In the Court of Appeals of the State of Georgia

THE STATE OF GEORGIA, *Cross-Appellant,*	)	
versus	)	Case Nos. A25A0395, A25A0396, A25A0397, A25A0398, A25A0399, A25A0400
JOHN EASTMAN, RAY STALLINGS SMITH, DONALD JOHN TRUMP, RUDOLPH WILLIAM LOUIS GIULIANI, ROBERT DAVID CHEELEY, MARK RANDALL MEADOWS, *Cross-Appellees.*	)	

BRIEF OF CROSS-APPELLANT

The State of Georgia, by and through Atlanta Judicial Circuit District Attorney Fani T. Willis, hereby files its Brief of Cross-Appellant.

INTRODUCTION

The trial court erred by quashing six counts of the indictment in this case, each of which alleged the crime of Solicitation of Violation of Oath by Public Officer. The indictment more than sufficiently placed Cross-Appellees on notice of the conduct at issue and allowed them to prepare an intelligent defense to the charges. The indictment included an abundance of context and factual allegations about the solicitations at

issue, including when the requests were made, to whom the requests were made, and the manner in which the requests were made.

The trial court erred by requiring the State to plead with specific details as to the target[1] crime of violation of oath by public officer, which is not required for a charge of solicitation of violation of oath by public officer. Solicitation, an inchoate offense, is complete before the target crime commences and often well before the target crime is fully considered or planned out. As a result, the target offense in an allegation of solicitation does not need to be detailed as though it were the completed, substantive crime itself. The only Georgia case concerning this issue does not provide a clear analog to this case. Consideration of cases from other jurisdictions, which is appropriate due to the lack of Georgia precedent acknowledged by the trial court in its order below, makes clear that the details of a target crime are not required to be pleaded with particularity so long as a defendant is placed on notice of

[1] There appears to be no common term of art to describe an offense that is the object of a criminal solicitation. The offense being solicited has been described as the "intended," "solicited," "targeted," "completed," "objective," "underlying," and "predicate" offense, among other terms. Because an act of solicitation seeks for another person to perform actions that would result in a completed criminal offense as a consequence, this brief will use the term "target offense."

what of his own conduct is at issue that constituted solicitation. Moreover, facts and context from other counts of the indictment here provide details that protect Cross-Appellees from double jeopardy and allow them to prepare an intelligent defense.

JURISDICTIONAL STATEMENT

The Court of Appeals of Georgia, rather than the Supreme Court of Georgia, has jurisdiction over this interlocutory appeal as the matters involved are not reserved to the Supreme Court or conferred on other courts by law. GA. CONST. Art. VI, § V, ¶ III. None of the charged offenses are felonies punishable by death. GA. CONST. Art. 6, § 6, ¶ III (8). This appeal does not involve the construction of "a treaty or of the Constitution of the State of Georgia or of the United States and . . . the constitutionality of a law, ordinance, or constitutional provision has [not] been drawn in question. GA. CONST. Art. 6, § 5, ¶ II (1).

The State appeals under O.C.G.A. § 5-7-1 (c) ("In any instance in which the defendant in a criminal case applies for and is granted an interlocutory appeal as provided in Code Section 5-6-34 . . . the state shall have the right to cross appeal on any matter ruled on prior to the impaneling of a jury or the defendant being put in jeopardy."). On May

10, 2024, Defendants Michael Roman and David Shafer filed their notices of appeal in the case that would be docketed in this Court under case numbers A24A1595-1603.[2] The State filed its notice of cross-appeal in this case on May 23, 2024. (R. 1-5).[3]

ENUMERATION OF ERROR

1. Did the trial court err in granting a special demurrer by applying the pleading requirements for compound or non-anticipatory offenses to counts of the indictment charging criminal solicitation, an inchoate offense?

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[2] Other Defendants on the disqualification order subsequently filed their notices of appeal on May 13, 2024 (Meadows, Latham), May 14, 2024 (Cheeley), May 16, 2024 (Trump, Clark), and May 17, 2024 (Floyd). Cross-Appellees Ray Smith and John Eastman were not involved in the original issue being appealed by the Defendants but were included in this cross-appeal. Other Defendants subsequently filed their notices of appeal on May 13, 2024 (Meadows, Latham), May 14, 2024 (Cheeley), May 16, 2024 (Trump, Clark), and May 17, 2024 (Floyd). *Centennial Ins. Co. v. Sandner*, 259 Ga. 317 (1989) (allowing cross appeals against parties who are not the appellant).

[3] Citations are made to the record in *State v. Smith*, Case No. A25A0396. When a citation is made to another record, the citation will include the Cross-Appellee's name, and for citations to the record in the appeal concerning the order on the disqualification motion, the case number in this Court.

PROCEDURAL HISTORY

On August 14, 2023, a Fulton County grand jury returned a 41 count indictment against Cross-Appellees and thirteen other individuals alleging their participation in a conspiracy to illegally overturn the results of Georgia's 2020 presidential election. (R. 6-103). Included in the indictment were six counts of Solicitation of Violation of Oath by Public Officer (counts 2, 5, 6, 23, 28, and 38).

Cross-Appellee Smith filed several demurrers on September 11, 2023. (R. 212-46). Included was a special demurrer arguing that the six solicitation counts failed to allege "what the oath of office was, or what portion of the oath was violated." (R. 224). Cross-Appellee Smith's demurrer focused on the completeness of the allegations of the solicited felony, rather than the substantive offense of solicitation. The other Cross-Appellees would adopt this demurrer in later filings. (Trump Case No. A24A1599 R. 263; Giuliani Case No. A24A1601 R. 680, 698; Eastman R. 659; Meadows Case No. A24A1598 R.693; Cheeley Case No. A24A1597 R. 560). The State responded that the indictment sufficiently alleged the criminal solicitation offenses, as there was no support for the proposition that the counts were required to allege the exact provision or provisions

of the solicited persons' oaths of office that the solicited conduct would have violated, just as there is no requirement that an indictment for any other solicited crime specify exactly how the target crime may have ultimately been completed. The State also argued that the indictment as a whole provided ample information allowing Cross-Appellees to prepare an intelligent defense to the charges. (R. 710-12).

An omnibus hearing was held on December 1, 2023, which included argument on this issue and post-hearing briefs were submitted and considered by the trial court. (R. 744-99). The State included in its post-hearing brief exhibits of several federal indictments alleging solicitation offenses that were upheld by federal courts. (R. 764-85). A continuation of the previous hearing was held on January 12, 2024.

The trial court issued its order on March 13, 2024. (R. 1228). The trial court granted the special demurrer as to these counts and quashed the solicitation charges (counts 2, 5, 6, 23, 28, and 38).[4] The trial court

[4] The trial court declined to strike the overt acts alleging criminal solicitation because overt acts are not subject to the same pleading standards as substantive counts and because only one overt act must be proven at trial. (R. 1235-36) (citing *Bradford v. State*, 283 Ga. App. 75, 78-79 (2006); *Hall v. State*, 241 Ga. App. 454, 460 (1999); *Thomas v. State*, 215 Ga. App. 522, 523 (1994)).

rejected Cross-Appellees' argument that the counts were required to recite the specific oaths at issue because there was only one oath applicable to each public officer. (R. 1232-33). However, the trial court found that the solicitation counts were deficient because they did not detail exactly *how* the oaths would have been violated if the solicitations had been successful. (R. 1232-35). In so doing, the trial court equated inchoate offenses to compound offenses, holding that solicitation charges must include details of the target felony with the same level of specificity required for compound crimes such as felony murder. (R. 1233 n.5, 1234). While each solicitation count charges that Cross-Appellees asked public officers "to violate their oaths to the Georgia Constitution and to the United States Constitution," the trial court held that the counts' "incorporation of the United States and Georgia Constitutions [was] so generic as to compel [the trial court] to grant the special demurrers." (R. 1233). This appeal comes as a cross-appeal under O.C.G.A. § 5-7-1 to the appeal docketed under case numbers A24A1595-1603.

STANDARD OF REVIEW

This Court reviews "a ruling on a special demurrer de novo to determine the legal sufficiency of the allegations in the indictment." *Eubanks v. State*, 317 Ga. 563, 581 (2023).

ARGUMENT

I. The Indictment is sufficient to withstand special demurrer.

The indictment supplied Cross-Appellees with sufficient information to prepare a defense intelligently and to protect them against double jeopardy. By extensively setting out the factual allegations and context of the solicitations, the counts sufficiently put Cross-Appellees on notice of the conduct with which they were charged.

The indictment set out six counts of Solicitation of Violation of Oath by Public Officer (counts 2, 5, 6, 23, 28, and 38). Count 2 charged Cross-Appellees Giuliani, Eastman, and Smith for their conduct as follows:

> on the 3rd day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia Senate and present at Senate Judiciary Subcommittee meeting, including unindicted co-conspirator Individual 8, whose identity is known to the Grand Jury, Senators Lee Anderson, Brandon Beach, Matt Brass, Greg Dolezal, Steve Gooch, Tyler Harper, Bill Heath, Jen Jordan, John F. Kennedy, William Ligon, Elena Parent, Michael Rhett, Carden Summers, and Blake

> Tillery, to engage in conduct constituting the felony offense of Violation of Oath by Public Officers, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(R. 72).

Count 5 charged Cross-Appellee Trump for his conduct as follows:

> on or about the 7th day of December 2020, unlawfully solicited, requested, and importuned Speaker of the Georgia House of Representatives David Ralston, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by calling for special session of the Georgia General Assembly for the purpose of unlawfully appointing presidential electors from the State of Georgia, in willful and intentional Violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(R. 74).

Count 6 charged Cross-Appellees Giuliani and Smith for their conduct as follows:

> on the 10th day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia House of Representatives and present at a House Governmental Affairs Committee meeting, including Representatives Shaw Blackmon, Jon Burns, Barry Fleming, Todd Jones, Bee Nguyen, Mary Margaret Oliver, Alan Powell, Renitta Shannon, Robert Trammell, Scot Turner, and Bruce Williamson, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-

> 10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(R. 74).

Count 23 charged Cross-Appellees Giuliani, Smith and Cheeley for their conduct as follows:

> on the 30th day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia Senate and present at a Senate Judiciary Subcommittee meeting, including unindicted co-conspirator Individual 8, whose identity is known to the Grand Jury, Senators Brandon Beach, Bill Heath, William Ligon, Michael Rhett, and Blake Tillery, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(R. 84).

Count 28 charged Cross-Appellees Trump and Meadows for their conduct as follows:

> on or about the 2nd day of January 2021, unlawfully solicited, requested, and importuned Georgia Secretary of State Brad Raffensperger, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, § O.C.G.A. l6-10-1, by unlawfully altering, unlawfully

> adjusting, and otherwise unlawfully influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia, in willful and intentional violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(R. 87).

Count 38 charged Cross-Appellee Trump for his conduct as follows:

> on or about the 17th day of September 2021, unlawfully solicited, requested, and importuned Georgia Secretary of State Brad Raffensperger, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. 16-10-1, by unlawfully "decertifying the Election, or whatever the correct legal remedy is, and announce the true winner," in willful and intentional violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(R. 95).

When a special demurrer is timely filed prior to trial, a defendant is entitled to an indictment "perfect in form, . . . [but] an indictment does not have to contain every detail of the crime to withstand a special demurrer." *Kimbrough v. State*, 300 Ga. 878, 881 (2017) (cleaned up). A special demurrer is "without merit" where the allegations in the indictment sufficiently inform a defendant "what actions of [his are] at issue." *Davis v. State*, 272 Ga. 818, 820 (2000). "[T]he purpose of an indictment is to allow [the] defendant to prepare his defense intelligently

and to protect him from double jeopardy." *Sanders v. State*, 313 Ga. 191, 195 (2022) (citation omitted). An indictment satisfies due process where it alleges the underlying facts with enough detail to put "the defendant on notice of the crimes with which he is charged and against which he must defend." *Dunn v. State*, 263 Ga. 343, 345 (1993). Ultimately, the test for whether an indictment is constitutionally sufficient:

> is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

Sanders, 313 Ga. at 195.

While each count of an indictment must within itself allege the essential elements of the crime charged, when considering a special demurrer, "the indictment is read as a whole," and factual details alleged in one count of the indictment can "provide[] the information [a defendant] complains is missing from" another count. *Id.* at 196-197. Moreover, while a defendant "may desire greater detail about [a charge] . . . [i]t is not required that the indictment give every detail of the crime," and additional detail desired "may be supplemented . . . by the pretrial

discovery [he] receives and any investigation [his] counsel conducts." *Id.* at 196. "[I]t is not necessary for the [S]tate to spell out in the indictment the evidence on which it relies for a conviction." *Stapleton v. State*, 362 Ga. App. 740, 747 (2021).

In general, the indictment in this case clearly alleged the underlying facts with enough detail to sufficiently apprise Cross-Appellants of what they must be prepared to meet at trial. As the trial court acknowledged, the indictment included "an abundance" of factual allegations in support of the charges. (R. 1234). In addition to the essential elements of the offenses, each count alleged the following details: (1) the date of the solicitation, which was made a material element of each count (e.g., "on the 3rd day of December … said date being a material element of the offense"); (2) to whom the solicitation was made (e.g., "certain public officers then serving as elected members of the Georgia Senate … including [list of Senators]"); (3) the forum in which the solicitation was made (e.g., "at a Senate Judiciary Subcommittee meeting"); and (4) the manner in which the solicited public officials would violate their oaths of office (e.g., "by unlawfully appointing presidential electors from the State of Georgia"). These details, which amount to far

more than a barebones recitation of the statutory elements for the crime of solicitation, clearly gave Cross-Appellees enough information to prepare their defense intelligently by telling them precisely what they were alleged to have done, when, and to whom. Cf. *Sanders*, 313 Ga. at 202 (granting special demurrer to criminal solicitation count based on possession of a controlled substance where the indictment did not even specify what drug the defendant requested another person to possess or in what amount). These counts also protected Cross-Appellees from double jeopardy, as they specified the acts that formed the basis of the solicitations with sufficient detail.

Further, as observed by the trial court, there was only one oath that could be violated by each public officer. The indictment therefore informed each Cross-Appellee of what of their own specific actions constituted the *actus reus* of the offenses charged, what date each Cross-Appellee committed those acts, to whom the acts were directed, and which oaths would have been violated had the public officials acquiesced to their solicitations. The indictment also alleged the precise conduct that Cross-Appellees requested the public officials to perform (i.e., unlawfully appointing a slate of electors, calling a special session of the legislature

for that purpose, etc.). As detailed below, the indictment was not required to also allege precisely which portion of the oath would have been violated or the State's legal theory for exactly how that portion would have been violated by the solicited conduct.

When read as a whole, the indictment provided an extremely clear picture of the acts committed by Cross-Appellees. For purposes of a special demurrer, one count of an indictment can provide details and context complained to be missing from another count. *Id*. at 196. Count 1 of the indictment connected every other count together as components of an over-arching conspiracy with a very specific goal: "unlawfully chang[ing] the outcome of the [2020 presidential election in Georgia] in favor of Trump." (R. 19). Count 1's factual allegations described the solicitations of state legislators as using false statements to reject lawful electoral votes and "to instead to unlawfully appoint their own presidential electors for the purpose of casting electoral votes for Donald Trump." (R. 21). It provided the dates of the solicitations and where these solicitations were made. (R. 21). Count 1 also detailed the solicitations that Cross-Appellees and their co-conspirators made to public officials in other states to unlawfully change the outcomes of the presidential

election in those states. (R. 26-30, 34-37). Specifically, it recounted that the Speaker of the Arizona House of Representatives refused to accept Cross-Appellees Trump and Eastman's solicitation because he believed that it would violate his oath. (R. 26, 62). Count 1 also alleged that the solicitation of Georgia officials, had it been successful, would have resulted in acts that would "violate their oaths to the Georgia Constitution and to the United States Constitution by unlawfully changing the outcome of the November 3, 2020, presidential election in Georgia in favor of Donald Trump." (R. 20-21).

Moreover, as counsel for Cross-Appellee Smith conceded at the December 1, 2023, hearing, there was only one oath applicable to state legislators, which is found in O.C.G.A. § 24-1-4. (V8. at 143-44). That oath states, "I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States and, on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state." O.C.G.A. § 28-1-4. There is no other oath that could apply to the conduct being solicited, as the trial court properly found. (R. 1231). When read as a whole, the indictment sufficiently alleged Cross-

Appellees' intent to solicit conduct that would result in the crime of violation oath of office by public officer by unlawfully participating in the solicited actions in order to overturn the results of Georgia's 2020 presidential election.

II. The target offenses of inchoate crimes, including solicitation, are not required to be pleaded with exacting specificity.

In striking the solicitation counts, the trial court made an improper comparison between inchoate and compound crimes, which led it to seek excessive detail concerning the target offense of violation of oath of office. Violation of oath by public officer is a separate crime from *solicitation of* violation of oath by public officer, with each requiring different elements and necessitating different charging requirements.

A. Solicitation, as an inchoate crime, does not require the same pleading standards as a completed offense.

Solicitation belongs to a class of inchoate offenses that includes conspiracy and attempt. *Mizrahi v. Gonzales*, 492 F.3d 156, 160 (2d Cir. 2007) (citing Black's Law Dictionary 1111 (8th ed. 2004); Herbert Wechsler et al., *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Colum. L. Rev. 571, 572 (1961)). Inchoate crimes penalize

actions taken in anticipation of a complete substantive crime and are themselves worthy of punishment. Wayne LaFave, *Criminal Law* § 11.1 (6th ed. 2017). *See English v. State*, 290 Ga. App. 378, 380 (2008) ("The crime of solicitation is complete when the accused, with intent, engages in the overt act of asking another to commit a felony."). Georgia's inchoate crimes—including criminal solicitation (O.C.G.A. § 16-4-7), criminal attempt (O.C.G.A. § 16-4-1), and conspiracy to commit a crime (O.C.G.A. § 16-4-8)—are separate and distinct offenses from their "target" substantive crimes. Inchoate crimes have different essential elements and therefore different pleading requirements from their target crimes. *Adams v. State*, 229 Ga. App. 381, 384 (1997) (criminal solicitation not a lesser included offense of trafficking cocaine because essential elements of criminal solicitation are intent that another person engage in conduct constituting a felony and solicitation of the other person to engage in such conduct); *Dennard v. State*, 243 Ga. App. 868, 871-72 (2000) (indictment charging criminal attempt not required to allege elements of the target child molestation but instead must simply allege intent to commit a crime and a substantial step toward the commission of that crime); *Sanders v. State*, 313 Ga. at 196-97 (indictment charging conspiracy to commit

aggravated assault sufficient where count alleges a conspiracy and at least one overt act; indictment not required to plead elements of aggravated assault).

Solicitation has been described as "the most inchoate of the anticipatory offenses." Lafave at § 11.1. Because solicitation occurs so early in the criminal planning stages of a crime, its prohibitions furthers the purposes of the criminal law by allowing law enforcement to intervene prior to harm being inflicted upon an individual. *Id.*; Ira Robbins, *Double Inchoate Crimes*, 26 Harv. J. Leg. 1, 31(1989). The harm from solicitation springs from the solicitation of unlawful conduct, not an injury to a specific person or persons. *See State v. Kenney*, 233 Ga. App. 298, 299 (1998) ("[I]n an accusation for soliciting for a prostitute the gist of the offense is the harm done society by such unlawful solicitation, and not an injury to the individual solicited."). The crime of solicitation is complete the moment the accused, with requisite criminal intent, engages in the act of requesting or otherwise attempting in any way to cause another person to commit a crime. *English*, 290 Ga. App. at 380. The solicitation may be complete well before the specifics of the target crime are fully contemplated, and the specific manner in which the target

offense might ultimately, if ever, be carried out is therefore irrelevant to the solicitation itself.

Solicitation only requires that the solicited conduct be the result—not that the entire plan or scheme is thought out or conveyed. *See Id.*; *State v. Johnson*, 202 Or. App. 478, 485, 123 P.3d 304 (Or. Ct. App. 2005) (in order to show defendant intended to "engage in specific conduct constituting a crime" as required under Oregon's criminal solicitation statute, "the state needs to prove that a defendant has engaged another person, intending that the other person engage in any specific conduct that constitutes a crime."); *Gardner v. State*, 41 Md. App. 187, 201, 396 A.2d 303, 311 (Md. Ct. Spec. App. 1979) ("The crime of solicitation requires neither a direction to proceed nor the fulfillment of any conditions.").[5]

By contrast, unlike solicitation, a compound offense necessarily depends entirely upon the completed commission of all the elements of

[5] The trial court acknowledged in its order that there was little precedent on this issue from Georgia courts. (R. 1232 n.4). Therefore, precedent from foreign jurisdictions is particularly relevant as persuasive authority for this Court. *Hill v. Burnett*, 349 Ga. App. 260, 263 (2019) ("It is well settled that Georgia courts often consider law and decisions from other jurisdictions as persuasive authority.")

some predicate crime. For example, felony murder (which the trial court wrongly analogized to criminal solicitation) is complete only once all the elements of some predicate felony have been committed and a death results. Accordingly, all the elements of the predicate felony *plus* the added element of the death of another must be alleged in the indictment. This is because "[p]roof of the elements of the offense of felony murder necessarily requires proof of the elements of the felony." *Woods v. State*, 233 Ga. 495, 501 (1975). Because felony murder requires the completion of some complete predicate felony as the proximate cause of a death—unlike criminal solicitation, which requires only criminal intent and the commission of some overt act—that predicate felony must be fully alleged in the indictment. *Stinson v. State*, 279 Ga. 177, 178 (2005).

The trial court thus erred in applying pleading requirements for compound crimes to the criminal solicitation counts of the indictment because this fundamental difference in necessary proof results in fundamentally different pleading requirements. Because criminal solicitation does not require that a defendant fully realize the plan or scheme of the solicited criminal conduct, the full details of the solicited felony need not be alleged. "The [solicited] conduct must be specifically

criminal . . . but details of how the crime is to be committed need not be specified." *Johnson*, 202 Or. App at 485. Indeed, in some cases, it would be impossible to do so, and Georgia law specifically contemplates this scenario: "It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited." O.C.G.A. § 16-4-7(c). *See also* Lafave at § 11.1(d). For example, a jury could convict a defendant of soliciting aggravated assault based on an indictment alleging that the defendant, with requisite intent, simply stated, "take care of this problem and mess him up," without specifying whether the implied assault should occur by shooting, stabbing, kicking, punching, or any other conceivable method. *See State v. Banks,* 2005-Ohio-3433, ¶ 9 (Oh. Ct. App. 2005) (finding the evidence of solicitation of murder sufficient when the defendant asked a person to "take care" of defendant's girlfriend with instructions to get her drunk and dump her body); *State v. Everett*, 355 Ore. 670, 671, 330 P.3d 22 (Or. 2014) (upholding a conviction of solicitation of aggravated murder when asked to "take care of" and "get rid of" a potential witness). This is because the harm is created at the moment the solicitor commits an overt act toward seeking to have another commit a crime. The criminal intent that the target

offense is committed separates a criminal solicitation from a benign demand. *O'Kelly v. State*, 196 Ga. App. 860, 862 (1990) ("The inquiry is directed not at the ears of the solicited and whether that person intends to commit the solicited acts, but at the words and intent of the solicitor, as shown by the words, the context, and other circumstances."). Because the details of the target crime need not be proven, it should not be required that they be pleaded with the specificity of a completed non-anticipatory offense.

Additionally, looking to other inchoate offenses in Georgia law, the emphasis is on the factual details of the request, not the target felony offense, for analyzing the sufficiency of an indictment. This Court upheld an indictment for criminal attempt to commit murder even though it failed to specify how the murder was to be carried out when the overt act provided the information constituting the charged offense. *Stapleton v. State*, 362 Ga. App. 740, 747 (2021). While the count could have "been made more definite and certain," further specificity was not needed because the allegations in the indictment were sufficient to survive a demurrer. Additionally, this Court upheld an indictment for criminal attempt to traffic cocaine that simply alleged "intent to commit an offense

defined in the Georgia Controlled Substances Act, to wit: Traffic[] in Cocaine" and then factually described discussions of purchasing cocaine. *Davis v. State*, 281 Ga. App. 855, 857 (2006). While the trial court filing was a motion to dismiss, this Court used the special demurrer test articulated by Georgia courts. *Compare id.* with *Sanders*, 313 Ga at 195. Even though the criminal attempt to traffic cocaine count did not allege the purity of cocaine as defined in O.C.G.A. § 16-13-31(a)(1), the indictment gave sufficient notice with the underlying facts that it "track[ed] the applicable statutes in a manner that is easily understood, and . . . apprised [defendant] of both the crime and manner in which it was alleged to have been committed." *Davis*, 281 Ga. App. at 857. There is no need to spell out all the elements of the target felony because the target felony supplies the intent for the inchoate crime.

B. *Sanders v. State* is not analogous to this case, as its solicitation count provided no facts regarding the target felony whatsoever.

The only Georgia case concerning the level of detail necessary for a solicitation count to survive special demurrer is *Sanders v. State*, 313 Ga. 191 (2022). The solicitation count in *Sanders* "fail[ed] to allege *any underlying facts*." *Id.* at 202 (emphasis added). *Sanders* stands for the

proposition that an indictment containing no context or factual allegations is insufficient. *See also Kimbrough*, 300 Ga. at 884 (quashing a RICO indictment where the count in question alleged "*nothing at all* about the nature of the connection" between the RICO enterprise and the alleged pattern of racketeering activity).

Indeed, the solicitation count in *Sanders* merely alleged:

> [O]n the 22nd day of January, 2018, with intent that another person engage in conduct constituting a felony, [Sanders] did request Chaz David Conley to commit the felony offense of Violation of the Georgia Controlled Substances Act: Possession of a Controlled Substance, contrary to the laws of said State, the good order, peace and dignity thereof.

313 Ga. at 201. The count failed to include any underlying facts relating to the request whatsoever. *Id.* at 202. It was the complete lack of factual details regarding the solicitation—and the failure to clarify what of the defendant's own actions constituted the solicitation—that rendered the indictment insufficient.

Here, unlike the solicitation count in *Sanders*, the indictment alleges the factual details about how the requests were made, to whom they were made, and when and where they made. As detailed above, the indictment also alleges what actions the public officials were requested to take that would have violated their oaths of office. Far from lacking

"any underlying facts", the indictment in this case alleged an "abundance" of facts concerning the pertinent conduct. (R. 1234).

C. Federal precedent supports the conclusion that target offenses of inchoate crimes do not need to be pleaded with exacting specificity.

While *Sanders* is the only Georgia case discussing a special demurrer to a charge of solicitation, federal courts have examined similar issues in the context of motions to dismiss or motions for bills of particulars numerous times. The analysis begins from the same point, as the Georgia Supreme Court adopted the same fundamental test first set forth nearly 130 years ago by the United States Supreme Court to determine whether an indictment is constitutionally sufficient to withstand a special demurrer:

> [The test] is not whether [the indictment] could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

Sanders, 313 Ga. at 195; *Compare Id. with Cochran v. United States*, 157 U.S. 286, 290 (1895). Where the bedrock principles underpinning

challenges to an indictment are nearly identical under both Georgia and federal law, federal authority is instructive.

Federal courts have held that solicitation charges are not required to be pleaded with exacting detail regarding the target offense. As an example, the Eleventh Circuit upheld an indictment charging use of the internet to entice a minor child in violation of 18 U.S.C. § 2422(b) that simply referred to several Alabama code sections without specifying how the solicited conduct would have violated those code sections. *United States v. White,* 660 Fed. Appx. 779 (11th Cir. 2016) (hereinafter *Lancy White*). The *Lancy White* indictment alleged two counts of "soliciting violations of the Code of Alabama, sections 13A-6-62, 13A-6-63, 13A-6-64, and 13A-6-67." (R. 778-79). Significantly, the indictment in *Lancy White* alleged multiple Alabama crimes solicited by White, and several of those crimes could have been committed in multiple ways. *Id.* Though the indictment failed to specify the particular manner in which the solicited conduct would have violated one of the Alabama provisions, the Eleventh Circuit noted that the indictment set forth the essential elements of the crimes charged, and, in the context of the record as a whole, the "only subsections of the Alabama statutes charged in Counts 1 and 2 that could

have applied to White's conduct were those based on the ages of the minor victims."[6] *Lancy White*, 660 Fed. Appx. at 782. Moreover, "each count of the indictment charged the victim's age and the applicable Alabama sex offense statutes." *Id*. Accordingly, the court held that the indictment provided "proper notice of the charges" and protected against double jeopardy. *Id*.

The Seventh Circuit upheld an indictment that charged a white supremacist with soliciting the murder of a jury foreperson. *United States v. White*, 610 F.3d 956 (7th Cir. 2010) (hereinafter *William White)*. The indictment failed to allege any specific person being solicited or the manner in which the juror was to be harmed. (R. 764-75). However, the Seventh Circuit held that the indictment sufficiently stated "all the elements of the crime charged," adequately informed "the defendant of

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[6] Similar to *Lancy White*, only certain provisions of the federal and Georgia constitutions pertain to Cross-Appellees' conduct, and not the "dozens" or "hundreds" that the trial court suggested. (R.1233). *Lancy White* further underscores the point, acknowledged even by the trial court, that an indictment is sufficient if it merely provides "enough additional detail to create a much smaller universe of possibilities." (R. 1234 n.7) (citing *Wiggins v. State*, 272 Ga. App. 414 (2005) (vacated on other grounds by *Wiggins v. State*, 280 Ga. 268 (2006))). Cross-Appellees need not worry about clauses such as those relating to taxation or the military that obviously do not apply. There is a confineable class of constitutional provisions for which Cross-Appellees are on notice.

the nature of the charges so that he" could prepare a defense, and allowed "the defendant to plead the judgment as a bar to any future prosecutions." *William White*, 610 F.3d at 958. The court noted that "the presence or absence of any particular fact [in the indictment] is not dispositive," and the indictment was sufficient to make the defendant "aware of the specific conduct against which he will have to defend himself at trial." *Id.* at 959.

Finally, the Northern District of Georgia upheld the sufficiency of an indictment charging a deputy sheriff for soliciting employees of the Fulton County Sheriff's Office to violate 18 U.S.C. § 242. *United States v. Hill*, No. 1:09-CR-199-TWT-CCH-1, 2009 U.S. Dist. LEXIS 123059 (N.D. Ga. Dec. 11, 2009). The indictment (1) did not allege any specific persons the defendant intended to solicit; (2) did not allege any specific provision of Section 242 that the defendant solicited anyone to violate, i.e., subjecting a person to "deprivation of any rights, privileges, or immunities" protected by law or subjecting any person "to different punishments, pains, or penalties" on account of status as an alien, or by reason of color or race; (3) did not allege any specific right, privilege, or immunity provided by law that the defendant solicited anyone to deprive

an inmate of; and (4) did not allege how the defendant intended that his subordinates go about violating Section 242, i.e. by excessively restraining an inmate, by striking them, by tasing them, or something else. (R. 782-85). The district court noted that 18 U.S.C. § 373 "requires only that Defendant have endeavored to induce or persuade another person to commit a felony involving physical force against either property or a person." *Hill*, 2009 U.S. Dist. LEXIS 123059 at *22. The court held that the indictment was not required to allege more than it did; as alleged, it was "sufficient to inform Defendant of the offense charged against him and to allow him to mount a defense to the charge." *Id*. at *23. The indictment also sufficiently provided "protection to Defendant against any future prosecution for the same offense." *Id*. at *24.

None of the above indictments alleged how the target offense was to be performed, but each was upheld as sufficient to allow the defendants to mount a defense. In each case, the factual details of the *request*, which demonstrated the defendants' intent that some other person carry out the target crimes, were sufficient to satisfy due process and double jeopardy concerns. The indictment here is consistent with this principle, as the

requests as alleged provide the information necessary for Cross-Appellees to mount a defense and protect against duplicate charges.

Similarly to Georgia courts, federal courts have concluded that the target felonies for other inchoate crimes need not be precisely alleged. An indictment for conspiracy need not allege the target offense with the same precision as the substantive count. *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) (citing *Wong Tai v. United States*, 273 U.S. 77, 81 (1927); *United States v. Fusaro*, 708 F.2d 17, 23 (1st Cir. 1983)). "Abundant case law supports the proposition that it is not necessary to allege in the conspiracy count all of the elements of the offense that is the object of the conspiracy with the same technical precision as would be necessary in a substantive count." *United States v. Perkins*, 748 F.2d 1519, 1525 (11th Cir. 1984). In *Perkins*, the Eleventh Circuit upheld a conspiracy count in an indictment that failed to identify the judicial proceeding the defendant conspired to obstruct because he had been adequately advised of the nature of the proceeding in the factual allegations. 748 F.2d at 1525-26. The necessary information to place a defendant on notice is the conduct that led to the inchoate crime.

As the United States Supreme Court acknowledged in considering conspiracy charges, "the conspiracy is the gist of the crime, a certainty, to a common intent, sufficient to identify the offense which the defendants conspired to commit, is all that is requisite in stating object of the conspiracy." *Williamson v. United States*, 207 U.S. 425, 447 (1908). It further stated:

> It was not essential to the commission of the crime that in the minds of the conspirators the precise persons to be suborned, or the time and place of such suborning, should have been agreed upon, and as the criminality of the conspiracy charged consisted in the unlawful agreement to compass a criminal purpose, the indictment, we think, sufficiently set forth such purpose.

Id. at 449. Succinctly, "[t]he rules of criminal pleading do not require the same degree of detail in an indictment for conspiracy in stating the object of the conspiracy as if it were one charging the substantive offense." *Thornton v. United States*, 271 U.S. 414, 423 (1926). As noted above, this is in accord with the general purpose of inchoate crimes. The harm is caused by the anticipatory action itself, whether it be a solicitation, an overt act constituting an attempt, or the agreement to join in a criminal conspiracy. The target felony merely indicates intent. This Court should

analyze the indictment in this case in accordance with federal precedent on the specificity required for alleging inchoate crimes.

Both Georgia and federal courts agree that the pleading requirements for inchoate crimes cannot be equated to the pleading standards for compound or non-anticipatory crimes. The trial court therefore erred in applying inapplicable pleading standards to the six counts of Solicitation of Violation of Oath by Public Officer in this indictment. Because the indictment here provides an "abundance" of context and factual allegations about Cross-Appellees' conduct, the indictment is sufficient to withstand special demurrer.

CONCLUSION

For the above reasons, the State of Georgia submits this Honorable Court should reverse the trial court's order and reinstate counts 2, 5, 6, 28, 36, and 38 of the indictment.

CERTIFICATION OF WORD COUNT

This submission does not exceed the word count imposed by Rule 24.

Respectfully submitted,

/s/ ALEX BERNICK

ALEX BERNICK 730234
Assistant District Attorney
Office of the District Attorney
Atlanta Judicial Circuit
136 Pryor Street SW, Fourth Floor
Atlanta, GA 30303
Tel. (404) 612-4981/ *Fax* (404) 893-2769
Alex.bernick@fultoncountyga.gov

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) 612-4981/ Fax (404) 893-2769
fmcdonald.wakeford@fultoncountyga.gov

JOHN W. "WILL" WOOTEN 410684

Deputy District Attorney
Office of the District Attorney
Atlanta Judicial Circuit
136 Pryor Street SW, Fourth Floor
Atlanta, GA 30303
Tel. (404) 612-4981/ Fax (404) 893-2769
will.wooten@fultoncountyga.gov

GRANT ROOD 955552
Deputy District Attorney
Office of the District Attorney
Atlanta Judicial Circuit
136 Pryor Street SW, Fourth Floor
Atlanta, GA 30303
Tel. (404) 612-4981/ Fax (404) 893-2769
Grant.rood@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(b)(2). To that end, on the 15th day of October, 2024, I served a copy of the foregoing Brief upon the following counsel of record via e-mail:

Attorneys for Defendant Trump:
Steven Sadow
260 Peachtree Street NW
Suite 2502
Atlanta, Georgia 30303
stevesadow@gmail.com

Jennifer Little
400 Galleria Parkway
Suite 1920
Atlanta, Georgia 30339
jlittle@jllaw.com

Attorneys for Defendant Giuliani:
L. Allyn Stockton, Jr.
P.O. Box 1550
Clayton, Georgia 30525
lastockton@windstream.net

Attorney for Defendant Eastman:
Wilmer Parker III
1360 Peachtree Street NE
Suite 1201
Atlanta, Georgia 30309

parker@mjplawyers.com

Attorney for Defendant Meadows:
James D. Durham
104 West State Street
Suite 200
Savannah, Georgia 31401
jdurham@griffindurham.com

Attorneys for Defendant Smith:
Donald F. Samuel
Amanda R. Clark Palmer
Kristen W. Novay
3151 Maple Drive NE
Atlanta, Georgia 30305
dfs@gsllaw.com
aclark@gsllaw.com
kwn@gsllaw.com

Attorneys for Defendant Cheeley:
Christopher Anulewicz
Jonathan DeLuca
Wayne Beckerman
Marc. J. Ayers
Promenade Tower
1230 Peachtree Street NE
Atlanta, Georgia 30309
canulewicz@bradley.com
jdeluca@bradley.com
wbeckermann@bradley.com
mayers@bradley.com

Richard Rice
3151 Maple Drive NE
Atlanta, Georgia 30305
Richard.rice@trlfirm.com

/s/ ALEX BERNICK

ALEX BERNICK
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
Alex.bernick@fultoncountyga.gov