IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	*	
	*	Indictment:
V.	*	CR 2000433
	*	
WILLIAM R BRYAN	*	

STATE'S REPSONSE TO SPECIAL DEMURRERS

Defendant William R Bryan filed Special Demurrers to Indictment CR-2000433 on August 7, 2020. The State's response now follows.

Introduction: Summary of the Argument

Defendant's special demurrers 1, 2, 3, 4, and 8 have no statutory or case law support for them. Defendant's special demurrers 5, 6, and 7 have no merit as Counts 7, 8 and 9 of the indictment contain the elements of the offenses and are set out in plain language that anyone could understand. "The true test of the sufficiency of an indictment to withstand a special demurrer is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises 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 or conviction." *State v. English*, 276 Ga. 343, 346 (2003).

Demurrer Overview

A special demurrer merely objects to the form of an indictment and seeks more information or greater specificity about the offense charged. *State v. Wilson*, 318 Ga. App. 88, 91-92 (2012). See also *Williams v. State*, 307 Ga. 778, 782-783

(2020). Most defendants like to cite to the magic words, that "[o]nce a defendant has timely filed a special demurrer, he or she is entitled to an indictment perfect in form and substance. *State v. Corhen*, 306 Ga. App. 495, 498 (2010). However, the use of the word "perfect" is misleading. "In adopting the "perfect" indictment standard from the Court of Appeals, this Court recognized that the ultimate goal in requiring "perfect" indictments is to provide trials free of harmful defects." *Bailey v. State*, 280 Ga. 884, 884-885 (2006).[1]

At a minimum, all that is required in an indictment is that the charge contain the elements of the offense. *Brown v. State*, 322 Ga. App. 446, 453-454 (2013); *State v. English*, 276 Ga. 343, 346 (2003). This is so that the defendant is sufficiently apprised of what he must be prepared to meet and defend against. Id. See also *Dunn v. State*, 263 Ga. 343 (1993) ("Due process is satisfied where the indictment puts the defendant on notice of the crimes with which he is charged and against which he must defend."). As the Georgia Supreme Court recently stated, "when a court considers whether an indictment is sufficient to withstand a special demurrer, it is useful to remember that a purpose of the indictment is to allow a defendant to prepare his defense intelligently." *Bullard v. State*, 307 Ga. 482, 487 (2019).

The other purpose is to ensure that the record reflects the crime, date, victim and county, so that a defendant may defend against any other proceedings that may constitute double jeopardy. "A special demurrer, with its demand for greater specificity, may be used to address procedural double jeopardy concerns, given that a vague or ambiguous charge, if carried through trial, may not sufficiently inform the defendant of the specific crime of which he was acquitted or convicted." *Williams v. State*, 307 Ga. 778, 782-783 (2020). See also *Green v. State*, 292 Ga. 451, 452 (2013) ("The purpose of an indictment is to inform the accused of the

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[1] Overturned in part by *Wagner v. State*, 282 Ga. 149, 150-151 (2007)(Holding "to the extent that *Bailey* can be construed to hold that a material defect that is not prejudicial to the defendant does not require the quashing of a defective count of an indictment, it is disapproved").

charges against him and to protect the accused against another prosecution for the same offense.").

Specific Special Demurrers

1. Defendant cites to no statute that requires the signature of Joyette Holmes, the District Attorney Pro Tempore in this case, on this indictment. Defendant has been on notice that Joyette Holmes is the acting District Attorney Pro Tempore in his case since May 11, 2020. Defendant has not shown that he has been harmed or prejudiced in any way by either the lack of a signature or how District Attorney Joyette Holmes' name appears on this indictment.

2. Defendant cites to no statute that requires a defendant's full name on an indictment. The fact that the indictment has "Wiliam R Bryan" instead of "William Roderick Bryan" in no way violates his due process rights, especially since defendant does not allege that the person indicted is a different William R Bryan.

3. Defendant cites to no statute that requires anyone to initial that they have crossed out the names of the grand jurors on the indictment.

4. Defendant cites to no statute that requires a victim's full name in the indictment. Ahmaud Arbery is the victim and has been sufficiently identified.

5. Defendant claims that Count 7 of the indictment is defective because it fails to sufficiently set forth the manner in which the defendants assaulted Ahmaud Arbery. This claim is unsupported as Count 7 contains the elements of the offense charged:

"did make an assault upon the person of Ahmaud Arbery with a Ford f-150 pickup truck and a Chevy Silverado pickup truck, an object, device and instrument which when used offensively against a person are likely to result in serious bodily injury…"

Here Count 7 of the indictment tracks the language of the statute, OCGA § 16-5-21 (b) (2) ("A person commits the offense of aggravated assault when he or she assaults[ ] … [w]ith a deadly weapon or with any object, device, or instrument

which, when used offensively against a person, is likely to or actually does result in serious bodily injury[.]").

An indictment that is "substantially in the language of the Code is sufficient in form and substance." *Issa v. State*, 340 Ga. App. 327, 335 (2017). "It is not necessary that an indictment charging a defendant with aggravated assault specify the manner in which the simple assault was committed, but it must set forth the aggravating aspect. Accordingly, because the indictment "used the language of the statute, included the essential elements of the offense, and was sufficiently definite to advise [the defendant] of what he must be prepared to confront, it was not void." Id. (Citations and punctuation omitted)

This was also the case in *Wyatt v. State*, 295 Ga. 257 (2014), where the defendant based his special demurrers on his contention that the aggravated assault accusation was silent as to how the unknown object was used. The Georgia Supreme Court held that "the indictment need not say how the defendant used the weapon or object that aggravated the assault." *Wyatt* at 505. See also *Watson v. State*, 178 Ga. App. 778, 780 (1986) (concluding that an indictment charging that the defendant assaulted the victim "with a metal pipe," without specifying how the pipe was used, was sufficient).

In *Arthur v. State*, 275 Ga. 790, 791 (2002), when a defendant complained that the aggravated assault count in his indictment failed to set out how he used the handgun, the Georgia Supreme Court held that "The true test of the sufficiency of an indictment is not whether it could be made more certain and definite, but whether it contains the elements of the offense charged, apprises the accused of what he must be prepared to defend against, and protects against double jeopardy. *Snider v. State*, 238 Ga. App. 55, 58 (2) (516 S.E.2d 569) (1999). The language of the indictment tracks that of O.C.G.A. § 16-5-21 (a) (2) and "is not too vague to inform [a defendant] of the charges against him."

Count 7 of the indictment does track the language of the statute, includes the aggravating factor which is the pickup trucks, since they are an "object, device, or

instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury," and puts the defendant on notice of what he must be prepared to defend against.

6. Defendant claims that the indictment does not sufficiently specify how the alleged victim was confined and detained by the defendants or how they attempted to do so. This claim is unsupported as both Counts 8 and 9 set out that the defendants used their pick-up trucks to chase Ahmaud Arbery, and then confine and detain him on Holmes drive.

The words "confine and detain" in Counts 8 and 9 of the indictment are sufficient to apprise the defendant of what he must defend against at trial. The words "confine and detain" are not so vague and undefined that it would prevent persons of common intelligence, either the defendant or the jurors, from understanding the conduct alleged. See *State v. Marshall*, 304 Ga. App. 865, 866-868 (2010) (Holding that the words "indecent acts" are not so vague and undefined that they would prevent persons of common intelligence from recognizing the conduct.)

False imprisonment, and specifically the words confine and detain, were found to have commonly understood meanings in *Kiser v. State*, 327 Ga. App. 17, 19-20 (2014).

> Kiser contends that this evidence is insufficient to support his false imprisonment conviction, because no one prevented the victim from leaving through the window or told him that he could not leave. A person is guilty of false imprisonment "when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority." OCGA § 16-5-41 (a).
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> This statute on its face does not require that the imprisonment be for a specific length of time; all that is required is there be an arrest, confinement or detention of the person, without legal authority, which violated the person's liberty (i.e., against his or her will). At the point when that occurs, the offense is complete notwithstanding that the victim may thereafter … effect an escape. (Citations omitted.) *Herrin*

v. State, 229 Ga. App. 260, 263 (3) (493 SE2d 634) (1997). In *Alexander v. State*, 279 Ga. 683 (620 SE2d 792) (2005), **the Supreme Court of Georgia concluded that the false imprisonment statute is not unconstitutionally vague, noting: "The word "confine" has a commonly understood meaning which would place a person of common intelligence on notice of the prohibited acts.** For example, Webster's Ninth New Collegiate Dictionary defines "confine" as follows: "1. To hold within a location … 2. To keep within limits." In turn, Black's Law Dictionary, Sixth Edition, defines the term confinement in a similar manner as: "shut in" or "imprisoned." Id. at 686 (3). And when interpreting a similar statute governing civil actions for false imprisonment, we have held that **"[a] detention need not consist of physical restraint, but may arise out of words, acts, gestures, or the like, which induce a reasonable apprehension that force will be used. …""** *Hampton v. Norred & Assoc.*, 216 Ga. App. 367, 368 (1) (454 SE2d 222) (1995). *Kiser v. State*, 327 Ga. App. 17, 19-20 (2014).

7. Counts 8 and 9 are not defective and do not contain surplusage. As was pointed out above in *Kiser v. State*, 327 Ga. App. 17, 19-20 (2014), any action that violates a person's liberty, and confines them to location or keeps them with in a limited area, constitutes the crime of false imprisonment. This includes chasing someone. *Johnson v. State*, 195 Ga. App. 723, 724 (1990) (Holding that false imprisonment was proven when defendant chased the victim each time she managed to escape the car, forced her to re-enter the car and remain there.)

The words in Count 9 of the indictment, "unlawfully chase Ahmaud Arbery through the public roadways of the Satilla Shores neighborhood in pickup trucks and did attempt to confine and detain Ahmaud Arbery without legal authority on Burford Drive using a Ford F-150 pickup truck and a Chevy Silverado pickup truck" are not so vague and undefined that it would prevent persons of common intelligence, either the defendant or the jurors, from understanding the conduct alleged.

8. Defendant cites to no statute that forbids placing the name of the judge assigned to a case at the top of an indictment. There is no evidence, and it is mere speculation, that the grand jury was prejudiced in their consideration of the indictment because the indictment listed "Judge Timothy R. Walmsely" at the top. There is no evidence, and it is mere speculation, that the presence of these words "inevitably conveyed to the grand jury the prior approval of the indictment" by Judge Walmsely. Judge Walmsely is a Chatham County Superior Court Judge who was assigned to this case after the judges of the Glynn County Superior Court recused themselves, and thus may be completely unknown to the Glynn County grand jurors (which is also speculation). Defendant has not proven that he is prejudiced by the indictment having Judge Walmsely's name at the top.

Conclusion

Defendant's special demurrers 1, 2, 3, 4, and 8 have no statutory or case law support for them. Defendant's special demurrers 5, 6, and 7 have no merit as Counts 7, 8 and 9 of the indictment contain the elements of the offenses and are set out in plain language that anyone could understand. The defendant is on notice as to what he is to defend against and he is protected from double jeopardy as to the aggravated assault, false imprisonment and criminal attempt at false imprisonment of Ahmaud Arbery.

This the 31st day of August, 2020.

/S/ Linda J. Dunikoski
Linda J. Dunikoski
State Bar # 233887
Senior Assistant District Attorney
District Attorney Pro Tempore
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above Motion via the Odyssey E-File System to:

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This the 31st day of August, 2020.

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