IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	
	CASE NO.
v.	
	23SC188947
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.	

STATE'S RESPONSE TO DEFENDANT SHAWN STILL'S PLEA IN BAR AND MOTION TO QUASH THE INDICTMENT UNDER O.C.G.A. § 16-3-20

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Shawn Still's Plea in Bar and Motion to Quash the Indictment.[1] The Defendant asks the Court to dismiss the indictment against him on the basis that his conduct was justified pursuant to O.C.G.A. §§ 16-3-20(5) and 16-3-20(6), but his motion is unsupported by law. The Defendant acknowledges that the defenses raised are

[1] The Defendant has filed two pleadings titled "Defendant Shawn Still's Plea in Bar and Motion to Quash the Indictment." The first was filed October 2, 2023. The second was filed January 5, 2024. This response addresses the pleading filed on January 5, 2024.

explicitly statutory and must be decided by the fact finder—in this case, the jury—at trial, but he maintains that the Court somehow has the authority to grant his motion prior to trial because he characterizes it as "constitutional" in nature. The Defendant is wrong. Affirmative defenses under O.C.G.A. § 16-3-20 cannot be raised prior to trial. For the reasons set forth below, the Court should deny the Defendant's plea in bar and motion to quash the indictment pursuant to O.C.G.A. § 16-3-20 without a hearing.

I. The defenses set forth in O.C.G.A. § 16-3-20 are affirmative defenses to be raised at trial and to be decided by the jury; they do not authorize pre-trial dismissal.

The Defendant asks the Court to dismiss the charges against him on grounds that his conduct was justified pursuant to the affirmative defenses set forth in O.C.G.A. § 16-3-20. Def.'s Mot. at 7; *see also* O.C.G.A. § 16-3-28 ("A defense based upon any of the provisions of this article is an affirmative defense."). That statute includes such affirmative defenses as use of force in defense of self or others, use of force in defense of habitation, use of force in defense of property other than a habitation, entrapment, coercion, reasonable fulfillment of duties as a government employee, reasonable discipline of a minor, rendering emergency care at the scene of an accident, and catch-all defenses including "[w]hen the person's conduct is justified for any other reason under the laws of this state …" and "[i]n all other instances which stand upon the same footing of reason and justice as those enumerated in this article." O.C.G.A. § 16-3-20. The Defendant broadly relies on the catch-all provisions to assert his position that the statute permits pre-trial dismissal of the indictment against him. His reliance is unsupported by law.

Unlike immunity set forth in O.C.G.A. § 16-3-24.2, the affirmative defenses set forth in O.C.G.A. § 16-3-20 "may be asserted during a trial," but cannot be asserted in a pre-trial motion to dismiss to "stop a trial altogether." *Bunn v. State*, 284 Ga. 410, 413 (2008). Instead, "[w]hen a defendant raises an affirmative defense that is supported by some evidence, the State has the

burden of disproving that defense beyond a reasonable doubt. *It is for the jury to determine* whether the State has met its burden in this respect." *Clark v. State*, 307 Ga. 537, 539 (2019) (emphasis added); *see also Mosley v. State*, 300 Ga. 521, 524 (2017) ("The question of [the defendant's] justification was for the jury to determine … ."). Moreover, in order for a fact finder to be authorized to consider a justification defense at trial, some amount of evidence must be introduced that actually supports the defense. *See Noel v. State*, 297 Ga. 689, 701 (2015) (trial court correctly declined to instruct the jury on justification defense in a homicide case where the evidence could not support such a defense). Here, the Defendant provides no statute, no case, and no other provision of law that supports his position, and the controlling law is directly contrary to his position. No trial court has the authority to dismiss an indictment prior to trial based on any of the affirmative defenses enumerated in O.C.G.A. § 16-3-20, and this Court should deny the Defendant's unsupported motion without a hearing.

II. The Defendant's characterization of his assertion of affirmative defenses as a "constitutional challenge" does not authorize pre-trial dismissal of the indictment.

The Defendant argues that the Court is authorized to dismiss the indictment against him pre-trial pursuant to O.C.G.A. § 16-3-20 because he characterizes it as a "constitutional challenge." Def.'s Mot. at 8. He relies on three Georgia Supreme Court cases—*Hardeman v. State*, 272 Ga. 361 (2000), *Woods v. State*, 279 Ga. 28 (2005), and *Amos v. State*, 298 Ga. 804 (2016)—in support of his argument, but none of these cases are applicable here. None of the cases examine O.C.G.A. § 16-3-20 or any other statutory affirmative defense at all, and they certainly do not examine pre-trial application of a statutory affirmative defense. In both *Hardeman* and *Amos*, the Court held that a constitutional challenge to a criminal statute could not be raised for the first time in a motion for new trial. 272 Ga. at 361; 298 Ga. at 807-08. In *Woods*, the Court held that a defendant could challenge the constitutionality of a sentencing

statute after a guilty verdict had been returned by the jury. 279 Ga. at 28-29. No reasonable reading of any of these cases supports the conclusion that a statutory affirmative defense raised pursuant to O.C.G.A. § 16-3-20, even if characterized by the Defendant as "constitutional" in nature, can be considered by the Court prior to trial to dismiss an indictment.

The Defendant repeatedly reaffirms throughout his motion that his challenge is a statutory one. He begins and ends his motion with reliance on O.C.G.A. § 16-3-20. Every substantive heading within his motion refers to O.C.G.A. § 16-3-20. Each of his arguments is framed using O.C.G.A. § 16-3-20 as the procedural mechanism under which he seeks relief. The Court should not consider these backdoor "constitutional" arguments that the Defendant elected to package within the box of an unripe statutory remedy. For the reasons set forth above, the Defendant's plea in bar and motion to quash the indictment pursuant to O.C.G.A. § 16-3-20 should be denied without a hearing.

Respectfully submitted this 29th day of March 2024,

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Defendants.	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT SHAWN STILL'S PLEA IN BAR AND MOTION TO QUASH THE INDICTMENT UNDER O.C.G.A. § 16-3-20, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 29th day of March 2024,

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