IN THE COURT OF APPEALS
STATE OF GEORGIA

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

PRESIDENT TRUMP'S RESPONSE OPPOSING THE STATE'S MOTION TO DISMISS APPEAL

Pursuant to Court of Appeals Rule 41 (d) and O.C.G.A. § 5-6-48 (b), President Trump and the interlocutory Appellants respond in opposition to the State's June 12, 2024 "Motion to Dismiss Appeal as Improvidently Granted." In support of their joint position that the motion must be denied, President Trump shows the following:

INTRODUCTION

Without citation to any applicable authority, the State filed this "Hail Mary" motion to dismiss these meritorious appeals, accusing this Court of "improvidently" granting interlocutory review. There is no proper procedural vehicle for the State to relitigate this Court's sound decision to hear the merits. The State's attempt to do so conflicts with applicable statutes and this Court's Rules.

In its desperate bid to avoid disqualification of a deeply conflicted District Attorney who has engaged in – and continues to unapologetically engage in[1] – extrajudicial forensic misconduct, the State argues that the trial court's factual findings were not clearly erroneous. According to the State, then, this Court is powerless to overturn the trial court's order denying the dismissal of the case and the disqualification of District Attorney Willis and her office. Of course, as this Court well knows, that has never been, and is not now, the law.

As the "Joint Application for Interlocutory Appeal" made plain, the vast majority, if not all, of the issues raised in these appeals are issues of *law*, not fact, which this Court reviews *de novo*.[2] Most of the issues on appeal involve the trial court's misinterpretation or misapplication of legal standards, not the trial court's

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[1] *See* FULL FANI WILLIS SPEECH!, at 22:00-32:12, https://www.youtube.com/watch?v=Epl9HaVBDd8 (last visited June 17, 2024).

[2] *See e.g., Welcker v. Ga. Bd. of Examiners of Psychologists,* 340 Ga. App. 853, 856 (2017) (quoting *Murray v. Murray*, 299 Ga. 703, 705 (2016) ("[U]nder the abuse of discretion standard, '[this Court] review[s] … legal holdings de novo, and [it] uphold[s] … factual findings as long as they are not clearly erroneous, which means there is some evidence in the record to support them." (ellipses in original) (emphasis added)); *State v. Randle*, 331 Ga. App. 1, 4 (2015), *aff'd*, 298 Ga. 375 (2016) (same); *Williams v. State*, 356 Ga. App. 19, 28 (2020) (abuse of discretion occurs where a ruling misstates or misapplies the relevant law) (citation and punctuation omitted.). Notably, the State's motion omits reference to the fact that the trial court's order signaled uncertainty as to the correctness of its application of the law, particularly in the forensic misconduct context. [R. at 1629].

factual findings, many of which actually favor Appellants and undermine the State.[3] For those reasons, the State's focus on the "clearly erroneous" standard is largely irrelevant to the matters for litigation in these appeals.[4] Simply stated, the State's motion is a calculated, disingenuous attempt to mislead this Court for the obvious purpose of preventing interlocutory appellate review of the District Attorney's misconduct.

Both the trial court, in granting the certificate of immediate review, and this Court, in granting the interlocutory application, have already determined these issues are critical. The trial court's error in declining to disqualify the District Attorney and her office, under these circumstances, is a structural error that would, if left uncorrected by this Court, fatally infect all subsequent proceedings and require later

[3] In its 17-page diatribe in support of their clearly erroneous standard, the State *also* ignores that there are several factual issues upon which the trial court expressly declined to make definitive findings, including whether the DA Willis and SADA Wade committed perjury in their testimony. [R. at 1627-28] ("This Court is not under an obligation to ferret out every instance of potential dishonesty from each witness . . . .").

[4] Even if the issues on appeal *did* involve the clearly erroneous standard, the State's argument that this fact requires this Court not to *hear* the appeal is nonsensical. The clearly erroneous standard is, by definition, a standard of review to be applied *on appeal*; the fact that a case may invoke or involve that appellate standard is no reason to *deny review* under this same appellate standard. Equally obvious, while the clearly erroneous standard is more difficult to satisfy than the *de novo* standard for legal issues, it is a standard of review *on appeal* for a reason: this Court is empowered to, and does, reverse a trial court's findings when, after hearing the merits, it determines that trial court's factual findings are clearly erroneous.

reversal of any obtained conviction—all at great wasted time and expense to the courts, the parties, and the taxpayers. This Court's decision to grant the interlocutory application was sound, responsible, and appropriate. The motion should be denied.

ARGUMENT AND CITATIONS TO AUTHORITY

I. The State's thinly veiled attempt to request reconsideration of the Interlocutory Application is contrary to governing law and premature.

Without citation to any applicable statute, case,[5] or court rule, the State's motion seeks dismissal of the interlocutory appeals granted by this Court prior to a full briefing on the merits. But, under O.C.G.A. § 5-6-48 (b), "[n]o appeal shall be dismissed or its validity affected for any cause nor shall consideration of any enumerated error be refused," except:

> (1) For failure to file notice of appeal within the time required as provided in this article or within any extension of time granted hereunder;
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> (2) Where the decision or judgment is not then appealable; or
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> (3) Where the questions presented have become moot.

None of these subsections apply: there is no dispute that Appellants' notices of appeal were timely filed within ten days of this Court's order granting the interlocutory application; the appealed order (the trial court's March 15, 2024 "Order

[5] The "string" citation on pages two and three of the State's motion does not provide any authority for the State's filing of this motion. Instead, these cases merely reiterate the well-known "clearly erroneous" standard of review for appellate challenges to factual findings.

on the Defendants' Motions to Dismiss and Disqualify the Fulton County District Attorney") is appealable per this Court's May 8, 2024 order granting interlocutory review, and the questions presented are certainly not moot (nor can or does the State contend that they are). O.C.G.A. § 5-6-34 (b). *See* Ga. Ct. App. R. 41 (d).

Consistent with the Code, Rule 41 (d) provides only "lack of jurisdiction" as an appropriate ground to dismiss an appeal. *See* Ga Ct. App. R. 41 (d); *accord* O.C.G.A. § 5-6-48 (b). The State's motion does not (and could not) challenge appellate jurisdiction,[6] and "improvidence" is not listed as a basis for dismissal in either the Code or Rule 41.

While this Court has, on rare occasions, dismissed interlocutory and discretionary appeals for improvidence *sua sponte*, it has only exercised this authority *after* full briefing on the merits and with the benefit of oral argument, if granted.[7] *See, e.g., Woody v. State*, 247 Ga. App. 684 (2001) ("[U]pon consideration of the entire record, applicable case law and statutory provisions, this discretionary appeal is hereby dismissed as having been improvidently granted."); *Leigh v. State*,

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[6] Because Appellants properly followed the interlocutory procedures set forth in § 5-6-34 (b), appellate jurisdiction was properly conferred. *Cf.*, *Duke v. State*, 306 Ga. 171, 173 (1) (2019) (collecting citations for the proposition that an application that fails to follow the § 5-6-34 interlocutory procedure is ineffective to confer appellate jurisdiction).

[7] On June 10, 2024, President Trump timely requested oral argument. As of this filing, the request remains pending.

217 Ga. App. 583, 584 (1995) (dismissing interlocutory application *sua sponte* for motion to suppress after briefing and oral argument). Obviously, at this point, neither briefing nor oral argument has occurred.

II. The State ignores that the vast majority of the issues for interlocutory review are legal, not factual, challenges.

The State's motion is, at bottom, a red herring. The State devotes its entire motion to the standard of review of the trial court's factual findings, when all – or substantially all – of the issues raised in this appeal are *legal* issues subject to *de novo*, not clearly erroneous, review. *See* Part I, n.2, *supra*.

For example, one of Appellants' primary issues challenges the trial court's misinterpretation and misapplication of *Williams v. State*, 258 Ga. 305 (1988). Specifically, Appellants challenge the trial court's interpretation and application of the *Williams* forensic misconduct standard applicable to the District Attorney's "legally improper" speech and other established forensic prosecutorial misconduct, including fraud upon the court via false testimony under oath. *See* [R. at 1620, 1628, 1631] (noting "reasonable questions about whether the District Attorney and her hand-selected lead SADA testified untruthfully" and describing the church speech as "still legally improper."). Interpretation and application of the law are purely legal questions reviewed *de novo*, wholly distinct from the deferential ambit of the State's sole string citation on the clearly erroneous standard of review.

Tellingly, the State's motion wholly ignores this forensic misconduct issue

and the other *legal* issues that will be subject to *de novo* review. It also ignores trial court's own candid admission, made in its order, of a lack of certainty in its application of the law and its comments lamenting the lack of precedent applying *Williams* and questions surrounding the forensic misconduct legal standard. *See* [R. at 1629].

Appellants' compelling legal challenges do not depend upon contesting or challenging the trial court's findings of fact. Indeed, many of the trial court's factual findings are favorable to Appellants and damning to the District Attorney and her office. *See* [R. at 1620, 1627, 1628, 1631] (noting "an odor of mendacity" and describing DA Willis' conduct as a "tremendous lapse in judgment," her testimony as "unprofessional," and her speech as "legally improper."). The focus of these appeals will be the legal errors that the trial court committed below, errors that this Court has plenary authority to review and decide.

(Continued on the next page with signatures)

CONCLUSION

The State has moved this Court to act contrary to statute and its own Rules. It ignores that the issues to be raised in this appeal are largely legal, rather than factual, a distinction that undercuts the logic of the State's own argument. In short, the State's motion is unsupported by any relevant authority and has no basis in law or fact. Appellants respectfully request this Court **DENY** the State's motion to dismiss in case numbers A24A1595-1603.

Respectfully submitted this 20th 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 RESPONSE 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 (1,951 words) does not exceed the criminal case word count limit imposed by Rule 24.

This 20th day of June, 2024.

/s/ Matthew K. Winchester
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