

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

STATE OF GEORGIA,

Plaintiff,

v.

ERIC A. HEINZE and KRISTOPHER  
L. HUTCHENS,

Defendants.

Civil Action No.

1:22-cr-00388-VMC

**ORDER**

This matter is before the Court on the State of Georgia's (the "State") Motion for Limited Remand. ("Motion," Doc. 35). The Court held oral argument on the Motion on May 23, 2023. For the reasons below, the Court will deny the State's Motion.

**I. Procedural History**

On October 26, 2021, Defendants Eric A. Heinze ("Heinze") and Kristopher Hutchens ("Hutchens") (collectively "Defendants") were indicted by a Fulton County, Georgia grand jury for the August 5, 2016 shooting death of Jamarion Robinson ("Mr. Robinson") (Doc. 1). Mr. Robinson was shot as the Defendants attempted to execute an arrest warrant in their role as officers on the United States Marshal Service's Southeast Regional Task Force.

The grand jury indicted Heinze on the following charges: two counts of felony murder, aggravated assault with a deadly weapon, burglary in the first degree, making a false statement, and violation of oath by a public officer. (Doc. 1 at 1). Hutchens was indicted on the same charges as well as an additional count of making a false statement. (*Id.*). Defendants' false statement charges relate to statements they made to Special Agent Clint Thomas of the Georgia Bureau of Investigation. (*Id.* at 3-4).

Shortly after their indictment, Defendants removed the criminal indictments from the Fulton County Superior Court (the "State Court") to this Court, pursuant to 42 U.S.C. § 1455. On October 25, 2022, the Court denied the State's motion to remand after determining that removal was proper under 28 U.S.C. § 1455(b)(5). (Doc. 2). Thereafter the Parties filed their joint proposal for pretrial deadlines and procedures. ("Joint Proposal," Doc. 17). On January 23, 2023, the Court issued a Pretrial Scheduling Order. (Doc. 24). In relevant part, the Pretrial Scheduling Order notified the Parties of a March 6, 2023 deadline to file preliminary dispositive motions, and of a May 23, 2023 hearing date for an evidentiary hearing on any dispositive motions. (*Id.*).

On May 5, 2023, roughly three weeks before the scheduled evidentiary hearing, the State filed the foregoing Motion, which seeks to bring a superseding indictment charging the Defendants with malice murder, an additional count of

felony murder based on false imprisonment under color of legal process, and conspiracy to make false statements to the Fulton County grand jury. (Doc. 35 at 3-4). Defendants oppose the State's Motion. (Doc. 37). After reviewing the Parties' briefs, and considering the oral arguments made, the Court denied the State's Motion. As the State has indicated its desire to pursue an interlocutory appeal (Docs. 54, 70), the Court now issues this Order.<sup>1</sup>

## II. Discussion

In its Motion, the State's main argument is that it has an unlimited sovereign right to supersede an indictment prior to trial and the removal of a criminal case to federal court cannot infringe on that right. (Doc. 35 at 1). The State relies on the Supreme Court's decision in *Arizona v. Manypenny* in support of its contention that "federal removal cannot limit the prosecutorial rights of a sovereign state government." (*Id.* at 2) (citing *Arizona v. Manypenny*, 451 U.S. 232, 243 (1981)). However, *Manypenny* involved a state's right to seek appellate review of a decision, not the propriety of a limited remand. 451 U.S. at 250 ("We hold that in a criminal proceeding removed to federal court, a State may appeal under § 1291

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<sup>1</sup> The Court **DENIES** the State's request (Doc. 40 at 9) that the Court certify the issue addressed in this Order, pursuant to 28 U.S.C. § 1292(b), because that subsection does not apply to criminal cases. 28 U.S.C. § 1292(b) ("When a district judge, in making in a *civil action*....) (emphasis added); *In re Grand Jury Proc.*, 832 F.2d 554, 557 (11th Cir. 1987) ("By its terms, section 1292(b) applies only to orders in civil actions, and has no application to appeals in criminal cases") (citations omitted).

from an adverse judgment if statutory authority to seek such review is conferred by state law.”).

While the Court agrees with the State that it has a sovereign right to enforce its criminal laws, it does not agree that the State can demand, at any time, that this Court temporarily relinquish jurisdiction in order for the State to supersede an indictment. First, the Court interprets 28 U.S.C. § 1447(c) as authorizing remand only “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” At this point, the Court has subject matter jurisdiction and therefore there is no statutory authority for any remand, much less a limited remand that would return the case to this Court.<sup>2</sup> Further, the State conducted research and consulted experts but could not cite any precedent supporting a limited remand. Thus, the Court is not convinced that it has the authority to permit a limited remand.

Furthermore, the Court finds that even if it did have the authority, it would not be appropriate to exercise it here. Primarily, the Court is not convinced that the State needs a limited remand to supersede the indictment particularly given the limited role judges have in the grand jury process. The availability of

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<sup>2</sup> During oral argument, the State argued that both 28 U.S.C. §§ 1442 and 1455 permit the Court to order a limited remand, but after reading the text of these provisions, the Court is not persuaded.

alternatives (*see* Doc. 40 at 8), as well as the Court's concern that if allowed now, there would be no limitation on future requests for remands to add charges, are factors that weigh in favor of denying the State's motion.

Next, the Court agrees with the Defendants that the additional murder charges would not change the defenses the Defendants are raising, which are Supremacy Clause immunity and self-defense immunity under Georgia law. Under the Supremacy Clause, the Court must determine, in relevant part, whether each Defendant "did no more than what the officer subjectively believed was necessary and proper" and that his "belief was objectively reasonable under the circumstances." *See e.g., Texas v. Kleinert*, 855 F.3d 305, 314-15 (5th Cir. 2017). In order to obtain immunity under Georgia's self-defense law, each Defendant must prove that he "reasonably believes that such . . . force is necessary to defend himself . . . or a third person against such other's imminent use of unlawful force." O.C.G.A. § 16-3-21 (2020). These defenses require the Court to assess the reasonableness of the Defendants' actions. Given that the Defendants are charged with aggravated assault with a deadly weapon, the Court will consider all of the evidence presented by the Parties to determine whether the Defendants' actions were reasonable, and the new murder charges would not change the Court's analysis. Therefore, a limited remand for the purpose of obtaining a superseding

indictment to add those charges would not be dispositive to the defenses Defendants are raising.<sup>3</sup>

As the Supreme Court stated in *Manypenny*, “removal under § 1442(a)(1) and its predecessor statutes was meant to ensure a federal forum in any case where a federal official is entitled to raise a defense arising out of his official duties.” 451 U.S. at 241. At the same time, “[t]he statutory goal of ensuring fair and impartial adjudication is not advanced when the State in effect can be penalized by the defendant’s decision to remove a criminal prosecution.” *Id.* at 243. The Court has considered these goals, and finds that given the Defendants’ defenses, the State is not being penalized by this Court’s denial of its motion for a limited remand.

Finally, the Parties agreed to adhere to specific scheduling deadlines in this case, including that all dispositive motions would be filed no later than March 6, 2023. (Doc. 37 at 8). Nevertheless, the State waited two months after the deadline to file its motion for a limited remand. According to the State, the new murder charges result from the State’s review of the Eleventh Circuit’s opinion in the civil case related to Mr. Robinson’s death. (Doc. 35 at 3). However, the shooting incident

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<sup>3</sup> At oral argument, the State indicated that it intended to dismiss the false statement charges. As a result, the Court determined that evidence related to those charges would not be presented at the evidentiary hearing unless it became relevant to the credibility of the Defendants or other witnesses.

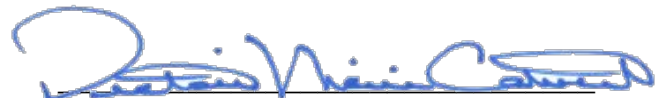
occurred in 2016, and the Eleventh Circuit's opinion was issued in August 2022,<sup>4</sup> before the Court denied the State's motions to remand. The State asserted that it is not obligated to provide any justification to supersede an indictment and declined to explain why it failed to bring these charges earlier. The Court finds that the State has not provided good cause for its disregard of the scheduling order and therefore will deny the State's unprecedented request for a limited remand.

### III. Conclusion

The Court has been asked to determine whether the State has an unfettered right to divest the Court of jurisdiction at any time in order to supersede an indictment. After surveying the applicable case law and statutes, as well as considering the circumstances of this case, the Court concludes that the State does not have that right.

For the reasons above, the State's Motion for Limited Remand (Doc. 35) is **DENIED**.

**SO ORDERED** this 23rd day of June, 2023.



Victoria Marie Calvert  
United States District Judge

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<sup>4</sup> *Robinson v. Sauls*, 46 F.4th 1332 (11th Cir. 2022).