IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
	)	CASE NO.:
v.	)	
	)	23SC189192
MARLON KAUTZ,	)	
ADELE MACLEAN, and	)	
SAVANNAH PATTERSON,	)	
	)	
Defendants.	)	

GENERAL AND SPECIAL DEMURRERS TO COUNT ONE OF THE INDICTMENT

A. Introduction

In the opening lines of Anna Karenina, Leo Tolstoy observed, "All happy families are alike; each unhappy family is unhappy in its own way." Indictments suffer the same fate: proper indictments are alike in setting forth the allegations with clarity. Defective indictments – those that are subject to a general or special demurrer – are flawed in their own way. The indictment in this case is extraordinary in the breadth and depth of its inadequacies.

In this pleading, Defendants Kautz, MacLean and Patterson (hereinafter "defendants") challenge Count One of the Indictment which purports to allege a RICO conspiracy pursuant to OCGA § 16-14-4(c).[1] Count One fails to allege an offense and is subject to general and special demurrers because it:

- fails to properly allege the elements of the offense of a RICO conspiracy;

[1] Kautz, Maclean, and Patterson have filed a separate general and special demurrer challenging the sufficiency of Counts 4 – 18 of the indictment which allege (supposedly) a violation of the state money laundering statute.

- fails to recite facts that identify the basis for the allegations;
- fails to adequately allege the dates of the offense and date that any conspirator is alleged to have joined the conspiracy;
- fails to allege the identity of co-conspirators;
- fails to comply with the statutory requirements of OCGA § 17-7-54;[2]
- fails to properly allege either the elements or the factual basis for the alleged racketeering acts;
- fails to allege what conduct is alleged to be an overt act of the conspiracy as opposed to (or in addition to) being a racketeering act;
- alleges that certain conduct was criminal that was protected First Amendment activity (freedom of speech, freedom of assembly, and freedom to petition the government for redress of grievances);
- fails to adequately allege the relationship between the listed overt acts / racketeering acts and the alleged (but ill-defined) enterprise;
- fails to allege whether the defendants, individually, are alleged to have participated in overt acts, or racketeering acts, as principals, aiders and abettors, or conspirators;
- and includes an abundance of statements in the introductory pages that are wholly inappropriate and unprecedented in an indictment, including: facts and circumstances that occurred centuries ago (literally); anonymous statements of unidentified (masked)

[2] OCGA § 17-7-54 provides: Every indictment of the grand jury which states the offense in the terms and language of this Code or so plainly that the nature of the offense charged *may easily be understood by the jury* shall be deemed sufficiently technical and correct. The form of every indictment shall be substantially as follows [the traditional form of an indictment is then set forth in the code section].

people that are unrelated to the charges in the indictment; uncharged crimes committed by unnamed people wholly unrelated to this case; and activities of thousands of unidentified people who were undeniably engaged in protected First Amendment activities and assemblies. The recitation of the history of anarchism and the claims regarding its followers' profligate and gratuitous use of violence has no place in an indictment in Fulton County.

B. Legal Basis For Special and General Demurrers

The basis for a general demurrer is the failure of the indictment to allege an offense. If, theoretically, a defendant could agree that every fact alleged in the indictment is true and still be innocent of the crime charged, a general demurrer would succeed. Often, a general demurrer is predicated on the failure of an indictment to allege the essential elements of an offense, but the failure to adequately allege the facts that demonstrate the satisfaction of an element also supports a general demurrer. The indictment must set forth the elements of the offense, as well as the facts that show that the defendant is culpable (as a party to the crime, as a conspirator, or as a principal) for the commission of each element. If an indictment alleges an offense, but the allegation violates the Constitution as applied (or if the criminal offense is facially unconstitutional), this, too, will support a successful general demurrer.

A special demurrer addresses the failure of the indictment to allege the facts with sufficient particularity: for example, the date of the offense (and in this case, the date that any individual defendant allegedly joined the conspiracy) is not revealed, or a date range is too broad; the identity of the victim of a crime is not identified, the location of an offense is not alleged. In these situations, a special demurrer acknowledges that a crime has been alleged, but the indictment is not "perfect in form and substance," thus depriving the defendants of the ability to prepare their

defense intelligently. The indictment is therefore subject to a pretrial special demurrer. *State v. Heath*, 308 Ga. 836 (2020).

If the court grants a general or a special demurrer, the result is the dismissal of the targeted count of the indictment. The prosecutor may not hoover up inappropriate surplusage; or add a date; or allege an inadvertently omitted element. The grand jury returned the indictment and if it needs to be corrected, the grand jury must do so.

The following cases illustrate the appellate courts' intolerance in the past 25 years of defective indictments:

Jackson v. State, 301 Ga. 137, 800 S.E.2d 356 (2017): An indictment that states that the defendant's conduct was in violation of a specific statute but fails to set forth the elements of the specific offense is subject to demurrer. Simply stating that the defendant's conduct violated a specific identified statute is not sufficient to put the defendant on notice of the elements of the offense or the factual basis for the allegation.

Kimbrough v. State, 300 Ga. 878, 799 S.E.2d 229 (2017): The defendants were charged with violating the RICO Act. The indictment alleged the existence of an enterprise and the commission of various racketeering acts. The indictment also alleged that the enterprise was operated through the commission of the racketeering acts. However, the indictment provided no specifics how the enterprise was run through the commission of the racketeering acts. The defendants filed a special demurrer, which was denied. The Supreme Court reversed. The enterprise was a clinic. The racketeering acts were alleged to be the acquisition of certain drugs in violation of the Controlled Substances Act. But the relationship of the defendants to the enterprise, or the connection between the acts and the enterprise were not even implicitly revealed. As written,

the indictment failed to provide enough information to the defendants to prepare their defense intelligently.

State v. Heath, 308 Ga. 836, 843 S.E.2d 801 (2020): If a defendant is charged with a compound crime, such as first-degree vehicular homicide, the indictment must allege all the essential elements of the predicate offense. In this case, the indictment alleged that the defendant caused the death of another person by driving under the influence of alcohol but did not state that alcohol rendered the defendant's alcohol level was over .08% or that the alcohol rendered her less safe to drive. Another count alleged that first degree vehicular homicide by the commission of reckless driving and a third count alleged causing serious injury by vehicle. Each of the counts was deficient because the count did not allege each of the essential elements of the underlying offense. This same principle would apply in a RICO case: the predicate offenses (racketeering acts) must be set forth with the same degree of specificity as if they were stand-alone crimes.

Sanders v. State, 313 Ga. 191, 869 S.E.2d 411 (2022): Two counts of the indictment in this case were subject to a special demurrer. One count alleged felony murder with the predicate offense being conspiracy to commit armed robbery, but the indictment did not sufficiently allege the element of the conspiracy to commit armed robbery. Another count alleged solicitation to commit a VGCSA felony but failed to adequately allege the VGCSA offense. Thus, this case stands for the proposition that when a conspiracy is alleged, the indictment must allege the elements of the offense that is the object of the conspiracy.

Henderson v. Hames, 287 Ga. 534, 697 S.E.2d 798 (2010): An indictment must set forth the essential elements of the offense, including the required *mens rea* element. In this case, the defendant was charged with misuse of a firearm while hunting and felony murder. The firearm violation was the predicate for the felony murder charge. The firearm violation, however, was not

properly set out in the indictment, because there was no allegation that the defendant "consciously disregarded a substantial and unjustifiable risk that his act or omission would cause harm to or endanger the safety of another person." This is the required *mens rea* to commit the offense.

Thomas v. State, 366 Ga. App. 738, 884 S.E.2d 120 (2023): The indictment alleged in two different counts that the defendant possessed a sawed-off shotgun. Identifying the statute that was violated and alleging only that a gun with insufficient length was possessed was not sufficient. The indictment should have alleged the make and model of the gun, the serial number, the color, or some other method of identifying the gun that was possessed in violation of the law.

Smith v. State, 366 Ga. App. 399, 883 S.E.2d 147 (2023): The accusation alleged that the defendant violated OCGA § 40-6-123, improper lane change, specifically alleging that the defendant violated § 40-6-123 by making an "erratic" lane change. This allegation failed to include a necessary element of the offense: "unless such movement can be made with reasonable safety." Citing the statute (without listing the necessary elements) is not sufficient; and citing some, but not all the necessary facts, is also not sufficient to allege an offense. In this case, stating that the defendant made an "improper" lane change was simply a legal conclusion; and "erratic" does not necessarily mean "unsafe."

State v. Delaby, 298 Ga. App. 723, 681 S.E.2d 645 (2009): The indictment alleged that the defendant committed the offense of influencing a witness by using "intimidation." The Court of Appeals held that a special demurrer was properly granted by the trial court. The term "intimidation," even though it is one of the statutory methods of committing the offense, did not sufficiently apprise the defendant of the facts that the state would prove at trial. "Where the statutory definition of an offense includes generic terms, the indictment must state the species of acts charged; it must descend to particulars."

Woods v. State, 361 Ga. App. 844, 864 S.E.2d 194 (2021): An indictment for the offense of driving too fast for conditions must contain an allegation about the speed the defendant was traveling and the hazard or condition that made that speed too fast for conditions.

Sexton-Johnson v. State, 354 Ga. App. 646, 839 S.E.2d 713 (2020): The defendant was charged with driving with an open container while operating a vehicle. Trial counsel provided ineffective assistance of counsel by failing to file a demurrer, because this offense has the essential element that the vehicle must be on the roadway. Because this essential element was not in the indictment it was defective.

State v. Cerajewski, 347 Ga. App. 454, 820 S.E.2d 67 (2018): The defendant was charged with impeding a court officer, but the indictment provided insufficient information to identify what conduct was the focus of the charge. Merely alleging that the defendant made "threatening communications" is not enough. The special demurrer was properly granted.

Everhart v. State, 337 Ga. App. 348, 786 S.E.2d 866 (2016): The indictment alleged that the defendant committed the offense of cruelty to children in the first degree when he willfully deprived the victim of necessary sustenance … by failing to seek medical attention for said child after noticing injury and illness to the child. But "timely medical care" is not the equivalent of "necessary sustenance," so the indictment was defective and subject to a general demurrer.

Herring v. State, 334 Ga. App. 50, 778 S.E.2d 57 (2015): The trial court erred in failing to require the state to provide more detailed dates when the alleged sexual offenses occurred. The broad range of dates could have been narrowed by the prosecution by asking the victim more questions than simply the address where the offense occurred and then checking on what dates the defendant lived at that particular address.

State v. Meeks, 309 Ga. App. 855, 711 S.E.2d 403 (2011): When a trial court's decision

regarding a demurrer is reviewed by an appellate court pretrial, there is no harmless error review. Rather, the appellate court applies the rule that a defendant who has timely filed a special demurrer is entitled to an indictment or accusation perfect in form and substance. When presented with a special demurrer, the court should examine the indictment or accusation from the perspective that the accused is innocent.

State v. Bair, 303 Ga. App. 183, 692 S.E.2d 806 (2010): The indictment alleged that the defendant committed the offense of theft by taking, but failed to allege the way in which the theft was alleged to have occurred. The trial court granted a demurrer. Among other problems, the indictment apparently attempted to charge numerous separate "takings" over an extended period of time in one theft by taking count, without describing the individual criminal acts.

State v. Jones, 251 Ga. App. 192, 553 S.E.2d 631 (2001): On remand from the Supreme Court, the Court of Appeals re-affirms much of its earlier ruling in *State v. Jones*, 246 Ga. App. 482 (2000). The court distinguished the appellate court's task in reviewing a lower court's rejection of a special demurrer, depending on whether the review is pretrial or post-trial. If pretrial, the defendant is entitled to an indictment which is perfect in form and which specifies the method by which an offense is alleged to have been committed. Post-trial, the appellate court must determine if the failure to grant a special demurrer was prejudicial to the defendant at trial.

Hall v. State, 268 Ga. 89, 485 S.E.2d 755 (1997): The defendant was charged with reckless conduct in that she left her three young children at home in the care of her eleven-and-a-half-year-old child. (One of the young children died from a fall). The Supreme Court held that considering the conduct alleged in the indictment and relied upon by the state in response to the defendant's demurrer, the reckless conduct statute was unconstitutionally vague. The court held it is proper to consider these facts in assessing a demurrer; otherwise the state could avoid all pretrial challenges

simply by making conclusory allegations in the accusation, or indictment.

C. The Inadequacies of the Indictment

The foregoing precedents demonstrate that an indictment must do more than simply cite a statute (*Jackson v. State*); it must do more than just list the elements of the offense (*Henderson v. Hames*), it must allege the outlawed conduct in an unambiguous manner that is not exploiting an inherently vague statute (*Hall v. State*); it must allege *facts*, not just generic elements (*State v. Delaby*); and must provide the necessary information for each offense when the indictment alleges a compound offense, such as RICO (*Heath v. State* and *Sanders v. State*).

Though the precedents do not deal with the unique situation of an indictment (as in this case) that recites information totally unrelated to the crimes that are charged in the indictment (and allegations that are attributed to anonymous sources), it is obvious that reciting facts that have nothing to do with the charged offenses is as offensive as providing too little information. An indictment is not supposed to be a Wikipedia entry, or a high school term paper. Nor is an indictment a public relations script. Or a political manifesto.

1. Failure to Identify or Properly Allege Any Racketeering Acts General and Special Demurrer

A RICO conspiracy charge requires proof that a defendant conspired to participate in the affairs of an enterprise through the commission of at least two predicate (racketeering) acts. *Pasha v. State*, 273 Ga. App. 788, 616 S.E.2d 135 (2005); *State v. Pittman*, 302 Ga. App. 531, 690 S.E.2d 661 (2010). The defendant is not required to participate in the racketeering acts, but must agree to do so, or agree to endeavor to do so, or agree to aid and abet the commission of at least two racketeering acts. The indictment does not identify the specific two racketeering acts that any of the defendants allegedly conspired to commit. In fact, the indictment's flaw is more fundamental, because it does not even allege with specificity *any* racketeering acts. Instead, it alleges that a

bedeviling list of 225 events are "overt acts" (those are the words that are attached to each of the 225 events). Yet, no act is explicitly identified as a racketeering act and there is no recitation of the elements of *any* offense (or the facts that satisfy the elements) that are the object of the RICO conspiracy.

On page 49 of the indictment, the indictment alleges (apparently) that all the 225 events are *both* racketeering acts and overt acts. This is obviously not true. Many of the 225 acts are not crimes at all, and do not "involve" a crime. *See* OCGA § 16-14-3(5)(A), (B), and (C), for the list of crimes that qualify as racketeering acts. For example, there are dozens of "events" that involve purchasing food, or camping, or kitchen supplies. One might assume that these are meant to be the "overt acts" of the conspiracy and are not alleged to be racketeering acts. But defendants are not required to "assume" that the indictment is proper. If the prosecution alleges that some of these 225 events are racketeering acts and other events are only alleged to be overt acts (the former must be crimes, the latter need not be crimes), the indictment must specifically identify which is which. Any event that is alleged to be a racketeering act must adhere to the requirement of *Heath* and *Sanders* that requires a full description of every element and the supporting facts for each offense in a compound crime. Not one of the 225 events properly alleges any predicate racketeering crime with any degree of specificity: not by the title of a statute, not by code section, and not by a list of elements. The failure to identify a single racketeering act (identify the crime, the elements, and the facts), necessitates granting this demurrer. If the blurring of overt acts and racketeering acts persists, the court will need to review each act under the general demurrer standard, and determine, one-by-one, whether the act alleges an offense with sufficient particularity that the court can determine it is an eligible racketeering act.

In addition, though the indictment alleges which defendant was a participant in (or

responsible for) each event, there is no suggestion anywhere that any other defendant agreed or conspired to participate in that event. The defendants are left to guess whether any particular defendant is alleged to have conspired to commit any racketeering act in which he or she was not named.

In short, the indictment provides no notice what acts are alleged to be racketeering acts and which defendants are alleged to have agreed to participate in the affairs of the enterprise through the commission of which racketeering acts.

2. <u>The Enterprise Is Inadequately Defined</u>
<u>General and Special Demurrer</u>

The "enterprise" element of the offense is not sufficiently described and for that reason, Count One does not allege an offense. The enterprise is initially defined (kind of) on pages 24-25 of the indictment, though its definition blurs the identification of the enterprise and the commission of various acts (some of which are crimes, some of which are clearly First Amendment protected activity). Nevertheless, the enterprise is apparently "Defend the Atlanta Forest." The indictment alleges that Defend the Atlanta Forest ("DAF") is a "self-identified" coalition (whatever that means). Nowhere does the indictment allege that DAF has any "self-identified" structure, or that it is an "association in fact" of the defendants (and others), or that it had a date when it was formed in its present state, or whether the "coalition" members know each other, meet together, or even conspire to commit crimes with one another. In fact, the indictment acknowledges that DAF is a "broad, decentralized, autonomous *movement*" (emphasis added) which "does not recruit from a single location, nor do all [its] members have a history of working together as a group in a single location." *See* Indictment at 34. Elsewhere in the indictment DAF is also described as a "movement" as opposed to a coalition (page 25, 30). Although Georgia RICO does not require much to qualify as an "enterprise," at a minimum it must have some structure that differentiates

the enterprise from the description of the conduct of the defendants. *Boyle v. United States*, 556 U.S. 938 (2009). Many people drive too fast on the interstate, but all speeding drivers do not qualify as an enterprise. So, too, many people are opposed to the construction of the training facility, but that does not mean they are members of an enterprise.

The indictment also alleges (utterly nonsensically) that Defend the Atlanta Forest had its "beginnings" a year before the City of Atlanta acquired the land to construct the training center (Indictment page 30). DAF, the indictment alleges, started with protests surrounding the George Floyd and Rayshard Brooks killings, and the tragic death of 8-year-old Secoria Turner in 2020 (page 30 – 31). Those events had nothing to do with either a training center, or a forest. Only two of the indicted defendants in this case were alleged to have been involved in an overt act in July of 2020 (page 49, Act #1). One of those individuals, Andrew Carlisle, is not identified in any other overt act in the indictment, defying the suggestion that membership in the enterprise requires any involvement in the training center protests.

Apparently, none of the other 59 defendants were involved in the DAF "coalition" or the "movement" in May of 2020, as those events certainly had nothing to do with a forest, or a training center.[3] [4] Nevertheless, demonstrating the incomprehensible description of the enterprise in this case, the conduct of those two defendants is alleged to have amounted to overt acts in connection with the DAF enterprise conspiracy that was designed to prevent the construction of the training center in a forest in Dekalb County.

[3] The indictment dates the inception of the enterprise as May 25, 2020 (page 23, Count #1). Though not alleged in the indictment, the killing of George Floyd occurred on May 25, 2020.

[4] This alleged act is but one example of how the indictment fails to demonstrate the relationship between the alleged overt acts and any alleged enterprise, as discussed in section 3 below.

In reality, the Attorney General's description of the enterprise that is the subject of this indictment is not limited to the activities surrounding the training center but is actually comprised of "anarchists" who have a variety of specific goals and beliefs. The enterprise is not comprised of people whose mission is to stop the construction of the training center. Rather it is comprised of people who are (according to the indictment) unified in their beliefs about the government, the police, and the environment. Mere membership in the "movement" or the coalition – protected First Amendment activity – is enough, according to the indictment, to brand the member a conspirator in this RICO prosecution.

This attack on people's beliefs and membership in a political party, or who adhere to a particular philosophy, violates the First Amendment, even if the defendant does engage in protest activity. *Dawson v. Delaware*, 503 U.S. 159 (1992); *Aptheker v. Secretary of State,* 378 U.S. 500, 507 (1964); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 460 (1958). To put it simply, a person who joins the Communist Party, or the NAACP, or the National Lawyers Guild, or the Republican Party, is not a criminal, even if other members of the association commit crimes and even if the person agrees not only with the mission of the group, but with the methods the group uses to achieve their goals. *See N.A.A.C.P. v. Claiborne Hardware*, 458 U.S. 886, 919 (1982) ("Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence); *also Scales v. United States*, 367 U.S. 203, 229 (1961) (noting that a "blanket prohibition of association with a group having both legal and illegal aims" would present "a real danger that legitimate political expression or association would be impaired.")

The indictment does not allege that any of the defendants are card-carrying "members" of the coalition, or when any person joined, or whether any person holds any particular status in the

coalition, or whether any member had decision-making authority. Nor are any defendants identified as having been members of the coalition for any particular length of time (some, for example, may have been members for one day, or for a couple hours – though the indictment does not say one way or another). The indictment does not allege that DAF had *any* identifiable members when it was formed, or whether it has any identifiable members today.

As far as this indictment reveals, many of the defendants apparently showed up one day, went to the training center location to protest, and then left. Some were arrested, some were not. That was the beginning and end of their membership in the coalition or the movement. This is the antithesis of an enterprise with an identifiable structure.

The indictment alleges that many people committed a variety of crimes. But membership in an enterprise has not been properly alleged. The demurrer to this Count should be granted based on the failure to allege a violation of the RICO Act.

3. The Indictment fails to allege a sufficient relationship between the overt acts and the enterprise

Special Demurrer

The indictment does not allege how most of the events (the 225 "overt acts") related to the enterprise, or the alleged criminal goals. The various money-related events that address the conduct of Defendants Kautz, MacLean, and Patterson, do not allege the essential elements of a money laundering offense (the Money Laundering Demurrer filed in a separate pleading by Kautz, MacLean and Patterson shows that the allegations of money laundering in Counts 4 – 18 are categorically insufficient) and fail to explain how any of the transactions had a relationship to the

efforts to deter the construction of the training center or to achieve the goals of the coalition.[5] [6] One can speculate about the reason that food, or kitchen supplies, were purchased, but an indictment is not supposed to leave the defendants speculating. Perhaps the court – and ultimately the jury – will assume the worst, but requiring the jury or the court to assume the worst is not the mission of an indictment. *See Kimbrough v. State*, 300 Ga. 878.

Regarding the allegations concerning communications in the "Scenes Blog,"[7] the indictment provides insufficient facts to allege that these communications were criminal threats, fighting words (OCGA § 16-11-39), terroristic threats (OCGA § 16-11-37), or otherwise prosecutable conduct. No citation to any crime, nor a recitation of the elements of any offense is included in the various overt acts that relate to these communications. These overt acts also fail to adequately accuse the defendants of influencing a witness, because there is not even a suggestion that there was any pending proceeding or investigation that the defendants were intending to obstruct. OCGA § 16-10-93(b)(1)(B)(i).

Even if the prosecution labels the communications with Scenes Blog as "urging" people to riot, this type of activity is protected First Amendment speech. *Brandenburg v. Ohio***,** 395 U.S. 444 (1969) (encouraging, advocating, or urging people to violate the law is not a crime; to prosecute such speech, the state must prove the defendant "incited" imminent lawless action); *United States v. Miselis*, 972 F.3d 518, 536-537 (4th Cir. 2020) (declaring unconstitutional portions of the federal

[5] See, e.g., Overt Acts ## 3, 4, 16, 25, 26, 28, 29, 40, 42, 44, 46, 48, 50, 52, 58, 60, 62, 67 (and scores more).

[6] As described in section 1, the other alleged crimes mentioned by name in Count 1 of the indictment suffer the same flaw.

[7] See, e.g., Overt Acts ## 7, 17, 18, 19, 24 (and scores more).

"Anti-Riot" Act, 18 U.S.C. § 2101, *et seq*., which outlaws encouraging, urging, or promoting others to riot).[8] The right to protest is one of the load-bearing pillars of the First Amendment. To prosecute protestors as conspirators in a RICO indictment, even if they engaged in civil disobedience not only violates their First Amendment rights, it also chills the rights of others to come anywhere within hailing distance of such a protest.

This prosecution sends a clear message: "If you join a protest in Georgia, you are not just exposed to a misdemeanor trespass prosecution, you risk being prosecuted as a racketeer and face twenty years in prison." This Court should enter an Order dismissing the indictment to refute that unconstitutional message.

4. The Failure to Individualize the Allegations Or Specify Relevant Dates

Special Demurrer

The vagueness of the allegations that connect the overt acts to the conspiracy is exasperated by the failure to properly identify the individuals' personal participation in the conspiracy. The defendants are individuals. They are being prosecuted individually and will be mounting individual defenses. If convicted, they will be punished individually. Yet, the indictment thrusts them all into an overarching conspiracy and fails to reveal the specifics of what any individual defendant did.[9]

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[8] In *Land v. State*, 262 Ga. 898, 426 S.E.2d 370 (1993), the Supreme Court upheld a conviction for inciting a riot and relied on the testimony of the arresting officers who revealed what is required to support a conviction in this context: "The responding officers in the case at bar, well-versed in crowd control, described the crowd toward which appellant was directing his gesticulations as "very agitated" and "at the breaking point," and were of the opinion that only their arrival had prevented the outbreak of violence. Since appellant's conduct constituted inciting to riot, his speech is not afforded any constitutional protection." *Id. at 900.*

[9] Even the three defendants who are filing this Demurrer are grouped together as perpetrators of several dozen overt acts, as if they are one person. There is no explanation how the prosecution convinced the grand jury that Kautz, Patterson and MacLean together were the perpetrators of 98 of the overt acts. Defendants are left only to speculate. Is the indictment intending to allege that

The defendants are not identified as being principals in the commission of any predicate offense, or aiders and abettors, or conspirators.

The indictment also fails to set forth when any defendant joined the conspiracy. The conspiracy is alleged to have started in May of 2020 (page 24 of the indictment), a year before there was any effort to construct a training center in Dekalb County. There are no overt acts that allegedly occurred in May of 2020, or any other evidence that this was a date of significance for the beginning of the conspiracy. Many of the defendants' acts occurred on one day and one day only. Yet, the indictment does not allege the date that any defendant joined the conspiracy. This deficiency means that no defendant knows what he or she will be held responsible for. To cure this deficiency, a special demurrer must be granted that requires the indictment to narrow the date range for the conspiracy, but more important, to specify the date that each defendant allegedly joined the conspiracy. *Herring v. State*, 334 Ga. App. 50, 778 S.E.2d 57 (2015); *Blanton v. State*, 324 Ga. App. 610, 751 S.E.2d 431 (2013); *Mosby v. State*, 319 Ga. App. 642, 738 S.E.2d 98 (2013).

5. The Irrelevant Background Information

Special Demurrer

The indictment does not begin with a concise recitation of the offense. Starting on page 25, and continuing through page 49, the indictment provides a history of anarchism both in America and abroad. Consider, for example, the following excerpts from the indictment, virtually none of which is relevant to any count in the indictment (or admissible in evidence at trial):

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as alleged conspirators, they are responsible for the conduct of one another? Of course, that would mean that all 61 conspirators are responsible for all 225 overt acts. If so, then why are only three individuals listed for 98 of the overt acts? Alternatively, perhaps the prosecutor convinced the grand jury that as officers of the Atlanta Solidarity Fund, Kautz, Patterson, and MacLean are responsible on a theory of *respondeat superior*. But that can't be it either as that theory of guilt is not available in a criminal case.

Anarchy is a philosophy that is opposed to forms of authority or hierarchy. Beginnings of anarchist ideals date back centuries, though usage of the term "anarchy" did not exist until the 1800s. Over time, various philosophical forms of anarchy have emerged. Numerous anarchist philosophies exist, though anarchists are not required to subscribe to one particular belief of anarchy. Rather, the notion of anarchy, being grounded in an anti-authority mindset, primarily targets government because it views government as unnecessarily oppressive. Instead of relying on a modicum of government structure, anarchy relies on human association instead of government to fulfill all human needs. Some of the major ideas that anarchists promote include collectivism, mutualism/mutual aid, and social solidarity, and these same ideas are frequently seen in the Defendant the Atlanta Forest movement.

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Collectivism is the idea that individual needs are subordinate to the good of the whole society. That is, decisions are made based upon what is best for the group and not necessarily what is best for individuals. In embracing collectivism, individuals are expected to sacrifice personal income, personal liberty, or personal property if it benefits society as a whole. The decision of whether an individual should sacrifice their own individual needs is not made by the individual. Rather, in a true collectivist society, the society as a whole decides whether the individual must forfeit their own needs or property if it is deemed to benefit the society. Nevertheless, in an ideal collectivist society, individuals already make the decision to donate to the collective without prompting from others.

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Mutual Aid is a term popularized by anarchists to describe individuals who exchange goods and services to assist other individuals in society without government intervention. Closely related to collectivism, mutual aid is not a new term, nor is it limited to anarchy. However, the major factor in anarchist mutual aid 1s the absence of government and the absence of hierarchy. Indeed, an anarchist belief relies on the notion that once government is abolished, individuals will rely on mutual aid to exist. In doing so, anarchists believe that individuals will work together and voluntarily contribute their own resources to insure that each individual has its own needs met.

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Social solidarity is another term that is embraced by anarchists that is tied closely to mutual aid and collectivism. Social solidarity is the idea that individuals can live together without government and can provide for each other. The notion of social solidarity relies heavily on the idea of human altruism; that is, individuals will voluntarily offer goods, services, and resources without anything compelling it. Anarchists often shorten the term "social solidarity" simply into the term

"solidarity," and it is frequently woven into the speeches, statements, and writings of anarchists. In addition to the term "solidarity," and other anarchist terms, anarchists often weave the term "mutual aid" and "collective" into their jargon and writings.

Violence is part of the anarchism in some anarchist beliefs. Viewing their own violent acts as political violence, violent anarchists attempt to frame the government as violent oppressionists, thereby justifying the anarchists' own violence. Indeed, the belief is that the government is engaging in a form of violence by denying individuals basic needs through capitalism, government action, and law enforcement by police. Anarchists often point to law enforcement as one of the chief violent actors, and they accuse the government of using law enforcement to oppress societal change, and they view the structure of government as inherently oppressive and violent. As a result, violent anarchists often engage in violent activity towards law enforcement, and it is justified because of the anarchist belief that the ends justify the anarchist means.

pages 26 – 27.

Historical anarchist and activist movements in the United States have included the creation of "autonomous zones" in which participants do not recognize the lawful authority of local, state, or federal government. Such examples include the 2020 movements in Portland, Oregon and Seattle, Washington, the latter known as the "Capitol Hill Autonomous Zone" (CHAZ) which received a high volume of national and international media attention. A second example is the previously mentioned autonomous zone in Atlanta during the George Floyd demonstrations. A sign reading "You are now leaving the U.S.A." is frequently featured in social media posts and blogs about Defend the Atlanta Forest and exemplifies the underlying anti-government and anti-authority
ideology of Defend the Atlanta Forest.

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Defend the Atlanta Forest is made up of three primary ideologies. The first ideology is an anti-law enforcement ideology that attempts to push a narrative that all police are violent, militant individuals that frequently use excessive force and violence against innocent citizens. The goal of this ideology is the elimination of police forces in their entirety. The second ideology is protection of the environment at all costs. This ideology promotes the belief that the environment has the same rights as humans, and therefore violence is acceptable to defend the environment.

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The United States Department of Homeland Security has classified the individuals as alleged Domestic Violent Extremists (DVE). In a bulletin posting, the Department of Homeland Security concluded that "alleged DVEs in Georgia have

> cited anarchist violent extremism, animal rights/environmental violent extremism, and anti-law enforcement sentiment to justify criminal activity in opposition to a planned public safety training facility in Atlanta. Criminal acts have included an alleged shooting and assaults targeting law enforcement and property damage targeting the facility, construction companies, and financial institutions for their perceived involvement with the planned facility."

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The indictment also quotes a "local anarchist" who supposedly supports the Stop Cop City movement (which, apparently, is the same "movement" as Defend the Atlanta Forest, but that is not explicit in the indictment). This anarchist is not alleged to be a defendant in this case, or a co-conspirator, or a coalition member. Nevertheless, the indictment offers a quote from this anonymous anarchist:

> The movement's militant direct action, land occupation, and sabotage of construction machinery have not only kept the struggle alive, but shifted the Overton window when it comes to how even nonprofits are willing to engage the struggle. When asked about the sabotage of construction and police machinery, the referendum campaign-notably, headed by nonprofits and electoral organizers-has continuously reiterated its support for a diversity of tactics, in a stark departure from many nonprofits' more risk-averse approach to political action. Through a combination of tactics, the Stop Cop City has built a united front against Cop City that is willing to fight by any means necessary. Just as with tactics that directly engage the system, much of the militant direct action has also heightened contradictions and exposed hypocrisies, thrusting fundamental questions into public consciousness: Are we more concerned about the "violence" of destroying construction machinery and police property, or about the violence of capitalist exploitation, environmental devastation, and police murder? What do we do when it's liberal Democrats, rather than Republicans, who are leading the efforts to destroy an urban forest, suppress residents' right to vote, and expand the police state? Do we truly believe that Cop City is a matter of life and death, and, if we do, what are we willing to do to stop it?

Pages 26-27.

The indictment continues with more anonymous offerings from another unidentified source:

> As noted by the anarchist above, the militant anarchists engage in violence to bring attention to their own political goals and their perceived government violence. But political violence is not simply a philosophy; Defend the Atlanta Forest has put the philosophy into action. Indeed, in one example, a known Defend the Atlanta Forest

arsonist was recorded complaining that there were not enough violent members in protests against the Training Center.

Page 28.

Another unidentified person's views are also described in the indictment:

> In one video, a black-clad Defend the Atlanta Forest participant refers to historical insurgents or violent guerilla movements such as the Mexican Zapatistas and Syrian Revolution as a reference point for strategy and to anchor smaller movements to larger revolutions.
>
> The black-clad Defend the Atlanta Forest participant states that "the fate of the Kurdish revolutionaries in Kobani and Sere Kanive, and all of these places, it was partially determined by the bloodbath in Damascus and Aleppo," and "I think that with the current movement here, it's clear to me that the fate of the South River, Weelaunee Forest will be determined in midtown Atlanta and it will be determined in Chicago and in New York and in Los Angeles and in Seattle."
>
> The same black-clad Defend the Atlanta Forest participant goes on to detail the role of sabotage and militant actors in the Defend the Atlanta Forest movement by referencing US Department of Defense theory on the role of defense and offense. Specifically, that "the role of defense is to open the space for offense" and that,
>
> > "Defenders, of course, especially in an urban context, not only in an urban context, but a wooded urban context, will always have an inherent advantage, especially if they perceive their role as defensive and they're able to engage really on their own terms. They're just trying to open space for offense."

Page 37.

This unidentified person's views continue:

> The black-clad Defend the Atlanta Forest participant justifies the property destruction and violence by stating that it is not an "existential attack on the company" because these companies have various of contracts and make of money elsewhere, and:
>
> > "The idea is, if you deal with the [Atlanta Police Foundation], you'll deal with us. For this one contract, people are coming to your house. For this one contract, people are visiting your church. For this one contract, people are flooding your phone lines, people are sending you faxes, people are visiting your office. Some people are vandalising your stores, are burning your equipment, for the one contract."

pages 37-38.

We do not know if the prosecution will argue at trial that this case is exempt from the Confrontation Clause of the Constitution and that the state should be permitted to introduce anonymous statements from "black-clad" people about the anarchists' goals and the beliefs that the anonymous speaker believe are shared by the defendants. The defense assumes that the court will conduct this trial in accordance with the United States and Georgia Constitutions, neither of which tolerate "anonymous" testimony, or lengthy descriptions of the "bloodbath in Damascus and Aleppo" and the Mexican Zapatistas and Syrian Revolutionaries and the "beginnings of anarchist ideals" before the American Revolution.

Yet, if the indictment is read to the jury – as the law generally requires – both before jury selection and prior to deliberations, is the court going to just provide the jury with excerpts? Will the indictment be provided to the jury during its deliberations? What is to become of page after page of irrelevant, inadmissible, anonymously-sourced (and in many cases untruthful) statements? Will the jury be told that the history of anarchism is an element of the RICO offense? Will the jury be told that during their deliberations they may consider the alleged comparison between the charged coalition/movement, and Mideastern terrorists?

What is the prosecution's plan? A cynical view would be that the prosecution designed this pseudo-history of violent anarchism for public consumption, not for the courtroom. No court in America would tolerate the admissibility of evidence from anonymous sources about the activities of the defendants in this case and comparing them to terrorists in the Mideast, or cartels in Mexico. No court in America would permit a prosecutor in a drug prosecution to include a dozen pages in the indictment about the history of the War on Drugs, or the dangers posed by addiction. No court in America would permit a prosecutor in a firearm possession prosecution to include an anthology

of sociological studies about the danger of guns in the home.

This indictment's improper effort to indoctrinate the jury about the evils of anarchism and the inscrutable comparison of the demonstrators in this case to terrorists in the Mideast and the cartels in Mexico violates any rational notion of fairness and Due Process.

The solution for the court is easy and necessary: the court should grant a demurrer and require the prosecution to return to the grand jury with an indictment that conforms to the requirements of OCGA §17-7-54 and the Georgia and United States Constitutions. Let a newly empaneled grand jury decide whether the facts of this case deserve to be pursued in a criminal case in an American courtroom.

CONCLUSION

For the foregoing reasons, Defendants Kautz, MacLean, and Patterson urge the court to grant these general and special demurrers and dismiss the indictment.

This, the 15th day of November, 2023.

RESPECTFULLY SUBMITTED,

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
	)	CASE NO.:
v.	)	
	)	23SC189192
MARLON KAUTZ,	)	
ADELE MACLEAN, and	)	
SAVANNAH PATTERSON,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this GENERAL AND SPECIAL DEMURRERS TO COUNT ONE OF THE INDICTMENT using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This, the 15th day of November, 2023.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

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