

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

STATE OF GEORGIA

v.

LEILANI MAREE SIMON

SPCR22-03364-J6

State's Response to General Demurrer to Certain of the False Statement Charges

In Counts 10, 12, 14, and 17, the Defendant is charged with violating O.C.G.A. § 16-10-20 by knowingly and willfully concealing material facts from law enforcement during a series of interviews. The Defendant argues that these charges violate her Fifth Amendment right against compelled self-incrimination because to have revealed the material facts at issue would have been to admit to criminal acts, which she had a right not to do.

It is true that all Americans enjoy the right to decline to speak to law enforcement and may invoke this right at any time during an interview. Contrary to the Defendant's sweeping assertion, however, O.C.G.A. § 16-10-20 does not offend this right by imposing a general "duty to reveal information during a criminal investigation." Rather, "[a]s our Supreme Court has recognized, O.C.G.A. § 16-10-20 is modeled on the longstanding federal false statements statute, 18 U.S.C. § 1001, which criminalizes [only] affirmative false statements and concealment of material facts designed to deceive and harm lawful government functions." *Sneiderman v. State*, 336 Ga. App. 153, 161 (2016). These statutes criminalize not "passive nondisclosure," *id.*, but "a joint operation of an act or omission to act and intention." O.C.G.A. § 16-2-1 (Definition of Crime). This is no different from any other criminal offense.

The Defendant cites no authority for the proposition that the Fifth Amendment affords criminal suspects the right, once they have chosen to talk, to knowingly and wrongfully conceal material facts when asked questions that reasonably call for those facts to be revealed.

To the contrary, the United States Supreme Court squarely rejected this theory in *Brogan v. United States*, which “present[ed] the question whether there is an exception to criminal liability under 18 U.S.C. § 1001 for a false statement that consists of a denial of wrongdoing, the so-called ‘exculpatory no.’” 522 U.S. 398, 399 (1998). In response to Brogan’s argument that construing the statute as criminalizing false exculpatory statements “violates the ‘spirit’ of the Fifth Amendment because it places a ‘cornered suspect’ in the ‘cruel trilemma’ of admitting guilt, remaining silent, or falsely denying guilt,” *id.* at 404, the Court explained as follows:

This “trilemma” is wholly of the guilty suspect’s own making, of course. An innocent person will not find himself in a similar quandary (as one commentator has put it, the innocent person lacks even a “lemma”). And even the honest and contrite guilty person will not regard the third prong of the “trilemma” (the blatant lie) as an available option. . . . Whether or not the predicament of the wrongdoer run to ground tugs at the heartstrings, neither the text nor the spirit of the Fifth Amendment confers a privilege to lie. Proper invocation of the Fifth Amendment privilege against compulsory self-incrimination allows a witness to remain silent, but not to swear falsely.

Id. (internal citations omitted).

Finally, a note on as-applied challenges: “An as-applied challenge [as opposed to a facial challenge] addresses whether a statute is unconstitutional on the facts of a particular case or to a particular party.” *Major v. State*, 301 Ga. 147, 152 (2017) (internal citation omitted) (emphasis added). By raising an as-applied challenge to the statute as charged in these counts, the Defendant is asserting *both* that complying with the statute in the instances charged in these counts would have required her to incriminate herself *and* that this application of the statute violates the Fifth Amendment. Having addressed the latter (a legal matter) above, let us stick

with the former (a factual matter) for a moment. To assert that complying with the statute in the instances charged in these counts would have required her to incriminate herself is necessarily to admit that the material facts that these counts charge her with concealing are true, i.e., that on the night of October 4, 2022, she did use controlled substances (Count 12) and that in the early morning hours of October 5, 2022, she did travel to Azalea Mobile Home Plaza and discard Quinton's body in a dumpster (Counts 10, 14, and 17). Her sole grievance is with the constitutionality of penalizing her for concealing them. But to challenge the constitutionality of penalizing her for concealing them, she first must necessarily assert—Or is it concede?—the factual premise: That what are alleged in these counts as material facts are the truth. Else, she cannot assert that compliance with the statute in these instances would have required self-incrimination, which is a threshold requirement for her as-applied challenge, for there can be no self-incrimination without the incriminating facts. If the Defendant claims not to be making this admission, the State does not see how an as-applied challenge can so much as get off the ground. And on its face the Defendant's filing does appear to make this very admission, in that it repeatedly refers to these facts as “material *facts*” (emphasis added) with no qualification of the term. The State therefore notifies the Defendant that it may consider this filing, if it is not withdrawn, as an admission to the truth of these two material facts. *See Flint v. State*, 288 Ga. 39, 44 n.8 (2010) (“It is well established that a party in a criminal proceeding may make admissions in *judicio* in pleadings, motions, and briefs.”); O.C.G.A. § 24-14-26(b)(7) (admissions in *judicio*); O.C.G.A. § 24-8-821 (admissions in pleadings).

Put another way, the State is unaware of any authority for the notion that the Defendant may merely assume *arguendo* the facts forming the basis for an as-applied challenge. *See, e.g., Henderson v. McMurray*, 987 F.3d 997, 1001 (11th Cir. 2021) (dismissing an as-applied

constitutional challenge in part because complaint failed to “*allege facts . . .* to support their challenge”) (emphasis added).

Respectfully submitted this 14th day of July, 2023.

Office of the District Attorney
Eastern Judicial Circuit of Georgia
Post Office Box 2309
Savannah, Georgia 31402
(912) 652-7308 (phone)
(912) 652-7149 (fax)

/s/ Tim Dean
Tim Dean
Assistant District Attorney
Eastern Judicial Circuit
Georgia Bar Number 506124

CERTIFICATE OF SERVICE

I have this day caused Robert Attridge, Counsel for Defendant, to be served with the foregoing filing by e-filing.

This 14th day of July, 2023.

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Eastern Judicial Circuit of Georgia
Post Office Box 2309
Savannah, Georgia 31402
(912) 652-7308 (phone)
(912) 652-7149 (fax)
tpdean@chathamcounty.org

/s/ Tim Dean
Tim Dean
Assistant District Attorney
Eastern Judicial Circuit
Georgia Bar Number 506124