

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA, *
vs. * CASE NUMBER: 23SC188947
* Judge: Scott McAfee
RUDOLPH WILLIAM LOUIS GIULIANI,
*
Defendant.

DEFENDANT MAYOR GIULIANI’S REPLY BRIEF

Comes now, Defendant Mayor Giuliani, and files this Reply Brief and shows this Court the following:

Mayor Giuliani’s former legal counsel in the above-styled indictment originally filed a pleading styled as “*Defendant’s Demand for Indictment Perfect in Form and Substance, Preliminary General and Special Demurrers, and Motion to Quash*” on September 8, 2023. The State of Georgia filed a response to this pleading on February 7, 2024, and on February 9, 2024, the State filed a Notice of Filing of Supplemental Exhibits to State’s Response.

Although Mayor Giuliani’s current counsel of record adopts the arguments set forth in prior counsel’s September 8, 2023 pleading, current counsel does not request oral argument concerning the same. Furthermore, current counsel will stand on the original pleadings filed on September 8, 2023 and will not further reply to the State’s response except as to the limited argument set forth below.

I. THE ACTS ALLEGED TO BE IN FURTHERANCE OF A CRIMINAL CONSPIRACY IN THE INDICTMENT THAT WERE COMMITTED OUTSIDE OF GEORGIA.

A citizen convicted of violating Georgia’s RICO statute may not be separately punished for crimes which served as the predicate or underlying acts in the RICO prosecution. *Martin v. State*, 189 Ga. App. 483 (1988). Likewise, where a citizen has already been convicted of a RICO count or an offense which would serve as a predicate

to a RICO charge, subsequently prosecuting the other violates a defendant's right against double jeopardy. *State v. Bethune*, 198 Ga. App. 490 (1991).

There is conduct alleged in this Indictment that occurred in jurisdictions which do not afford the same double jeopardy protection as Georgia (e.g. Arizona, Michigan, Nevada, New Mexico, Pennsylvania, Wisconsin, and the District of Columbia). The potential consequence of using acts in furtherance of the conspiracy from other states is that, while a defendant may not be subject to prosecution twice in this State for a RICO charge and its predicate acts, a defendant could be subject to prosecution in another state for the acts in furtherance of the conspiracy charged in this Indictment even if the defendant is convicted and punished for the acts in furtherance of the conspiracy's accompanying RICO charge.

If Mayor Giuliani were to be convicted of Georgia RICO violations based upon acts in furtherance of the conspiracy allegedly committed in other jurisdictions, without the same jeopardy protection as Georgia, this would negate the legal protections very clearly established in Georgia. Therefore, Mayor Giuliani requests this Court prohibit the State from basing the RICO charges in the present Indictment on acts in furtherance of the conspiracy allegedly committed outside of the jurisdiction of this State.

In making this argument, Defendant's current counsel recognizes this is a novel argument and further recognizes the sovereignty of other states to prosecute crimes committed within their jurisdiction.

II. DISCOVERY AND EXCULPATORY INFORMATION CONCERNING THE ACTS ALLEGED TO BE IN FURTHERANCE OF A CRIMINAL CONSPIRACY IN THE INDICTMENT THAT WERE COMMITTED OUTSIDE OF GEORGIA.

A defendant is entitled to discovery, investigative and exculpatory material. No less than 50 of the 161 overt acts in furtherance of the conspiracy alleged in the above-styled Indictment were committed at least in part outside of the State of Georgia. Hence, the information regarding the investigation of such and any exculpatory information is likely outside of the State of Georgia.

All investigative and exculpatory materials related to the overt acts in furtherance of the conspiracy in other jurisdictions must be reviewed by the defendants. However, the

prosecution nor the Court in this case can assure access to investigative and exculpatory information in other jurisdictions and by federal law enforcement agencies, particularly where those cases are still under investigation.

Because Mayor Giuliani is entitled to all investigative and exculpatory information, any overt acts in furtherance of the conspiracy allegedly committed in other jurisdictions where any investigative or exculpatory information is unavailable to Mayor Giuliani must not be considered in charging the RICO charge.

WHEREFORE, Defendant Giuliani respectfully requests that the relief sought in prior counsel's "*Defendant's Demand for Indictment Perfect in Form and Substance, Preliminary General and Special Demurrers, and Motion to Quash*" be granted.

This the 8th day of April, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing DEFENDANT MAYOR GIULIANI'S REPLY BRIEF with the Fulton County Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties of record.

This the 8th day of April, 2024.

Respectfully Submitted,

/s/ L. Allyn Stockton, Jr.

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Attorney for Defendant

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