

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

DONALD JOHN TRUMP	:	
Appellant - Defendant,	:	INTERLOCUTORY APPEAL
	:	
vs.	:	
	:	Docket Number: A24A1599
STATE OF GEORGIA	:	
Appellee - Plaintiff.	:	

REQUEST FOR ORAL ARGUMENT

Pursuant to Court of Appeals Rule 28 (a) (3), President Donald J. Trump requests oral argument to aid the decisional process of A24A1599 and the related interlocutory appeals, A24A1595 (Roman), A24A1596 (Shafer), A24A1597 (Cheeley), A24A1598 (Meadows), A24A1600 (Latham), A24A1601 (Giuliani), A24A1602 (Clark), and A24A1603 (Floyd).¹

Undersigned have notified counsel for the State of this request, specifically Alex Bernick of the Fulton County District Attorney’s Office.² As of the time of filing, the State’s position is unknown for it has chosen not to respond to our notification.³

¹ President Trump’s request for oral argument is timely because it was filed within twenty days of the docketing notice (June 3, 2024). Ga. Ct. App. R. 28 (a) (2).

² Notice of President Trump’s request to argue was given to the State’s counsel via emails dated June 4 and June 5, 2024.

³ The June 5 email asked the State to respond by Friday, June 7. It did not do so.

In accordance with Rule 28 (a) (3), this request identifies that, should oral argument be granted, lead counsel Steven H. Sadow will argue for President Trump.

REASONS FOR ORAL ARGUMENT

Oral argument will aid the decisional process of this appeal because A24A1599 presents a novel issue of first impression concerning the legal standard for “forensic misconduct” to disqualify an elected District Attorney and her office.⁴ *See Williams v. State*, 258 Ga. 305 (2) (1988). In *Williams*, our Supreme Court explained that “[t]here are two generally recognized grounds for disqualification of a prosecuting attorney. The first such ground is based on a conflict of interest, and the second ground has been described as “forensic misconduct.” *Id.* at 314 (2). On forensic misconduct, *Williams* did not provide a standard, but cited as a “primary example” the “improper expression by the prosecution attorney of his personal belief in the defendant’s guilt.” *Id.*

Williams directs:

In determining whether an improper statement of the prosecutor as to the defendant’s guilt requires [her] disqualification, the courts have taken into consideration whether such remarks were part of a calculated plan evincing a design to prejudice the defendant in the minds of the jurors, or whether such remarks were inadvertent, albeit improper, utterances. *Id.* (citations omitted).

⁴ Local Rule 28, subsection (a) (4), lists an issue of first impression as one of two non-inclusive, reasons to grant oral argument. *See* Ga. Ct. App. R. 28 (a) (4) (“These reasons may include, but are not limited to, that oral argument would simplify an unusually complex case or that the appeal presents an important question of first impression for the Court.”).

The trial court's Order on the defendants' motion to disqualify elected Fulton County DA Willis and her office sought to apply *Williams*,⁵ but noted a lack of case guidance for the application of the forensic misconduct standard, when the disqualification remedy becomes appropriate, and whether a showing of prejudice is required. [R. at 1629]. Explaining its view that the forensic misconduct question was one of first impression, the trial court wrote:

This Court has not located, nor been provided with, a single additional case exploring the relevant standard for forensic misconduct, or an opinion that actually resulted in disqualification under Georgia law. Left unexplored, therefore, is how other examples of forensic misconduct can manifest, such as whether statements that stop short of commenting on the guilt of a defendant can be disqualifying. Nor has it been decided if some showing of prejudice is required - and how a trial court should go about determining whether such prejudice exists. Nor is it clear whether the analysis differs depending on the pretrial posture of the case. Unmoored from precedent, the Court feels confined to the boundaries of *Williams* and restricts the application of the facts found here to its limited holding.⁶ [R. at 1629].

President Trump's adoption of co-defendant Roman's motion to dismiss the case and disqualify the DA invoked forensic misconduct by quoting a litany of

⁵ As the trial court noted, *Williams*' bifurcated conflict of interest definition was most recently cited in *Reed v. State*, 314 Ga. 534, 545 (4) (2022), but *Reed*'s division 4 did not elaborate on, nor further developed, the forensic misconduct standard. *Reed*, 314 Ga. at 545 (4).

⁶ The law review note that *Williams* cited favorably defines forensic misconduct more broadly than the facts of that case. This note states that "[p]rosecutor's forensic misconduct may be generally defined as *any activity by the prosecutor which tends to divert the jury from making its determination of guilt or innocence by weighing the legally admitted evidence in the manner prescribed by law.*" See *The Nature and Consequences of Forensic Misconduct in the Prosecution of a Criminal Case*, 54 Colum. L. Rev. 946, 949 (1954) (emphasis added).

extrajudicial comments made by DA Willis, including a nationally televised, Martin Luther King Holiday speech at Atlanta's Big Bethel AME Church. *See* [R. at 1059-63] (motion to adopt and supplement co-defendant Roman's motion to dismiss and disqualify); *see also* [R. at 1278-85] (initial reply); *see also* [R. at 1574-75] (second reply). In this speech, DA Willis injected race and her communications with God into the case (and the prospective jury pool) and stoked racial animus against the defendants and their counsel, by, among other statements, asking God why the defendants challenged her conduct in hiring a Black man but not his White counterparts, and why the judgment of a Black female Democrat was not as good as White male Republicans.⁷ Specifically, President Trump argued that *Williams*

⁷ This keynote speech lasted approximately 35 minutes, was widely reported on by local and national media outlets, and broadcast on YouTube. In pertinent part, DA Willis publicly said:

Why does [Fulton County] Commissioner [Bridget] Thorne, and so many others, question my decision in special counsel? Lord, your flawed, hard-headed and imperfect child--I'm a little ... confused. I appointed three special counsel, as is my right to do. Paid them all the same hourly rate. They only attack one. I hired one white woman, a good personal friend and great lawyer. A superstar, I tell you, I hired one white man, brilliant, my friend and a great lawyer. And I hired one black man. Another superstar a great friend and a great lawyer. Oh, Lord, they're going to be mad when I call them out on this nonsense. First thing they say. Oh, she going to play the race card now? But no. God, isn't it them who's playing the race card when they only question one? Isn't it them playing the race card when they constantly think I need someone from some other jurisdiction in some other state to tell me how to do a job I've been doing almost 30 years. God why don't they look at themselves and just be honest? I mean, can't they keep it a hundred with themselves, right? Come on. Why are they so surprised that a diverse team that I assembled, your child can accomplish extraordinary things? Yes. God, wasn't it them that attacked this lawyer of impeccable credentials? The black man I chose has been a judge more than ten years, huh? Run a private practice. More than 20 represented businesses and civil litigation. I ain't done. Y'all [he] served as a prosecutor, a criminal defense lawyer, special assistant attorney general one chief

required disqualification for DA Willis’ extrajudicial speech – which violated Georgia Rules of Professional Conduct 3.3 (a) (1), 3.8 (g),⁸ and 8.4 (a) (1) & (a) (4) – both standing alone and when analyzed together with prior public, extrajudicial remarks on the special grand jury’s investigation. [R. at 1061, 1278-83, 1575].⁹

The trial court erred in its narrow construction of *Williams*. Its Order inconsistently found that DA Willis’ extrajudicial speech was “legally improper,” which all but acknowledged forensic misconduct, yet failed to disqualify. *See* [R. at 1631] (“As best it can divine, under the sole direction of *Williams*, the Court cannot find that this speech crossed the line”); *see also* [R. at 1629] (“Unmoored from

Justice Robert Benham award from the state bar of Georgia. You know, they ain’t just giving this to black men. How come God, the same black man I hired was acceptable when a Republican in another county hired him and paid him twice the rate? Oh, y’all ain’t hear me. All right. In another county, the elected official has the authority to pay him twice the rate. Why is the white male Republicans judgment good enough? But the black female Democrats Not yet... *See* Atlanta News First article, transcript of DA Willis speech, <https://www.atlantaneewsfirst.com/2024/01/15/read-fulton-county-da-fani-willis-improper-relationship-charges/>.

⁸ Comment [5] to Rule 3.8 states: “Paragraph (g) supplements Rule 3.6: Trial Publicity, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused.”

⁹ Indeed, the lead enumeration of error in President Trump’s brief will mostly likely include: “The court below erred in holding that the standard for “forensic misconduct” under Georgia law prohibits a trial court from disqualifying prosecutors for intentional and deliberate violations of Georgia Rules of Professional Misconduct 3.8 (g) (special responsibilities of a prosecutor) and 8.4 (a) (1) & (4) (misconduct).”

precedent, the Court feels confined to the boundaries of *Williams* and restricts the application of the facts found here to its limited holding.”). In other sections, the Order found that DA Willis’ collective actions created an appearance of impropriety and an “odor of mendacity” that now permeate this case, and a continuing possibility that “an outsider could reasonably think that District Attorney Willis is not exercising her independent professional judgment totally free of any compromising influences.” [R. at 1627].

Simply stated, the trial court’s factual findings were inconsistent with its legal application of *Williams*, and the Order’s proposed remedy - the withdrawal of Special Assistant DA Wade - did nothing to cure nor mitigate the harm to the defendants from DA Willis’ extrajudicial speech.

President Trump’s request for oral argument is further premised on the need to simplify an unusually complex case at this interlocutory stage. *See* Ga. Ct. App. R. 28 (a) (4). In the related appeals (A24A1595-1603), nine appellants challenge several legal conclusions from the disqualification order and the record is voluminous. Here, focused time to get it right is important – failure to disqualify a prosecutor who should be disqualified is a structural error that can necessitate retrial without a showing of prejudice. *See McLaughlin v. Payne*, 295 Ga. 609, 613 (2014). This error could cause an upheaval of not one, but *multiple*, costly jury trials if not accurately redressed beforehand.

The public’s faith in the integrity of the criminal justice system is critical to its functioning. *See e.g., Berger v. United States*, 295 U.S. 78 (1935). Courts have an obligation to ensure that legal proceedings appear fair to all who observe them.” *Wheat v. United States*, 486 U.S. 153, 160 (1988). “[O]ur system [] has always endeavored to prevent even the probability of unfairness . . . [t]o perform its high function in the best way justice must satisfy the appearance of justice.” *Estes v. Texas*, 381 U.S. 532, 543 (1965) (quotations omitted). Nowhere are these interests more important or on display than in a high-profile case that involves a former president of the United States, who is also the presumptive Republican nominee in the ongoing Presidential Election, and whose prosecution in Fulton County, Georgia has captured the attention of our great Nation. Oral argument is therefore warranted.

CONCLUSION

For the foregoing reasons, President Trump respectfully requests this Court to **GRANT ORAL ARGUMENT** to aid the decisional process of this appeal.

Respectfully submitted this 10th day of June, 2024.

/s/ Steven H. Sadow

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing pleading upon Mr. Alex Bernick, Assistant District Attorney for Fulton County, or a member of his staff, by filing this REQUEST FOR ORAL ARGUMENT with the Court of Appeals E-Fast service, by emailing same to all counsel of record, and by depositing the same in the U.S. Mail with adequate first-class postage affixed thereon to ensure delivery, addressed to Fulton County District Attorney's Office, 136 Pryor Street, third floor, Atlanta, Georgia 30303.

Pursuant to Rule 24 (f) (1), I hereby certify that this request (2,216 words) does not exceed the criminal case word count limit imposed by Rule 24.

This 10th day of June, 2024.

/s/ Matthew K. Winchester
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