

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
vs.) Case No. 23SC188947
)
HARRISON FLOYD,)
)
Defendant.)

**DEFENDANT HARRISON FLOYD’S GENERAL DEMURRER TO COUNT 1
(ISSUE: LACK OF AGREEMENT TO JOIN CONSPIRACY)**

COMES NOW, DEFENDANT HARRISON FLOYD, by counsel, pursuant to this Court’s standing order to file one motion per issue, and files his demurrer to Count 1 of the State’s political indictment entitled Violation of the Georgia RICO Act § 16-14-4 (c).

Under well-established Georgia RICO law, the state must show that Mr. Floyd *knowingly and willfully* joined a conspiracy to violate Georgia’s RICO Act through one of two possible legal avenues: 1) by showing an affirmative agreement to the overall objective, or 2) by showing that the defendant agreed to commit two predicate acts (either by words of affirmation or by actually committing the acts).¹ Specifically, Mr. Floyd demurs on this issue as follows:

1. Count 1 fails to state a crime under Georgia law because the indictment does not allege *anything* showing Mr. Floyd *knowingly* and *willfully* joined a conspiracy to violate Georgia’s RICO Act.

a. There are no allegations that Mr. Floyd *affirmatively agreed* to participate in

¹ To establish a RICO conspiracy violation under Georgia law, the state must show that the defendant agreed to join or participate in the conspiracy. *Cotman v. State*, 342 Ga. 569, 585 (2017); *United States v. Browne*, 505 F.3d 1229, 1264 (11th Cir. 2007). An agreement can be shown in either of “two ways: ‘(1) by showing an **agreement on an overall objective**, or (2) ... by showing that a defendant **agreed personally to commit two predicate acts** and therefore to participate in a “single objective” conspiracy.’” (emphasis added) *United States v. Starrett*, 55 F.3d 1525, 1544 (11th Cir. 1995) (quoting *United States v. Church*, 955 F.2d 688, 694 (11th Cir.)); See *United States v. Browne*, 505 F.3d 1229, 1264 (11th Cir. 2007); *United States v. Abbell*, 271 F.3d 1286, 1299 (11th Cir. 2001).

the conduct and overall objective of the alleged RICO enterprise; or,

b. There are no allegations that Mr. Floyd agreed to commit, or committed, two or more predicate acts.² The indictment's allegations purport to show two predicate acts at Act 120 and 121. However, since these acts arise out of or are only shown in a single transaction, there is only one predicate act, not two.³

WHEREFORE, Mr. Floyd moves this Court to sustain his demurrer and quash Count I of the indictment.

Respectfully submitted this the 27th day of October, 2023.


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² The Court's order dated October 17, 2023 denying the demurrers of Powell and Chesebro, affirms that "[t]he State need not have asserted that [defendant] personally participated in even a single predicate offense to sufficiently allege the RICO count." As the Court is of course aware, this exposition of the law can only be true if the State can show the defendant "knowingly and willfully join[ed] a conspiracy," through one of the alternative methods (i.e., affirmatively agreeing to join in the overall conspiracy or agreeing to commit predicate acts in the future). See *Cotman v. State*, 342 Ga. App. 569 (2017) ("under Georgia law, a person may be found guilty of a RICO conspiracy 'if they knowingly and willfully join a conspiracy which itself contains a common plan or purpose to commit two or more predicate acts'"). The fact that an agreement to join a conspiracy *can* be shown under an alternate method requiring two predicate acts does not conflate the elements of a RICO conspiracy violation with those of a substantive RICO violation. If the government shows defendant agreed to the overall objective, then defendant's predicate acts are irrelevant for showing an agreement. *United States v. Starrett*, 55 F.3d 1525, 1544 (11th Cir. 1995); *Salinas v. United States*, 522 U.S. 52, 63-65 (1997) (a defendant "who does not [] commit or agree to commit the two or more predicate acts" is not "excuse[d] from the reach of the conspiracy provision" so long as the government can show the defendant agreed to the overall criminal plan or objective.). While it is true that conspirators can be responsible for the overt acts committed by coconspirators, such imputed liability based on other's actions only comes into play *after* it has been shown that defendant knowingly and willfully agreed to join the conspiracy.

³ In order for there to be two predicate acts, the two actions *must not arise* out of a single transaction. It is irrelevant whether one predicate act could result in multiple criminal charges. It still constitutes only one act. See *Stargate Software Int'l, Inc. v. Rumph*, 224 Ga. App. 873, 877 (1997) (the taking and wrongful use of computer equipment and records is one single transaction even though the "elements of two crimes may have been present at two separate points in time"); *Raines v. State*, 219 Ga. App. 893, 894 (1996) (the sale of timber land by a single deed cannot be broken down into the two predicate acts of theft by taking and filing of fraudulent documents; the issue is not whether party could have been charged with two separate criminal offenses); *Emrich v. Winsor*, 198 Ga. App. 333 (1991) (the sale of a single investment to a plaintiff and co-investor did not constitute a pattern but simply a single transaction with two victims).

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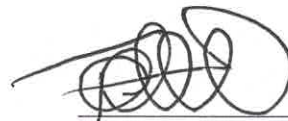
CERTIFICATE OF SERVICE

This is to certify that I have this day served the District Attorney of Fulton County, Georgia a true and correct copy of the **DEFENDANT HARRISON FLOYD'S GENERAL DEMURRER TO COUNT 1 (ISSUE: LACK OF AGREEMENT TO JOIN CONSPIRACY)** via electronic transmission through the Odyssey automated system to all counsels of record:

Fani T. Willis, Fulton County DA
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Respectfully submitted this the 27th day of October, 2023.

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