

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

Case No. 23SC188947

v.

DONALD JOHN TRUMP,  
RUDOLPH WILLIAM LOUIS GIULIANI,  
JOHN CHARLES EASTMAN,  
MARK RANDALL MEADOWS,  
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,  
HARRISON WILLIAM PRESCOTT  
FLOYD,  
TREVIAN C. KUTTI,  
CATHLEEN ALSTON LATHAM,  
SCOTT GRAHAM HALL, and  
MISTY HAMPTON,

Defendants.

**DEFENDANT SHAFER'S RESPONSE IN OPPOSITION TO  
STATE'S EMERGENCY MOTION FOR A PROTECTIVE ORDER  
OVER DISCOVERY MATERIALS  
AND PROPOSED PROTECTIVE ORDER**

Defendant David Shafer files this Response in Opposition to State's Emergency Motion for a Protective Order Over Discovery Materials and Proposed Protective Order, hereby opposing the State's Emergency Motion for a Protective Order Over Discovery Materials (Emergency Motion) and its proposed protective order over discovery materials, requesting that they be denied. In the event that the Court determines that any protective order relating to discovery materials is necessary, Defendant Shafer, Defendant Donald Trump, Defendant Ray Smith, Defendant Robert Cheeley, Defendant Shawn Still

and Defendant Cathleen Latham join in submitting an alternative proposed Protective Order, attached as Exhibit 1.

The State previously filed a Motion for a Protective Order Over Discovery Materials, contending that a protective order over discovery materials provided by the State was allegedly necessary to prevent threats or harassment to witnesses. The State now moves on an emergency basis, citing today's publication of video recorded proffers of witnesses by the news media. *See* Emergency Motion, p. 2. The prosecution maintains that the release of the proffers was clearly intended to intimidate witnesses, and constitutes a violation of the Defendants' conditions of release. *Id.* at 3. Neither Mr. Shafer nor any members of his defense team had any involvement in providing the proffers to members of the news media, and have no knowledge concerning who was responsible for the disclosure.

The State has failed to meet its burden of establishing that a protective order should be issued over discovery materials which the State is required to produce based upon a substantial threat of physical or economic harm to a particular witness under O.C.G.A. § 17-16-4(d). The State has furthermore submitted a proposed "Protective Order Over Discovery Materials" which broadly restricts the Defendants' and the defense's use of any and all discovery materials produced by the State, without any showing regarding how the conditions imposed therein allegedly serve the purpose of protecting witnesses from alleged harm.

Mr. Shafer submits that some limitation on the use of discovery materials produced in this action is reasonable, and he and former President Trump, Mr. Smith, Mr. Cheeley, Mr. Still and Mrs. Latham submit their own proposed Protective Order, attached, for that purpose. No one associated with the defense wishes for any parties,

counsel or potential witnesses in relation to this action to be subject to any harassment, much less any harm, as a result of any use of the discovery materials. However, the State has proffered no evidence which could be relied upon to grant its proposed order restricting the defense's use of discovery materials. Section 17-16-4(d) provides:

(d) Upon *a sufficient showing that a discovery required by this article would create a substantial threat of physical or economic harm to a witness*, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make such other order as is appropriate.

O.C.G.A. § 17-16-4(d) (emphasis added). The State has failed to make any showing under Section 17-16-4(d), either in its initial Motion or Emergency Motion, that complying with its duties pursuant to the State's Criminal Procedure Discovery Act, O.C.G.A. §§ 17-16-1 *et seq.*, would allegedly create any substantial threat of physical or economic harm to any witness. *See* O.C.G.A. § 17-16-4(d). It fails to identify any specific material contained in its discovery which presumably would create a substantial threat of physical or economic harm to any witness. It furthermore neglects to identify any potential witnesses who allegedly face "a substantial threat of physical or economic harm." *See* O.C.G.A. § 17-16-4(d). The Court is not required to accept the State's conclusory statements as true. *See Mabra v. SF, Inc.*, 316 Ga. App. 62, 65–66 (2012) (citing *Novare Group, Inc. v. Sarif*, 290 Ga. 186, 191 (2011); *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The State has failed to meet its burden of demonstrating that it is entitled to the issuance of any protective order by the Court pursuant to Section 17-16-4(d), and its Motion and Emergency Motion should appropriately should be denied.

The Criminal Procedure Discovery Act contains no other legal basis for the State to restrict the Defendants' or the defense's use of any of the discovery which the Act mandates that the State produce, apart from meeting Section 17-16-4(d)'s requirement of

demonstrating a substantial threat of physical or economic harm to any witness. *See* O.C.G.A. § 17-16-4(d). The defense has not discovered any Georgia decisions which consider Section 17-16-4(d) in depth. However, Federal Rule of Criminal Procedure 16, governing criminal discovery in federal cases, provides, in relevant part, “Protective and Modifying Orders. At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” Fed. R. Crim. P. 16(d)(1). Federal courts have held that, under Rule 16(d)(1):

“The burden of showing ‘good cause’ is on the party seeking the order, and among the considerations to be taken into account by the court will be the safety of witnesses and others, a particular danger of perjury or witness intimidation, and the protection of information vital to national security.”

*United States v. Castellanos*, No. CR420-056, 2021 WL 886225, at \*3 (S.D. Ga. Mar. 8, 2021) (quoting *United States v. Cordova*, 806 F.3d 1085, 1090 (D.C. Cir. 2015)). Furthermore, “[a] finding of good cause must be based on a particular factual demonstration of potential harm, not on conclusory statements.” *United States v. Padilla-Galarza*, 990 F.3d 60, 77 (1st Cir. 2021) (quoting *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7 (1st Cir. 1986)).

### **CONCLUSION**

Based upon the grounds and authorities set forth herein, Defendant David Shafer requests that the State’s Motion for a Protective Order Over Discovery Materials, the State’s Emergency Motion for a Protective Order Over Discovery Materials and the State’s proposed protective order over discovery materials be denied. In the event that the Court determines any protective order over discovery materials to be necessary, Defendant Donald Trump, Defendant Ray Smith, Defendant Robert Cheeley, Defendant Shawn Still

and Defendant Cathleen Latham request that the Court adopt Defendants' proposed Protective Order, attached hereto.

Respectfully submitted, this 14th day of November, 2023.

/s/ Craig A. Gillen

Craig A. Gillen

Georgia Bar No. 294838

Anthony C. Lake

Georgia Bar No. 431149

GILLEN & LAKE LLC

400 Galleria Parkway

Suite 1920

Atlanta, Georgia 30339

(404) 842-9700

[cgillen@gwllawfirm.com](mailto:cgillen@gwllawfirm.com)

[aclake@gwllawfirm.com](mailto:aclake@gwllawfirm.com)

*Counsel for David J. Shafer*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 14th day of November, 2023, filed the foregoing filing with the Court using the Court's Odyssey eFileGa system, serving copies of the filing on all counsel of record in this action, and furthermore have sent a copy of the filing to the parties and the Court.

*/s/ Craig A. Gillen* \_\_\_\_\_

Craig A. Gillen

Georgia Bar No. 294838

Anthony C. Lake

Georgia Bar No. 431149

GILLEN & LAKE LLC

400 Galleria Parkway

Suite 1920

Atlanta, Georgia 30339

(404) 842-9700

[cgillen@gwllawfirm.com](mailto:cgillen@gwllawfirm.com)

[aclake@gwllawfirm.com](mailto:aclake@gwllawfirm.com)

*Counsel for David J. Shafer*

**EXHIBIT 1**

**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,  
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,  
HARRISON WILLIAM PRESCOTT  
FLOYD,  
TREVIAN C. KUTTI,  
CATHLEEN ALSTON LATHAM,  
SCOTT GRAHAM HALL,  
MISTY HAMPTON

Indictment No.  
23SC188947

**PROTECTIVE ORDER**

The Court enters this Protective Order concerning discovery materials produced by the State to the defendants, **ORDERING** as follows:

1. This Protective Order does not apply to information or records that are publicly available independent of the State's discovery productions to the defendants, information or records which the defendants or defense counsel came into possession by independent means, unrelated to the discovery process, or information or records which has been filed or received in evidence in any other court proceeding.
2. For the purposes of this Protective Order, "Sensitive Materials" shall mean any evidence within the State's discovery productions to the defendants and their counsel which the State



believes in good faith is entitled to confidential treatment under applicable law, and which the State designates as Sensitive Materials.

3. The State shall review its discovery productions to the defendants or their counsel and shall specifically designate any evidence and the basis for the designation which the State believes in good faith constitutes Sensitive Materials in writing, served on the Court and the defendants or their counsel, within 30 days of the date of this Protective Order. For each item of evidence which the State believes constitutes Sensitive Materials, the State shall state in writing served on the Court and the defendants or their counsel the grounds on which the item of evidence is contended to constitute Sensitive Materials.

4. The State shall designate any evidence believed to constitute Sensitive Materials in all future productions of discovery to the defendants or their counsel at the time of production. The State shall physically label any and all documentary evidence designated as Sensitive Materials in any future productions with the legend "Sensitive," and shall label any other types of evidence designated as Sensitive Materials in any future productions with the word "Sensitive" at the end of the filename.

5. The defendants and counsel shall have fourteen (14) days from production of any discovery designated as Sensitive Materials to notify the State that the defense contests the designation. If the parties are unable to come to agreement on whether the discovery is appropriately designated as Sensitive Materials and a motion is filed with the Court, the defense shall continue to treat the disputed discovery as Sensitive Materials until the motion is ruled upon by the Court.

6. The defendants and their counsel and their counsel's co-counsel, employees, assistants, paralegals, consultants, agents, experts or potential witnesses may use evidence designated by the State as Sensitive Materials solely in connection with the defense of this action and for no other

purpose, and in connection with no other proceeding, without further order of this Court. This Protective Order is intended to allow the defendants and their counsel the broadest and least restricted use of evidence produced by the State to the defendants and their counsel consistent with any good faith concerns by the State regarding sensitive information. The defendants and their counsel shall provide a copy of this Protective Order to any persons or entities to whom the defendants or their counsel disclose any evidence designated by the State as Sensitive Materials and shall (1) require such persons or entities to sign and date a copy of this Protective Order, and (2) retain such signed and dated copies for inspection by the Court.

7. The defendants and their counsel shall not otherwise disclose evidence designated by the State as Sensitive Materials to any persons or entities other than employees, assistants, paralegals, consultants, agents, experts or potential witnesses connected to the defendants' defense of this action or to counsel for other parties without further order of this Court.

8. The defendants and their counsel and their counsel's co-counsel, employees, assistants, paralegals, consultants, agents, experts shall keep any evidence designated by the State as Sensitive Materials in their custody and control.

9. Any evidence designated by the State as Sensitive Materials shall not be filed with the Court except under seal, and shall not be introduced in any trial or hearing in this action without having redacted from the evidence any information required to be redacted from filings pursuant to O.C.G.A. § 9-11-7.1(a). In addition to the information required to be redacted from filings pursuant to O.C.G.A. § 9-11-7.1(a), the parties shall redact any residential addresses, telephone numbers and email addresses from any evidence designated by the State as Sensitive Materials from any evidence introduced in any trial or hearing in this action.

10. This Protective Order does not alter, waive, modify, or abridge any right, privilege or protection otherwise available to any party with respect to discovery.

11. Any party may move for modification of this Protective Order.

12. Inadvertent production of any evidence designated by the State as Sensitive Materials to any person or entity shall not alter, waive, modify, or abridge the status of the evidence as Sensitive Materials. In the event that evidence designated by the State as Sensitive Materials is inadvertently disclosed, the party that inadvertently disclosed the evidence shall give written notice of such inadvertent disclosure to the State within seven days of the discovery of the inadvertent disclosure, and shall (1) take all reasonable efforts to cause the person or entity to whom the Sensitive Materials were disclosed to return or destroy the Sensitive Materials and any copies thereof, and (2) request such persons or entities to sign and date a copy of this Protective Order and retain such copies for inspection by the Court whether signed and dated, or not.

13. Within 30 days following the conclusion of this action or any appeal of this action or any collateral challenge to this action, the defendants and their counsel shall destroy all evidence designated by the State as Sensitive Materials and any copies thereof.

**SO ORDERED** this, the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Judge Scott McAfee  
Fulton Superior Court  
Atlanta Judicial Circuit

*Service via eFileGa.*