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October 16, 2024

VIA EMAIL ONLY TO: lara.percifield@fultoncountyga.gov

Honorable Paige Reese Whitaker
c/o Ms. Lara Percifield
Superior Court of Fulton County
Justice Center Tower
185 Central Avenue, S.W.
Suite T5855
Atlanta, Georgia 30303

***Re: State v. Williams, et al.; Issues With Proposed Testimony of Martinez
Arnold***

Dear Judge Whitaker:

I represent Martinez Arnold (“Mr. Arnold”), a former defendant in the above matter. I am submitting this letter in anticipation of Mr. Arnold’s upcoming testimony. The State recently advised me that the State intended to call Mr. Arnold today, October 16, 2024. Yesterday, I was advised that he will not testify today and will likely not be called for “several weeks” but that they would try to let me know by next week.

Mr. Arnold originally agreed to testify when he entered into his plea in December of 2022, now approaching two years ago. Mr. Arnold has kept in constant contact with me over these past two years to make sure that he would be available whenever the State might call him as a witness. The first time that I was contacted by the State about Mr. Arnold being called as a witness was on August 13, 2024—by Adrian Love. Ms. Love asked if I could not appear with Mr. Arnold if there was anyone who could serve as “stand in counsel” for me. I informed Ms. Love that I was not willing to allow any “stand-in counsel” to stand with Mr. Arnold during his testimony, and I asked for Ms. Love to give

me some general indication of when Mr. Arnold's testimony would be needed. On September 4, 2024, the State told me Mr. Arnold was needed within the next few days. I immediately emailed Ms. Love and Investigator Long with the few dates for which I had leaves of absence on file for September and asked for the State to provide me with an anticipated time frame for when they might call Mr. Arnold to the stand. I received no response by e-mail but Ms. Love called my cell phone the evening of September 11, 2024 and also sent a text asking me to reach out to Investigator Long about the timing of Mr. Arnold's testimony.

I responded to the same e-mail chain providing all the dates we were available and the few dates that I was not available. Ms. Love indicated that she would be calling Mr. Arnold as a witness in September, so I wrote Ms. Love and the Court about the five days for which I was on leave in September. Mr. Arnold was never called as a witness during this time and no one from the State ever updated me on when Mr. Arnold might be called as a witness until last week.

On October 8, 2024, Investigator Long e-mailed me and copied Mr. Adam Abbate (and not Ms. Love) about Mr. Arnold's testimony. We were told Mr. Arnold would be called as a witness sometime mid-to-latter part of the week of October 14, 2024. We were asked to meet so the State could give "notice of his impending testimony." I provided a very detailed response advising the State that I could have Mr. Arnold testify beginning October 14, 2024 and anytime through October 18, 2024 and beginning again on October 22, 2024 through October 25, 2024.

Since Investigator Long had mentioned in his email wanting to provide "notice of [Mr. Arnold's] impending testimony" I drafted my October 9, 2024 letter to Ms. Love and copied all parties, including the Court, to clarify that Mr. Arnold was not avoiding service of any subpoena and intended to testify if called as a witness but that we just needed some accommodations such as notice to ensure that I was able to accompany him for his testimony as his attorney.

On October 9, 2024, Investigator Long e-mailed me that they would provide a date for Mr. Arnold's testimony within 48 hours. He also said that they would provide me with anything that the State wanted Mr. Arnold to review prior to his testimony and answer my question about whether the State intended on asking Mr. Arnold any additional questions that would involve his Fifth Amendment privilege and/or a grant of immunity.

On October 11, 2024, Investigator Long advised that Mr. Arnold would be called as a witness on October 16, 2024, but that they would keep me posted as the trial progressed. He also advised that Mr. Abbate would be responding about whether there were any prior statements the State intended to use to refresh Mr. Arnold's memory and whether the State intended to ask any questions outside the proffer he provided that might implicate immunity or Fifth Amendment concerns. In the interest of expediency and to

avoid wasting the jury and the Court's time, I previously had asked the State to send me any prior statements the State may wish to use during Mr. Arnold's testimony.

On October 14, 2024, I wrote Investigator Long and Mr. Abbate to confirm that Mr. Arnold was being called at 9:00 a.m. on October 16, 2024, and to again ask about those two outstanding questions regarding prior statements and questions outside of his proffer. In response, today, October 15, 2024, Investigator Long responded that Mr. Arnold's testimony would not be needed this week and that the State did "not anticipate his testimony taking place in the next few weeks." He wrote further, "I do not have a date certain as of now."

Mr. Arnold and I have now been "on call" since January of 2023. While we realize that trials are sometimes unpredictable, we have been available for the past 22 months. Now, moving into November of 2024, I am specially set for a jury trial the week of November 18, 2024 and will be on medical leave beginning November 22, 2024. Given how other witnesses have been required to testify with "stand in counsel", Mr. Arnold is very concerned that the State is purposefully delaying calling him to the stand so that he will be denied his right to have his counsel of choosing, the same counsel that negotiated, and is familiar with the terms of his plea. I am kindly asking the Court to instruct the State to advise me whether, in fact, it intends to call Mr. Arnold *at all* so that we can avoid any unnecessary waste of the parties' and the Court's time and resources.

If the State still intends to call Mr. Arnold as a witness, and to the extent the Court can address potential evidentiary and privilege issues before they arise, and to expedite Mr. Arnold's testimony in the presence of the jury, I believe advising the Court of the history with regard to Mr. Arnold's plea negotiations and plea agreement would greatly assist the Court in ruling on potential issues.

FACTUAL AND PROCEDURAL HISTORY REGARDING MR. ARNOLD'S PLEA

In 2014, Mr. Arnold was charged in indictment 14SC131032, to which he pled guilty to a misdemeanor and completed his sentence on February 29, 2016. In 2015, Mr. Arnold was charged in indictment 15SC140116 to which he pled guilty under the First Offender Act and completed his sentence and was discharged and exonerated on November 1, 2021. Mr. Arnold was able to complete the foregoing sentences without a felony conviction on his record.

Despite this, in 2022, Mr. Arnold was arrested and charged for these same two underlying criminal incidents from 14SC131032 and 15SC140116 in the current RICO indictment and held without bond in the Fulton County Jail. Despite having been able to successfully complete probation for both underlying offenses and move forward without a felony on his record, Mr. Arnold was nevertheless denied bond. Having little recourse, Mr. Arnold attempted to negotiate a plea in connection with the RICO indictment that

allowed him to finally be released from the conditions at the Fulton County Jail. Notably, while the State and Judge Glanville both were unwilling to grant Mr. Arnold a bond, they were willing to let him be released on probation provided that he provide testimony sought by the State.

Mr. Arnold, however, was unwilling to make all of the statements that the State sought, so Mr. Arnold was again sent back to the Fulton County Jail to languish without a bond. After further and deliberate negotiation, the State agreed to accept the statements Mr. Arnold could swear to under oath and agreed to release Mr. Arnold on probation once he made those statements and agreed to testify for the State about those statements. Mr. Arnold agreed only to the specific statements set forth in his plea agreement, and he was very clear that he intended to retain his right against self-incrimination under the Fifth Amendment to the United States Constitution should any party seek to question him about any matters outside of the specific statements contained in his plea proffer.

On December 16, 2022, Mr. Arnold entered his plea, which allowed him to remain on probation. A copy of the plea colloquy is attached hereto. Since the entry of his plea, Mr. Arnold has been in full compliance with the terms of his probation, for which reporting is set to terminate in December of this year. The State has not suggested Mr. Arnold has not complied with the terms of his probation, nor could it. Also, as noted above, Mr. Arnold has been ready to testify within the confines of his plea agreement.

Recently, the State called one of Mr. Arnold's co-defendants to testify pursuant to his plea agreement. This witness did not receive a grant of immunity for his testimony, and, *unlike Mr. Arnold*, apparently did not retain his Fifth Amendment privilege when he entered into his plea agreement. After this witness testified, the State filed a motion to revoke his probation for what the State believed was a violation of the terms of his probation. The State alleged that the witness "directly contradicted the special conditions of his plea agreement by disavowing the Factual Acknowledgements he had sworn were accurate and true during" his plea hearing. The State then argued that this witness had the opportunity, at the time he took his plea, "to correct or clarify any statements in the Factual Acknowledgement before affirming their truth under oath."

Mr. Arnold has serious concerns that the State may, without any authority, attempt to do the same thing with Mr. Arnold. For this reason, Mr. Arnold wishes to advise the Court, in advance of his testimony, why such an action by the State would be improper and illegal.

As an initial matter, when Mr. Arnold attempted to "correct or clarify" the statements contained in his original "Factual Acknowledgement" he was told if he did not admit to the statements as written he would be sent back to the Fulton County Jail, held without bond, and be placed on trial with his codefendants. Mr. Arnold continually explained that he could not swear to all of the statements the State wanted him to swear to in the "Factual Acknowledgement". Notably, after Mr. Arnold was willing to return to the

Fulton County Jail and stand trial, the State amended the “Factual Acknowledgement” to remove those statements for which Mr. Arnold had no knowledge. In other words, the parties specifically negotiated the scope of the “Factual Acknowledgement” to significantly narrow the potential scope of Mr. Arnold’s testimony, which included a separate constitutional right to remain silent.

We are writing to advise the Court and the State, outside the presence of the jury, that if the State intends to call Mr. Arnold and ask him questions about facts that are not contained in his plea proffer or questions that are worded differently from the statements in Mr. Arnold’s plea proffer, and then attempt to use those statements against him, as it has with another witness, in an effort to revoke his probation, Mr. Arnold will assert his Fifth Amendment right against self-incrimination and will refuse to answer any such questions. ***Mr. Arnold’s assertion of his Fifth Amendment rights, however, which was specifically contemplated by the express terms of his negotiated plea agreement, cannot be used to revoke his probation or to hold him in contempt.***

In addition, at no time between the date of Mr. Arnold’s plea and the present has anyone from the State suggested to me that Mr. Arnold would be offered any immunity for any testimony he may give. Nonetheless, based on the State’s history of using immunity to force additional witness testimony in the middle of trial, I outline below several issues for the Court’s consideration prior to Mr. Arnold taking the stand.

Mr. Arnold has no faith in any immunity agreement that the State might put forth in this case and which has been offered to other witnesses to compel their testimony under the threat of incarceration without assurances from the Court that this immunity will extend to the State’s attempt to revoke his probation if they do not like how he answers questions.¹ Furthermore, Mr. Arnold has no faith that the State will not use whatever he says, no matter whether he has an agreement from the District Attorney for “immunity”, against him if they do not like how he testifies on the stand.²

Mr. Arnold’s constitutional protections, much like a promise of immunity, ring entirely hollow when the State refuses to honor them.³ With no guarantee that the State will not try to revoke Mr. Arnold’s probation or charge him with another crime based on these same allegations or deny him bail or require he remain in unconstitutional conditions,

¹ The grant of immunity may not be conditional and therefore, the State may not condition a grant of immunity on the testimony of the witness being “full,” “complete” and “truthful”. *Corson v. Hames*, 239 Ga. 534, 535 (1977). To be a valid grant of immunity, the State must make a written request, and the Court must make a specific finding that the witness’s testimony was necessary to the public interest. *In Re Long*, 276 Ga.App. 306(1)(2005).

² The State recently filed a motion to revoke a witnesses probation because it did not like how that witness testified on the stand.

Mr. Arnold will only answer the questions specifically negotiated and set forth in his proffer. In other words, he is asking this Court to make the State honor its agreement with Mr. Arnold and not allow the State, as it has in the past, to change the terms only after it is unhappy with the testimony.

To be perfectly clear, based on the express terms of his plea agreement, the State may only question Mr. Arnold to the following:

- Mr. Arnold is a member of the Rollin 60's Crips;
- Mr. Arnold became associated or affiliated with YSL in 2015, but not that YSL is anything more than a record label;
- Mr. Arnold committed the other incident for which he pled guilty to in indictment 15SC140116 and again in 2022 in this indictment;
- Mr. Arnold committed the other incident for which he pled guilty to in indictment 14SC131032 and again in 2022 in this indictment;
- Mr. Arnold was present on May 9, 2022 when a search warrant was executed, and he does not claim ownership of any of the items the government claims to have discovered during this search;
- Mr. Arnold also acknowledged that YSL, which he knows as a record label, has the following "identifiers":
 - Clothing with YSL or slime
 - Pendants with letters YSL or SLATT
 - Colors is green for slime
 - Seen YSL members use one or more hand signs
 - Language that members of YSL use includes SLATT which means slime love all the time.
 - Some of the language includes calling each other slime.
 - Symbols that YSL uses includes a green heart and green snake.

As explained above, as to any other topics or questions, Mr. Arnold intends to assert his right to remain silent under the Fifth Amendment. The Fifth Amendment protects Mr. Arnold against any statements that potentially could be against his self-interest. In the RICO indictment, the State has alleged that certain non-criminal acts were overt acts in furtherance of a conspiracy. Therefore, any statement by Mr. Arnold, even as to a non-criminal act, could be used by the State to demonstrate an "overt act" that could be used potentially to prosecute Mr. Arnold. In that scenario, Mr. Arnold would be forced to remain, yet again, in the Fulton County Jail without bond. Such an action by the State would be an obvious attempt to strong-arm Mr. Arnold into providing additional testimony

even though the State agreed to the terms of his plea offer knowing full-well to what Mr. Arnold could testify. Therefore, Mr. Arnold intends to assert his Fifth Amendment privilege against any making any such statements that are not covered in the agreed-upon proffer since any statement, as the State argues, can be used against him as an “overt act” should the State seek to use the information for that purpose. And, he is asking this Court to uphold the terms of his agreement and to decline any invitation to interpret his failure to testify to facts outside of that agreement as evidence of any probation violation that could be used to re-arrest him.

It is also my understanding that many of the questions the State may wish to ask Mr. Arnold pertain to social media posts, musical lyrics and videos, and friendships or associations he has. The State has denoted certain of these “facts” as “overt acts” and continues to argue that other acts are admissible as overt acts in furtherance of the alleged conspiracy. Therefore, Mr. Arnold intends to assert his Fifth Amendment privilege for any questions about social media posts, musical lyrics and videos, and his friendships or associations since none of these topics were listed in his plea proffer.

Despite the foregoing, Mr. Arnold wishes to make certain that he intends to fulfill the requirements of his plea agreement and testify as to the matters outlined in his proffer and summarized above—but only those topics. Mr. Arnold wants to make abundantly clear that, based on his fear that the State will seek to revoke his probation should the State seek testimony beyond that in his proffer, he only intends to respond to those specific questions and only if they are worded the in the same manner they were posed during Mr. Arnold’s plea proffer. If the State intends inquire into any facts beyond the scope of his plea proffer, Mr. Arnold is providing the Court and the State with notice that he intends to assert his right to remain silent, a right he specifically protected in his plea agreement.

I trust this history of the negotiations regarding Mr. Arnold’s plea and summary of Mr. Arnold’s position on recent issues that have emerged in the context of other witnesses will assist the Court in evaluating these issues should they arise during Mr. Arnold’s testimony. We happily invite the State to outline its position for Mr. Arnold, the Court and the current defendants so that everyone is on the same page before Mr. Arnold’s anticipated testimony so as to ensure his testimony can be taken expeditiously, fairly in accordance with the terms of his negotiated plea, and without a violation of Mr. Arnold’s Fifth Amendment constitutional rights.

Should the Court wish to hear from Mr. Arnold on any of these issues in advance of his testimony, I am happy to address them at the Court’s pleasure.

Sincerely,

Ashleigh B. Merchant

State v. Williams, et al.

Letter to Judge Whitaker Re: Testimony of Martinez Arnold

October 16, 2024

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ABM/ssb

cc: Adrian Love (*via e-mail only w/attachment*)
Adam Abate (*via e-mail only w/attachment*)
Defense counsel (*via e-mail only w/attachment*)