

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
vs.) Case No. 23SC188947
)
HARRISON FLOYD, et al)
)
DEFENDANT.)

**DEFENDANT HARRISON FLOYD'S MOTION TO SEVER
OTHER DEFENDANTS AND OFFENSES**

COMES NOW, Defendant Harrison Floyd, by counsel, and files this his Motion for Severance pursuant to Ga. Code Ann. § 17-8-4(a) and the Sixth Amendment to the U.S. Constitution. Mr. Floyd is seeking an order from this Court severing Mr. Floyd's trial from most—but not all—of the other defendants and their charges. Respectfully, this Court should order severance according to the indictment's grouping of defendants.

BACKGROUND

In a sprawling, 98-page indictment, Harrison Floyd is charged with three offenses allegedly occurring on January 4, 2021: Count I (RICO), Count 30 (Conspiracy to Commit Solicitation of False Statements and Writings), and Count 31 (Influencing Witnesses). Other than the fact that he is a Republican and supporter of President Trump, the remaining 38 counts do not involve Mr. Floyd at all, do not connect him to a common scheme or plan, and do not connect him or his co-defendants (Ms. Trevian Kutti and Rev. Stephen Lee) to the other 16 co-defendants and their facts. The remaining counts are simply not relevant in the prosecution or defense of Mr. Floyd and his immediate co-defendants.

Depending on this Court's rulings on pre-trial motions, and assuming severance is not granted now, the Court may have to sever co-defendants later causing unnecessary delays in, for

example, scheduling and witnesses. If this situation were to occur, a later severance would have zero effect on the state's juggernaut of resources, but it would unfairly impact defendants and their counsel, whose resources are finite.

Severing trials according to a grouping of defendants based on their non-RICO counts makes the most sense. It is a practical, logistical solution that would promote judicial economy, avoid the evidentiary and legal chaos of 19 defendants at once, and avoid the unfair prejudice to Mr. Floyd that would result from the spillover effect of 16 other co-defendants.

ARGUMENT AND CITATION TO AUTHORITY

This Court has wide latitude in determining whether to sever. Whether to grant or deny severance rests within the discretion of this Court. Ga. Code Ann. § 17-8-4. Georgia law provides that:

[w]hen two or more crimes of the same general nature are committed against different persons, at different times and places, and are charged in separate counts of an indictment, severance is mandatory upon the defendant's motion if the crimes are joined *solely* because they are of the same or similar character.

Willis v. State, 316 Ga. App. 258, 262, 728 S.E.2d 857, 863 (2012); see also Dingler v. State, 233 Ga. 462, 463-464, 211 S.E.2d 752 (1975). However,

[i]f the offenses are not joined solely because they are of the same or similar character, and evidence of one charged offense would be admissible as a similar transaction during trial on another charged offense, the trial court is vested with discretion in deciding whether to grant a motion to sever. In making this decision, the court must consider the number of offenses charged, the complexity of the charges, and the complexity of the evidence and determine whether the jury will be able to fairly and intelligently parse the evidence and apply the law with regard to each charge.

(emphasis added) Johnson v. State, 364 Ga. App. 543, 545-46 (2022). Multiple offenses may be joined by the State only if they “are based (1) on the same conduct or (2) on a series of acts connect together or (3) on a series of acts constituting parts of a single scheme or plan. . . . For

these purposes, ‘the same conduct’ means ‘the same transaction’.” (emphasis added) Brown v. State, 230 Ga. App. 190, 190-91 (1998).

Sixteen co-defendants have allegations and charges which are not based on the same conduct as Mr. Floyd, have no resemblance to the allegations against him, and cannot be said to arise out of the “same transaction.” Sixteen co-defendants do not have a series of acts connected together with Mr. Floyd. The 98-page indictment does not show a series of acts constituting parts of a single scheme or plan involving Mr. Floyd. Instead, it shows Mr. Floyd lumped together with 16 co-defendants and unrelated charges solely by reason of his support for former President Trump.

“Severance is designed to protect a defendant from, among other things, ‘the great risk of prejudice from a joint disposition of unrelated charges,’ and ‘confusion of law and evidence by the trier of the fact and the ‘smear’ effect such confusion can produce.” Id. at 193. The numerous co-defendants and their associated charges are bound to confuse a jury and obfuscate the facts. The complexity of the charges and the volume of evidence necessary for each charge necessitates severance. This Court has the discretion to sever cases “if it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence of each charge. . . .” Harrell v. State, 297 Ga. 884, 889 (2015) (citing Terry v. State, 259 Ga. 165, 168 (1989)); see also, Calhoun v. State, 318 Ga. App. 835, 836 (2012) (a court “must consider the number of offenses charged, the complexity of the charges, and the complexity of the evidence and determine whether the jury will be able to fairly and intelligently parse the evidence and apply the law with regard to each charge.”

Here, 19 defendants are charged with 41 counts of various “offenses” occurring over a period of nearly two years. The indictment pinpoints Mr. Floyd’s charges (along with his co-

defendants) to conduct on a single day and are entirely separate and distinct from the remaining counts allegedly occurring over a two-year span. The list of alleged co-conspirators includes former federal officials, former state officials, lawyers, political campaign associates, and others. The logistics of trying 19 defendants simultaneously on 41 separate counts that are not similar is sure to create confusion during the trial. Severance of the 38 counts Mr. Floyd was not charged with is necessary for a fair determination of the 3 counts he was charged with. This spare him the risk of unfair prejudice, confusion of law and evidence, and avoid depriving him of his right to due process as guaranteed by the 5th and 14th Amendments of the U.S. Constitution.

Not severing Mr. Floyd's case would cause a jury to see and hear the unrelated charges and evidence of the remaining 16 defendants, cause substantial confusion in the minds of the jury, pose an unreasonable risk that jurors will be tainted, and unfairly prejudice Mr. Floyd. The sheer complexity of the unrelated charges will undoubtedly confuse the jury. The burden on a single jury to "get it right" is incredibly high when they would have to separate two years' worth of the State's investigation of material and evidence—several terabytes of material which the State has yet to deliver—and parse it among 19 defendants only to turn around and do the same in the defense case in chief. Mr. Floyd would have no choice but to participate in the defense of an additional 37 charges and go through mounds of electronic evidence and data that have nothing to do with him. The spillover effect against Mr. Floyd is substantial and unnecessary.

One injury Mr. Floyd might suffer is the burden of defending against the State of Georgia *plus* a multitude of unrelated defendants. If Mr. Floyd were, for example, to give testimony about his innocence, he could be cross examined by defense attorneys desperate to find some innocent fact to ensnare Mr. Floyd in ambiguous circumstances and mislead jurors in an effort to

exculpate their own clients—clients who have nothing to do with Mr. Floyd. Mr. Floyd will be unduly and unfairly prejudiced if confronted with such antagonistic defenses.

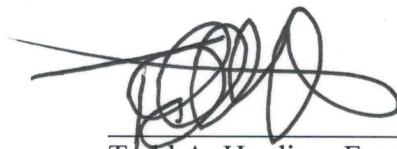
CONCLUSION

The totality of the charges and expansiveness of the proposed evidence necessitates severance of Mr. Floyd’s case along with the 38 counts of the indictment pertaining to the remaining 16 defendants. Not severing Mr. Floyd’s case now from the remaining co-defendants along with their counts guarantees that Mr. Floyd will be “forced to proceed at an unfair disadvantage, due to confusion of law and evidence by the trier of the fact and the ‘smear’ effect such confusion can produce.” Harrell, at 891.

WHEREFORE, Defendant Harrison Floyd, by counsel, moves this Court to enter an order severing his case from the 16 other co-defendants and accordingly sever Counts 1, 30, and 31 from the rest of the indictment.

Respectfully submitted this the 11th day of September 2023.

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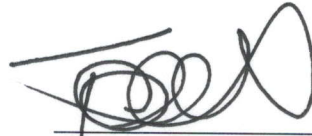
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties of record.

Respectfully submitted this the 11th day of September 2023.

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