motion, and it appears that counsel for the Defendant had the purported “invitation letter” in his possession at the same time he filed the current pleading asking the Court to take action against the State for failing to disclose it. This sort of untoward gamesmanship is inconsistent with the ongoing duty of candor to the Court required of all attorneys pursuant to Georgia Rule of Professional Conduct 3.3.

² The State maintains that this purported “invitation letter,” if it is even authentic, in no way authorized any person to unlawfully access secure election equipment and copy the data contained within it.

As set forth above, the State has fully complied with its discovery obligations under *Brady*, and it has continued to disclose all inculpatory and exculpatory evidence gathered after the expiration of the initial discovery deadline in this case. The remaining evidence requested is non-discoverable attorney work product, is not in the State's possession, or, in at least one instance, was already in the Defendant's possession. For these reasons, her motion should be denied.

Respectfully submitted this 4th day of October 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

F. McDonald Wakeford
Georgia Bar No. 414898
Chief Senior Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
fmcdonald.wakeford@fultoncountyga.gov

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684
Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov

Exhibit A

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

*

INDICTMENT NO.: 23SC188947

vs.

*

DONALD JOHN TRUMP,
RUDOLPH WILLIAM LOUIS GIULIANI,
JOHN CHARLES EASTMAN,
MARK RANDALL MEADOWS,
KENNETH JOHN CHESEBRO,
JEFFREY BOSSERT CLARK,
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CATHLEEN ALSTON LATHAM,
SCOTT GRAHAM HALL,
MISTY HAMPTON a/k/a EMILY MISTY HAYES

*

JUDGE SCOTT MCAFEE

DISCOVERY RECEIPT

For Attorney: Brian Rafferty

For Client: Sidney Powell

Received the following item(s):

1. Initial Certificate of Discovery - (EXTERNAL HARD DRIVE – 2TB)

Abigail Frye

Defense Attorney

09/20/23

Date

Witness

Date

Return to Assistant Executive Legal Assistant Tywana Settles-Isby, Anti-Corruption

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

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DONALD JOHN TRUMP,
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CATHLEEN ALSTON LATHAM,
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MISTY HAMPTON a/k/a EMILY MISTY HAYES

*

JUDGE SCOTT MCAFEE

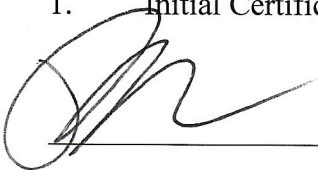
DISCOVERY RECEIPT

For Attorney: Brian Rafferty

For Client: Sidney Powell

Received the following item(s):

1. Initial Certificate of Discovery - (EXTERNAL HARD DRIVE)



Defense Attorney

9/26/2023

Date

Witness

Date

Return to Assistant Executive Legal Assistant Tywana Settles-Isby, Anti-Corruption

Exhibit B

Re: Chesebro - request for additional discovery

Wooten, Will [redacted]

Tue 10/3/2023 12:54 PM

To: Brian Rafferty [redacted]; Rood, Grant [redacted]

Cc: Scott R. Grubman [redacted]; Mani Arora [redacted]; Robert Wilson [redacted]; nathanwade [redacted]

Mr. Rafferty:

The hard drive is now ready for pickup at the 3rd floor reception desk. It contains the Georgia Bureau of Investigation materials we received yesterday as well as the SPGJ transcripts we recently received and the documentation/information related to Scott Hall's guilty plea last Friday.

Thank you.

Best regards,

Will Wooten
Deputy District Attorney
White Collar Crime Unit
Fulton County District Attorney's Office

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From: Brian Rafferty [redacted]
Sent: Tuesday, October 3, 2023 12:50 PM
To: Rood, Grant [redacted]
Cc: Wooten, Will [redacted]; Scott R. Grubman [redacted]; Mani Arora [redacted]; Robert Wilson [redacted]; nathanwade [redacted]
Subject: Re: Chesebro - request for additional discovery

This Message Is From an External Sender

This message came from outside Fulton County Government. Use caution with links/attachments.

Report Suspicious

Grant, will this be available this afternoon?

Sent from my iPhone

On Oct 3, 2023, at 9:47 AM, Brian Rafferty [redacted] wrote:

Grant, do you think this stuff will be ready to pick up this morning? Thank you,
Brian
Brian Rafferty
Rafferty Law, LLC

[redacted]

On Oct 2, 2023, at 4:23 PM, Rood, Grant [redacted] wrote:

It is still copying, it will not be available this afternoon.

From: Brian Rafferty [redacted]
Sent: Monday, October 2, 2023 3:52 PM
To: Wooten, Will [redacted]
Cc: Rood, Grant [redacted]; Scott R. Grubman [redacted]; Mani Arora [redacted]; Robert Wilson [redacted]; nathanwade [redacted]
Subject: Re: Chesebro - request for additional discovery

Thank you. I ask about the update because Mr. Rood indicated it may be available this afternoon, and if it was, I was going to come pick it up.
Brian Rafferty
Rafferty Law, LLC

[redacted]

Exhibit C

Re: Brady Request

Wooten, Will [Redacted]

Mon 9/18/2023 2:05 PM

To: Brian Rafferty [Redacted]

Cc: Nathan Wade [Redacted]; Rood, Grant [Redacted]; Wakeford, FMcDonald [Redacted]

Mr. Rafferty,

We have reviewed the article and do not have the purported letter. We do not know the source of CNN's claim. [Redacted]

Best regards,

Will Wooten
Deputy District Attorney
White Collar Crime Unit
Fulton County District Attorney's Office

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From: Brian Rafferty [Redacted]

Sent: Saturday, September 16, 2023 11:28 AM

To: Wooten, Will [Redacted]

Cc: Nathan Wade [Redacted]; Rood, Grant [Redacted]; Wakeford, FMcDonald [Redacted]

Subject: Re: Brady Request

This Message Is From an External Sender

This message came from outside Fulton County Government. Use caution with links/attachments.

Report Suspicious

Mr. Wooten, linked below is the article referencing both text messages and a letter of invitation from Coffee County, authorizing the activities conducted in Coffee County. Please advise if you have this letter.

[Redacted]

I look forward your prompt response to this request.

Regards,

Brian Rafferty



Exclusive: Georgia prosecutors have messages showing Trump's team is behind voting system breach | CNN Politics
cnn.com

Brian Rafferty
Rafferty Law, LLC

[Redacted]

On Sep 14, 2023, at 4:44 PM, Wooten, Will [REDACTED] wrote:

Mr. Rafferty:

We have reviewed our materials, and we do not have any such letter in our possession. When you provide the referenced media reports, we will conduct an additional sweep of our materials to determine if there is anything else that may be responsive. Thank you.

Best regards,

Will Wooten
Deputy District Attorney
White Collar Crime Unit
Fulton County District Attorney's Office
[REDACTED]

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From: Brian Rafferty [REDACTED]
Sent: Thursday, September 14, 2023 2:45 PM
To: Wooten, Will [REDACTED]
Cc: Nathan Wade [REDACTED]; Rood, Grant [REDACTED]; Wakeford, FMcDonald [REDACTED]
Subject: Re: Brady Request

Mr. Wooten, I will locate those media reports, but the specific letter is dated January 1, 2021, and is described as a letter of invitation. Does the District Attorney have such a letter?

Brian Rafferty
Rafferty Law, LLC
[REDACTED]

On Sep 14, 2023, at 2:34 PM, Wooten, Will [REDACTED] wrote:

Mr. Rafferty:

Your e-mail states that the "letter of invitation" you are inquiring about is "specifically referenced in media reports." Please provide those media reports to us so that we can determine whether or not we are in possession of anything responsive to your request.

Best regards,

Will Wooten (He/Him)
Deputy District Attorney
White Collar Crime Unit
DA's LGBTQ+ Advisory Committee
Fulton County District Attorney's Office
[REDACTED]

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OPEN RECORDS NOTICE: Please be advised that the contents of this e-mail and any response sent by you to this e-mail address may be subject to public disclosure under the Georgia Open Records Act, O.C.G.A. § 50-18-70, et seq.

From: Brian Rafferty [REDACTED]
Sent: Thursday, September 14, 2023 2:01 PM
To: Wooten, Will [REDACTED]; Nathan Wade [REDACTED]; Rood, Grant [REDACTED]; Wakeford, FMcDonald [REDACTED]
Subject: Re: Brady Request

Counsel,

I write to follow up on my request below, and following up on the direction from the Court at today's hearing.

Although I believe all of the materials I have asked for already should be disclosed by the government as Brady, I am specifically asking if the Government has the "letter of invitation" dated January 1, 2021, relating to the events in Coffee County, and specifically referenced in media reports. If so, I am asking the District Attorney to transmit a copy of the letter to me as an attachment to this email.

I look forward to your prompt response to this request.

Brian

Brian Rafferty
Rafferty Law, LLC

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Exhibit D

**COFFEE COUNTY BOARD OF
ELECTIONS AND REGISTRATION**

Ernestine Thomas-Clark, Chairman
Wendell Stone, Vice-chairman
C.T. Peavy, Member

224 West Ashley Street
Douglas, GA 31533
(912) 384-7018
FAX (912) 384-1343
E-Mail: misty.hampton@coffeecounty-ga.gov

Eric Chaney, Member
Matthew McCulloch, Member
Misty Martin, Election Supervisor
Jil Riddlehoover Elections Assistant

12/31/2020

We have received your open record request, and I will be speaking with my board, and per Georgia Law I do not see any problem assisting you with anything y'all need accordance to Georgia Law. Y'all are welcome in our office any time. Coffee County Board of Elections and Registration and myself, are willing to work with anyone with accordance to the Georgia Law.

Misty Martin
Election Supervisor
Coffee County Board of Elections
224 West Ashley St
Douglas, Ga. 31533
[912-384-7018](tel:912-384-7018) - Office
[912-393-7181](tel:912-393-7181) - Direct

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MISTY HAMPTON a/k/a EMILY MISTY HAYES
Defendants.

CASE NO.

23SC188947

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT POWELL'S MOTION TO PRODUCE BRADY MATERIAL upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 4th day of October 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten

John W. “Will” Wooten
Georgia Bar No. 410684
Deputy District Attorney
Fulton County District Attorney’s Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov