February 12, 2024

Christopher M. Carr
Attorney General of Georgia
40 Capitol Square, SW
Atlanta, GA 30334 US
Delivered via email

Dear Attorney General Carr:

The judge presiding over the trial of Ayla King in Fulton County, Georgia recently allowed the State’s arguments that use of a “burner” phone by an activist may be admissible as evidence of criminal intent. King is one of the 61 co-defendants charged with violating Georgia’s expansive RICO Act for opposing the proposed Atlanta Public Safety Training Center, commonly known as “Cop City.”

Based on arguments heard at the hearing on King’s unsuccessful motion to suppress the seizure and search of the phone at issue, your office’s position appears to be that all of the following evidence criminal intent at a protest event: (1) having a burner phone when arrested, (2) having a phone that has been scrubbed of data when arrested, or (3) not having a phone at all when arrested.

It is alarming that prosecutors sworn to uphold the Constitution would even make such arguments — let alone that a sitting judge would seriously entertain them, and allow a phone to be searched and potentially admitted into evidence without any indication that it was used for illegal purposes. The undersigned civil liberties, human rights and press freedom organizations are gravely concerned by this latest effort by officers of the court in Georgia to advance specious legal theories for the purpose of criminalizing dissent and privacy.

Using burner phones, or other means of preventing police surveillance of cell phones, is not evidence of criminal intent. Rather, these are common techniques used by activists, journalists and others to evade unlawful searches and mass surveillance of their communications by the government. These tactics are made necessary by the long history, in Georgia and throughout the United States, of law enforcement officers baselessly searching and seizing devices from individuals lawfully engaging in First Amendment activity.

Accepting the prosecution’s theory, which can be summarized as “if you’re not doing anything wrong, what do you have to hide,” requires extreme naivete regarding that history and the ever-present possibility that law enforcement officials will abuse their power to retaliate against dissidents. That possibility is especially strong for activists participating in (or journalists covering) movements where the police themselves are the subjects of protest.

The prosecution’s theory is also contrary to the underpinnings of the First and Fourth Amendments to the Constitution of the United States. Resistance to government surveillance is
far from evidence of illegality – it is a well-established constitutional right. The freedoms of speech, press, and assembly all require the ability to communicate free of snooping by hostile government officials, using whatever lawful technologies are available.

Stop Cop City activists' anticipation that the government would use their constitutionally protected communications to retaliate against them was proven prescient. Your office successfully sought an absurd and blatantly unconstitutional racketeering indictment, which seeks to criminalize an entire protest movement and alleged shared political ideology (anarchism) based on alleged offenses by a few protesters.

Civil liberties, human rights and press freedom organizations nationwide have raised alarms over the indictment but it is, presumably, exactly the kind of retaliation that people fear when they elect to use burner phones in the first place.

The dangers of the arguments in King’s case are compounded by other efforts in the case to criminalize common tools and practices used by activists and journalists not to break the law but to protect their legal rights. For example, prosecutors have ignored the Sixth Amendment right to legal counsel by attempting to criminalize activists writing the phone numbers of lawyers or legal hotlines on their persons in case their cell phones and notes are unlawfully seized. The indictment itself, and remarks by prosecutors during proceedings thus far, casts aspersions on everything from the use of encrypted messaging to the circulation of “zines” and other literature to attempt to attract media attention to the movement.

Your office’s latest effort to substitute evidence of constitutionally protected activity for evidence of illegality, or even a basis for a finding of probable cause, is appalling. We call on the State of Georgia to recognize freedom from government surveillance as necessary to the exercise of First Amendment freedoms. The assertion that use of a burner phone suggests guilt has no place in the courtroom. We urge you to drop these arguments and this entire unconstitutional and dangerous RICO prosecution.

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Sincerely,

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Austin Justice Coalition
Breach Collective
Civil Liberties Defense Center
Coalition For Women In Journalism
Defending Rights and Dissent
Direct Action Everywhere
Fight for the Future
First Amendment Foundation
Freedom of the Press Foundation
Free Press
Greenpeace USA
Institute for Policy Studies Climate Policy Program
InterReligious Task Force On Central America
National Lawyers Guild
NDN Collective
Oil & Gas Action Network
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Reclaiming Our Time
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