

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
v.)
) CASE NO.: 23SC188947
SCOTT G. HALL,)
Defendant.)

**DEFENDANT SCOTT G. HALL’S MOTION TO SEVER FROM OCTOBER 23,
2023 TRIAL AND FROM THE ALLEGATIONS UNRELATED TO HIM**

The State of Georgia has alleged that 19 defendants – most of whom do not even know each *other*, much less the unnamed others in the transcontinental web stretching across Count 1 of the indictment – participated in a coordinated criminal enterprise “to unlawfully change the outcome of the election in favor of Trump.” (Ind. at 14.) Rather than following the lead of its federal counterpart in charging cohesive and manageable allegations targeted to discrete sets of facts,¹ the State elected to boil the ocean with an unwieldy morass of disjointed events in different geographies, with different participants, at different points in time, and for different purposes. This indictment is the exact type of “sprawling . . . charging instrument that has typically led to monthslong trials, complicated appeals and exhaustion for participating lawyers.”²

¹ Compare *United States v. Trump*, Case No. 1:23-cr-257 (D.D.C.); *United States v. Trump, et al.*, Case No. 9:23-cr-80101 (S.D. Fla.).

² Fleischman, A., “What Fani Willis Got Wrong in Her Trump Indictment,” *New York Times* (Aug. 29, 2023), available at <https://www.nytimes.com/2023/08/29/opinion/fani-willis-trump-indictment-georgia.html>.

Adding to the chaos and complexity inherent in this indictment, some defendants have exercised their constitutional rights to a speedy trial, which this Court has set to begin October 23, 2023 – seven weeks from now. But Defendant Hall does not even have the discovery yet and is therefore not in a position to determine which pretrial motions are appropriate, much less prepare for what will likely be a months-long trial.

This Court has discretion to sever this case into modules – which are already perforated by the indictment for easy extraction – to allow for more fair and manageable trials. For the reasons below, Defendant Scott G. Hall asks this Court (1) sever his case from the defendants who have demanded a speedy trial under O.C.G.A. § 17-7-170; and (2) to sever his case from the aspects of the State’s case that took place outside Coffee County, Georgia.

ARGUMENT

Defendant Hall is charged with participating in a RICO conspiracy, which participation is allegedly based on his travel to Coffee County, Georgia on January 7, 2021 “to assist[] with the unlawful breach of election equipment at the Coffee County Board of Elections & Registration Office” and for other acts that took place in Coffee County on that day. (Ind. at 64 (Overt Act 142); *see also id.* at 64-65 (Overt Acts 143-49).) Substantive Counts 32 through 37 mirror these same allegations. (*Id.* at 90-95.) Defendants Cathy Latham, Misty Hampton, and Sidney Powell are

alleged to have been part of this discrete activity. (*See id.*) Although Count 37 alleges a timeframe spanning just over one month, the heart of all the alleged activity took place on a single day – January 7, 2021. Importantly, this Court may take judicial notice of the fact that the presidential election had already been certified by January 7, 2021³ and that the data allegedly accessed pertained to the senate runoff that had happened two days prior – not the presidential election.⁴ *See* Fed. R. Evid. 201(b). Because the allegations supporting the charges against Defendant Hall involved a discrete set of actors during a short period of time in another judicial district, his trial could be easily and manageably extracted from the rest of this case.

This Court enjoys wide discretion in deciding whether to grant a motion for severance after assessing the facts and circumstances of the case. *See Chancey v. State*, 256 Ga. 415, 432 (1986). Severance is warranted when it is necessary to ensure a fair determination of the guilt or innocence of each defendant, *i.e.*, where the defendant will suffer prejudice and a denial of due process of the request is not granted. *See Cain v. State*, 235 Ga. 128, 129 (1975). Factors this Court should

³ *See* Congressional Record, “Daily Digest” (Jan. 6, 2021), *available at* <https://www.congress.gov/117/crec/2021/01/06/167/4/CREC-2021-01-06-dailydigest.pdf>.

⁴ *See* Results of Fed. Runoff, Ga. Sec. of State (last updated Jan. 20, 2021), *available at* <https://results.enr.clarityelections.com/GA/107556/web.274956/#/summary>.

consider include, but are not limited to, the following: (1) Whether there are so many defendants that the jury could confuse the evidence and law applicable to each defendant; (2) whether there is a risk that evidence that is admissible against only a particular defendant would be considered by the jury against other defendants even with a limiting instruction; and (3) whether the defenses the defendants may raise are antagonistic to other defendants or their rights. *Id.*

The RICO count in this case reads as a quintessential “rimless hub-and-spoke” conspiracy—that unique variation of conspiracies where multiple individuals are connected by a hub conspirator but not necessarily connected with each other. *See United States v. Chandler*, 388 F.3d 796, 807 (11th Cir. 2004). Indeed, that appears to be the very essence of a RICO enterprise charged as an association-in-fact, like the one here. There is not one overarching conspiracy but “as many conspiracies as there are spokes.” *Id.* For example, there is no allegation that the Coffee County conspirators were in on or even aware of the alternate elector plan, or the acts involving a Fulton County poll worker, or any activity in any state other than Georgia, or that any of the individuals at issue in those spokes of the alleged RICO wheel knew what was happening in Coffee County. It appears that the various spokes were not even aware of each other or any common aim. *See United States v. Seher*, 562 F.3d 1344, 1367 (11th Cir. 2009); *see also United States v. Huff*, 609 F.3d 1240, 1243-44 (11th Cir. 2010).

The State will therefore be attempting to prove multiple conspiracies it views as part of the larger RICO association-in-fact—each of which will be a separate mini-trial—which will make it difficult for the jury to track all of the evidence so that it can do the necessary work of parsing each defendant’s alleged involvement to determine if the State met its burden. The various alleged acts of racketeering are similarly governed by different law. The unwieldy indictment—if tried as a whole—will make it increasingly likely that the jury gets overwhelmed and frustrated by its grave task rather than carefully threading the needle individually, as justice requires.

Defendant Hall further expects that the State will attempt to introduce significant hearsay shoehorned by the coconspirator exception, O.C.G.A. § 24-8-801(d)(2).⁵ Given the State’s broad view of this alleged enterprise—which seems to have encompassed practically everyone in America who hoped the various recounts would turn the election results in President Trump’s favor—there is a near certainty that the State will rely on hearsay statements by the other defendants and unindicted coconspirators without any proof that those persons were in a joint agreement with Defendant Hall or otherwise in violation of *Bruton v. United States*, 391 U.S. 123 (1968). Limiting the trial against Defendant Hall to the

⁵ Defendant Hall intends to move this Court separately for a hearing to determine the admissibility of coconspirator statements.

allegations involving Coffee County further protects against any unfair prejudice or confrontation problems that could arise should the mini-conspiracies all be tried together.

Finally, separating out the Coffee County angle of this case from the rest of the indictment serves judicial economy. This Court is no doubt aware of the jury selection and trial problems generated by the Jeffery L. Williams (“Young Thug”) RICO gang trial proceeding in this very courthouse. Eight months in, a jury has not even been seated. This indictment is considerably more complex given the expansiveness of the charges, the number of defendants, the geographic and temporal reach of the allegations, and the District Attorney’s need to empanel a Special Purpose Grand Jury just to investigate this case.

Even if this Court is not prepared to rule on whether to separate the case into digestible modules for trial, at the very least it should sever Defendant Hall from the defendants who have filed speedy trial notices at this time. The State filed a Notice of Initial Batch of Discovery on August 25, 2023, instructing defendants who wished to opt into reciprocal discovery to provide a 2 terabyte (2TB) external hard drive no later than September 5, 2023. Defendant Hall provided the state with that hard drive a week early, on August 29, 2023, but the State claims the discovery will not be ready until September 15, 2023. Query why it takes two and a half weeks to copy documents onto an external drive, but nonetheless there is simply

not enough time for undersigned counsel to prepare responsibly for a trial of this magnitude in less than two months when even the “initial” batch of 2TB of discovery will be produced barely a month before trial. If there is more discovery to come, the challenge is near impossible.

For the reasons stated above, Defendant Hall asked that he be severed from the upcoming trial of the defendants who have demanded a speedy trial. He further requests that the charges against him be severed from the remainder of the indictment to avoid the prejudicial spillover of having to endure months of evidence that has nothing to do with the allegations against him.

Respectfully submitted, this the 5th day of September, 2023.

s/ Lynsey M. Barron

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing MOTION FOR SEVERENCE on all counsel who have entered an appearance in this matter by filing the foregoing with the Court’s electronic filing system.

This 5th day of September, 2023.

s/ Lynsey M. Barron _____

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