

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

**STATE’S RESPONSE TO DEFENDANT SHAWN STILL’S
SPECIAL DEMURRER**

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 Special Demurrer. The Defendant argues that Counts 1, 8, 10, 12, 14, 16, and 18 of the indictment returned against him by a Fulton County Grand Jury must be dismissed because the counts are “imperfect as to form” and lack sufficient detail for him to “intelligently and adequately prepare his defense.” Def.’s Mot. at 1. For the reasons set forth below, the Defendant’s special demurer to these counts should be overruled.

I. An indictment is sufficient to survive special demurrer where it contains the elements of the offenses charged, apprises the defendant of what he must be prepared to meet, and protects against double jeopardy.

The Defendant urges the Court to dismiss Counts 1, 8, 10, 12, 14, 16, and 18 of the indictment, complaining that the counts lack sufficient information to allow him to “intelligently and adequately prepare his defense.” Def.’s Mot. at 1. Years of both Georgia and federal precedent provide the Court with all that it needs to determine that these counts are legally sufficient to survive 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. 191, 195 (2022) (citation omitted). 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*, 131 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 a special demurrer¹:

[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, pettifoggery, technicality or hair splitting fault finding.” Although indictments must 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, the challenged counts are sufficient to withstand special demurrer. Each count sets forth the essential elements of the crime charged; each count sufficiently apprises the Defendant

¹ 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).

of what of his own conduct is at issue and what he must be prepared to meet; and each count is sufficiently pled to protect against double jeopardy. *Sanders*, 313 Ga. at 195.

II. The Defendant’s “special demurrers” to overt acts and acts of racketeering activity alleged in Count 1 are without merit because such acts are not subject to any particular pleading requirements.

The Defendant complains that Count 1, Acts 78 through 85 are subject to special demurrer for various reasons. As the Georgia Supreme Court recently held, there is “no authority requiring the indictment to set forth the particulars of [an] overt act” *Sanders*, 313 Ga. at 197 (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)). All that is required is some reference to an alleged overt act. Accordingly, the Defendant’s “special demurrers” to various overt acts and acts of racketeering activity within Count 1 are meritless and should be overruled.

III. The indictment’s reference to unnamed, unindicted co-conspirators does not render it subject to demurrer, and the Defendant’s remaining special demurrers are without support and should be overruled.

The Defendant complains that the indictment is subject to special demurrer because it “fails to identify the ‘unindicted co-conspirators’ and other unidentified individuals. Def.’s Mot. at 4. 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.

The Defendant’s remaining special demurrers are unsupported and should be overruled.

A. Count 8 is not subject to special demurrer.

The Defendant is charged in Count 8 with impersonating a public officer, in violation of O.C.G.A. § 16-10-23. He complains that Count 8 is subject to special demurrer because the indictment fails to allege how he held himself out as a duly elected and qualified presidential elector and because the indictment does not “identify who among the 16 individuals actually mailed the document.” Def.’s Mot. at 2. Count 8 alleges that the Defendant held himself out as a duly and qualified presidential elector by mailing a document titled “CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA” to the President of the United States Senate, the Archivist of the United States, the Georgia Secretary of State, and the Chief Judge of the United States District Court for the Northern District of Georgia. Indictment at 76.

Moreover, Count 8 alleges that the crime was committed by the Defendant, Defendant Shafer, and Defendant Latham, “individually and as persons concerned in the commission of a crime.” *Id.* It thus alleges that all of the parties charged committed the crime together, and the identity of the specific person who actually mailed the document is simply not required.

O.C.G.A. § 16-2-21 does not require that a person be specifically identified as a party to the crime, as opposed to the actual perpetrator, in the indictment; instead, as long as there is proof at trial that the person was a party to the crime, the person may be convicted and punished for that crime. It follows that, where several people are jointly indicted for a single offense, each person may be convicted of that offense upon evidence showing that he or she either was the actual perpetrator of the crime or was a party to the crime. Accordingly, *the State was not required to specify in each count of the indictment whether each of the named defendants was being charged as the actual perpetrator or as a party to the crime*, as that merely presents an issue of fact for resolution by the jury.

State v. Corhen, 306 Ga. App. 495, 502 (2010) (emphasis added). The Defendant’s special demurrer to Count 8 is both meritless and frivolous, as Count 8 contains the specific information the Defendant complains is missing from it. Count 8 is constitutionally sufficient as alleged, and the Defendant’s special demurrer to it should be overruled.

B. Count 10 is not subject to special demurrer.

The Defendant is charged in Count 10 with forgery in the first degree, in violation of O.C.G.A. § 16-9-1. He complains that Count 10 is subject to special demurrer because it fails to identify how he “made” the document and how the document was “delivered” to the Archivist of the United States. Def.’s Mot. at 3. The test when analyzing whether an indictment is sufficient to withstand special demurrer “is not whether it could have been made more definite and certain,” but whether it alleges the essential elements of the offense, appries the defendant of what he must be prepared to meet, and protects against double jeopardy. *Sanders*, 313 Ga. at 195. Count 10, when read as a whole with the rest of the indictment, makes clear that the Defendant and his co-conspirators created a false document titled “CERTIFICATES OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA” that purported to have been made by the authority of the duly elected and qualified presidential electors from Georgia and delivered it to the Archivist of the United States by placing it in the United States mail. Indictment at 76-77. The level of specificity demanded by the Defendant is not required under the law. Count 10 is constitutionally sufficient as alleged, and the Defendant’s special demurrer to it should be overruled.

C. Counts 12 and 18 are not subject to special demurrer.

The Defendant is charged in Counts 12 and 18 with false statements and writings, in violation of O.C.G.A. § 16-10-20. He complains that Count 12 and 18 are subject to special demurrer because they fail to identify how he “made” or “used” the false documents and that the counts fail to identify to whom the false documents were given. Def.’s Mot. at 3. The test when analyzing whether an indictment is sufficient to withstand special demurrer “is not whether it could have been made more definite and certain,” but whether it alleges the essential elements of the offense, appries the defendant of what he must be prepared to meet, and protects against double

jeopardy. *Sanders*, 313 Ga. at 195. Counts 12 and 18, when read as a whole with the rest of the indictment, make clear that the Defendant and his co-conspirators made and used false documents titled “CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA” and “RE: Notice of Filling Electoral College Vacancy” that contained the false statement that they were “the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia,” that Defendant Shafer was the Chairman of the 2020 Georgia Electoral College Meeting, and that the Defendant was the Secretary of the meeting. Indictment at 78, 81. The document was then delivered by the Defendant and his co-conspirators to the Georgia Secretary of State, the Governor of Georgia, and other entities. *Id.* at 76-77, 80. Moreover, a prosecution pursuant to O.C.G.A. § 16-10-20 “does not require proof [or allegation] that the defendant made the false statement directly to the government agency” *Haley v. State*, 289 Ga. 515, 527 (2011). It is irrelevant to whom the false documents were given. The level of specificity demanded by the Defendant is not required under the law. Counts 12 and 18 are constitutionally sufficient as alleged, and the Defendant’s special demurrer to them should be overruled.

D. Count 14 is not subject to special demurrer.

The Defendant is charged in Count 14 with criminal attempt to commit filing false documents, in violation of O.C.G.A. §§ 16-4-1 and 16-10-20.1. He complains that Count 14 is subject to special demurrer because it fails to identify who placed the false document in the mail and how it was filed. Def.’s Mot. at 3. Count 14 alleges that the crime was committed by the Defendant, Defendant Shafer, and Defendant Latham, “individually and as persons concerned in the commission of a crime.” Indictment at 79. It thus alleges that all of the parties charged committed the crime together, and the identity of the specific person who actually mailed the document is simply not required. *Corhen*, 306 Ga. at 502. Moreover, because Count 14 alleges

criminal attempt to commit filing false documents, it does not allege that the document ever was actually filed. It is nonsensical to complain that an indictment is deficient for failing to sufficiently allege something that it does not allege in the first place. The level of specificity demanded by the Defendant is not required under the law. Count 14 is constitutionally sufficient as alleged, and the Defendant's special demurrer to it should be overruled.

E. Count 16 is not subject to special demurrer.

The Defendant is charged in Count 16 with forgery in the first degree, in violation of O.C.G.A. § 16-9-1. He complains that Count 16 is subject to special demurrer because it fails to identify how he "made" the document and how the document was "delivered" to the Archivist of the United States. Def.'s Mot. at 4. The test when analyzing whether an indictment is sufficient to withstand special demurrer "is not whether it could have been made more definite and certain," but whether it alleges the essential elements of the offense, apprises the defendant of what he must be prepared to meet, and protects against double jeopardy. *Sanders*, 313 Ga. at 195. Count 16, when read as a whole with the rest of the indictment, makes clear that the Defendant and his co-conspirators created a false document titled "RE: Notice of Filling of Electoral College Vacancy" that purported to have been made by the authority of the duly elected and qualified presidential electors from Georgia and delivered it to the Archivist of the United States by placing it in the United States mail. Indictment at 76, 80. The level of specificity demanded by the Defendant is not required under the law. Count 16 is constitutionally sufficient as alleged, and the Defendant's special demurrer to it should be overruled.

Respectfully submitted this 29th day of March 2024,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

F. McDonald Wakeford
Georgia Bar No. 414898
Chief Senior Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
fmcdonald.wakeford@fultoncountyga.gov

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684
Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov

Alex Bernick
Georgia Bar No. 730234
Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
alex.bernick@fultoncountyga.gov

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT SHAWN STILL'S SPECIAL DEMURRER, 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,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684

Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov