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AUG 19 2024

SUPREME COURT
CRIMINAL TERM
NEW YORK COUNTY

August 16, 2024

Hon. Juan M. Merchan
New York State Supreme Court, Criminal Term, Part 59
100 Centre Street
New York, New York 10013

Dear Justice Merchan:

This letter addresses defendant's August 14, 2024 letter requesting an adjournment of the sentencing date. The People defer to the Court on the appropriate post-trial schedule that allows for adequate time to adjudicate defendant's CPL § 330.30 motion while also pronouncing sentence "without unreasonable delay." CPL § 380.30(1). To assist the Court, we note the following points.

Defendant's letter indicates for the first time his intent to seek interlocutory state or federal appellate review, before he is sentenced, of any adverse ruling on his CPL § 330.30 motion. It is correct that the denial of immunity from prosecution is immediately appealable. But here, in contrast to defendant's criminal case in D.C., the question of defendant's immunity from prosecution is not presented; the only question now before the Court is whether a small subset of the trial evidence was improperly admitted in light of a brand-new evidentiary rule that derives from official-acts immunity, and if so, whether any error in admitting official-acts evidence was harmless.¹ The Supreme Court's recent decision did not consider whether a trial court's ruling on that distinct evidentiary question is immediately appealable, and there are strong reasons why it should not be. Nonetheless, given the defense's newly-stated position, we defer to the Court on whether an adjournment is warranted to allow for orderly appellate litigation of that question, or to reduce the risk of a disruptive stay from an appellate court pending consideration of that question.² The People are prepared to appear for sentencing on any future date the Court sets.

The People are also mindful that significant public safety and logistical steps by multiple agencies are necessary to prepare for court appearances in this matter. The defendant's newly-

¹ As the People noted in our opposition to the defendant's pending immunity motion, "the evidence that he claims is affected by the Supreme Court's ruling constitutes only a sliver of the mountains of testimony and documentary proof that the jury considered in finding him guilty of all 34 felony charges beyond a reasonable doubt." People's Mem. 1.

² Assuming that defendant seeks an interim stay of the sentencing hearing immediately after this Court's September 16 ruling, the People respectfully note that an appellate court considering such a request will understand that, without an interim stay, it would have to receive briefing and decide certain issues of first impression in one day.

stated position concerning an immediate appeal of the Court's CPL § 330.30 ruling may mean that significant preparatory steps are taken, only to have such steps disturbed by appellate litigation.

None of defendant's remaining arguments merit any consideration. First, although couched as a scheduling request, defendant re-raises for the fourth time a recusal grievance based on false claims of a potential conflict that have already been rejected over and over by this Court, the First Department, and the Advisory Committee. Defendant's ostensibly new argument about the Court's family member's co-worker's tweets is bizarre and has nothing to do with the post-trial schedule.

Defendant's concern about a "public sentencing submission" from the People is also misplaced. Any pre-sentence memorandum the People submit would be sealed. CPL § 390.50(1). The only way the memorandum would become public is if the Court orders otherwise or the defendant unlawfully discloses it.

Finally, defendant's apparent insinuation that state prosecutors are incapable of applying federal constitutional law is fundamentally flawed, given that the People and this Court protect and apply federal constitutional rights every day.

Based on the foregoing, the People respectfully defer to the Court on the appropriate post-trial schedule.

Respectfully Submitted,

/s/ Matthew Colangelo

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