

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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v.

CATHLEEN ALSTON LATHAM

Indictment No.
23SC188947

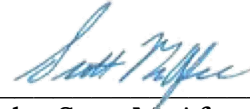
ORDER DENYING MOTION TO STRIKE ACT 160

Defendant Latham challenges Act 160 contained within Count 1 of the indictment, presumably by way of general demurrer, arguing that her alleged conduct amounting to perjury under Georgia law is “barred by federal law.” A general demurrer challenges the substance of an indictment by asserting its legal invalidity, more specifically that the indictment fails to allege a crime. *See Tate-Jesurum v. State*, 368 Ga. App. 710, 711 (2023); O.C.G.A. § 17-7-54(a). The Defendant’s argument rests on the idea that only the federal government can punish someone for perjury committed in federal court. *See In re Loney*, 134 U.S. 372, 375 (1890). This means, according to the Defendant, that because her allegedly false statements were made in conjunction with a federal proceeding, the State cannot punish her for perjury in violation of Georgia law.

The Court finds however that *In re Loney*, the Defendant’s sole citation, is inapplicable because the State has not substantively charged the Defendant with perjury. Nor has the Defendant provided any authority subjecting overt acts to the pleading standards of a demurrer. An overt act is any conduct undertaken by an individual to advance the goals of a conspiracy. O.C.G.A. § 16-14-4(c); *Pasha v. State*, 273 Ga. App. 788, 790 (2005). The reference to perjury in Act 160 identifies an overt act that the State claims the Defendant committed in furtherance of the alleged RICO conspiracy charged in count 1. Critically, “the overt act need not be a crime in itself.” *McCrigh v.*

State, 176 Ga. App. 486, 363 (1985). Act 160 is not demurrable as to its form because it “properly alleged [the] overt act[.]” and it “need not [be] stricken[.]” *Id.* at 488. The motion is denied.

SO ORDERED, this 9th day of April, 2024.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit