

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

DONALD JOHN TRUMP,
RUDOLPH WILLIAM LOUIS GIULIANI,
JOHN CHARLES EASTMAN,
MARK RANDALL MEADOWS,
JEFFREY BOSSERT CLARK,
RAY STALLINGS SMITH III,
ROBERT DAVID CHEELEY,
MICHAEL A. ROMAN,
DAVID JAMES SHAFER,
SHAWN MICAH TRESHER STILL,
STEPHEN CLIFFGARD LEE,
HARRISON WILLIAM PRESCOTT FLOYD,
TREVIAN C. KUTTI,
CATHLEEN ALSTON LATHAM,
MISTY HAMPTON.

Defendants.

Indictment No.
23SC188947

ORDER ON PROTECTIVE ORDER OVER PRETRIAL DISCOVERY

On September 27, 2023, the State requested entry of a protective order pursuant to O.C.G.A. § 17-16-4(d) over all provided discovery materials to “protect witnesses, confidential or sensitive information, and defendants’ own rights to a fair trial.” (Trump Doc. 65). The following day, Defendant Shafer filed a notice that he and nine other defendants intended to begin negotiating with the State for a jointly proposed protective order. (Shafer Doc. 48). One week later, Defendant Shafer filed a second notice informing the Court that the parties remained at an impasse, and that the Defendants intended to submit their own alternative version of a proposed protective order. (Shafer Doc. 54). However, the Court never received any such proposal. On October 16, 2023, after the Court inquired about the matter in open court, the State and counsel for Defendant

Chesebro indicated that the motions were not yet ready for a ruling. Now, the State has filed an Emergency Renewed Motion for a Protective Order on November 14, 2023, to which Defendant Shafer responded in opposition that same day on behalf of himself and Defendants Trump, Smith, Cheeley, Still, and Latham.¹ (Shafer Docs. 61, 63).

The Court conducted a remote hearing on November 15, 2023, during which the State and Defendants Trump, Giuliani, Eastman, Meadows, Smith, Cheeley, Shafer, Still, Kutti, and Latham all announced that they consented to the entry of Defendant Shafer's proposed order. On the other hand, Defendants Clark, Floyd, and Hampton opposed any order with varying levels of strenuousness. Defendants Lee and Roman did not appear. Finally, intervening counsel for several local and national media organizations voiced his objection to any protective order on First Amendment grounds. Having considered the dueling proposed protective orders, the law, and argument of counsel, the Court finds the entry of a protective order concerning pretrial discovery necessary and justified by the particular circumstances of this case.

In Georgia law, the only explicit reference to protective orders for pretrial criminal discovery can be found in a rarely, if ever, appealed section of the Criminal Procedure Discovery Act² applicable to felony cases:

Upon a sufficient showing that a discovery required by this article would create a substantial threat of physical or economic harm to a witness, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make such other order as is appropriate.

O.C.G.A. § 17-16-4(d); *compare* O.C.G.A. § 9-11-26(c) (outlining standards for protective orders in civil cases); Fed. R. Crim. P. 16(d)(1). If confined solely to this statute, a moving party or trial

¹ Subsequently joined by Defendants Clark, Roman, and Floyd. As subsequently noted however, Defendant Floyd later reversed his position and opposed the entry of any protective order during the hearing.

² O.C.G.A. § 17-16-1 *et seq.*

court would be left unable to consider the effect that pretrial disclosure of discovery materials has on other important matters, such as trial preparation or the prospective jury pool. But the Court finds that O.C.G.A. § 17-16-4(d) is not the sole source of authority for the entry of a protective order. Under O.C.G.A. § 15-1-3(4), every court has the broad power “[t]o control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.” *See also Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984) (finding regardless of any particular procedural rule, a court retains jurisdiction to enter a protective order “under the inherent equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustices”) (cleaned up).

Thus, setting aside whether the consenting parties have established a substantial threat of physical or economic harm to any particular witness, the Court finds that additional concerns at play here justify the entry of a protective order. First, allowing parties the unfettered ability to share pretrial materials with the public undermines the “smooth functioning of the discovery process.” *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986). Discovery is designed to avoid unnecessary surprise at trial and level the playing field. A party may be tempted to delay disclosure or avoid reducing items to documentary form if the possibility of public vetting is ever present. Such a logistical roadblock was already demonstrated in this case when the State, in reaction to the public release of the recordings of recent proffers given by four Defendants, indicated that all subsequently produced videos would only be viewable by defense counsel in-person.³ Only with full and unimpeded discovery will a case as cumbersome as this ever stay on track and be ready for trial without inordinate delay.

In addition, and more concerning, potential jurors should be limited from exposure to materials that may be deemed inadmissible at trial. One party may believe a piece of evidence should be


³ A pronouncement since withdrawn.

considered by the public at large, while another finds it prejudicial and damaging to the jury pool. The Court has an interest in ensuring that all parties retain their right to a fair trial before an unbiased jury, a process that could become unattainable should the public be allowed to vet every piece of unfiltered evidence months before trial.

Borrowing from the well-litigated principles highlighted at the federal level, the Court also notes that the proposed protective order does not offend the First Amendment. “Discovery is neither a public process nor typically a matter of public record. Historically, discovery materials were not available to the public or press.” *Anderson*, 799 F.2d at 1441 (11th Cir. 1986) (finding sealed discovery documents accompanying a motion were not a matter of public record); *see also United States v. Smith*, 985 F. Supp. 2d 506, 520 (S.D.N.Y. 2013) (surveying array of federal caselaw applicable to protective orders). In addition, the proposed protective order exempts information gained from other sources and is more narrowly tailored than a blanket/umbrella order covering all discovery.⁴ The likelihood of harm in this case is severe, as extensive media coverage guarantees broad dissemination of any disclosed discovery materials. Finally, the Order is not indefinite and will expire at the conclusion of the case.

With these justifications in mind, the Court hereby enters the attached Protective Order as proposed by Defendant Shafer (with slight modifications) effective immediately.

SO ORDERED, this 16th day of November, 2023.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit

⁴ Should circumstances require, this should not be read to foreclose the imposition of such a blanket order in the future via an amended protective order.

Attachment 1

**PROTECTIVE ORDER REGARDING ALL PRETRIAL DISCOVERY IN
INDICTMENT NUMBER 23SC188947**


The Court enters this Protective Order concerning discovery materials produced by the State to the defendants:

1. This Protective Order does not apply to information or records that are publicly available independent of the State's discovery productions to the defendants, information or records which the defendants or defense counsel came into possession by independent means, unrelated to the discovery process, or information or records which has been filed or received in evidence in any other court proceeding.
2. For the purposes of this Protective Order, "Sensitive Materials" shall mean any evidence within the State's discovery productions to the defendants and their counsel which the State believes in good faith is entitled to confidential treatment under applicable law, and which the State designates as Sensitive Materials.
3. The State shall review its discovery productions to the defendants or their counsel and shall specifically designate any evidence and the basis for the designation which the State believes in good faith constitutes Sensitive Materials in writing, served on the defendants or their counsel, within 30 days of the date of this Protective Order. For each item of evidence which the State believes constitutes Sensitive Materials, the State shall state in writing served on the defendants or their counsel the grounds on which the item of evidence is contended to constitute Sensitive Materials.
4. The State shall designate any evidence believed to constitute Sensitive Materials in all future productions of discovery to the defendants or their counsel at the time of production. The State shall physically label any and all documentary evidence designated as Sensitive Materials in any future productions with the legend "Sensitive," and shall label any other types of evidence designated as Sensitive Materials in any future productions with the word "Sensitive" at the end of the filename.
5. The defendants and counsel shall have fourteen days from production of any discovery designated as Sensitive Materials to notify the State that the defense contests the designation. If the parties are unable to come to agreement on whether the discovery is appropriately designated as Sensitive Materials and a motion is filed with the Court, the defense shall continue to treat the disputed discovery as Sensitive Materials until the motion is ruled upon by the Court.
6. The defendants and their counsel and their counsel's co-counsel, employees, assistants, paralegals, consultants, agents, experts or potential witnesses may use evidence designated by the State as Sensitive Materials solely in connection with the defense of this action and for no other purpose, and in connection with no other proceeding, without further order of this Court. This Protective Order is intended to allow the defendants and their counsel the broadest and least restricted use of evidence produced by the State to the defendants and their counsel consistent with any good faith concerns by the State regarding sensitive information. The

defendants and their counsel shall provide a copy of this Protective Order to any persons or entities to whom the defendants or their counsel disclose any evidence designated by the State as Sensitive Materials and shall (1) require such persons or entities to sign and date a copy of this Protective Order, and (2) retain such signed and dated copies for inspection by the Court.

7. The defendants and their counsel shall not otherwise disclose evidence designated by the State as Sensitive Materials to any persons or entities other than employees, assistants, paralegals, consultants, agents, experts or potential witnesses connected to the defendants' defense of this action or to counsel for other parties without further order of this Court.
8. The defendants and their counsel and their counsel's co-counsel, employees, assistants, paralegals, consultants, agents, experts shall keep any evidence designated by the State as Sensitive Materials in their custody and control.
9. Any evidence designated by the State as Sensitive Materials shall not be filed with the Court except under seal, and shall not be introduced in any trial or hearing in this action without having redacted from the evidence any information required to be redacted from filings pursuant to O.C.G.A. § 9-11-7.1(a). In addition to the information required to be redacted from filings pursuant to O.C.G.A. § 9-11-7.1(a), the parties shall redact any residential addresses, telephone numbers and email addresses from any evidence designated by the State as Sensitive Materials from any evidence introduced in any trial or hearing in this action.
10. This Protective Order does not alter, waive, modify, or abridge any right, privilege or protection otherwise available to any party with respect to discovery.
11. Any party may move for modification of this Protective Order.
12. Inadvertent production of any evidence designated by the State as Sensitive Materials to any person or entity shall not alter, waive, modify, or abridge the status of the evidence as Sensitive Materials. In the event that evidence designated by the State as Sensitive Materials is inadvertently disclosed, the party that inadvertently disclosed the evidence shall give written notice of such inadvertent disclosure to the State within seven days of the discovery of the inadvertent disclosure, and shall (1) take all reasonable efforts to cause the person or entity to whom the Sensitive Materials were disclosed to return or destroy the Sensitive Materials and any copies thereof, and (2) request such persons or entities to sign and date a copy of this Protective Order and retain such copies for inspection by the Court whether signed and dated, or not.
13. Within 30 days following the conclusion of this action or any appeal of this action or any collateral challenge to this action, the defendants and their counsel shall destroy all evidence designated by the State as Sensitive Materials and any copies thereof.

SO ORDERED, this 16th day of November, 2023.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit