

In the Court of Appeals of the State of Georgia

MICHAEL A. ROMAN, DAVID J. SHAFER,	)	
ROBERT DAVID CHEELEY, MARK	)	
RANDALL MEADOWS, DONALD JOHN	)	
TRUMP, CATHLEEN LATHAM, RUDOLPH	)	
WILLIAM LOUIS GIULIANI, JEFFREY	)	Case Nos. A24A1595,
BOSSERT CLARK, HARRISON FLOYD,	)	A24A1596, A24A1597,
<i>Appellants,</i>	)	A24A1598, A24A1599,
	)	A24A1600, A24A1601,
	)	A24A1602, A24A1603
versus	)	
	)	
	)	
THE STATE OF GEORGIA, <i>Appellee.</i>	)	

MOTION TO DISMISS APPEAL AS IMPROVIDENTLY GRANTED

On May 8, 2024, this Court granted Appellant’s petition for interlocutory appeal in the present matter. With the case now docketed, the State of Georgia, by and through Atlanta Judicial Circuit District Attorney Fani T. Willis, moves for the appeal to be dismissed as improvidently granted due to the lack of sufficient evidence, based upon the explicit factual findings of the trial court, to support reversal of the order at issue.

The order, filed in Superior Court on March 15, 2024, concerned various motions seeking to disqualify the District Attorney from prosecuting Appellants’ pending criminal case or to dismiss said case

entirely. As a basis for these motions, Appellants asserted that the District Attorney had a conflict of interest in the prosecution due to her personal relationship with the Special Assistant District Attorney appointed to oversee the case on her behalf. The problem with Appellants' theory, as detailed by the trial court in its order, is that it was not supported by the actual evidence they provided.

As both this Court and the Supreme Court have repeatedly held, Georgia appellate courts will not disturb a trial court's factual findings on disputed issues outside of certain, very rare, circumstances. When a trial court makes determinations concerning matters of credibility or evidentiary weight, reviewing courts will not disturb those determinations unless they are flatly incorrect.

As we review the decision of the trial court [on a conflict-of-interest claim], we owe no deference to its application of the law to the facts of this case. We owe substantial deference, however, to the way in which the trial court assessed the credibility of witnesses and found the relevant facts. To that end, we must accept the factual findings of the trial court unless they are clearly erroneous, and we must view the evidentiary record in the light most favorable to the findings and judgment of the trial court.

*Adams v. State*, 317 Ga. 342, 352 (2) (2023) (brackets in original) (quoting *Hall v. Jackson*, 310 Ga. 714, 720 (2)(a) (2021)). Appellate courts will

not—indeed, may not—substitute their own appraisal of the factual record for the trial court’s. This principle has been reiterated time and again. *Pauldo v. State*, 317 Ga. 433, 441 (4)(d) (2023) *Morrell v. State*, 313 Ga. 247, 251 (1) (2022); *Mathenia v. Brumbelow*, 308 Ga. 714, 716 (1) (2020); *Neuman v. State*, 311 Ga. 83, 88 (2) (2021); *Ventura v. State*, 346 Ga. App. 309, 310 (2) (2018). And of course, as the trial court itself noted, “A determination of whether a prosecutor is laboring under a conflict of interest is a fact-driven one.” Order at 5.

The State respectfully submits that, with such due deference afforded to the trial court’s factual findings, there exists no basis for reversal of the order at issue. This is particularly true given the substantial leeway the trial court afforded Appellants in gathering and submitting evidence to support their various theories and arguments. In the trial court’s own words, Appellants “were provided an opportunity to subpoena and introduce whatever relevant and material evidence they could muster” to make their case. Order at 2. The trial court’s careful and extensive evaluation of the resulting record, and its utter dismissal of the central evidence proffered by the Appellants, forecloses any possibility of reversal.

Appellants' theory of conflict was that "the District Attorney obtained a personal stake in the prosecution of this case by financially benefitting from her romantic relationship with Special Assistant District Attorney ("SADA") Nathan Wade, whom she personally hired to lead the State's prosecution team." Order at 1. The purported financial benefit stemmed from meals and travel that Wade paid for while he acted as SADA in this case. Appellants argued that the case was initiated, and then unnecessarily prolonged, in order for the District Attorney to enrich herself via Wade's employment.

The trial court found that Appellants' chosen theory could not be supported by the evidence. Appellants' star witness, attorney Terrence Bradley, was such an utter cypher of either credibility or useful information that the trial court felt compelled to discard his testimony in its entirety.

[T]he Court finds itself unable to place any stock in the testimony of Terrance Bradley. His inconsistencies, demeanor, and generally non-responsive answers left far too brittle a foundation upon which to build any conclusions.

Order at 16. Bradley was the linchpin of Appellants' entire theory of conflict, but his lack of credibility and the absence of any useful or

tangible facts led the trial court to completely disregard Bradley's testimony. His extensive testimony, and any evidence whose admission relied solely on that testimony, cannot be considered at this stage of the proceedings at all.<sup>1</sup>

Appellants' other evidence, in the eyes of the trial court, was either vague or of marginal evidentiary value, despite the fact that, as noted above, Appellants had the chance to provide "whatever relevant and material evidence they could muster" over the course of three days in court. Order at 2. And most importantly, even when the court considered everything proffered and cast a critical eye at the testimony from the District Attorney, it still found that Appellants lacked support for claims of a material personal or financial stake in the present case.

Simply put, the Defendants have not presented sufficient evidence indicating that the expenses were not "roughly divided evenly," or that the District Attorney was, or currently

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<sup>1</sup> Appellants also sought to extensively impeach their own central witness by introducing numerous text messages as prior inconsistent statements. However, the trial court found that the messages were similarly useless: "While prior inconsistent statements can be considered as substantive evidence under Georgia law, Bradley's impeachment by text message did not establish the basis for which he claimed such sweeping knowledge of Wade's personal affairs." Order at 16.

remains, “greatly and pecuniarily interested” in this prosecution.

Order at 7-8 (quoting *Nichols v. State*, 17 Ga. App. 593, 606 (1916)). In order to sufficiently prove a theory of their own devising, Appellants had to show that the District Attorney had an improper personal stake in the outcome of their prosecution. They failed to do so, and when evidence related to Bradley is properly disregarded, their theory becomes a room without walls.

The evidence that actually *does* remain for consideration at this stage makes this clear. The trial court considered Appellants’ documentary evidence showing travel and meal expenses and then closely examined the testimony of all witnesses who came before it, the District Attorney included. The court’s frank appraisal of the District Attorney’s testimony was that it withstood scrutiny. Order at 7. The trial court allowed Appellants to pull together anything they could find, considered all of the testimony and evidence, and found Appellants wanting: “[A]fter considering all the surrounding circumstances, the Court finds that the evidence did not establish the District Attorney’s

receipt of a material financial benefit as a result of her decision to hire and engage in a romantic relationship with Wade.” Order at 7-8.

Appellants were even less successful with their suggestion that the District Attorney might have initiated the case solely due to personal interests or that she might be improperly prolonging the case, with the trial court finding that the record indicated *precisely the opposite* to be true.

In addition—and much more important—the Court finds, based largely on the District Attorney’s testimony, that the evidence demonstrated that the financial gain flowing from her relationship with Wade was not a motivating factor on the part of the District Attorney to indict and prosecute this case ... Defendants argue that the financial arrangement created an incentive to prolong the case, but in fact, there is no indication the District Attorney is interested in delaying anything. Indeed, the record is quite to the contrary ... In sum, the District Attorney has not *in any way* acted in conformance with the theory that she arranged a financial scheme to enrich herself (or endear herself to Wade) by extending the duration of this prosecution or engaging in excessive litigation.

Order at 8-9 (emphasis added). The trial court also emphasized that it found no evidence at all of any actual effect upon Appellants’ case, much less any evidence of harm. There was no adequate showing “that [the District Attorney’s] financial arrangements had any impact on the case,”

Order at 9, nor was there “a showing that the Defendants’ due process rights have been violated or that the issues involved prejudiced the Defendants *in any way*.” Order at 17 (emphasis added).

When the trial court’s findings are considered in the light most favorable to its order, Appellants’ theory of conflict has no factual basis remaining. At this stage of the proceedings, regarding the alleged presence of an actual and disqualifying conflict of interest, all that remains is the District Attorney’s testimony, which the trial court credited in the context of the documents provided by Appellants. The trial court accepted her explanations for how she and Wade split costs, her choice to pursue the Appellants’ case, and the pace and manner in which she directed her office to pursue it. Appellants’ remaining evidence does not concern the presence of some actual, personal stake in the prosecution by the District Attorney, but merely attacks the credibility of certain testimony from the State’s witnesses regarding *when* her relationship with Wade began. As Bradley’s credibility disintegrated on the stand, Appellants’ emphasis rapidly changed, a tactical choice noticed by the trial court:

During argument, the Defendants’ focus largely pivoted from the financial concerns to disproving the testimony of the



District Attorney, namely that her romantic relationship actually predated the November 2021 hiring of Wade.

Order at 16. But any concerns held by the trial court regarding this point were dispelled by its direction that either the District Attorney or Wade leave the case. The trial court crafted this remedy squarely within the inherent powers granted by the General Assembly to every court of this State, as set forth by O.C.G.A. § 15-1-3. *See* Order at 3. The trial court’s assessment of the facts was that Wade’s involvement—and the District Attorney’s professional and personal relationships with him—had not negatively impacted the case or Appellants’ rights *at all*; that the District Attorney received no material benefit from said relationships; and that the case was initiated for appropriate reasons and pursued at an appropriate pace. The trial court’s concern with any potential “questions” stemmed from Wade’s *continued* presence in the case, a concern that was addressed when Wade withdrew as SADA. At this stage, Appellants’ remaining evidence therefore relates to *possible* concerns about *future* appearances of impropriety that can no longer even come to pass, *not* to a disqualifying, actual conflict of interest. Bound by these factual findings, there can be no basis for reversal of the trial court’s order

declining to either disqualify the District Attorney or dismiss the indictment.

The trial court's findings as to Appellants' allegations of forensic misconduct also provide no basis for reversal. The trial court's extensive review of the District Attorney's public comments about the investigation (largely echoing findings made in an earlier order from another Superior Court judge) found that her comments did not rise to the level of disqualifying forensic misconduct as outlined in *Williams v. State*, 258 Ga. 305 (1988). As a factual matter, the trial court found that the District Attorney's public comments concerned either the office's conviction rates; the charges in the indictment; the procedural posture of the case; the need for or importance of the investigation; or personal anecdotes. Order at 19. The only statements that the trial court examined in greater detail concerned a speech given by the District Attorney on January 14, 2024. The trial court concluded the speech did not "cross the line" because it failed to name any defendant, it did not disclose sensitive or confidential evidence, and it did not address the merits of the indicted offenses to move the trial to the court of public opinion. Order at 20. With these findings as to the speech, as well as the District Attorney's testimony, the

Appellants cannot supply this Court with any factual basis for reversal. *See Williams*, 258 Ga. at 314-15. Moreover, because “the case is too far removed from jury selection to establish a permanent taint of the jury pool,” at the present stage, there can be no basis for concluding that Appellants’ rights to a fair trial have been affected. Order at 20. Any such evaluation would necessarily take place at the jury selection stage. *See Barber v. State*, 204 Ga. App. 94, 95 (1) (1992) (finding disqualification was unnecessary when the defendant did not show that any witness or juror was infected by the prosecutor’s comments about the defendant). However, at the present stage, with trial neither imminent nor even scheduled, the speech’s possible effects upon a hypothetical jury pool remain entirely speculative. Because the trial court followed the applicable guidance from *Williams* as it evaluated the text of the speech, no basis exists for reversal of its order.

Finally, as the trial court efficiently described in its order at pages 21-22, Appellants’ additional proposed grounds for either disqualification or dismissal of the indictment were either unfounded in the law, reiterations of previous (rejected) motions which were similarly unfounded in the law, irrelevant and unrelated to the actual case at hand,

or blatant misapplications of caselaw. With no basis for reversal, the State respectfully requests that the appeal be dismissed as improvidently granted.

### **CONCLUSION**

For the above reasons, the State of Georgia submits this Honorable Court should GRANT this motion to dismiss this interlocutory appeal as improvidently granted.

### **CERTIFICATION OF WORD COUNT**

This submission does not exceed the word count limit imposed by Rules 24 and 41.

Respectfully submitted,

/s/ F. McDONALD WAKEFORD

F. McDONALD WAKEFORD 414898  
Chief Senior Assistant District Attorney  
Office of the District Attorney  
Atlanta Judicial Circuit  
136 Pryor Street SW, Fourth Floor  
Atlanta, GA 30303  
Tel. (404) 375-0281 / Fax (404) 893-2769  
fmcdonald.wakeford@fultoncountyga.gov

ALEX BERNICK 730234  
Assistant District Attorney  
Office of the District Attorney  
Atlanta Judicial Circuit  
alex.bernick@fultoncountyga.gov

**CERTIFICATE OF SERVICE**

I hereby certify that there is a prior agreement with counsel for the Appellants, as listed below, to allow documents in a PDF format sent via email to suffice for service, as authorized under Rule 6(d). To that end, on the 12<sup>th</sup> day of June, 2024, I served a copy of the foregoing Motion to Dismiss upon the following counsel of record via e-mail:

Attorneys for Defendant Trump:

Steven Sadow  
260 Peachtree Street, N.W.  
Suite 2502  
Atlanta, Georgia 30303  
404-577-1400  
stevesadow@gmail.com

Jennifer Little  
400 Galleria Pkwy  
Suite 1920  
Atlanta, Georgia 30339  
404-947-7778  
jlittle@jllaw.com

Attorneys for Defendant Giuliani:

L. Allyn Stockton, Jr.  
Stockton & Stockton, LLC  
P.O. Box 1550  
Clayton, Georgia 30525  
706-782-6100  
lastockton@windstream.net

John Esposito  
David Lewis  
546 Fifth Avenue, 6th Floor

New York, New York 10036  
212-486-0011  
esposito@aidalalaw.com  
judgelewis@aidalalaw.com

Attorney for Defendant Meadows:

James D. Durham  
Griffin, Durham, Tanner & Clarkson, LLC  
104 West State Street, Suite 200  
Savannah, GA 31401  
912-867-9141  
jdurham@griffindurham.com

Attorneys for Defendant Clark:

Harry W. MacDougald  
Caldwell, Carlson, Elliott & DeLoach, LP  
6 Concourse Pkwy., Suite 2400  
Atlanta, Georgia 30328  
404-843-1956  
hmacdougald@ccedlaw.com

Catherine S. Bernard  
Bernard & Johnson, LLC  
5 Dunwoody Park, Suite 100  
Atlanta, Georgia 30338  
404-477-4755  
catherine@justice.law

Attorneys for Defendant Cheeley:

Christopher Anulewicz  
Jonathan DeLuca  
Wayne Beckerman  
Bradley Arant Boult Cummings LLP  
Promenade Tower  
1230 Peachtree Street NE  
Atlanta, GA 30309  
404-868-2030  
canulewicz@bradley.com

jdeluca@bradley.com  
wbeckermann@bradley.com

Attorneys for Defendant Roman:

Ashleigh Merchant  
John Merchant  
The Merchant Law Firm  
701 Whitlock Avenue, S.W., Ste. J-43  
Marietta, Georgia 30064  
404-510-9936  
ashleigh@merchantlawfirmpc.com  
john@merchantlawfirmpc.com

Attorneys for Defendant Shafer:

Craig A. Gillen  
Anthony C. Lake  
Gillen & Lake LLC  
400 Galleria Pkwy.  
Suite 1920  
Atlanta, Georgia 30339  
404-842-9700  
cgillen@gwllawfirm.com  
aclake@gwllawfirm.com

Holly A. Pierson  
Pierson Law LLC  
2851 Piedmont Road NE, suite 200  
Atlanta, Georgia 30305  
404-353-2316  
hpierson@piersonlawllc.com

Attorneys for Defendant Floyd:

Todd A. Harding  
Harding Law Firm, LLC  
113 E. Solomon Street  
Griffin, Georgia 30223  
770-229-4578  
kamikazehitman@comcast.net



Christopher I. Kachouroff, Esq.  
McSweeney, Cynkar & Kachouroff, PLLC  
13649 Office Place, Suite 101  
Woodbridge, Virginia 22192  
703-621-3300  
chris@mck-lawyers.com

Attorney for Defendant Latham:

William G. Cromwell  
Cromwell Law Firm LLC  
400 Galleria Pkwy.  
Suite 1920  
Atlanta, Georgia 30339  
678-648-7184  
bcromwell@cartercromwell.com

/s/ F. McDONALD WAKEFORD

F. McDONALD WAKEFORD  
Chief Senior Assistant District Attorney  
Office of the District Attorney  
Atlanta Judicial Circuit  
136 Pryor Street SW, Fourth Floor  
Atlanta, GA 30303  
*Tel.* (404) 375-0281 / *Fax* (404) 893-2769  
fmcdonald.wakeford@fultoncountyga.gov