IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	**CASE NO. 23SC189192**
v.	
AYLA ELEGIA KING **Defendant.**	**JUDGE:**

MOTION TO DISMISS PURSUANT TO O.C.G.A. § 17-7-170

COMES NOW THE ABOVE-NAMED DEFENDANT, Ayla Elegia King, by and through undersigned counsel, and files this MOTION TO DISMISS PURSUANT TO O.C.G.A. § 17-7-170 and moves this Court to order Mx. King absolutely discharged and acquitted of the offense charged in the Indictment. In support of said motion, Defendant shows the following:

Introduction

O.C.G.A. § 17-7-170 provides that if a "defendant is not ***tried*** when the demand for speedy trial is made or at the next succeeding regular court term thereafter, provided that at both court terms there were juries impaneled and qualified to try the defendant, the defendant shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation." (Emphasis added).

In this case, Ayla King timely and properly demanded a speedy trial during Fulton County's September-October 2023 court term. As it was required to do under O.C.G.A. § 17-7-170, this Court appropriately set the matter for trial during Fulton County's November-December 2023 term, and began jury selection on December 11. But after the jury was selected and sworn the next day, this Court – with the consent of the State but over the objection of the

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defense – delayed the start of the trial to January 10, nearly a full month later and during a different term of Court.

The text, context, and purpose of O.C.G.A. § 17-7-170 all make clear that the mere selection and swearing-in of a jury, without more, is insufficient to satisfy a speedy trial demand – at least under the circumstances of Mx. King's case, if not universally. To put it simply, the November-December 2023 term has passed, and Mx. King has not yet been ***tried*** in any plausible sense of the word. Under the plain text of O.C.G.A. § 17-7-170, Mx. King is therefore entitled to absolute discharge and acquittal.

Facts and Procedural History[1]

1. On March 5, 2023, Mx. King was arrested in relation to the allegations for which they were ultimately indicted in this matter.
2. On August 29, 2023, Mx. King was indicted and charged, alongside 60 co-defendants, with one count of Violation of the Georgia Racketeeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-4(c) [sic].
3. Mx. King is innocent of all charges in the above referenced indictment.
4. On October 30, 2023, Mx. King timely and properly filed a Demand for Speedy Trial pursuant to O.C.G.A. § 17-7-170.
5. On November 7, 2023, Mx. King was released on a Consent Bond Order. Among other conditions, the Order includes a restraint on Mx. King's First Amendment right of

[1] The procedural history outlined herein is limited to that which is relevant to the instant motion.

association ("No contact with co-defendants except case related contact in the presence of or through defendant's attorney of record.").

6. On November 16, 2023, Mx. King timely filed a Special Demurrer to the Indictment and Motion to Adopt Motions Filed by Co-Defendants. The Indictment against Mx. King is facially deficient for the reasons set forth in their demurrer as well as the other motions in which they have joined.
7. On November 28, 2023, counsel for Mx. King filed a Notice of Updated Leave of Absence, removing his previously requested and unopposed leave filed on October 27, 2023, from December 16, 2023 through January 9, 2024 in order to make himself available for the trial.
8. On November 30, 2023, this Court "denied" counsel's Leave of Absence due to the speedy trial demand and the anticipated December 11 trial date.
9. On December 5, 2023, this Court issued an Order Specially Setting Case for Jury Trial setting the matter for trial on December 11 and advising the parties that any leaves of absence or notices of conflict between December 11 and December 29 would not be honored.
10. The December 5, 2023 Order included a provision ordering Mx. King, as well as all counsel and parties, to refrain from any extra-judicial communications concerning the proceedings, including activities otherwise protected by the First Amendment such as engaging in social media commentary or any other communications regarding the subject matter of the indictment.

11. On December 11, 2023, the jury selection process began. On information and belief, members of the public and media were excluded from the courtroom at various points during the jury selection process. The exclusion continued on December 12, 2023 where at least one member of the public (an attorney representing a co-defendant in this matter) was directed to the leave the courtroom by a court deputy.
12. On December 12, 2023, the jury selection process was completed. Following the administration of the jury oath, rather than proceeding to trial as scheduled, with the consent of the State and over the objection of the defense, the Court continued the trial, excused the jury, and reset the trial for January 10. The Defense objected to the continuance and the State moved to "deny" the Defense's objections. As a result of the continuance of the trial, one of the selected jurors was excused due to conflicting travel plans. The next day, an alternate juror was sworn in by himself. The Court said "we will start trial January 10."
13. On December 12, 2023, this Court set the matter for a Motions Hearing on January 8, 2024.

Grounds and Authorities in Support

A. Summary of the argument[2]

O.G.C.A. § 17-7-170 requires that a defendant be ***tried*** by the next succeeding court

[2] The undersigned intends to file supplemental arguments in support of this Motion upon receipt of an official transcript of the December 11-13, 2023, proceedings.

term following a timely and proper speedy trial demand, provided that at both court terms there were juries impaneled and qualified to try the defendant, or that the defendant be absolutely discharged and acquitted. The text, context, and purpose of O.G.C.A. § 17-7-170 all make clear that the mere selection and swearing-in of a jury, without more, is insufficient to satisfy a defendant's speedy trial demand. This fact is particularly evident under the circumstances of the instant case: this Court had set the trial to take place from December 11-December 29 and the defense neither consented to, nor took any action necessitating, further delay at the time trial was continued on December 12.[3]

Mx. King filed a timely and proper speedy trial demand during Fulton County's September-October 2023 court term, and has not yet been tried following completion of the November-Decemer 2023 court term – despite the fact that juries were impaneled and qualified to try the defendant at both terms.[4] Accordingly, Mx. King must be absolutely discharged and acquitted of the pending Indictment.[5]

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[3] There are cases where exceptional circumstances necessitating a delay of trial, or circumstances delaying the start of trial which are caused or consented to by the defense (such as a time-intensive jury selection process), raise additional considerations such as waiver that may complicate the speedy trial analysis. This is not such a case. Similarly, there are cases where a defendant is partially tried during the final term in which trial is permissible under O.G.C.A. § 17-7-170, but where completion of the trial during that term is impossible or impractical. This is also not such a case.

[4] Although this Court can take judicial notice of the obvious fact that Fulton County juries were impaneled and qualified to try Mx. King during both court terms at issue here, Mx. King will present evidence of such if the State disputes this fact and the Court declines to take judicial notice as requested.

[5] Furthermore, the jury selection and oath administration processes are insufficient to satisfy the requirements of O.G.C.A. § 17-7-170, and additionally Mx. King has not yet been afforded the *speedy and public trial* guaranteed by the United States and Georgia Constitutions since access to the public has been restricted over the Defense's objection. This is a separate and independent ground warranting that Mx. King be discharged and acquitted.

B. *The plain language of O.G.C.A. § 17-7-170 makes clear that selecting and swearing-in a jury, without more, is insufficient to satisfy a defendant's speedy trial demand.*

This Court must "presume that the General Assembly meant what it said and said what it meant" and "read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would." *Bowman v. State*, 315 Ga. 707, 710 (2023) (internal quotations omitted). In enacting O.G.C.A. § 17-7-170, the General Assembly said that compliance with the speedy trial statute requires that a defendant be ***tried*** within the requisite period – not merely that the jury be selected and sworn in.

No ordinary speaker of the English language – whether lay or lawyer – would believe that Mx. King has been "tried" in any meaningful respect by the mere selection and swearing-in of the jury. The administration of a jury oath is a "prerequisite to a legally valid jury trial[,]" *Bowman*, 315 Ga. at 711, but the *trying* of the defendant only occurs *after* the jury is selected. It is nonsensical to speak of a defendant being "tried" by the jury selection process because the jury (or in some cases, the judge) is itself the body that *tries* the defendant. Indeed, O.C.G.A. § 17-7-170(b) itself recognizes that this is the case by referring to "juries impaneled and ***qualified to try the defendant***[.]" (Emphasis added). *See also, e.g.*, *Whittaker v. State*, 317 Ga. 127 n.1 (2023) (one of more than 940 Georgia Supreme Court and Georgia Court of Appeals to use the term "tried by a jury").

A plain text, common-sense reading of OGCA § 17-7-170 does not support a finding that Mx. King has been "tried" simply because a jury has been selected and sworn-in. In fact, due to the continuance objected to by the Defense, ***pre-trial motions*** have not even been heard yet.

C. *Construing § 17-7-170's use of the word "tried" in accordance with its plain meaning is necessary to harmonize § 17-7-170 with Georgia statutes governing jury selection and oath administration.*

In interpreting § 17-7-170, for context, this Court should look to other statutes "that form[ ] the legal background of the statutory provision in question" and "construe statutes in connection and in harmony with the existing law, and as part of a general and uniform system of jurisprudence." *Bowman*, 315 Ga. at 710 (internal quotations omitted)

Consistent with widespread lay and legal understandings of what it means to be "tried," the General Assembly has repeatedly and explicitly recognized that the jury selection process and administration of the jury oath precede and are distinct from the jury's trying of the case. *See* § 15-12-166 ("If a juror is found competent and is not challenged peremptorily by the state, he shall be put upon the accused. Unless he is challenged peremptorily by the accused, ***the juror shall be sworn to try the case***.") (emphasis added); § 15-12-139 (prescribing the oath to be administered to criminal juries, including the directive to "well and truly ***try the issue*** formed upon this bill of indictment") (emphasis added); § 15-12-165 ("Every person accused of a felony may peremptorily challenge nine of the ***jurors impaneled to try him or her***.") (emphasis added).

It is clear that the General Assembly understands that selecting and swearing in a jury is different from trying a case. Notably, all these statutes appear in Title 15, Chapter 12, Article 5 of the Code of Georgia – the article governing ***trial juries***. It would be very odd to interpret § 17-7-170 inconsistently with the General Assembly's legislation governing trial juries by finding that a defendant can be "tried" within the meaning § 17-7-170 by the mere selection and swearing-in of a jury, when § 15-120 and § 15-160, *et seq.* plainly contemplate that jurors "try" cases, issues, and defendants only *after* they are sworn and impaneled. This is particularly true

given O.C.G.A. § 17-7-170(b)'s recognition that the jury is the body which "tr[ies] the defendant[.]"

In order to harmonize § 17-7-170 with § 15-120 and § 15-160, *et seq.* as two parts of a general and uniform system of jurisprudence, *see Bowman*, 315 Ga. at 710, § 17-7-170's use of the word "tried" must be interpreted to refer to the adjudication of a criminal matter after a jury is sworn.

D. *Construing § 17-7-170's use of the word "tried" in accordance with its plain meaning is consistent with the purpose of the statute.*

"OCGA § 17-7-170 provides a mechanism that criminal defendants may employ to ensure that their constitutionally guaranteed right to a speedy trial is not violated." *Bowman*, 315 Ga. at 711; *see also Reid v. State*, 116 Ga. App. 640, 645, 158 S.E.2d 461 (1967) (noting that O.C.G.A. § 17-7-170's predecessor speedy demand statute was enacted "in aid and implementation of the State constitutional right" to a speedy trial); *Durham v. State*, 9 Ga. 306, 309 (1851) (noting that statutory predecessor "was wisely and humanely framed to carry into effect that provision of the Constitution which declares, that 'in all criminal prosecutions, the accused shall enjoy the right to a *speedy* and public trial[ ]'") (emphasis in original). This Court must "give proper weight to the constitutional background of the applicable speedy trial statute[.]" *Bowman*, 315 Ga. at 710.

With these background principles in mind, it is clear that interpreting O.C.G.A. § 17-7-170's speedy trial requirement to be satisfied by the mere selection and swearing-in of a jury would undermine the purpose of the statute: to effectuate the constitutional right to a speedy trial. O.C.G.A. § 17-7-170 is of little comfort or aid to a defendant such as Mx. King who wishes to

resolve a serious, anxiety-inducing, and liberty-restraining criminal proceeding, when the promise of a speedy trial can be undermined by an extensive recess between administration of the jury oath and any further efforts to actually try the case. *Cf. Durham*, 9 Ga. at 310 (the predecessor speedy trial statute was "one of the great safeguards thrown around the citizen to protect him from unreasonable and vexatious procrastination and harassment"); *Denny v. State*, 6 Ga. 491, 492 (1849) (the object of the predecessor speedy trial statute was "to prevent vexatious delays; to limit the unequal power of the State over the prisoner, and to compel, in his behalf, an early trial"); *Bowman*, 315 Ga. at 711 (citing *Durham* and *Denny* approvingly with respect to interpreting the constitutional background of the modern speedy trial statute).

Furthermore, a construction of O.C.G.A. § 17-7-170 allowing the speedy trial requirement to be satisfied in this manner has no clear limiting principle. Under such a counter-textual interpretation, courts could sabotage any meaningful application of the statute by "timely" swearing-in a jury and then deferring all future proceedings to a date convenient to the State – be it one month, three months, six months, or one year later – if not longer. Such an interpretation is obviously at odds with the purpose, history, and tradition of Georgia's statutory speedy trial statute and related jurisprudence. *See Bowman*, 315 Ga. at 710-11.

E. ***Assuming* arguendo *that O.G.C.A. § 17-7-170(b)'s requirement that a defendant be timely "tried" can be satisfied by the jury selection process and swearing-in of the jury, dismissal is nonetheless required because Mx. King has still not received the speedy and public trial guaranteed by the Sixth Amendment and Art. I, Sec. I, Par. XI(a) of the Georgia Constitution.***

Assuming, *arguendo*, that Mx. King could have been "tried" based on the occurrence of the jury selection and oath administration process, Mx. King has still nonetheless not received a

"speedy trial" within the meaning of O.C.G.A. § 17-7-170 because substantial portions of the jury selection proceedings were arbitrarily closed to members of the public.

"The 'speedy trial' that criminal defendants * * * have the right to demand under O.C.G.A. § 17-7-170(a) is the same 'speedy trial' that is guaranteed by the Sixth Amendment to the United States Constitution and the Georgia Constitution." *Bowman,* 315 Ga. at 710-11. These Constitutions, respectively, guarantee a "speedy and public trial" and a "public and speedy trial[.]"

On information and belief, members of the public and media were excluded from the courtroom at various points during the jury selection process, and at least one member of the public (an attorney representing a co-defendant in this matter) was directed to the leave the courtroom by a court deputy. The exclusion of members of the public in this case failed to comply with the standards and requirements set forth in *Presley v. Georgia,* 558 U.S. 209 (2010) and *Waller v. Georgia,* 467 U.S. 39 (1984).[6]

Even if the jury selection and oath administration processes constitute the "trial" in which a defendant is "tried" for purposes of O.C.G.A. § 17-7-170(b) – and for the reasons set forth in subsections (A)-(D), *supra,* that is not the case – Mx. King has still not received the speedy trial guaranteed by the United States and Georgia Constitutions: a trial that is both speedy and public.

[6] Counsel intends to present evidence in support of this assertion at a hearing on this motion. Additionally, counsel intends to file supplemental arguments in support of this subsection (E) upon receipt of an official transcript of the December 11-13, 2023, proceedings.

Conclusion

WHEREFORE, for the reasons set forth above, Mx. King prays that this Court dismiss the Indictment against and enter an order absolutely discharging them and acquitting them of the offense charged.

Respectfully submitted January 1, 2024.

_/s/ Surinder K. Chadha Jimenez__
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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of MOTION TO DISMISS PURSUANT TO O.C.G.A. § 17-7-170 by electronic filing, by hand delivery, by facsimile, or by depositing a copy of same in the United States Mail with sufficient postage attached thereon, addressed as follows:

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Respectfully submitted January 1, 2024.

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