

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
vs.) Case No. 23SC188947
)
HARRISON FLOYD, et al)
)
DEFENDANT.)

**DEFENDANT HARRISON FLOYD'S MOTION TO REVEAL THE DEAL
AND BRIEF IN SUPPORT**

COMES NOW THE ACCUSED, HARRISON FLOYD, by counsel, and moves this Court for an Order compelling the Government to disclose the existence and substance of any agreements with any co-defendant, co-conspirator, unindicted co-conspirator, any officer or agent of the Federal or State Government or any other person in this case. Movant's request is made pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ 1, 2, 11, 12, 14, 16, and 17 of the Constitution of the State of Georgia; Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L.E.2d 215 (1963); Williams v. State, 250 Ga. 463, 298 S.E.2d 492 (1983), this Court's inherent power to compel discovery (see Hightower v. State, 259 Ga. 770, 386 S.E.2d 509 (1989)), and other applicable law. Mr. Floyd requests this Court to require the State of Georgia, its agencies, and any agents acting on its behalf to respond to Mr. Floyd in writing and disclose the following:

- (1) All writings, recordings, and photographs which relate in any way to offers, inducements or consideration made to persons in an effort, whether successful or not, to obtain testimony in this case.
- (2) All writings, recordings, and photographs relating to offered "bargains," whether consummated or not, with persons connected directly or indirectly with this case.

(3) All writings, recordings, and photographs relating to an offer of immunity or other special consideration made to persons directly or indirectly connected with this case.

(4) Without limiting the generality of the foregoing, Mr. Floyd specifically requests that the Government and its state agencies,¹ their agents, or anyone acting on their behalf disclose any bargains, deals, or agreements of any kind reached with any unindicted co-conspirator, any witness, any prospective witness, and any governmental agency in this case, including but not limited to:

- a. The substance of any "deal" or understanding reached between agents or officers of the Federal or State Government and potential witnesses in this case;
- b. The date that the bargains were reached;
- c. The date on which the negotiation of such "deals were undertaken;
- d. The proffer, if any, made by the witness as to information he could provide the Government, including the date that the proffer was made;
- e. Any debriefing notes and summaries obtained by the Government as a result of such negotiations; and
- f. The results of any polygraph examination given to witnesses, pursuant to such agreements.
- g. Whether any witness has or may receive, or might reasonably anticipate receiving, or has been offered, in return for testifying in this case, any consideration of any nature whatsoever in any cases presently pending against the witness in the Federal, Juvenile, Magistrate, Military, Municipal, Probate, or State court system of either Georgia or the United States of America.
- h. Whether any witness has ever been made or reasonably anticipates being made a trustee or allowed other special privileges at any government facility where the witness is incarcerated or otherwise works, studies, or resides, in return for testimony in the above-styled case.
- i. Whether any witness has been offered or granted use, derivative use, or transactional immunity or any other kind of immunity from prosecution for any offense, either by a prosecutor, court, law enforcement officer (regardless of whether said officer had

¹ Any state agency includes but is not limited to, any prosecutor's office; Fulton County District Attorney's Office; Fulton County Sheriff's Office; Fulton County, Georgia; Georgia Attorney General; Georgia Bureau of Investigation (GBI); Georgia Capitol Police; Georgia Department of Corrections (GDC); Georgia Department of Public Safety; Georgia Office of Special Investigations; the Georgia Secretary of State; and the Georgia State Patrol (GSP).

authority to extend same), or other individual or entity representing that they had authority to offer same, whether extended formally or informally, whether extended directly to the witness or indirectly through counsel or others, or had charges dismissed, “nolle prossed,” dead-docketed, reduced, consolidated, or otherwise disposed of, and whether any witness might reasonably have anticipated being prosecuted for any offense for which he had not been charged before agreeing to testify for the prosecution.

- j. Whether any law enforcement agency (or individual acting under apparent authority of same) has offered or agreed not to take out warrants against any witness or offered or agreed not to serve said warrants or delay service of same or offered or agreed to make recommendations with respect to parole or probation eligibility or revocation or offered or agreed to help Defendant obtain a bond or reduction in bond of any witness.

(5) Mr. Floyd requests all of the same information as requested in the above paragraph relating to any bargain or deal which was discussed with, or offered, to any individual by the state or federal government and any person connected with this case, but for whatever reason was not consummated or for some reason ultimately voided prior to this date.

(6) In addition to deals and considerations given to any named or unnamed co-defendants or witnesses for the prosecution, Mr. Floyd requests in writing any and all such deals or considerations that include but are not limited to all other law enforcement agencies, of whatever nature, kind, or jurisdiction, involved in the investigation and/or prosecution of this case.

BRIEF IN SUPPORT

The constitutional guarantee of due process promises that an accused will be afforded a meaningful opportunity to prepare and present a defense in order to obtain a fair trial. Chambers v. Mississippi, 410 U.S. 284, 294 (1973). Government disclosure of impeachment evidence is part of the constitutional guarantee to a fair trial. Brady v. Maryland, 373 U.S. 83, 87 (1963); Giglio v. United States, 405 U.S. 150, 154 (1972). Under both Brady and Giglio, “the state is under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, and a failure to disclose such an agreement constitutes a

violation of the due process requirements” Colbert v. State, 345 Ga. App. 554, 555 (2018) (citing Alford v. State, 293 Ga. App. 512, 514-515 (2008)).

Indeed, the Government may not suppress favorable evidence that is material to the credibility of one of its witnesses. Giglio v. United States, 405 U.S. 150 (1972). “[P]rosecutorial suppression of an agreement with or promise to a material witness in exchange for that witness’ testimony violates a criminal defendant’s due process rights.” Smith v. Kemp, 715 F.2d 1459, 1463 (11th Cir. 1983), see also, Drake v. Francis, 727 F.2d 990, 995 (11th Cir. 1984); Moore v. Zant, 722 F.2d 640, 649 (11th Cir. 1983); Ross v. Hopper, 716 F.2d 1528, 1535 (11th Cir. 1983).

Mr. Floyd’s “cross-examination of a witness in matters pertinent to his credibility ought to be given the largest possible scope.” United States v. Partin, 493 F.2d. 750, 763 (5th Cir. 1974), quoting McConnell v. United. States, 393 F.2d 404, 406 (5th Cir. 1968). This is especially true where a prosecution witness has had prior dealings with the prosecution or with other law enforcement officials, so that the possibility exists that his testimony was motivated by a desire to please the prosecution in exchange for the prosecutor’s actions in having some or all of the charges against this witness dropped. United States v. Myer, 556 F.2d 245, 248-249 (5th Cir. 1977).

Thus, in addition to the basic questions regarding the bargain, Mr. Floyd seeks to have the government disclose discussions with government witnesses concerning deals, regardless of whether the potential benefits to those witnesses were ultimately agreed upon and reduced to a bargain. It is also requested that the Government reveal any prior deal that a witness has had with and state or federal agency, in any other case. These matters are particularly relevant to the witness’s bias as it reflects his willingness, desire, and experience in cooperating with the Government.

Mr. Floyd believes that plea arrangements and "bargains" have been already reached between various co-defendants in this case and agents and officers of both state and federal government. Due to the overly expansive nature of the allegations contained in the Indictment and the number of persons involved in this case, it is vitally important that Mr. Floyd's due process rights be protected through the complete disclosure of all deals, understandings and arrangements between the Government and persons connected with this case.

WHEREFORE, Defendant respectfully moves the Court to grant the relief sought in this motion.

Respectfully submitted this the 11th day of September 2023.

HARDING LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "Todd A. Harding", written over a horizontal line.

Todd A. Harding, For the Firm
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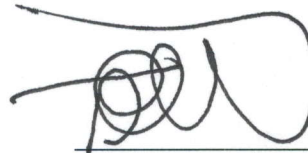
CERTIFICATE OF SERVICE

I hereby certify that on this day I have served counsel of record with the foregoing **DEFENDANT HARRISON FLOYD'S MOTION TO REVEAL THE DEAL** filed by electronic transmission addressed to the following:

Fani T. Willis, DA
136 Pryor Street, SW
3rd Floor
Atlanta, Georgia 30303

Respectfully submitted this the 11th day of September 2023.

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