

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

CASE NO. D0293186

PLAINTIFF,

VS.

**JAMES MARSICANO, AKA JAMES
MARSICANA,**

DEFENDANT.

**ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS BASED ON VIOLATION OF
DUE PROCESS AND CONSTITUTIONAL SPEEDY TRIAL RIGHTS**

The above-styled case came before Judge Gregory A. Adams, Superior Court Judge Presiding over the Superior Court of DeKalb County on the 6th day of August, 2025. The State was represented by Deputy Attorney General John Fowler and Defendant, James "Jamie" Marsicano, AKA, James Marsicana, was represented by Attorney Xavier T. de Janon.

This Court, after hearing all the evidence, proffer, and arguments of the parties,

HEREBY ENTERS the following:

FINDINGS OF FACT

1. Defendant was present in court along with Defendant's Counsel.
2. On March 5, 2023, Defendant was arrested based on allegations that Defendant had participated in an incident that occurred earlier that day at the site where the Atlanta Public Safety Training Center was then being constructed. Defendant was held overnight at DeKalb County Jail.

3. On March 6, 2023, the State of Georgia charged Defendant with Domestic Terrorism in DeKalb County through an arrest warrant in the instant case, D0293186.
4. The arrest warrant alleges that the criminal conduct giving rise to the charge occurred within the span of a few hours, at a single location.
5. On March 7, 2023, a DeKalb County Magistrate Judge denied Defendant's bond.
6. On March 23, 2023, this Court held a bond hearing and granted Defendant a secured bond in the amount of \$25,000.00, with conditions requiring Defendant to do the following: turn over U.S. passport to defense counsel for holding; refrain from communicating with any co-defendant; stay away from Georgia; and remain on an ankle monitor. Defendant posted bond and was released.
7. In or around June 2023, the Attorney General's Office took over the prosecution of this case, and the DeKalb County District Attorney's Office withdrew from the prosecution.
8. Since Defendant's bond hearing, there has been no further progression or prosecution of this individual case other than bond modifications made at Defendant's request.
9. On August 29, 2023, the Attorney General indicted Defendant in Fulton County under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, Fulton County Case 23SC189192, in a RICO Conspiracy accusation, O.C.G.A. § 16-14-1(c).
10. The Fulton County indictment's specific accusations against Defendant are based on the same set of facts alleged in the arrest warrant of this case. The same officer that

testified against Defendant for the Fulton County indictment also sought and obtained the instant arrest warrant against Defendant in this case.

11. The Attorney General's Office asserts that the delay in indictment in this case is due to a large amount of evidence and its "ongoing" investigation. But it does not dispute that the Fulton County case, based on the same underlying factual allegations with respect to Defendant, was indicted nearly two years ago and has proceeded in course. On June 3, 2025, the Attorney General's Office moved to join Defendant's Fulton County case with that of Ayla King, a co-defendant who timely filed a statutory demand for a speedy trial and is expected to be tried first. As with Defendant, the only allegations in the Fulton County RICO case that are specific to Ayla King arose from the same March 5, 2023 incident that is the basis of the instant case.
12. Despite its reassertion of factual allegations and a theory of criminal liability against Defendant in open court, the Attorney General's Office has not indicted this matter or even attempted to do so.
13. More than twenty-nine (29) months after Defendant's charging in this case, construction has been completed on the Atlanta Public Safety Training Center and physical evidence has become forever lost according to Defendant's Counsel. The Attorney General's Office disclaims responsibility but did not establish that the evidence has been preserved.
14. Defendant cannot otherwise challenge this unindicted case.

15. In late 2024, the North Carolina Board of Law Examiners (“Board”) authorized Defendant to sit for the February 2025 bar exam. Defendant took and passed the North Carolina bar exam to become a licensed North Carolina attorney.
16. In April 2025, the Board ordered a Character and Fitness Hearing due to this pending charge. As submitted by Defendant, the Board informed Defendant that it would not consider Defendant’s eligibility for a bar license while this charge is pending.
17. Defendant made a demand for a speedy prosecution and trial on March 1, 2024.
18. Defendant made a second demand for a speedy prosecution and trial on May 16, 2025.
19. More than twenty-nine (29) months have passed since the arrest occurred.
20. More than twenty-nine (29) months have passed since the arrest warrant was issued.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter in this action.
2. Defendant’s Due Process rights have been violated, as follows:
 - A. Defendant and Defendant’s defense have been prejudiced due to the passage of time. The Attorney General’s Office is prosecuting Defendant for the same criminal conduct in another indictment, forcing a defense of this case by proxy. Moreover, essential physical evidence may be lost. The State disclaims responsibility for any loss of evidence occurring on private property and suggests that Defendant’s remedy against destruction of

evidence is *ex post facto* cross-examination of police at a jury trial. In addition, this unindicted case has caused negative publicity against Defendant, yet because there has been no indictment, there is no avenue for Defendant to challenge the allegations in this case. The personal and professional consequences that Defendant has faced as a result of this indefinite charge, without a legal forum in which it may be timely challenged, are forms of actual prejudice to Defendant.

B. The Attorney General's Office appears to have delayed this matter in order to gain a tactical advantage over the defense. The State is prosecuting Defendant in another county, based on the same factual allegations with regard to Defendant, as those underlying this case. As reflected in the RICO Conspiracy indictment, the investigation of these factual allegations against Defendant has ended, yet the Attorney General's Office has not indicted or even attempted to indict Defendant in this case in 29 months.¹

¹ At the hearing on this matter, the Attorney General's Office argued that the investigation was ongoing and suggested that part of the reason for delay was due to its obligation to only present matters to a grand jury that it believes in good faith can be proven beyond a reasonable doubt. But this explanation is undermined by the fact that the RICO Conspiracy indictment alleges that Defendant participated in "Domestic Terrorism" based upon the same conduct found in this matter's arrest warrant. The Attorney General's Office would not have sought an indictment against Defendant in Fulton County with allegations of "Domestic Terrorism" if it did not believe that it could prove the same case it has failed to indict here.

C. This case is distinguishable from Billingslea v. State, 311 Ga. App. 490 (2011), which the State based its arguments on. In that case, the Court found no deliberate delay by the State when the delay was due to law enforcement's failure to promptly arrest the defendant due to being unable to find him after pursuing multiple leads. Id. at 490, 494. Here, Defendant was arrested by and available to the State on the same date as the alleged offense, and the 29-month delay is solely attributable to the State's deliberate decision not to seek an indictment in this county, while doing so promptly and with no issue in another county.

D. Considering all of the facts and arguments presented by both parties, the State's delay in prosecuting this case has violated Defendant's Due Process rights under Ga. Const. art. I, § I, para. I, and U.S. Const. amend. V and XIV.

3. In addition, Defendant's Speedy Trial rights have been violated, as follows:

A. The State's 29-month delay in bringing forth a trial is presumptively prejudicial, triggering a balancing of the Barker-Doggett factors. Johnson v. State, 300 Ga. 252, 257 (2016). All factors weigh in favor of Defendant, as follows:

i. Although Defendant is accused of a serious felony, the underlying criminal conduct alleged is relatively straightforward, limited to

events occurring over the span of only a few hours in a single location. Over 29 months is a lengthy delay to bring this offense to trial. Nor can the delay be attributable in any part to Defendant, who has never failed to respond to this Court and has proactively sought this Court's intervention.

- ii. The Attorney General's Office has not provided sufficient reason for the 29-month delay in this case. Even if the investigation for this case was complex, the State had no difficulty in indicting Defendant on the same alleged criminal conduct almost two (2) years ago. The State is solely responsible for the lack of an indictment in this matter, let alone a trial. Furthermore, as explained above, the State's delay appears to be deliberate, weighing heavily against it. Burney v. State, 309 Ga. 273 (2020). Inexplicably, the Attorney General's Office has yet to prosecute the case it took from the Dekalb County District Attorney's Office after the latter withdrew.
- iii. Defendant has proactively asserted the right to a speedy trial twice over the span of the past two years. The Attorney General's Office has taken no apparent action in response to Defendant's repeated

assertions of the right to a speedy trial, and the Court is powerless to set the matter for trial in the absence of an indictment.

iv. Finally, Defendant has suffered not only presumptive prejudice, but demonstrated actual personal and legal prejudice from the delay in prosecuting this case in the form of incarceration, bond conditions, negative publicity, a pause on Defendant's professional career and diminished ability to adequately prepare a defense.

B. Since the delay is presumptively prejudicial and all Barker-Doggett factors weigh in favor of Defendant, the State's delay in prosecuting this case has violated Defendant's Speedy Trial rights under Ga. Const. art. I, § I, para. XI, and U.S. Const. amend. VI.

WHEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED AND DECREED THAT:

- I. Defendant's Motion to Dismiss Based on Violation of Due Process and Constitutional Speedy Trial Rights is **GRANTED**; and
- II. This case is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED THIS 14th day of August, 2025.



Hon. Gregory A. Adams
Superior Court Judge Presiding