IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

HARRISON FLOYD'S OPPOSITION TO
THE STATE'S MOTION TO REVOKE BOND

Mr. Floyd most certainly did not violate the conditions of his bond order. If one is faithful to the text of the order, the examples of violations proffered by the State cannot be seen as violations. What will become apparent is that the State's motion lacks any good faith basis.

I. Introduction

Mr. Floyd believes this motion is a retaliatory measure because he rejected the State's plea offer, subpoenaed Fulton County election records, did not agree to the protective order for discovery last week, and exercised his First Amendment rights after the State intimated that Mr. Floyd was the "leaker."[1]

In exercising his First Amendment rights, Mr. Floyd neither threatened or intimidated anyone and he certainly did not *communicate with* a witness or co-defendant directly or indirectly. He has no idea who the State's witnesses even are at this point. If this truly were an issue, the State had every opportunity to notify Mr. Floyd or his counsel that his posts on social media were a problem. A phone call or email to resolve disputes should be customary among the parties. The failure to do so belies the State's true intent and raises a troubling question. Just

[1] The State's motion was hastily cobbled together and filed just hours after the last hearing. Ms. Willis was in Washington D.C. being interviewed about the "leak" and would have received the motion with a copy of her name on it one hour before she hosted one of two fund raisers.

weeks ago, the State made a plea offer knowing Mr. Floyd had his social media account. His posts were acceptable enough then to let him plea but now the posts are unacceptable? What is the difference? None.

It is also worth noting that President Trump's bond order specifically mentions social media as part of the bond conditions. A review of President Trump's social media posts make the State's decision to go after Harrison Floyd hard to justify. *See* Exhibit A, Unedited examples of President Trump's Truth Social posts. The State chose not to employ such language in Mr. Floyd's order. Even if it had, however, Mr. Floyd's posts would still be unobjectionable. Yet the State's twisting of language introduces vagueness and ambiguity in the consent order. It raises First Amendment concerns about political speech in a very political case. If the State now contends that social media proscriptions are included in Harrison's protective order, the State's reading is hopelessly vague and cannot withstand constitutional scrutiny.

If the State's view is correct, the guarantees of the First Amendment are applicable to this protective order because it involves political speech and association in a traditional public forum. In *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. May 23, 2018), the Court found that Twitter (now "X") was a public forum subject to First Amendment protections. It matters not that speech may be offensive to the State. Indeed, to even be able to think one must risk being offensive. As a corollary, one does not have "the right to not be offended." The central commitment of the First Amendment summarized in the opinion of *New York Times Co. v. Sullivan*, 376 U. S. 254, 376 U. S. 270 (1964), is that "debate on public issues should be uninhibited, robust, and wide-open." That is the hallmark of the First Amendment and why offensive speech, like political speech, commands the highest scrutiny.

Mr. Floyd's political posts occurred in a public forum with a staggering 528.3 million monthly active users worldwide, 94 million of whom reside in the United States.[2] Attempting to "indirectly communicate" from a tiny account on "X" (formerly Twitter) with a user by using the "@NAME" tag is analogous to asserting that indirect communication occurs when someone yells a message to someone else sitting on the opposite side of a packed Mercedes-Benz stadium during the middle of an Atlanta Falcons football game. That State knows or should know that its assertions of Mr. Floyd attempting to "indirectly communicate" in a public forum of hundreds of millions of people are false.

If the State's desire to revoke bond was genuine, it would not have left out things like a relevant graphic in one post that referred to Mr. Floyd a "Coonfused Negro." If genuine, the State would not have claimed that Mr. Floyd tried to indirectly contact Ruby Freeman. Ms. Freeman is not even on social media. In so doing, the State hoped for an emotional response. That attempt is easily dispelled. First, Mr. Floyd's posts did not stir the pot against Ms. Freeman. Second and more important, it is Mr. Floyd's contention—the very point of his posts—is that what Ruby Freeman has stated numerous times and places *exonerates* him. She is *a favorable* witness. The last thing Mr. Floyd wants is for Ms. Freeman to form an impression that he is somehow against her.

II. Argument

Tackling the motion head on, the State cherry picks several of Mr. Floyd's *recent* social media posts on his "X" (Twitter) account and then unfairly recast those postings to fit the State's theme of witness intimidation. In truth, not a single one of Mr. Floyd's posts violates a condition of the bond order. The state's allegations fail.

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[2] Rohit Shewale, *Twitter Statistics In 2023,* DEMANDSAGE blog (https://www.demandsage.com/twitter-statistics/#:~:text=Let%20us%20take%20a%20closer,528.3%20million%20monthly%20active%20users).

Before addressing the express words of the bond order and the State's examples, the Court should note that of the examples cited by the State, 2/3rds occurred on November 13 and 14. This is notable because these tweets are directly from Mr. Floyd's public response to the State's accusation that his team "leaked" the proffer video.

All of this is due to the State's inadvertent but misleading filing in its emergency protective order concerning an a purported "leak." While the Court understandably did not wish to address this at the last hearing—namely, that all counsel should expect some extensive contact with the press and the public in this case—the District Attorney's office raises the issue anew in its motion to revoke Mr. Floyd's bond. Again, 2/3rds of the posts surround the State's comments about the "leak." Having caused that situation, the State cannot now complain about Mr. Floyd responding in kind. The other third of the posts fall just after the plea offer expired yet the State claims that Mr. Floyd has been doing this since he was released.

Turning to the language of the bond order weighs dispositively in favor of Mr. Floyd.

a. Bond Order Conditions and Mr. Floyd's Posts

i. Bond Order, Paragraph 5

None of Mr. Floyd's posts contain any threats or acts that would make a reasonable person *remotely* believe that Mr. Floyd was attempting to intimidate anyone. Paragraph 5 of the bond order reads,

> (5) The Defendant shall perform no act to intimidate any person known to him to be a codefendant or witness in this case or to otherwise obstruct the administration of justice. *Id*.

(Emphasis added.) The "Id." refers the reader to the legal citation in paragraph 3. Paragraph 3 anchors the order's use of the word "intimidate" to violations of federal laws, state laws, or local government laws. In that context, the word "intimidate" under Georgia criminal law is not

applicable because none of Mr. Floyd's postings constitute criminal intimidation.[3] The State fares no better with the common usage of "intimidation" which means "to make timid or fearful by or as if by threats."[4]

All of Mr. Floyd's posts constitute political speech, the touchstone of First Amendment guarantees. None of them contain any threat to use force that would make a reasonable person believe the posts were somehow intimidating or unlawful.

ii. Bond Order, Paragraphs 6 and 7

Mr. Floyd did not communicate "with" anyone about the "facts of this case" known to be a witness or co-defendant. Paragraphs 6 and 7 proscribe:

> (6) The Defendant shall not communicate in any way, directly or indirectly, about the facts of this case **with** any person known to him or her to be a codefendant in this case except through his or her counsel.
>
> (7) The Defendant shall not communicate in any way, directly or indirectly, about the facts of this case **with** any person known to him or her to be a witness in this case except through his or her counsel.

(Emphasis added.) The prepositional phrase "with any person [i.e., a witness or co-defendant]" means doing something *with* someone else. The "facts of this case" must mean the facts contained in the indictment.

The "X" social media platform uses "tags" to refer to people and accounts. Tags occur automatically or are inserted to gain views. Tags are not used to contact someone directly and especially not indirectly. The use of the "@[NAME]" tag is how the public knows who one is referring to in a post and how the post trends. It is not a form of indirect communication. If it is, then so is yelling across the stadium over the voices of tens of thousands of people.

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[3] *See, e.g.,* OCGA § 16-5-90 (intimidation means "a knowing and willful course of conduct directed a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety . . . .");
[4] "Intimidate." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/intimidate. Accessed 16 Nov. 2023.

Finally, Mr. Floyd asserts that he does not follow anyone on X that would be on the State's witness list. On that note, Mr. Floyd has no idea who the State's witnesses actually are.

b. The Actual Posts Do Not Cross Any Lines

i. *November 1, 2023 – Post mentioning public officials*

This post is banter with a leftist journalist. The State claims that Gabriel Sterling is a witness in this case. Mr. Floyd does not believe that Mr. Sterling is relevant or a witness in this case. In fact, only the State has the full list of its witnesses. We do not. And we still do not have all of the grand jury transcripts to know who might be a witness. Regardless, nothing in this post is intimidating to a reasonable person nor does it speak about the "facts of this case".

ii. *November 6, 2023 – Conservative Podcast about Jenna Ellis taking $200,000 in public donations only to turn around shortly thereafter and take a plea*.

Contrary to the State's representations, this podcast was NOT widely disseminated. Less than .0001 percent of the population in the United States saw this video. Nothing in this post is intimidating to a reasonable person nor does it speak about the "facts of this case" *with* a witness or co-defendant.

iii. November 7, 2023

Post tagging @GaSecofState, @GabrielSterling, @FultonCountyDA

Once again, the State misreads this post. This post is not discussing the criminal case but the civil case in which the ballots are sealed. Nothing in this post is intimidating to a reasonable person nor does it speak about the "facts of this case" *with* a witness or co-defendant. Speaking about them is not the same as speaking *with* them.

Second Post tagging @GaSecofState, @GabrielSterling

This example is the graphic removed by the State in Mr. Floyd's response. The actual, unedited post is depicted below:

Like the other examples, nothing in this post talks about the “facts of this case” *with* a victim or a witness. Nothing shows that there is any threat or intimidation whatsoever. It does show that Harrison is responding to someone from Georgia who uses racism to intimidate Harrison Floyd. Mr. Floyd also tags the Secretary of State’s government account and not Mr. Raffensperger’s personal account. This is subject to First Amendment protections in a public forum.

iv. November 8, 2023

@GaSecofState

The @GaSecofState is an official, not personal account. It is doubtful that Mr. Raffensperger even checks that account. Absolutely nothing in this post talks about the facts of this case *with* @GaSecofState or is otherwise intimidating to the reasonable person.

v. November 13, 2023 (2 posts)

@JennaEllisEsq

Having been accused of leaking a proffer video, Mr. Floyd turned to the internet to find the video. Nothing in this post is intimidating to Jenna Ellis who is now a witness and not a co-defendant. True to the nature of the X platform, Mr. Floyd was commenting out loud like thousands of other people and not attempting to communicate indirectly *with Ms. Ellis*.

Importantly, Ms. Ellis has over one million followers and could never see Mr. Floyd's posts. In all likelihood, even if he messaged her directly to *communicate with* her, it is doubtful Ms. Ellis would even see it.

Post Accusing Fulton County of leaking the video with Powell's picture.

Inclusion of this post as a ground defies logic. It does not represent any attempt to contact anyone, intimidate anyone, or anything else. It is proof, however, that the state is retaliating against him for stating such a thing.

vi. November 14, 2023 (8 posts)

Ruby Freeman

It is Mr. Floyd's position that Ms. Freeman is a valuable defense witness—not a witness favorable to the prosecution. There is not a chance Mr. Floyd would want to intimidate Ms. Freeman. The State claims that because of Mr. Floyd's posts, Ms. Freeman is being attacked

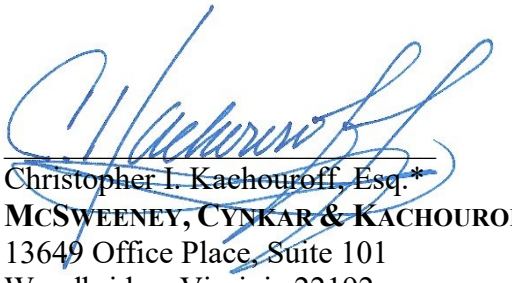
anew. The problem is that Ms. Freeman does not have an X account and could not know of the posts. And none of the posts by Mr. Floyd are inflammatory or attack Ms. Ruby in anyway. So Mr. Floyd demands that the State provide its proof that Ms. Freeman is allegedly suffering new threats "caused by" Mr. Floyd's posts.

III. Conclusion

For the foregoing reasons Mr. Floyd moves this Court to overrule the State's Motion to Revoke Bond. If the Court believes a modification is appropriate, we would ask the Court to mirror the President's bond order.

Respectfully submitted this the 20th day of November, 2023.

HARDING LAW FIRM, LLC



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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served counsel of record with the foregoing **HARRISON FLOYD'S OPPOSITION TO STATE'S MOTION FOR BOND REVOCATION,** filed by electronic transmission addressed to the following:

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Respectfully submitted this the 20th day of November, 2023.

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Truth Details

2789 replies

Trending

Donald J. Trump
@realDonaldTrump

Mark Meadows NEVER told me that allegations of significant fraud (about the RIGGED Election!) were baseless. He certainly didn't say that in his book!

6.87k ReTruths **26.5k** Likes Oct 24, 2023, 9:48 PM

Reply ReTruth Like

Donald J. Trump
@realDonaldTrump

Sidney Powell was one of millions and millions of people who thought, and in ever increasing numbers still think, correctly, that the 2020 Presidential Election was RIGGED & STOLLEN, AND OUR COUNTRY IS BEING ABSOLUTELY DESTROYED BECAUSE OF IT!!! Despite the Fake News reports to the contrary, and without even reaching out to ask the Trump Campaign, MS. POWELL WAS NOT MY ATTORNEY, AND NEVER WAS. In fact, she would have been conflicted. Ms. Powell did a valiant job of representing a very unfairly treated and governmentally abused General Mike Flynn, but to no avail. His prosecution, despite the facts, was ruthless. He was an innocent man, much like many other innocent people who are being persecuted by this now Fascist government of ours, and I was honored to give him a Full Pardon!

10.4k ReTruths **32k** Likes Oct 22, 2023, 9:25 AM

Reply ReTruth Like

Truth Details

2833 replies

Trending

Donald J. Trump
@realDonaldTrump

Fulton County, Georgia, acknowledges, in a major Consent Decree, that 3,600 individual ballots were DUPLICATED (36 Batches). THAT'S A LOT OF CRIME. When are the rest of the facts coming out? We are all waiting. This is just the beginning. UNBELIEVABLE!

12.2k ReTruths **34.2k** Likes Nov 11, 2023, 6:34 PM

Reply ReTruth Like

DEFENDANT'S EXHIBIT

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