

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

KENNETH CHESEBRO *et al.*,

Defendants.

Case No. 23SC188947

Judge McAfee

MOTION TO SEVER DEFENDANT CHESEBRO FROM DEFENDANT POWELL

COMES NOW, Kenneth Chesebro, by and through undersigned counsel, and respectfully moves this Court to sever his trial from defendant Sidney Powell pursuant to O.C.G.A. § 17-8-4(a).

FACTUAL BACKGROUND

On August 14, 2023, an indictment was returned naming 19 defendants, including Mr. Chesebro and Ms. Powell. Mr. Chesebro is listed in seven counts of the indictment (including Count 1, RICO). Ms. Powell is also listed in seven counts of the indictment (also including Count 1, RICO).

On August 8, 2023, Mr. Chesebro filed a Demand for Speedy Trial. Subsequently, on August 25, 2023, Ms. Powell filed a Demand for Speedy Trial.

Despite attempts by the State to incorrectly paint Mr. Chesebro as the alleged “architect of the Trump elector scheme,” even according to the Indictment, Mr. Chesebro’s involvement consisted solely of sending 18 emails, receiving 1 email, and attending 1 in-person meeting in Wisconsin over a period of approximately 2 months. All of this occurred in his role as an attorney.

Entirely separate, and completely unrelated from the allegations levied against Mr. Chesebro, the allegations related to Ms. Powell center around her alleged belief, and

alleged work in furtherance of that belief, that voting machines were erroneously tabulating votes. In fact, the lion's share of the allegations related to Ms. Powell centers around activities that occurred in Coffee County, Georgia. Not only has Mr. Chesebro never been to Coffee County or anywhere even close to it, he has not overtly or directly been charged with having any connection to any of the Coffee County allegations.

Finally, and most importantly:

- a. Mr. Chesebro has never physically met Sidney Powell;
- b. Mr. Chesebro has never sent an email to Ms. Powell;
- c. Mr. Chesebro has never received an email from Ms. Powell;
- d. Mr. Chesebro has never called Ms. Powell;
- e. Mr. Chesebro has never received a phone call from Ms. Powell;
- f. Mr. Chesebro has never texted Ms. Powell;
- g. Mr. Chesebro has never received a text message from Ms. Powell; and
- h. Mr. Chesebro has never communicated with Ms. Powell through any social media or telecommunications application.

In sum, there has never been any direct contact or communication between Mr. Chesebro and Ms. Powell. Similarly, there is no correlation or overlap between the overt acts or the substantive charges associated with Mr. Chesebro and Ms. Powell.

ARGUMENT AND CITATION TO AUTHORITY

When two or more defendants are jointly indicted, any defendant can be separately tried at the discretion of the trial court, and that decision will not be disturbed unless such discretion was abused. O.C.G.A. § 17-8-4 (2018). The trial court must consider three factors when deciding whether to sever the trial: (1) whether the number of defendants

creates confusion as to the law and evidence to be applied to each; (2) whether a danger exists that evidence admissible against one defendant might be considered against the other notwithstanding instructions to the contrary; and (3) whether the defenses are antagonistic to each other or each other's rights. *Griffin v. State*, 273 Ga. 32, 33 (2000); see also *Brown v. State*, 262 Ga. 223, 224 (1992). A motion to sever should be granted whenever it appears "necessary to achieve a fair determination of the guilt or innocence of a defendant." *Baker v. State*, 238 Ga. 389, 391 (1977); see also *Padgett v. State*, 239 Ga. 556, 558 (1977).

According to the Supreme Court, "[e]vidence that is probative of a defendant's guilt but technically admissible only against a codefendant also might present a risk of prejudice." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

While the Georgia Supreme court has held that a severance is not required when co-defendants were accused of the same conduct, see, e.g., *Henderson v. State*, 2023 WL 5338772 (August 21, 2023), Mr. Chesebro and Ms. Powell never acted in concert. In fact, nowhere in the indictment are Mr. Chesebro and Ms. Powell even listed in the same overt acts or substantive counts.

If there is a danger that evidence incriminating one defendant will be considered against a co-defendant, or if the strength of the evidence against one defendant will engulf the co-defendant(s) with a spillover effect, then the motion to sever must be granted. See *Jones v. State*, 277 Ga. App. 185 (2006). Where evidence of the defendant is slight, he should not be convicted merely by association. *Price v. State*, 155 Ga. App. 844, 845 (1980) (motion to sever should have been granted because evidence against defendant was minimal, while that against his codefendant was substantial, and defendant's

conviction more likely resulted from the evidence against his codefendant than from evidence against him); see also *Crawford v. State*, 148 Ga. App. 523, 526 (1978).

Simply put, if Mr. Chesebro and Ms. Powell are forced to be tried together, the State will attempt to lump them together in an attempt to convict Mr. Chesebro via a “conspiracy” or “RICO” theory based on the conduct of the co-defendant which has no relation to anything for which he stands accused.

Additionally, while Mr. Chesebro is not aware of Ms. Powell’s defenses, they potentially will be antagonistic to each other. In order to achieve a fair determination of the guilt or innocence of Mr. Chesebro, he must be severed from the trial. The fact that Mr. Chesebro is implicated with Ms. Powell will inextricably link them together and has the potential to cause a tremendous prejudice.

CONCLUSION

The actions of Mr. Chesebro and Ms. Powell are akin to oil and water; wholly separate and impossible to mix (into one conspiracy).

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, Mr. Chesebro respectfully requests that the Court Sever Mr. Chesebro from Ms. Powell, and allow Mr. Chesebro to proceed to trial on October 23 alone.

This the 1st day of September, 2023.

/s/ Scott R. Grubman
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CERTIFICATE OF SERVICE

I hereby certify the above styled **MOTION TO SEVER DEFENDANT CHESEBRO FROM DEFENDANT POWELL** has been served, this day, by electronic mail and the Fulton County e-filing system upon all parties:

This the 1st day of September, 2023.

/s/ Scott R. Grubman

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