IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. JEFFREY B. CLARK	Indictment No. 23SC188947

ORDER DENYING DEFENDANT'S SPECIAL PLEA AS TO LACK OF PERSONAL JURISDICTION

On October 31, 2023, Defendant Clark filed a Special Plea seeking dismissal of the indictment returned against him for lack of personal jurisdiction. (Doc. 58). Setting aside the vigorous critiques of the State's case, the Defendant's legal argument boils down to this: Mr. Clark is not subject to criminal prosecution in Georgia because the indictment fails to satisfy a threshold showing of personal jurisdiction under the Due Process Clause. Uncovering no persuasive appellate precedent in support of this creative theory, further briefing and oral argument is unnecessary, and the motion is denied.

Jurisdiction establishes the types of cases a court can hear and decide. *See In re Judicial Qualifications Comm'n Formal Advisory Op. No. 239*, 300 Ga. 291, 293 (2016). A combination of constitutional and statutory authority establishes this Court's criminal jurisdiction.[1] First and foremost, the Georgia Constitution grants superior courts exclusive subject-matter jurisdiction

[1] Not to be reflexively conflated with venue, which establishes where within the state a case should be tried. *See Schiefelbein v. State*, 258 Ga. 623, 624 (1988) (Gregory, J., concurring) ("It merely adds to confusion to refer to the problem [of venue] as one of jurisdiction."); *but see Patterson v. State*, 162 Ga. App. 455, 457 (1982) ("Jurisdiction of the person is only obtained by the court of trial where under the operative statute the court has jurisdiction to try the offense and the defendant; in other words, where proper venue is established."). To determine the appropriate superior court, our Constitution further provides that criminal actions must generally be tried in the county in which the crime was committed. Ga. Const. of 1983, Art. VI, Sec. II, Par. VI; *see also* O.C.G.A. § 17-2-2(a); O.C.G.A. § 16-14-11 (establishing venue in RICO cases).

over felony jury trials. Ga. Const. of 1983, Art. VI, Sec. IV, Par. I. Going further, "a person shall be subject to prosecution in this state for a crime which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable if [t]he crime is committed either wholly or partly within the state[, or] [t]he conduct outside the state constitutes an attempt to commit a crime within the state[.]" O.C.G.A. § 17-2-1(b)(1)-(2); *see, e.g., Freeman v. State*, 194 Ga. App. 905, 906 (1990) ("the record affirmatively establishes that the State Court of DeKalb County exercised both personal and subject matter jurisdiction over appellant"). As the personal jurisdiction statute makes clear, a criminal defendant's actual presence within Georgia at the time a crime occurred is not required for a trial court to obtain jurisdiction. *See*, *e.g.*, *Brown v. State*, 321 Ga. App. 798, 801 (2013) (finding jurisdiction under O.C.G.A. § 17-2-1 over out-of-state defendant who sent messages via computer to in-state recipient); *see also Everett v. Cobb Cty*., 823 F. App'x 888, 893 (11th Cir. 2020) ("[T]o the extent [plaintiff] seeks to argue that the warrant violated the Constitution because she was located in Alabama, we are unpersuaded. It has long been understood that a state's constitutional authority encompasses punishment for crimes committed out of the state that were intended to produce harm within the state[.]") (citing *Strassheim v. Daily*, 221 U.S. 280, 285 (1911) and *Simpson v. State*, 92 Ga. 41, 45 (1893)).

Nevertheless, borrowing principles from civil law, the Defendant contends that the State's prosecution does not satisfy the jurisdictional requirements of the Due Process Clause and that he should be allowed to make a pretrial challenge on these grounds. In civil practice, a pretrial challenge to personal jurisdiction is permitted and commonly litigated. *See* O.C.G.A. § 9-11-12(d) (stating that a defense of lack of jurisdiction over the person pursuant to O.C.G.A. § 9-11-12(b)(2) "shall be heard and determined before trial" unless deferred by the court). It is from this well-litigated civil well that the legal concepts of "minimum contacts," "purposeful availment," and

"traditional notions of fair play and substantial justice" are drawn. But such a procedural mechanism does not exist in Title 17, and the Defendant cannot point to a single case where these notions have been applied to a criminal prosecution, much less in a pretrial context. *See*, *e.g*., *United States v. Maruyasu Indus. Co*., 229 F. Supp. 3d 659, 670 (S.D. Ohio 2017) (surveying cases and holding that "due process in the civil and criminal contexts simply is *different*") (emphasis in original).

By comparison, venue (a concept our appellate courts have previously used to address criminal personal jurisdiction challenges and incorporate O.C.G.A. § 17-2-1) is an essential element of a prosecution regularly challenged on appeal. Whether the State has proved venue is a question for the jury which may be proved by direct or circumstantial evidence. *Faust v. State*, 303 Ga. 731, 735 (2018) (finding venue is generally a "question for the jury"); *Davis v. State*, 82 Ga. 205, 206 (1888) ("[V]enue is a jurisdictional fact, and there is no provision of law for pleading specially to the jurisdiction[.]"); *see also* Ga. Suggested Pattern Jury Instructions, Vol. II: Criminal Cases, § 1.51.10 ("Venue; Generally"). Count one alleges that the RICO violation occurred in the "State of Georgia and County of Fulton," while count 22 alleges that the crime occurred "in the County of Fulton and State of Georgia."[2] Regarding count one, as the Defendant predicts in his motion, the accepted law of conspiracy does not help his argument. When individuals conspire to commit a crime, any act done in furtherance of the conspiracy is legally the act of each conspirator. *Brown v. State*, 177 Ga. App. 284, 295 (1985). Venue is appropriate in the county in which the conspiratorial agreement was reached or in any county in which an overt act occurred. *Raftis v.*

[2] To the extent the Defendant claims the indictment insufficiently establishes personal jurisdiction on its face, thereby taking the form of a special demurrer, this claim also fails as each count properly alleges that the crime occurred in Fulton County.

State, 175 Ga. App. 893, 895 (1985).[3] While the Defendant will have the ability at trial to challenge whether he participated in the RICO conspiracy alleged in count one, and whether conduct alleged in count 22 targeted Fulton County, a pretrial analysis of civil Due Process concepts such as "minimum contacts" has no relevance or application here. *See Frisbie v. Collins*, 342 U.S. 519, 522 (1952) ("[D]ue process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards."); *see also United States v. Rendon*, 354 F.3d 1320, 1326 (11th Cir. 2003) ("A federal district court has personal jurisdiction to try any defendant brought before it on a federal indictment charging a violation of federal law."). The motion is DENIED.

SO ORDERED, this 12th day of December, 2023.

Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit

[3] *See also Graham v. State*, 282 Ga. App. 576, 579 (2006) (Under the RICO venue provision, "both the corrupt agreement and an overt act must be proved; venue may be laid in the county of either, or, if there are several overt acts, in a county where any of them was committed.").