

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

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**STATE'S CONSOLIDATED RESPONSE TO DEFENDANT  
HARRISON FLOYD'S GENERAL DEMURRER TO COUNTS 1, 30, AND 31,  
DEMURRER TO COUNTS 1 & 30, AND SPECIAL DEMURRER TO COUNT 31**

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Harrison William Prescott Floyd's General Demurrer to Counts 1, 30 and 31, Demurrer to Counts 1 & 30, and Special Demurrer to Count 31. The Defendant seeks dismissal of the indictment issued by a Fulton County grand jury, arguing, among other things, that the indictment is impermissibly vague and that it fails to allege certain facts such that he cannot prepare an intelligent defense. The Defendant's arguments are meritless, and for the reasons set forth below, the Court should overrule all of his demurrers.

**I. The indictment’s reference to unnamed, unindicted co-conspirators does not render it “vague and ambiguous,” and the other information the Defendant claims is missing from the indictment is, in fact, pled with exacting specificity.**

The Defendant complains that the indictment is subject to general demurrer<sup>1</sup> because it “fails to sufficiently identify all parties and conduct involved in the alleged crimes” by referring to unnamed, unindicted co-conspirators and refers generally to “other unidentified conduct within and without the State of Georgia.” Def.’s Gen. Dem. Cts. 1, 30, and 31 at 1, Jan. 5, 2024. The Defendant’s argument fails for two reasons. First, not only is it not required for an indictment to name unindicted co-conspirators—and the Defendant cites nothing to the contrary—persuasive federal authority suggests that naming unindicted co-conspirators is beyond the power of a grand jury and violates the due process rights of those who are named in an indictment but not charged. *United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975). Further, the Defendant was provided with the identities of all unnamed, unindicted co-conspirators listed in the indictment in discovery.

Second, the Defendant’s general demurrer based on the indictment’s reference to “other unidentified conduct within and without the State of Georgia” is unavailing. Here, while Count 1 makes reference to acts committed “in Fulton County, Georgia, elsewhere in the State of Georgia, and in other states,” Indictment at 14, that conduct is in no way “unidentified.” The indictment specifies that the RICO enterprise operated “in Fulton County, Georgia, elsewhere in the State of Georgia, in other states, including, but not limited to, Arizona, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin, and in the District of Columbia.” *Id.* at 15. The indictment further specifies what the conduct in other states was: (1) false statements to state legislators in Arizona, Michigan, and Pennsylvania, *Id.* at 16; (2) false statements to and solicitation of high-ranking state

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<sup>1</sup> It should be noted that these arguments are not properly categorized as general demurrers, as they do not claim that the indictment fails to allege facts that constitute the charged crime. Still, the State substantively responds because the Defendant’s arguments are substantively meritless.

officials in Arizona, Michigan, and Pennsylvania, *Id.* at 17; (3) creation and distribution of false electoral college documents in Arizona, Michigan, New Mexico, Pennsylvania, and Wisconsin, *Id.*; (4) solicitation of the vice president of the United States to reject votes cast by the duly elected and qualified presidential electors “from several other states,” *Id.* at 18; (5) the unlawful breach of election equipment in Coffee County, Georgia, and in other states, *Id.*; and (6) obstructive acts in furtherance of the conspiracy and the cover up “in Fulton County, Georgia, and elsewhere,” *Id.* at 19. Finally, the list of 161 alleged acts of racketeering activity and overt acts in furtherance of the conspiracy sets forth with specificity acts committed by the Defendant and his co-conspirators in various states, spanning more than 50 pages of the indictment. *Id.* at 20-71.

The information the Defendant claims is missing from the indictment is either not required to be pled or *is* pled, with exacting specificity, throughout the 98-page indictment. While the document may be daunting to read in its entirety, the indictment in no way leaves the Defendant wondering what conduct, committed in Georgia and elsewhere, forms the bases of the charges. The Defendant’s general demurrer on these grounds is without merit.

**II. The Defendant’s claim that the Georgia Bureau of Investigation had no jurisdiction to investigate election-related crimes in 2020 is a void speaking demurrer, but in any case, the GBI clearly had jurisdiction.**

The Defendant argues that Count 30 is subject to general demurrer because the “Georgia Bureau of Investigations [sic] did not acquire jurisdiction to investigate conduct relating to [elections] until 2022, as a matter of law.” Def.’s Gen. Dem. Cts. 1, 30, and 31 at 2, Jan. 5, 2024. As a threshold matter, “a demurrer (whether general or special) must allege some flaw on the face of the indictment itself; a demurrer ordinarily cannot rely on extrinsic facts that are not alleged in the indictment.” *State v. Williams*, 306 Ga. 50, 53 (2019). A demurrer that relies on extrinsic facts not appearing on the face of the indictment “is a speaking demurrer that presents no authority for

quashing an indictment and is void.” *Id.* (cleaned up). Here, whether the false statements the Defendant conspired to solicit from Ruby Freeman, as alleged in Count 30, fell within the jurisdiction of the GBI is a matter of fact to be determined by the jury after hearing all of the evidence at trial. It cannot be grounds for pre-trial dismissal.

In any case, the GBI clearly had jurisdiction to investigate certain election-related crimes in 2020, and the Defendant’s argument to the contrary is meritless. Georgia’s appellate courts have adopted the United States Supreme Court’s definition of “jurisdiction” for purposes of O.C.G.A. § 16-10-20, noting that the term “should not be given a narrow or technical meaning . . . .” *Tester v. State*, 295 Ga. App. 569, 577 (2009). Simply put, “the word ‘jurisdiction’ as used in the statute must mean simply the power to act upon information when it is received.” *Id.* (quoting *United States v. Rogers*, 466 U.S. 475, 479 (1984)). The phrase “‘within the jurisdiction’ merely differentiates the official, authorized functions of an agency or department from matters peripheral to the business of that body.” *Id.* In light of this definition, the solicited statements clearly concerned matters within the jurisdiction of the GBI.

First, pursuant to the 2020 version of O.C.G.A. § 35-3-4(a)(11), “It shall be the duty of the bureau to . . . identify and investigate violations of Article 8 of Chapter 9 of Title 16.” That article concerns identity fraud. Accordingly, the GBI not only had the authority but was *duty-bound* to identify and investigate allegations of identity fraud following the November 3, 2020, presidential election in Georgia. The Defendant and his co-conspirators made countless claims that dead people voted, that fictitious identities were used to cast fraudulent votes, and that malfeasants used legitimate voters’ personal identifying identification to cast fraudulent votes. These claims clearly fall within the GBI’s statutory duty in place in 2020 to identify and investigate identity fraud.

Moreover, pursuant to the 2020 version of O.C.G.A. § 35-3-4(b), “[i]n addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the Department of Public Safety under this title.” The 2020 version of O.C.G.A. § 35-2-33(a)(2)(A) provides that “[i]t shall be the duty of the Uniform Division [of the Department of Public Safety] on property owned by this state or any agency thereof to enforce the criminal laws of this state.” (cleaned up). Accordingly, the GBI not only had the authority but was duty-bound to enforce Georgia’s criminal laws on all state-owned property, including the Georgia State Capitol. This broadly places within the GBI’s statutory jurisdiction any post-election matters concerning false statements made at the Capitol, false statements or documents directed to Georgia officials on state-owned property, and any other criminal conspiracy entered into or involving any overt act occurring on state-owned property.

Finally, GBI lawyers and agents have broad authority to assist both prosecuting agencies and outside law enforcement agencies with prosecution and investigation into any criminal case upon request of a district attorney, police chief, sheriff, judge of a superior court, or governor. Pursuant to the 2020 version of O.C.G.A. § 35-3-4(a)(16), GBI lawyers could serve at the request of a district attorney “in the prosecution of any civil or criminal case within the jurisdiction of such district attorney” with “the same authority and power as an attorney employed by such district attorney.” Pursuant to the 2020 version of O.C.G.A. § 35-3-8.1, the GBI’s director could “direct the bureau to render assistance in any criminal case, in the prevention or detection of violations of law, or in the detection or apprehension of persons violating the criminal laws of this state, any other state, or the United States.” Either of these provisions could have placed a wide range of election-related crimes within the jurisdiction of the GBI.

The Defendant's purported general demurrer on the grounds that the GBI had no jurisdiction to investigate criminal conduct related to elections in 2020 is both a void speaking demurrer and is wrong as a matter of fact and law. The Court should overrule it.

**III. Count 31 properly alleges the essential elements of Influencing Witnesses in violation of O.C.G.A. § 16-10-93(b)(1)(A) and is not subject to general demurrer.**

The Defendant argues that Count 31 is subject to general demurrer “because the allegations as stated fail to state a crime under Georgia law, as a matter of law.” Def.’s Gen. Dem. Cts. 1, 30, and 31 at 2, Jan. 5, 2024. The Defendant is flatly wrong. The Defendant is charged pursuant to O.C.G.A. § 16-10-93(b)(1)(A), the essential elements of which are as follows: (1) knowingly to engage in misleading conduct toward another person; (2) with intent to influence, delay, or prevent the testimony of any person in an official proceeding. Count 31 alleges that the Defendant and co-conspirators (1) “knowingly and unlawfully engaged in misleading conduct toward Ruby Freeman, a Fulton County, Georgia, election worker, by stating that she needed protection and by purporting to offer her help” (2) “with intent to influence her testimony in an official proceeding in Fulton County, Georgia, concerning events at State Farm Arena in the November 3, 2020, presidential election in Georgia.” Indictment at 89 (emphasis added). The indictment precisely tracks the statutory language of O.C.G.A. § 16-10-93(b)(1)(A), and “deeply embedded within our case law is the concept that a charging instrument that tracks the statutory language of a criminal offense is sufficient to survive general demurrer.” *Tate-Jesurum v. State*, 368 Ga. App. 710, 711 (2023) (citing *State v. Mondor*, 306 Ga. 338, 344 (2019)).

Moreover, “to assess the merits of a general demurrer, which challenges the sufficiency of the substance of the indictment, a court asks whether the defendant can admit each and every fact alleged in the indictment and still be innocent of any crime.” *State v. Williams*, 306 Ga. 50, 52 (2019) (cleaned up). Here, where the Defendant’s argument is essentially that an allegation in the

indictment is factually wrong (“The statements alleged in the Indictment are not misleading.” Def.’s Gen. Dem. Cts. 1, 30, and 31 at 2, Jan. 5, 2024.), he instantly transmogrifies his general demurrer into something else altogether: an election to join issue and proceed to trial.

The Defendant’s general demurrer to Count 31 should be overruled.

**IV. Count 1, Act 120, like any overt act alleged in a conspiracy charge, is not subject to particular pleading requirements, and Count 30 is properly alleged to survive both general and special demurrer.**

The Defendant argues that Count 1, Act 120 and Count 30 are subject to demurrer because the indictment does not identify a specific false statement he and his co-conspirators solicited Ruby Freeman to make.<sup>2</sup> Def.’s Dem. Cts. 1 & 30 at 1-2, Jan. 5, 2024. He does not specify whether his challenge is a general or special demurrer, but in any case, the counts at issue are subject to neither. The Defendant’s argument as to Count 1, Act 120 is easily dispensed with. As the Georgia Supreme Court recently held, there is “no authority requiring the indictment to set forth the particulars of [an] overt act ... .” *Sanders v. State*, 313 Ga. 191, 197 (2022) (quoting *Bradford v. State*, 283 Ga. App. 75, 78 (2006) (holding that overt acts in a conspiracy charge do not have to be alleged with particularity and all that is required is a reference to the alleged overt act)). Count 1, Act 120 is not subject to demurrer.

The Defendant’s challenge to Count 30 also fails. A “charging instrument that tracks the statutory language of a criminal offense is sufficient to survive general demurrer.” *Tate-Jesurum*,

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<sup>2</sup> The Defendant further complains that “the State charged Count 30 as a conspiracy in order to manufacture venue and avoid venue problems with Cobb County.” Def.’s Dem. Cts. 1 & 30 at 1, Jan. 5, 2024. As this Court well knows, in conspiracy cases, “both the corrupt agreement and an overt act must be proved; venue may be laid in the county of either, or, if there are several overt acts, in a county where any of them was committed.” *Chancey v. State*, 256 Ga. 415, 433 (1986). By conspiring to commit a crime with Defendant Kutti, who traveled to and committed overt acts in furtherance of the conspiracy in Fulton County, Georgia, the Defendant subjected himself to being both charged and brought to trial in Fulton County, Georgia.

368 Ga. App. at 711. Here, where the Defendant is charged with conspiracy to commit a crime, the essential elements that must be alleged in an indictment are set forth in O.C.G.A. § 16-4-8: (1) a person “together with one or more persons conspires to commit any crime”; and (2) “any one or more of such persons does any overt act to effect the object of the conspiracy.” *Sanders*, 313 Ga. at 200. Count 30 alleges that (1) the Defendant, together with Defendants Lee and Kutti, “unlawfully conspired to solicit, request, and importune Ruby Freeman, a Fulton County, Georgia, election worker, to engage in conduct constituting the felony offense of False Statements and Writings, O.C.G.A. § 16-10-20 ... with intent that said person engage in said conduct” and (2) that Defendant Kutti “traveled to Fulton County, Georgia, and placed a telephone call to Ruby Freeman while in Fulton County, Georgia, which were overt acts to effect the object of the conspiracy.” Indictment at 89 (emphasis added). The indictment precisely tracks the statutory language of O.C.G.A. § 16-4-8 and survives general demurrer.

Count 30 also survives special demurrer. While a defendant is entitled to an indictment “perfect in form, ... an indictment does not have to contain every detail of the crime to withstand a special demurrer.” *Kimbrough v. State*, 300 Ga. 878, 881 (2017) (cleaned up). A special demurrer is “without merit” where the allegations in the indictment sufficiently inform a defendant “what actions of [his are] at issue.” *Davis v. State*, 272 Ga. 818, 820 (2000). “[T]he purpose of an indictment is to allow [the] defendant to prepare his defense intelligently and to protect him from double jeopardy.” *Sanders*, 313 Ga. at 195. An indictment satisfies due process where it alleges the underlying facts with enough detail to put “the defendant on notice of the crimes with which he is charged and against which he must defend.” *Dunn v. State*, 263 Ga. 343, 345 (1993).

While each count of an indictment must within itself allege the essential elements of the crime charged, when considering a special demurrer, “the indictment is read as a whole,” and



factual details alleged in one count of the indictment can “provide[] the information [a defendant] complains is missing from” another count. *Sanders*, 313 Ga. at 196-197. Moreover, while a defendant “may desire greater detail about [a charge] ... [i]t is not required that the indictment give every detail of the crime,” and additional detail desired “may be supplemented ... by the pretrial discovery [he] receives and any investigation [his] counsel conducts.” *Id.* at 196. “[I]t is not necessary for the [S]tate to spell out in the indictment the evidence on which it relies for a conviction.” *Stapleton v. State*, 362 Ga. App. 740, 747 (2021).

Boiled down, the Georgia Supreme Court adopted the same fundamental test first set forth nearly 130 years ago by the United States Supreme Court to determine whether an indictment is constitutionally sufficient to withstand special demurrer<sup>3</sup>:

[The test] is not whether [the indictment] could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

*Sanders*, 313 Ga. at 195; *Compare Sanders, State v. Wyatt*, 295 Ga. 257, 260 (2014), and *State v. English*, 276 Ga. 343, 346 (2003), with *Cochran v. United States*, 157 U.S. 286, 290 (1895). Where the bedrock principles underpinning challenges to an indictment are nearly identical under both Georgia and federal law, the Court should view federal authority as instructive. As the former Fifth Circuit sagely counseled:

[Courts should] “examine into, and determine, the validity of attacks upon indictments, especially of this kind, from an enlightened standpoint of common sense and right reason rather than from the narrow standpoint of petty preciosity, pettifogging, technicality or hair splitting fault finding.” Although indictments must

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<sup>3</sup> Unlike Georgia’s extraordinary remedy of dismissal of a count for failing to meet this test, the analogous federal remedy is the filing of a bill of particulars by the government pursuant to Federal Rule of Criminal Procedure 7(f).

be specific and precise as to the acts and crime charged, *the law does not compel a ritual of words.*

*United States v. Purvis*, 580 F.2d 853, 857 (5th Cir. 1978) (emphasis added) (quoting *Parsons v. United States*, 189 F.2d 252, 253 (5th Cir. 1951)).

Here, Count 30 is sufficient to survive special demurrer. The count sets forth the essential elements of conspiracy to commit a crime; it sufficiently apprises the Defendant of what of his own conduct is at issue and what he must be prepared to meet; and it is sufficiently pled to protect against double jeopardy. *Sanders*, 313 Ga. at 195. In pertinent part, the indictment sets forth that:

- 1) Defendant Trump lost the United States presidential election held on November 3, 2020, in Georgia, Indictment at 14;
- 2) Members of the enterprise, including the Defendant, falsely accused Fulton County election worker Ruby Freeman of committing election crimes in Fulton County, Georgia, *Id.* at 17;
- 3) Members of the enterprise, including the Defendant's co-conspirators, traveled from out of state to harass Freeman, *Id.*;
- 4) Members of the enterprise, including the Defendant, intimidated Freeman and solicited her to falsely confess to election crimes that she did not commit, *Id.*;
- 5) Defendant Lee solicited the Defendant, who was associated with Black Voices for Trump, to assist with his effort to speak to Freeman, *Id.* at 43;
- 6) Defendant Lee told the Defendant that Freeman would not talk to him because he was a white man, *Id.*;
- 7) The Defendant attempted to place two telephone calls and sent a text message to Freeman on January 3, 2021, *Id.* at 53;

- 8) The Defendant participated in at least 18 telephone calls with Defendants Lee and Kutti between January 3 and January 5, 2021, *Id.* at 53, 56, 59;
- 9) Defendant Kutti came to Freeman's home on January 4, 2021, spoke to Freeman's neighbor, and falsely stated that she was a crisis manager attempting to "help" Freeman, *Id.* at 54;
- 10) Defendant Kutti placed a telephone call to Freeman from Fulton County, Georgia, on January 4, 2021, stated that she could "help" Freeman, and requested that Freeman meet with and speak to her later that night at a Cobb County Police Department precinct in Cobb County, Georgia, *Id.*;
- 11) Defendant Kutti met Freeman at a Cobb County Police Department precinct on January 4, 2021, and placed an approximately one-hour-long telephone call to the Defendant, during which the Defendant and Defendant Kutti stated to Freeman that she needed protection and purported to offer her help, *Id.*;
- 12) The Defendant and Defendants Lee and Kutti conspired to solicit, request, and importune Freeman to commit the offense of False Statements and Writings, O.C.G.A. § 16-10-20, *Id.* at 55, 89;
- 13) The Defendant and Defendants Lee and Kutti wanted Freeman to make a false statement and representation concerning events at State Farm Arena in the November 3, 2020, presidential election in Georgia, specifically soliciting her to falsely confess to election crimes that she did not commit, *Id.* at 17, 55, 89;
- 14) The false statements solicited by the Defendant and Defendants Lee and Kutti concerned matters within the jurisdiction of the Georgia Secretary of State, the GBI, and county and city law enforcement agencies, *Id.* at 55, 89;

15) The Defendant and Defendants Lee and Kutti actually intended that Freeman commit False Statements and Writings, O.C.G.A. § 16-10-20, *Id.*; and

16) Part of the conspiracy to solicit false statements was to engage in misleading conduct toward Freeman by stating that she needed protection and purporting to offer her help, *Id.*

Based on these specific, factual allegations, all appearing on the face of the indictment, the Defendant has sufficient notice to prepare a defense to the charge of conspiracy to commit solicitation of false statements and writings, “notice that may be supplemented, of course, by the pretrial discovery he receives and any investigation his counsel conducts.” *See State v. Wyatt*, 295 Ga. 257, 263 (2014). With these allegations in mind, Count 30 clearly passes the three-part test reiterated in case after case concerning special demurrers in Georgia: (1) it contains the elements of the offense charged; (2) it sufficiently apprises the Defendant of what of his own conduct he must be prepared to defend at trial; and (3) it is sufficient to protect against double jeopardy. *Sanders*, 313 Ga. at 195; *Wyatt*, 295 Ga. at 260; *State v. Grube*, 293 Ga. 257, 258 (2013); *State v. English*, 276 Ga. 343, 346 (2003).

The Court should overrule the Defendant’s demurrer to Count 1, Act 120 and Count 30.

**V. Count 1, Act 120, like any overt act alleged in a conspiracy charge, is not subject to particular pleading requirements, and while Count 30 is not required to identify the matter “giving rise to jurisdiction,” it does.**

The Defendant complains that Count 1, Act 120 and Count 30 are subject to demurrer because they fail to identify the “matter” within the jurisdiction of the Georgia Secretary of State, the GBI, and county and city law enforcement agencies. Def.’s Dem. Cts. 1 & 30 at 2-3, Jan. 5, 2024. First, as set forth above, overt acts are not required to be alleged with particularity, and Count 1, Act 120 is not subject to demurrer. *Sanders*, 313 Ga. at 197. Second, as set forth above, Count 30 is sufficiently alleged to survive both general and special demurrer without any additional

language. Finally, the indictment does allege the matter: “events at State Farm Arena in the November 3, 2020, presidential election in Georgia.” Indictment at 89. The Court should reject the Defendant’s argument and overrule his demurrer.

**VI. Count 30 is not required to allege details showing how the Defendant intended for Freeman to use the false statements or representations to violate the law.**

The Defendant relies on *Sanders* to argue that Count 30 fails to plead sufficient details on how he intended that Freeman violate the law. Def.’s Dem. Cts. 1 & 30 at 3-4, Jan. 5, 2024. As set forth above, the Defendant is charged with conspiracy to commit a crime—not criminal solicitation, the charge in *Sanders*, which has entirely different essential elements—and Count 30 is sufficiently alleged to survive both general and special demurrer without any additional language. Moreover, the Defendant misconstrues *Sanders*. Nothing in that case stands for the proposition that an indictment must detail “how the defendant intended the [solicited] individual to violate the law.” Def.’s Dem. Cts. 1 & 30 at 3, Jan. 5, 2024. *Sanders* simply held that the criminal solicitation count in that case, which only recited bare-bones statutory language without alleging *any* underlying facts at all, was insufficient to withstand special demurrer. 313 Ga. at 202. Here, as set forth above, Count 30, when read together with corresponding allegations in Counts 1 and 31, alleges numerous underlying facts that apprise the Defendant of what he must be prepared to meet. The Court should reject the Defendant’s argument and overrule his demurrer.

**VII. The Defendant’s special demurrer to Count 31 is a void speaking demurrer.**

The Defendant claims that Count 31 is subject to special demurrer because, according to him, his “statement was not misleading and his offer of assistance came only after Ms. Freeman asked for help.” Def.’s Spec. Dem. Ct. 31 at 1, Jan. 5, 2024. He further argues that Freeman did need help, that the FBI “removed her from her home ‘for her protection,’” and that he could provide help and protection to Freeman. *Id.* The Defendant further complains that Count 31 fails

to provide detail on how he intentionally intended to influence Freeman’s testimony, what the testimony was, what official proceeding he was trying to influence, and how he knowingly engaged in misleading conduct.

To the extent that the Defendant seeks to introduce extrinsic facts or contest the facts as alleged in the indictment, his demurrer “is a speaking demurrer that presents no authority for quashing an indictment and is void.” *Williams*, 306 Ga. at 53. Moreover, when read as a whole alongside the facts set forth in Section VI, *supra*, Count 31 clearly passes the three-part test reiterated in case after case concerning special demurrers in Georgia: (1) it contains the elements of the offense charged; (2) it sufficiently apprises the Defendant of what of his own conduct he must be prepared to defend at trial; and (3) it is sufficient to protect against double jeopardy. *Sanders*, 313 Ga. at 195; *Wyatt*, 295 Ga. at 260; *Grube*, 293 Ga. at 258; *English*, 276 Ga. at 346. The indictment sufficiently alleges how the Defendant intended to influence Freeman’s testimony, the nature of what the solicited testimony would have been (“In furtherance of this scheme, members of the enterprise traveled from out of state to harass Freeman, intimidate her, and solicit her *to falsely confess to election crimes that she did not commit.*” Indictment at 17 (emphasis added).), and that the Defendant acted knowingly.

Finally, the indictment is not required to allege what official proceeding the Defendant was trying to influence. The term “official proceeding” broadly encompasses “any hearing or trial conducted by a court of this state or its political subdivisions, a grand jury, or an agency of the executive, legislative, or judicial branches of government of this state or its political subdivisions or authorities.” O.C.G.A. § 16-10-93(b)(3)(A). As set forth in O.C.G.A. § 16-10-93(b)(3)(B), an official proceeding “need not be pending or about to be instituted at the time of any offense defined in this subsection.” The indictment cannot be required to specify what official proceeding the

Defendant was trying to influence when the criminal statute at issue specifies that an official proceeding does not have to be pending or even about to be instituted at the time of the offense. Common sense demonstrates that, had Freeman falsely confessed to committing election crimes in Fulton County, her testimony would have been the focal point of any number of official proceedings in Fulton County—whether criminal court proceedings, civil court proceedings, legislative hearings, or hearings related to a State Election Board investigation. Moreover, Freeman testified before at least two Fulton County grand juries, in part because of the Defendant’s crimes against her. Had the Defendant’s crimes been successful, Freeman’s testimony would have certainly been markedly different, and it may never have occurred at all. The indictment is sufficiently pled to withstand demurrer, and it is for the jury to determine at trial whether the evidence is sufficient to prove the allegations in the indictment.

For the reasons set forth above, the Defendants’ demurrers should be overruled.

Respectfully submitted this 17th day of January 2024,

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Defendants.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of this STATE'S CONSOLIDATED RESPONSE TO DEFENDANT HARRISON FLOYD'S GENERAL DEMURRER TO COUNTS 1, 30, AND 31, DEMURRER TO COUNTS 1 & 30, AND SPECIAL DEMURRER TO COUNT 31 upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 17th day of January 2024,

**FANI T. WILLIS**  
District Attorney  
Atlanta Judicial Circuit



/s/ John W. "Will" Wooten

**John W. "Will" Wooten**

**Georgia Bar No. 410684**

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