IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2023 JAN 13 A 10:45
DEP. CLK. SUPERIOR CT.
CHATHAM COUNTY, GA.

STATE OF GEORGIA	)	
	)	
vs.	)	**Indictment No. SPCR 22-03364-J6**
	)	
LEILANI SIMON, Defendant	)	

MOTION TO DENY ACCESS AND MOTION FOR PROTECTIVE ORDER

COMES NOW the Georgia Department of Human Services acting through the Chatham County Department of Family and Children Services (hereinafter DFCS) and files this Motion to Deny Access and Motion for Protective Order in the above-styled case and shows to the Court the following:

1.

A Subpoena Duces Tecum was issued by the Defendant to "Records Custodian DFCS" on or about January 10, 2023, a copy of which is attached hereto as Exhibit A (with redaction of identifying information of minors).

2.

The subject subpoena requests documents which are confidential and protected under O.C.G.A. § 49-5-40(b), which declares records of child abuse to be confidential and, subject to certain exceptions, prohibits access thereto, as mandated by 42 U.S.C. § 5106a(b)(2)(B)(viii).

3.

DFCS is precluded from releasing any such information without a court order issued following an in camera inspection pursuant to O.C.G.A. § 49-5-41(a)(11). The

ENTERED SG JAN 13 2023

documents should not be released unless the Court finds disclosure of the requested information is necessary for resolution of an issue before the Court and is reasonably calculated to lead to the discovery of admissible evidence, as required by O.C.G.A. § 49-5-41(a)(11) and 42 U.S.C. § 5106a(b)(2).

4.

Additionally DFCS is subject to a Protective Order entered by the Juvenile Court of Chatham County on October 18, 2022, a copy of which is attached hereto as Exhibit B (with redaction of identifying information of minors), which further prohibits disclosure of the information identified in the Subpoena Duces Tecum.

WHEREFORE, DFCS requests the following:

a. The Court perform an in camera inspection of the requested material to determine its confidentiality;

c. Access to the requested materials be denied to the Defendant; and

d. Pursuant to O.C.G.A. § 49-5-41(g)(3) the Court issue a protective order to ensure the confidentiality of any released records including prohibiting reproduction and/or redisclosure of said records, requiring the return of said records to the Court and sealing said records upon conclusion of said matter.

Respectfully submitted this 13th day of January, 2023.

CHRISTOPHER M. CARR
Attorney General
Georgia Bar Number 112505

BRYAN K. WEBB
Deputy Attorney General
Georgia Bar Number 743580

SHALEN S. NELSON
Senior Assistant Attorney General
Georgia Bar Number 636575

EMILY A. HARRIS
Assistant Attorney General
Georgia Bar Number 940515

/s/ Wendy Furey
Wendy M. Furey
Special Assistant Attorney General
Georgia Bar Number 351099

BECKMANN & FUREY, LLP
315 Tattnall Street
Savannah, Georgia 31401
Phone: 912-232-3137
Email: wendy@beckmannfurey.com

EXHIBIT

A

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

vs

LEILANI SIMON,
Defendant.

INDICTMENT NO. SPCR22-03364-J6

SUBPOENA DUCES TECUM

To: RECORDS CUSTODIAN
DFCS
761 WHEATON STREET
SAVANNAH, GA

You are hereby commanded that, laying all other business aside, you be and appear at the Chatham County Superior Court, Criminal Division, before Honorable Tammy Stokes, Judge of said Court, at the Chatham County Courthouse, 133 Montgomery Street, Savannah, GA 31401, at 1:30 P.M. on JANUARY 25, 2023, to be sworn in as a witness for the Defendant in the case of:

State of Georgia v. Leilani Simon
Case No. SPCR22-03364-J6

and to remain from day to day until released from this subpoena by the presiding Judge.

You are also commanded to bring with you any and all files in the custody of the Department of Family and Children Services pertaining to:

CHILD: - SEX: - DOB: - CASE: 22-01164 FILE #: 52739

CHILD: SEX: - DOB: - CASE: 22-01165 FILE #: 52740

CHILD: SEX:

DANIEL YOUNGKIN – PUTUATIVE FATHER OF

COREY WHARTON – PUTATIVE FATHER OF

BILLE JOE HOWELL - GUARDIAN OF

LEILANI SIMON, MOTHER, DOB:

Herein fail not, under the penalty of law, by authority of said Judges of this Court, this 10th day of January, 2023.

RECEIVED

JAN 11 2023

CHATHAM COUNTY DFCS
3:34 pm

Sarah Clarke
(Deputy) Clerk
Superior Court of Chatham County

If you have questions, contact
Attorney for the Defendant:
Robert W. Attridge, Jr., APD
Post Office Box 9176
Savannah, GA 31412
(912) 447.4901 / (912) 447.4909
rwattri@chathamcounty.org

Received by: _____
Date: _____
Served by: _____

DFCS

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2023 JAN 10 P 3:17
DEP. CLK. SUPERIOR CT.
CHATHAM COUNTY, GA.

STATE OF GEORGIA,

vs.

LEILANI M. SIMON,

Defendant.

Indictment No. SPCR22-03364-J6

MOTION FOR *IN CAMERA* INSPECTION OF RELEVANT D.F.C.S. FILES

COMES NOW LEILANI M. SIMON, Defendant, by and through undersigned counsel, pursuant to Article I, Section I, Paragraph I, of the Constitution of the State of Georgia and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; O.C.G.A. § 49-5-41(a)(2); the decisions in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *Ray v. Dept. of Human Resources*, 155 Ga. App. 81 (1980), *Darst v. State*, 323 Ga. App. 614 (2013), and the procedures set forth in *Davidson v. State*, 183 Ga App 557 (1987), and petitions the trial court to subpoena all Department of Family and Children's Services (D.F.C.S.) files pertaining to and/or involving:

CHILD: – SEX: – DOB: – CASE: 22-01164 – FILE #: 52739

CHILD: – SEX: – DOB: – CASE: 22-01165 – FILE #: 52740

CHILD: – SEX:

DANIEL YOUNGKIN – PUTUATIVE FATHER OF

COREY WHARTON – PUTATIVE FATHER OF

BILLE JOE HOWELL – GUARDIAN OF

LEILANI SIMON, MOTHER, DOB: , the alleged DEFENDANT in the above styled case; and to conduct an *in camera* inspection to determine whether disclosure of those records or portions thereof to defense counsel is required for Defendant to receive a fair trial. Alternatively,

2023 JAN 10 P 3:25

Defendant petitions the trial court for permission to directly issue subpoenas to DFCS returnable to this Court for *in camera* inspection.

WHEREFORE, Defendant prays that the Court grant said motion, and grant any other relief deemed just, necessary, and fair.

Respectfully submitted this the 10 day of ~~December, 2022.~~ JAN 2023

ROBERT W. ATTRIDGE, JR.
Assistant Public Defender
Georgia Bar No.: 311087

Office of the Public Defender, EJC
P.O. Box 9176
Savannah, Georgia 31412
Phone: (912) 447-4901
Fax: (912) 447-4909
rwattri@chathamcounty.org

CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties with a copy of the foregoing by hand delivery and e-file to the following:

Tim Dean, ADA
Office of the District Attorney, EJC
Chatham County Courthouse
133 Montgomery St., Suite 600
Savannah, GA 31402

This 10 day of ~~December, 2022.~~ JANUARY 2023

ROBERT W. ATTRIDGE, JR.
Assistant Public Defender
Georgia Bar No.: 311087

Office of the Public Defender, EJC
P.O. Box 9176
Savannah, Georgia 31412
Phone: (912) 447-4901
Fax: (912) 447-4909
rwattri@chathamcounty.org

EXHIBIT

B

JUVENILE COURT
CHATHAM COUNTY, GA.
2022 OCT 18 A 11:36

IN THE JUVENILE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

In the Interest of:

	SEX	DOB	CASE #	FILE #
			2201164	52739
			2201165	52740

Children

PROTECTIVE ORDER

This Court convened for a hearing on an Application for Protective Order on the conduct of the parties in this matter on October 17, 2022. Present at the hearing were:

Present?	Name	Relationship to Child	Represented by	Present?
Yes	***Leilani Simon***	Mother	***Francesca Rehal***	Yes
Yes Via Webex	***Cody Wharton***	Putative Father	***Jennifer Wittich***	Yes Via Webex
Yes Via Webex	***Daniel Youngkin***	Putative Father	***Evan Miller***	Yes
Yes	***Billie Jo Howell***	Permanent Guardian (Zayne)	***Derek Kauhane***	Yes
No No		Child's Attorney	***Kathy Davis***	Yes
No No		Guardian ad litem CASA	***Kathy Davis*** ***Mary Hermann***	Yes Yes
Yes Yes Yes	***DFCS Case Manager, Cristara Solomon;*** ***DFCS Supervisor Krystal Edwards Smalls;*** ***DFCS Regional Director, Shelia Deese Dinkins***		***SAAG Wendy Furey***	Yes

Also present were: the paternal grandfather of , Keith Alan Wharton, and the children's maternal uncle, Michael Simon, were permitted to remain in the courtroom after the hearing was ordered to be closed as persons present to assist a party pursuant to O.C.G.A. 15-11-700 (e). While not parties to this proceeding, or directly subject to this Protective Order, should they violate the terms hereof, the Court may preclude their attendance at future hearings, or consider placing them under a protective order should either of them violate the terms below.

Each of the parties outlined herein consented to the entry of a protective order restraining or otherwise controlling their behaviors and ordering them to abstain from offensive conduct against the children, specifically as to the following:

1. The Parties shall not disclose or share any information regarding the children, their identifying information, their images or likeness, or the same for any sibling(s), or any family member, or other information regarding this case; nor shall any party share or disclose any dependency records or the content thereof; and
2. Social Media: Each Party shall remove, or make wholly private, any and all social media accounts or posts that include information about the children, any sibling(s), family members, or the case, and to refrain from any new social media posts about the children, any sibling(s), family members or the dependency matter.

   O.C.G.A. §15-11-29

Counsel requested clarification as to how a party should respond if approached by media or third parties. Either no response, or "no comment", are responses approved by the Court. The parties may fully discuss the matters before this Court with their attorneys.

The parties are hereby placed on notice that failure to comply with this Court's order may be enforced by a citation to show cause for contempt of court by reason of any violation of this order and, where protection of the welfare of the children so requires, by the issuance of a warrant to take the alleged violator into custody and bring him or her before the Court. In addition to all other inherent powers of the Court to enforce its lawful orders, the Court may punish an adult for contempt of court by imprisonment of not more than 20 days or a fine not to exceed $1,000.00 for willfully disobeying an order of the Court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

THEREFORE, IT IS HEREBY ORDERED that the parties to this proceeding, shall comply with all orders of this Court including the above provisions.

IT IS SO ORDERED this 18 day of October, 2022.

Thomas L. Cole, Presiding Judge
Chatham County Juvenile Court
Eastern Judicial Circuit