



Could a Trump grand juror's comments affect possible Georgia charges?

Jack Queen

February 23, 2023

Media interviews given by the foreperson of the Georgia grand jury that investigated former President Donald Trump's attempt to overturn his 2020 election loss in the state present a public relations problem for prosecutors but need not stop them from bringing charges if warranted, according to legal experts.

The foreperson, Emily Kohrs, was interviewed by a variety of U.S. news outlets this week and offered a rare window into the secretive process in which members of the grand jury weigh evidence and make recommendations to prosecutors on possible criminal charges.

Kohrs, 30, offered hints as to what the grand jury recommended in its report, most of which remains sealed, after it wrapped up its work in January. Kohrs told CNN that "the big name that everyone keeps asking me about - I don't think you will be shocked."

That appeared to be a reference to Trump, though Kohrs did make that clear. She did not respond to requests for further comment.

Legal experts said the various remarks made by Kohrs likely would not be enough to undo any charges.

"In my 26 years of prosecution experience, I have never seen a grand jury indictment quashed because of grand jury misconduct," said Georgia lawyer David Cooke, the former district attorney in Georgia's Macon County who also served as a prosecutor in the Fulton County district attorney's office that is now handling the election inquiry.

Trump, who lost in Georgia and nationally to Democrat Joe Biden and has made false claims of widespread voting fraud, lashed out at the news, saying without offering evidence that the interviews showed that the grand jury process was unfair. In a social media post, Trump described the case as "ridiculous" and "strictly political."

Trump, who in November launched a bid for the 2024 Republican presidential nomination, took a similarly combative tone toward the various investigations including two impeachment trials that he faced during his four years in office and since.

Trump's lawyers did not immediately respond to requests for comment on Thursday.

The Georgia investigation could lead to the first-ever criminal charges against a former U.S. president. As such, prosecutors may proceed with an abundance of caution, particularly if Kohrs divulges more sensitive details.

"If that (further revelations from Kohrs) occurs, then the question will be, do they have to start the grand jury process from scratch? Because the result might be tainted by her talking about the deliberative process," said Michael Weinstein, a former U.S. Justice Department prosecutor who now specializes in white collar criminal defense.

'BAD OPTICS'

The interviews by Kohrs could create public relations headaches for prosecutors already navigating a politically polarizing investigation.

"It's bad optics," said legal expert Clark Neily of the Cato Institute, a libertarian think tank in Washington. "It makes the process look unfair to targets of the grand jury, even though it doesn't provide grounds for quashing an indictment."

The special grand jury heard testimony behind closed doors including from Trump allies such as Republican U.S. Senator Lindsay Graham of South Carolina, former White House Chief of Staff Mark Meadows and attorney Rudy Giuliani. Excerpts of its findings released on Feb. 16 showed that the panel concluded that some witnesses may have lied under oath.

But the grand jury lacked indictment powers. Fani Willis, the Fulton County district attorney steering the investigation, must decide whether to bring the panel's charging recommendations to a regular grand jury. That extra step would further insulate prosecutors from any accusations of grand juror misconduct based on the Kohrs interviews, legal experts said.

"There still has to be an independent assessment by the district attorney and a subsequent grand jury who hands up the indictment," Weinstein said.

A spokesperson for Willis' office did not immediately respond to a request for comment.

It is rare for judges to dismiss indictments based on breaches of grand jury protocols, which require proof that panelists were prejudiced or engaged in egregious misconduct that would make a fair trial impossible, experts said.

Cooke, whose time in the Fulton County DA's office overlapped with Willis's service as a prosecutor before she became district attorney, expressed confidence in the fairness of the process.

"Any grand jury in Fulton County is going to have a huge diversity of viewpoints, politics and backgrounds," Cooke said. "You're going to have a group of well-minded citizens trying to do the right thing."

Clark Neily is senior vice president for legal studies at the Cato Institute.