

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK: COUNTY OF

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In the Matter of : Adj. Date: Part:
 : Docket No.:
 :
 : DEMAND TO PRODUCE
A Person Alleged to be a Juvenile : AND REQUEST FOR BILL
Delinquent, : OF PARTICULARS
 Respondent. :
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DEMAND TO PRODUCE

PLEASE TAKE NOTICE, that pursuant to Family Court Act §§ 331.2 and 331.7, Criminal Procedure Law § 245.20, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 11 of the New York State Constitution, and *Matter of James H.*, 34 N.Y.2d 814, 816-817 (1974), *Matter of Edward S.*, 80 A.D.2d 585, 586 (2d Dept. 1981) (“Failure to extend a juvenile the benefit of a particular CPL section ‘based solely upon age, without other justification, denies both due process and the equal protection of the law’ (*Matter of Eric R.*, 34 AD2d 402, 403”)), and *Matter of Albert B.*, 79 A.D.2d 251, 255 (2d Dept. 1981) (“We hold that fundamental fairness and due process require that a juvenile respondent be given notice prior to a fact-finding hearing of petitioner’s intention to introduce evidence of respondent’s prior statements to a public servant or identification testimony by a witness who has previously identified respondent”), the Respondent demands that you disclose to the Respondent, through his/her attorney, **[name of attorney]**, and make available for inspection, photography, copying or testing, within fifteen (15) days of service of this Demand or as soon thereafter as practicable, and on/at dates/times and at a location specified in your Response, the property specified in FCA § 331.2(1)(a)-(h), and, if not included in § 331.2(1), all items and information set forth in CPL § 245.20(1)(a)-(u), including but not limited to the following items and information:

(a) All written or recorded statements, and the substance of all oral statements, made by the Respondent or a co-respondent or defendant to a public servant engaged in law enforcement activity or to a person then acting under his or her direction or in cooperation with him or her.

(b) All transcripts of the testimony of a person who has testified before a grand jury, including but not limited to the Respondent or a co-respondent or defendant.

(c) The names and adequate contact information for all persons other than law enforcement personnel whom you know to have evidence or information relevant to any offense charged or to any potential defense thereto, including a designation as to which of those persons may be called as witnesses. If information relating to a confidential

informant has been withheld, and redacted from discovery materials, you shall notify the Respondent in writing that such information has not been disclosed.

(d) The name and work affiliation of all law enforcement personnel whom you know to have evidence or information relevant to any offense charged or to any potential defense thereto, including a designation as to which of those persons may be called as witnesses. If information relating to undercover personnel has been withheld, and redacted from discovery materials, you shall notify the Respondent in writing that such information has not been disclosed.

(e) All statements, written or recorded or summarized in any writing or recording, made by persons, including persons to be called as witnesses at pre-trial hearings, who have evidence or information relevant to any offense charged or to any potential defense thereto, including all police reports, notes of police and other investigators, and law enforcement agency reports.

(f) Expert opinion evidence, including the name, business address, current curriculum vitae, a list of publications, and all proficiency tests and results administered or taken within the past ten years of each expert witness whom you intend to call as a witness at trial or a pre-trial hearing, and all reports prepared by the expert that pertain to the case, or if no report is prepared, a written statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(g) All tapes or other electronic recordings, including all electronic recordings of 911 telephone calls made or received in connection with the alleged incident, and a designation as to which of the recordings under this paragraph you intend to introduce at trial or a pre-trial hearing. If you are notified in writing (see CPL § 245.55) by the arresting officer or lead detective of the existence of an electronic recording of a 911 telephone call or a police radio transmission or video or audio footage from a police body-worn camera or other police recording made or received in connection with the investigation of an apparent criminal incident, you shall expeditiously take whatever reasonable steps are necessary to ensure that all known electronic recordings of 911 telephone calls, police radio transmissions and video and audio footage and other police recordings made or available in connection with this case are preserved.

(h) All photographs and drawings made or completed by a public servant engaged in law enforcement activity, or which were made by a person whom you intend to call as a witness at trial or a pre-trial hearing, or which relate to the subject matter of the case.

(i) All photographs, photocopies and reproductions made by or at the direction of law enforcement personnel of any property prior to its release pursuant to Penal Law § 450.10.

(j) All reports, documents, records, data, calculations or writings, including but not limited to preliminary tests and screening results and bench notes and analyses performed or stored electronically, concerning physical or mental examinations, or

scientific tests or experiments or comparisons, relating to the juvenile delinquency action or proceeding which were made by or at the request or direction of a public servant engaged in law enforcement activity, or which were made by a person whom you intend to call as a witness at trial or a pre-trial hearing, or which you intend to introduce at trial or a pre-trial hearing. This information also includes, but is not limited to, laboratory information management system records relating to such materials, any preliminary or final findings of non-conformance with accreditation, industry or governmental standards or laboratory protocols, and any conflicting analyses or results by laboratory personnel regardless of the laboratory's final analysis or results.

(k) All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to:

(i) negate the Respondent's guilt as to a charged offense;

(ii) reduce the degree of or mitigate the Respondent's culpability as to a charged offense;

(iii) support a potential defense to a charged offense;

(iv) impeach the credibility of a testifying prosecution witness;

(v) undermine evidence of the Respondent's identity as a perpetrator of a charged offense;

(vi) provide a basis for a motion to suppress evidence; or

(vii) mitigate punishment. Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether you credit the information.

You shall disclose the information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier than your response to this Demand is due.

(l) A summary of all promises, rewards and inducements made to, or in favor of, persons who may be called as witnesses, as well as requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement.

(m) A list of all tangible objects obtained from, or allegedly possessed by, the Respondent or a co-respondent or defendant, which the Respondent has a right to inspect, copy, photograph and test. The list shall include a designation as to which objects were physically or constructively possessed by the Respondent and were recovered during a search or seizure by a public servant or an agent thereof, and which tangible objects were recovered by a public servant or an agent thereof after allegedly being abandoned by the Respondent. If you intend to prove the Respondent's possession of any tangible objects by means of a statutory presumption of possession, you shall designate such intention as to each such object. If reasonably practicable, you shall also designate the location from which each tangible object was recovered.

(n) Whether a search warrant has been executed and all documents relating thereto, including but not limited to the warrant, the warrant application, supporting affidavits, a police inventory of all property seized under the warrant, and a transcript of all testimony or other oral communications offered in support of the warrant application.

(o) All tangible property that relates to the subject matter of the case, along with a designation of which items you intend to introduce in the prosecution's case-in-chief at trial or a pre-trial hearing. If in the exercise of reasonable diligence you have not formed such intention by the time your response to this Demand is due, you shall notify the Respondent in writing, but the disclosure shall be made as soon as practicable and subject to the continuing duty to disclose.

(p) A complete record of judgments of conviction for all Respondents and all persons designated as potential prosecution witnesses, other than those witnesses who are experts.

(q) When it is known to the prosecution, the existence of any pending criminal action against all persons designated as potential prosecution witnesses.

(r) The approximate date, time and place of the offense or offenses charged and of the Respondent's seizure and arrest.

(s)(i) A copy of all electronically created or stored information seized or obtained by or on behalf of law enforcement from: (A) the Respondent as described in subparagraph (ii) below; or (B) a source other than the Respondent which relates to the subject matter of the case.

(ii) If the electronically created or stored information originates from a device, account, or other electronically stored source that you believe the Respondent owned, maintained, or had lawful access to and is within the possession, custody or control of the prosecution or persons under the prosecution's direction or control, you shall provide a complete copy of the electronically created or stored information from the device or account or other source.

(iii) If possession of such electronically created or stored information would be a crime under New York state or federal law, you shall make those portions of the electronically created or stored information that are not criminal to possess available as specified under this paragraph and shall afford counsel for the Respondent access to inspect contraband portions at a supervised location that provides regular and reasonable hours for such access, such as a prosecutor's office, police station, or court.

(iv) If in the exercise of reasonable diligence the information under this paragraph is not available for disclosure by the time your response to this Demand is due, you shall notify the Respondent in writing that such information has not been disclosed, and such disclosure shall be made as soon as practicable.

PLEASE TAKE FURTHER NOTICE, that pursuant to Family Court Act § 331.2(2)(a), the presentment agency shall make a diligent, good faith effort to ascertain the existence of any property demanded above and to cause such property to be made available for discovery where it exists but is not within the presentment agency's possession, custody or control; provided, that the presentment agency shall not be required to obtain by subpoena duces tecum demanded material which the respondent may thereby obtain. Pursuant to Family Court Act § 331.5(4), the presentment agency,

if it finds, either before or during the fact-finding hearing, additional material subject to discovery, shall promptly comply with this Demand.

PLEASE TAKE FURTHER NOTICE, that you are required to disclose any recorded or unrecorded information, in the actual or constructive possession of the presentment agency or of a public prosecutor or law enforcement agency also involved in the investigation and/or prosecution of this case, that is exculpatory or otherwise favorable to the defense, disclosure of which is mandated either by *Brady v. Maryland*, 373 U.S. 83 (1963) and related Federal and New York State case law, or by *New York State Rules of Professional Conduct*, Rule 3.8(b), as interpreted in *Formal Opinion 2016-3: Prosecutors' Ethical Obligations to Disclose Information Favorable to the Defense* (N.Y.C. Bar Ass'n Committee of Professional Ethics, 8/29/16), including, but not limited to:

(a) Any evidence that another individual, and not the Respondent, committed the acts charged.

(b) Any evidence that might adversely affect the credibility of a prosecution witness, including, but not limited to:

- (i) Evidence of bias or interest or other motive to fabricate;
- (ii) Prior inconsistent statements made by a witness regarding the charges in this case;
- (iii) Evidence of a witness's prior bad acts, juvenile delinquency or youthful offender adjudications, or criminal convictions, including, but not limited to: a record of a witness's judgment of conviction if such record is known by the presentment agency to exist; the existence of any pending criminal or juvenile delinquency action against a witness if such pending action is known by the presentment agency to exist; information regarding the acts underlying pending criminal or juvenile delinquency charges that have not been filed; and information regarding employee disciplinary proceedings brought against a witness;
- (iv) The complete and specific terms of any plea bargain or witness cooperation agreement made by a witness and the presentment agency or another public prosecutor;
- (v) Evidence of a witness's prior false allegations against the Respondent, or false allegations that are similar to the allegations made against the Respondent;
- (vi) Evidence that a witness failed to identify the Respondent in a pictorial, photographic, electronic, filmed or video recorded reproduction, or in a corporeal identification procedure;
- (vii) Evidence of any physical, mental or emotional condition that could affect/have affected a witness's ability to perceive and recall relevant events, or a witness's ability to testify truthfully and accurately, including, but not limited to, evidence of a history of hospitalization or treatment for mental illness or drug or alcohol abuse;
- (viii) Evidence of a material conflict in statements made to the presentment agency or law enforcement officials by multiple witnesses;

(ix) Evidence of a witness's status as an informant for law enforcement.

PLEASE TAKE FURTHER NOTICE, that pursuant to 22 NYCRR § 200.16/200.27, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 11 of the New York State Constitution, the presentment agency and the prosecuting attorney responsible for this case have a duty to learn of such favorable information that is known to others acting on the government's behalf in the case, including the police, and should therefore confer with investigative and prosecutorial personnel who acted in this case and review their and their agencies' files directly related to the prosecution or investigation of this case.

Favorable information could include, but is not limited to:

(a) Information that impeaches the credibility of a testifying prosecution witness, including (i) benefits, promises, or inducements, express or tacit, made to a witness by a law enforcement official or law enforcement victim services agency in connection with giving testimony or cooperating in the case: (ii) a witness's prior inconsistent statements, written or oral: (iii) a witness's prior convictions and uncharged criminal conduct: (iv) information that tends to show that a witness has a motive to lie to inculcate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution: and (v) information that tends to show impairment of a witness's ability to perceive, recall, or recount relevant events, including impairment resulting from mental or physical illness or substance abuse.

(b) Information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense.

(c) Information that tends to mitigate the degree of the respondent's culpability as to a charged offense, or to mitigate punishment.

(d) Information that tends to undermine evidence of the respondent's identity as a perpetrator of a charged crime, such as a non-identification of the respondent by a witness to a charged crime or an identification or other evidence implicating another person in a manner that tends to cast doubt on the respondent's guilt.

(e) Information that could affect in the respondent's favor the ultimate decision on a suppression motion.

Favorable information must be disclosed whether or not it is recorded in tangible form, and irrespective of whether the prosecutor credits the information.

Favorable information must be timely disclosed in accordance with the United States and New York State constitutional standards, as well as Part 3 of FCA Article Three. Disclosures are presumptively "timely" if they are completed no later than 30 days before commencement of trial in a felony case and 15 days before commencement of trial in a misdemeanor case. Records of a judgment of conviction or a pending criminal

action ordinarily are discoverable within the time frame provided in FCA § 331.4(1) and (3). Disclosures that pertain to a suppression hearing are presumptively “timely” if they are made no later than 15 days before the scheduled hearing date. The prosecutor is reminded that the obligation to disclose is a continuing one. Prosecutors should strive to determine if favorable information exists. Nothing herein shall be understood to diminish a prosecutor’s obligation to disclose exculpatory information as soon as reasonably possible.

PLEASE TAKE FURTHER NOTICE, that pursuant to New York CPL §§ 245.10(1)(b) and 245.20(3), the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, § 11 of the New York State Constitution, *People v. Ventimiglia*, 52 N.Y.2d 350 (1981), and *Matter of Daniel C.*, 29 Misc.3d 548 (Fam. Ct., Queens Co., 2010), you shall, as soon as practicable but not later than fifteen calendar days prior to the first scheduled trial date, disclose to the Respondent a list of all misconduct and criminal acts of the Respondent not charged in the petition, which you intend to use at trial for purposes of (a) impeaching the credibility of the Respondent or (b) as substantive proof of any material issue in the case. In addition you shall designate whether you intend to use each listed act for impeachment and/or as substantive proof.

REQUEST FOR BILL OF PARTICULARS

PLEASE TAKE NOTICE, that pursuant to Section 330.1 of the Family Court Act, the Respondent requests that you provide to the Respondent, through his/her attorney, [name of attorney], within fifteen (15) days of service of this Request or as soon thereafter as practicable, a bill of particulars specifying the following items of factual information, without which the Respondent cannot adequately prepare or conduct a defense: [as appropriate, given the facts of the case, choose from the following]

1. Any items of factual information which are not recited in the petition, which pertain to the substance of each respondent’s conduct encompassed by the charges, and which the presentment agency intends to prove at the fact-finding hearing on its direct case.
2. Whether the presentment agency intends to prove that the respondent acted as principal or accomplice or both.
3. With respect to count(s) [insert count number(s)], which charge(s) acts allegedly committed in the period of time between [state beginning and end dates], state with more specificity the date(s) and times when the acts were allegedly committed.
4. With respect to the charge of burglary in the ___ degree, state what crime the presentment agency alleges the Respondent intended to commit.
5. With respect to the charge of criminal possession of a weapon in the fourth degree [Penal Law § 265.01(2)], state in what manner the Respondent intended to use the weapon unlawfully against another.
6. With respect to the charge(s) of resisting arrest (and/or obstructing governmental administration in the second degree), state the basis for the allegedly authorized arrest (and/or the official function being performed by the officer).

DATED: _____, New York
(date)

Yours, etc.,

(NAME OF JRP AIC)

_____, of Counsel
Attorney for the Respondent

THE LEGAL AID SOCIETY

_____, N.Y.
()

TO:

_____, ESQ.
CORPORATION COUNSEL

_____, N.Y.