

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

DAVID JAMES SHAFER *et al.*

Defendants.

Case No. 23SC188947

**DEFENDANT DAVID J. SHAFER'S REPLY IN SUPPORT OF
REOPENING EVIDENCE AND OPPOSITION TO STATE'S
MOTION TO STRIKE PROPOSED TESTIMONY.**

Defendant David J. Shafer respectfully files this Reply in Support of Reopening Evidence and Opposition to State's Motion to Strike Proposed Testimony, replying to and opposing the State's Response in Opposition to Reopening Evidence and Motion to Strike the Proposed Testimony of Cindi Yeager and Manny Arora (Response).

The prosecution objects to the defense's request to reopen the evidence relating to the defendants' motions to disqualify the District Attorney and Special Prosecutor Nathan Wade in order to present the testimony of Cindi Yeager, a Co-Deputy Chief Assistant District Attorney with the Cobb County District Attorney's Office, and attorney Manny Arora, counsel for Defendant Kenneth Chesebro. *See* Response, p. 2. The irony of the staff of one district attorney's office objecting to a member of another district attorney's office prepared to come forward and testify regarding the disqualification of a district attorney should not be lost on the Court.

The State's opposition to the testimony of Ms. Yeager and Mr. Arora is particularly perplexing in light of the fact that the prosecution itself had requested that this Court accept an affidavit (not sworn under penalty of perjury) from Mr. Herbert Brody, a wine salesperson or, in the event that the Court declined to accept Mr. Brody's affidavit,

requested that Mr. Brody be permitted to testify. *See* Notice of Filing State’s Proposed Supplemental Exhibit 1 to the Hearing on Defendants’ Motion to Dismiss and Disqualify. In making its request to present the testimony of Mr. Brody, the prosecution cited no alleged standards relating to “finality” or failure to present evidence in a timely manner. *See id.*; Response, pp. 1, 2 (quoting *Dominiak v. Camden Tel. & Tel. Co.*, 205 Ga. App. 620, 622 (1992); *Brawner v. Martin & Jones Produce Co.*, 116 Ga. App. 324, 325 (1967)).

“The object of all legal investigation is the discovery of truth.” O.C.G.A. § 24-1-1. “[I]t is this high goal that must govern and color all evidentiary and procedural rulings by a trial court.” *Montgomery v. State*, 156 Ga. App. 448, 451 (1980). The Court possesses the authority to schedule, as it deems appropriate, pre-trial conferences to hear motions, demurrers and pleas. *See* Ga. Unif. Super. Ct. R. 7.4. Moreover, it has control over the presentation of evidence for purposes of the ascertainment of truth. *See* O.C.G.A. § 24-6-611.

The defendants have presented evidence to support a finding that the District Attorney and Special Prosecutor Wade possess conflicts of interest, have knowingly engaged in a pattern of forensic misconduct, and have engaged in misconduct in relation to this case. The District Attorney’s conduct has created a clear appearance of impropriety which should not be permitted to undermine public trust in the impartiality of these proceedings and the administration of justice. In the interest of the ascertainment of the truth relating to the serious issues of prosecutorial misconduct raised by the defense, the Court should decline to strike the proposed testimony of Deputy Chief Assistant District Attorney Yeager and Mr. Arora, and should re-open the evidence to hear and consider their testimony.

Respectfully submitted, this 8th day of March, 2024.

/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
aclake@gwllawfirm.com

/s/ Holly A. Pierson

Holly A. Pierson
Georgia Bar No. 579655
PIERSON LAW LLC
2851 Piedmont Road NE, STE 200
Atlanta, GA 30305
(404) 353-2316
hpierson@piersonlawllc.com

Counsel for David J. Shafer

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 2024, 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 via electronic mail.

/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
aclake@gwllawfirm.com

Counsel for David J. Shafer