

COPY



IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

*

INDICTMENT 14SC131684

vs.

*

JUDGE MCBURNEY

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*

JOY LASKAR

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ORDER ON DEFENDANT'S PLEA IN BAR

Defendant, a former professor at the Georgia Institute of Technology (“Georgia Tech”), was indicted on 30 December 2014 for two counts of racketeering. The State alleges that Defendant conspired with others to defraud Georgia Tech and to illegally divert State educational funds to his private business. Defendant protests that this case was brought too late, after the statute of limitations for racketeering actions had run. Because Defendant is correct, the Court GRANTS his motion and dismisses the case as time barred.

THE FACTS¹

Defendant was once the Director of Georgia Tech’s Georgia Electronic Design Center (“GEDC”). He was at the same time the owner of Sayana Wireless, LLC, a private company that entered into a license agreement with Georgia Tech to develop wireless communications technology. At issue are several orders for microchips placed with a French concern, CMP; these chips were paid for by Georgia Tech but allegedly benefitted Sayana and Defendant rather than the University.² The State characterizes, for purposes of its racketeering claims, each of the purchases from CMP as thefts. The first such alleged thefts occurred in 2006, followed by additional orders in 2007 and 2008. Though initiated by

¹ The Court held several evidentiary hearings on this matter earlier this year, after which the parties requested an extended briefing period.

² The State further alleges that Defendant improperly used Georgia Tech’s facilities, staff, and student body to run Sayana, but those allegations are not particularized and do not feature in the specific acts of racketeering.

Defendant or his unindicted co-conspirator, these orders were always placed by Georgia Tech purchasing personnel, using Georgia Tech purchasing forms and processes, and were ultimately paid for using Georgia Tech funds. Because of the problematic way in which Defendant and his co-conspirator operated, payments were often delayed by many months, leading to friction between CMP, Defendant, and Georgia Tech administrative personnel. The last such payment was made in June 2011, nearly three years after the particular chip order had been run and over a year after Defendant had been terminated by Georgia Tech.³

THE LAW

Defendant is charged with two counts of racketeering, in violation of O.C.G.A. § 16-14-4(a) and (b). Such crimes have a five-year statute of limitations. O.C.G.A. § 16-14-8. The State has the burden of proving that its case is not time-barred. *State v. Bair*, 303 Ga. App. 183, 183 (2010). If the State is relying on any tolling provisions that might operate to pause the five-year clock -- see, e.g., O.C.G.A. § 17-3-2 -- it must allege them in the indictment. *Jannuzzo v. State*, 322 Ga. App. 760, 765 (2013). None are here alleged, so the State, faced with Defendant's motion, must show that at least one racketeering act occurred on or after 30 December 2009. *State v. Conzo*, 293 Ga. App. 72, 74 (2008).

The acts of racketeering as accused in the indictment all involve theft by taking (O.C.G.A. § 16-8-2), a crime which can indeed constitute an act of racketeering. See O.C.G.A. § 16-14-3(5)(A)(xii).⁴ The question before the Court is what constituted the alleged thefts: the taking of the chips or the taking of Georgia Tech's money? Defendant's technology was built from microchips, not bank notes. What he purportedly stole from Georgia Tech was the

³ Defendant was fired on 17 May 2010.

⁴ At the time the case was indicted, the pertinent code provision was O.C.G.A. § 16-14-3(9)(A)(ix).

microchips he (through Georgia Tech) ordered from CMP. Those chips rightfully belonged to Georgia Tech because Georgia Tech contracted with CMP to purchase them and, ultimately, paid for them. However, the University's payment for the merchandise is a collateral consequence of Defendant's alleged theft, and a measure of the value of goods Defendant allegedly stole. The payment is not, however, the "theft" that allegedly occurred in this case. The crime of theft is committed when "the act of taking another's property coincides with the intent to deprive him of it." *Cook v. State*, 180 Ga. App. 139, 139 (1986).⁵

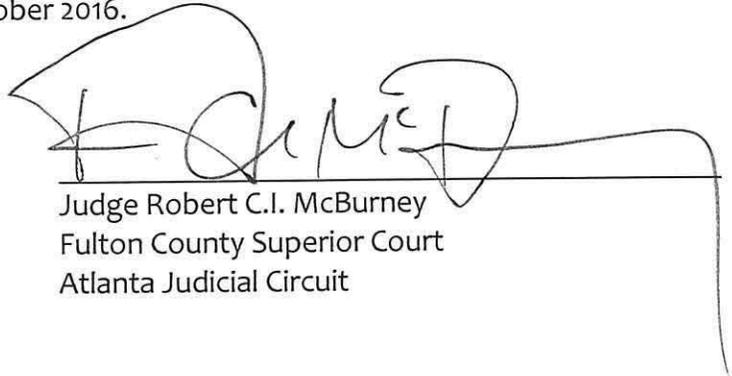
The State has failed to show that a racketeering act occurred on or after 30 December 2009, as the CMP chip runs at issue were all ordered in 2008 or earlier and fulfilled before December 2009. That they may have been invoiced or paid for after that date is no proof of a criminal act by Defendant *at the time* of invoicing or payment. Georgia Tech's reasonable and responsible decision to pay an obligation incurred by Defendant's allegedly illegal actions does not somehow time-shift *Defendant's* prior actions into the future.⁶

⁵ This makes sense on an additional level: Defendant's alleged *actions* were the theft and diversion and misuse of the microchips, staff resources, computing power, etc. belonging to Georgia Tech. Defendant did not act when Georgia Tech paid its bills. In particular, he could not have "acted" in the context of the alleged racketeering scheme when Georgia Tech paid the bill that forms the basis for the State's claim that some act of racketeering occurred within the period of the statute of limitations. That final payment made to CMP, authorized by senior University officials, was made over a year after Defendant had been fired, *i.e.*, at a time when Defendant had no ability to take actions on behalf of the University.

⁶ If instead the allegations were that Defendant had been stealing microchips Georgia Tech had already paid for, the time bar would be more obvious, as the State could not reasonably argue that anything done by Georgia Tech to replace the stolen chips constituted racketeering actions by Defendant. The *actus reus* in both situations – this case and the simpler hypothetical – is the taking of the chips (and the steps leading up to obtaining possession and dominion over them). Once Defendant has the chips, the alleged racketeering act is complete. The *consequences* of the act (e.g., future costs to Georgia Tech) may accrue over time, but the act itself is complete.

For these reasons, Defendant's plea in bar is granted. By operation of law, the case is DISMISSED and the other remaining motions are DENIED as moot. *State v. Boykin*, 320 Ga. App. 9, 10 (2013).

SO ORDERED this 5th day of October 2016.



Judge Robert C.I. McBurney
Fulton County Superior Court
Atlanta Judicial Circuit

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