

Randall M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
)	
v.)	Criminal Action No. 20-CR-00433
)	
WILLIAM RODERICK BRYAN,)	
Defendant.)	

SPECIAL DEMURRERS

COMES NOW Defendant William Roderick Bryan, by and through undersigned counsel, and files these special demurrers to the above-styled criminal action on the following grounds:

A defendant in a criminal case is entitled to be tried on an indictment perfect in both form and substance. Harris v. State, 37 Ga. App. 113 (1927). Moreover, the indictment must "sufficiently apprise 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 of conviction." Fletcher v. State, 157 Ga. App. 707 (1981). Moreover, the grand jury process must afford due process pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia. The indictment returned in the above-styled case is defective in several ways as set forth more fully below.

1. The indictment does not bear the signature of the District Attorney Pro Tempore. Her name is merely printed on the document. See In re Presentment of Special Grand Jury, 315 F. Supp. 662 (1970) (federal indictment requires signature of prosecutor); but see Newman v. State, 101 Ga. 534 (1897). Moreover, Ms. Holmes is referenced as Cobb County District Attorney in one place and simply "District Attorney" in another. This does not comport with due process or

Georgia law. Older Georgia authorities to the contrary, such as Newman, predate modern concepts of due process and subsequent revision of Georgia law.

2. The indictment fails to set forth the full name of Mr. Bryan even though his full name was known to the prosecution at the time that the indictment was drawn. There is no evidence or other cause given in the indictment for this omission. This is also a due process violation.

3. Names of various grand jurors have not been crossed out properly on the indictment. The individual responsible for making these marks on the indictment is not identified either by initials, signature or otherwise. This is also a due process violation.

4. The name of the alleged victim is not sufficiently set forth in the indictment even though his full legal name was known to the prosecution at the time that the indictment was drawn. There is no evidence or other cause given in the indictment for this omission.

5. Count Seven of the indictment is defective in that it fails to sufficiently set forth the manner in which the defendants assaulted the alleged victim. A motor vehicle may, in fact, be a deadly weapon when used offensively against another but the indictment provides no meaningful information from which defendants may meaningfully prepare for trial as the manner in which Mr. Arbery was allegedly assaulted is not set forth in this count. The felony murder count predicated upon this count, therefore, is likewise defective.

6. Counts Eight and Nine of the indictment are defective in that they fail to allege with sufficient specificity how the alleged victim was “confined and detained” by defendants or how they attempted to do so. There is no allegation, for example, that defendants attempted to “pin” Mr. Arbery between the subject pickup trucks or against a tree, wall or inanimate object. The words “confine and detain” are not sufficient to apprise these defendants of what they must defend against at trial.

7. Counts Eight and Nine are defective in that they contain surplusage. “Chasing” someone with a pickup truck, even if proven, is neither a crime nor a substantial step towards the commission of a crime. These counts, therefore, are not perfect in form or substance.

8. The entire indictment is defective in that the words “Judge Timothy R. Walmsley” are printed at the top of first page of the indictment for no apparent or stated reason. This language is surplusage and therefore, once again, the indictment is not perfect in form or substance. Moreover, the presence of these words inevitably conveyed to the grand jury the prior approval of the indictment by the Honorable Superior Court Judge named therein and thereby prejudiced the grand jury’s consideration of the indictment.

WHEREFORE, defendant prays that these special demurrers be inquired into and that they be sustained and that the above-styled criminal action be dismissed and quashed.

Respectfully submitted this the 6th day of August, 2020.

/s/ Kevin Gough
Kevin Gough
ATTORNEY FOR DEFENDANT
Georgia Bar No. 303210

Kevin Gough Firm, LLC
501 Gloucester Street, Suite 121
Post Office Box 898
Brunswick, GA 31521
(912) 242-5114
kevingough.firm@gmail.com

CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

This 6th day of August, 2020.

/s/ Kevin Gough