WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY ADDENDUM CPL § 245.10 & 245.20

PEOPLE v Michael Molina DOCKET NO. 3495-21

245.20(1)(C). In addition to those names referenced in the attached discovery materials[1], the people may call the following non-law enforcement witnesses during the prosecution of this case, who can be reached at the below telephone numbers:

	Name	Contact Information
1.		
2.		
3.		
4.		
5.		

245.20(1)(D). In addition to those names referenced in the attached discovery materials, the people may call the following law enforcement witnesses in during the prosecution of this case:

	Name	Agency
1.	Tpr. Fortune	NYSP
2.	Tpr. McMahon	
3.		
4.		
5.		

245.20(1)(F). The information about the expert witness is unknown for disclosure at this time. This information will be disclosed when it is received.

245.20(1)(M). The following tangible property was possessed or obtained from the defendant or co-defendants:

	Item	Location of Item	(Actual/Constructive/Abandoned)
1.			
2.			
3.			
4.			
5.			

245.20(1)(O). The prosecution intends to introduce all tangible property referenced in the discovery materials and the above list.

245.20(1)(P). The People hereby consent to inspection of any judgements of conviction for all defendants and persons designated as potential prosecution witnesses. Please contact the respective branch office to schedule an appointment during which time the items will be made available for inspection and copying subject to any protective order.

245.20(1)(R). See attached discovery materials for the approximate date, time and place of the charged offenses, arrest of the defendant, and seizure of the defendant if applicable. If additional information is required, it is as follows:

245.20(1)(U). The People hereby consent to the inspection of any electronically created or stored information including cellular telephone downloads. Please contact the respective Branch Office and schedule an appointment when the materials will be made available for copying. Please bring a thumb drive or alternate means to copy the above evidence.

---

[1] "Attached discovery materials," includes all information and material send electronically via the defense counsel portal.

; Please contact the White Plains Branch to schedule an appointment during which time items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

.. To the extent that the statement notices reference recordings that have not previously been provided, the Office of the District Attorney hereby consents to their inspection. Please contact the White Plains Branch at 914-422-6265 to schedule an appointment during which time the items will be made available for inspection and copy subject to protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0031766-Y000669069 transmitted on July 8, 2021 at 4:52 PM contained 12 files:

Category	Name	Type	Size	Note
	MOLINAARRESTREPORT.pdf	PDF	81.7 KB	
	MolinaMichael10275884.pdf	PDF	342.34 KB	
	MOLINAMICHAELBILLLAB23LAB23DREFUSALNOTES.pdf	PDF	138.02 KB	
	MOLINAMICHAELCALIBRATIONGASRECORD.pdf	PDF	885.83 KB	
	MOLINAMICHAELCRIMINALHISTORY.pdf	PDF	107.86 KB	
	MOLINAMICHAELDRAGERPRINTOUT.pdf	PDF	53.01 KB	
	MOLINAMICHAELDWIPACKET.pdf	PDF	86 KB	
	MOLINAMICHAELLICENSEREGISTRATIONHISTORY.pdf	PDF	84.93 KB	
	MOLINAMICHAELMUGSHOT.pdf	PDF	26.02	

			KB	
	MOLINAMICHAELPERSONALPROPERTYRECORD.pdf	PDF	37.5 KB	
	MOLINAMICHAELTHIRDPARTY.pdf	PDF	15.11 KB	
	MOLINAMICHAELUTT.pdf	PDF	117.98 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0032348-Y000669069 transmitted on July 16, 2021 at 5:36 PM contained 2 files:

Category	Name	Type	Size	Note
Digital Evidence	Recorded on 11-Jun-2021 at 23.48.37 (3E90E)IG02515437).zip	Compressed	255.01 KB	
Other	STSOCX121071314470.pdf	PDF	67.43 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0033077-Y000669069 transmitted on July 28, 2021 at 2:29 PM contained 19 files:

Category	Name	Type	Size	Note
Other	DDI.pdf	PDF	260.97 KB	
Other	Fortune, Angelo Resume 4-23-21.pdf	PDF	220.56 KB	
Other	Fortune_Angelo_NYSP_11_09_20.pdf	PDF	28.53 KB	
Other	McMahon, Meghan Resume 4-20-2021.pdf	PDF	201.12 KB	
Other	McMahon_Meghan_NYSP_06_22_21.pdf	PDF	16.21 KB	
	MOLINAARRESTREPORT.pdf	PDF	81.7 KB	
	MolinaMichael10275884.pdf	PDF	342.34 KB	
	MOLINAMICHAELBILLLAB23LAB23DREFUSALNOTES.pdf	PDF	138.02 KB	

	MOLINAMICHAELCALIBRATIONGASRECORD.pdf	PDF	885.83 KB	
	MOLINAMICHAELCRIMINALHISTORY.pdf	PDF	107.86 KB	
	MOLINAMICHAELDRAGERPRINTOUT.pdf	PDF	53.01 KB	
	MOLINAMICHAELDWIPACKET.pdf	PDF	86 KB	
	MOLINAMICHAELLICENSEREGISTRATIONHISTORY.pdf	PDF	84.93 KB	
	MOLINAMICHAELMUGSHOT.pdf	PDF	26.02 KB	
	MOLINAMICHAELPERSONALPROPERTYRECORD.pdf	PDF	37.5 KB	
	MOLINAMICHAELTHIRDPARTY.pdf	PDF	15.11 KB	
	MOLINAMICHAELUTT.pdf	PDF	117.98 KB	
Digital Evidence	Recorded on 11-Jun-2021 at 23.48.37 (3E90E)IG02515437).zip	Compressed	255.01 KB	
Other	STSOCX1210713144 70.pdf	PDF	67.43 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038616-Y000669069 transmitted on November 5, 2021 at 2:48 PM contained 3 files:

Category	Name	Type	Size	Note
Other	Fortune, Angelo DCN2018-0456.pdf	PDF	7.65 MB	
Other	Fortune, Angelo DCN2020-0071.pdf	PDF	9.76 MB	
Other	FortuneAngeloDCN20180456.pdf	PDF	221.47 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038828-Y000669069 transmitted on November 9, 2021 at 2:16 PM contained 1 file:

Category	Name	Type	Size	Note
Other	Molina Supplimental COC.pdf	PDF	298.9 KB	

PEOPLE'S EXHIBIT

STATE OF NEW YORK

CITY COURT: CITY OF NEW ROCHELLE

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

-versus-

MICHAEL MOLINA,

Defendant

DOCKET NO.
3695-21

----------X

New Rochelle City Court
475 North Avenue
New Rochelle, New York 10801
August 10, 2021

B E F O R E: HONORABLE MATTHEW J. COSTA
City Court Judge

APPEARANCES: MIRIAM E. ROCAH, ESQ.
Westchester County District Attorney
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
BY: KERRIS WILLIAMS, ESQ.
Assistant District Attorney

BARKET EPSTEIN KEARON ALDEA & LOTURCO LLP
666 Old Country Road, #700
Garden City, New York 11530
BY: STEVEN EPSTEIN, ESQ.
Attorney for Defendant

ALSO PRESENT: MICHAEL MOLINA, Defendant

CHLOE N. STEFANELLI
OFFICIAL COURT REPORTER

PEOPLE'S EXHIBIT B

STATE OF NEW YORK

CITY COURT: CITY OF NEW ROCHELLE

----------x

THE PEOPLE OF THE STATE OF NEW YORK,

-versus-

MICHAEL MOLINA,

Defendant

DOCKET NO.
3495-21

----------x

New Rochelle City Court
475 North Avenue
New Rochelle, New York 10801
August 10, 2021

B E F O R E: HONORABLE MATTHEW J. COSTA
City Court Judge

APPEARANCES: MIRIAM E. ROCAH, ESQ.
Westchester County District Attorney
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
BY: KERRIE WILLIAMS, ESQ.
Assistant District Attorney

BARKET EPSTEIN KEARON ALDEA & LOTURCO LLP
666 Old Country Road, #700
Garden City, New York 11530
BY: STEVEN EPSTEIN, ESQ.
Attorney for Defendant

ALSO PRESENT: MICHAEL MOLINA, Defendant

CHLOE M. STEFANELLI
OFFICIAL COURT REPORTER

THE COURT OFFICER: Michael Molina.

THE DEFENDANT: Present.

MR. EPSTEIN: Good morning.

THE COURT: Mr. Molina, please repeat your name.

THE DEFENDANT: Michael Molina present.

THE COURT: Do you consent to appear virtually today in New Rochelle City Court?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you.

MR. EPSTEIN: Barket Epstein Kearon Aldea & LoTurco by Steven Epstein, 666 Old Country Road, Garden City, New York for Mr. Molina. We consent to the appearance being via virtual appearance.

Good morning, Your Honor.

THE COURT: Good morning.

MS. WILLIAMS: Judge, Kerrie Williams for the People. People ready. The People have served and filed a certificate of compliance on the portal on or about July 28th of 2021.

THE COURT: 7/28?

MS. WILLIAMS: Yes.

MR. EPSTEIN: I'm having difficulty hearing the People. The certificate of compliance

wasn't in the upload, but there was discovery uploaded.

THE COURT: Well, the People just stated that they served the COC on July 28th. You did not receive that?

MR. EPSTEIN: Well, there was an upload in the file. Did you search it separately from the upload?

MS. WILLIAMS: I'm not sure I just have the COC dated 7/28/21.

MR. EPSTEIN: Okay. If you could just have the assistant send me another copy, Judge. Can we set a motion schedule then?

THE COURT: So I just have some questions.

MS. WILLIAMS: Yes, Judge.

THE COURT: Have the People filed a certificate of compliance with discovery requirements of CPL 245.20?

MS. WILLIAMS: Yes.

THE COURT: Are you or another prosecutor presently available and ready to try the case?

MS. WILLIAMS: Yes.

THE COURT: Are there witnesses, including any expert witnesses, that you deem necessary

for the People presently available to go to trial and available to testify with?

MS. WILLIAMS: Yes.

THE COURT: Any exhibits presently available for that purpose?

MS. WILLIAMS: Yes.

THE COURT: In sum, have you done all that is required to bring the case to a point where it maybe tried?

MS. WILLIAMS: Yes, Judge, and we're announcing readiness.

THE COURT: Mr. Epstein, I understand that you have not yet received the certificate of compliance, but one will be provided to you today.

Do you wish to be heard as to whether disclosure requirements of CPL 245.20 have been met.

MR. EPSTEIN: Not at this time, Judge. Any objections I'll file within the motion.

THE COURT: Thank you. Okay. You'd like a motion schedule, or -- the People will consent to hearings if you want to request hearings.

MR. EPSTEIN: Judge, if -- we definitely

would need a Dunaway Huntley refusal hearing. If there are any objections to the certificate of compliance once I receive the certificate, I'll advise the Court and file a motion if the People want to consent to Huntley Dunaway refusal hearings.

MS. WILLIAMS: That's fine, Judge.

THE COURT: The People would consent.

MR. EPSTEIN: Okay.

THE COURT: Just hold on one minute. I need to get the trial schedule.

How is September 27th?

MR. EPSTEIN: Judge, is this going to be for the pretrial hearings only?

THE COURT: Yes.

MR. EPSTEIN: The date in September, I'm sorry, Judge, was the 27 you were suggesting?

THE COURT: No. Let's go to the 30th. How's the 30th?

MR. EPSTEIN: That's fine.

THE COURT: That will be at 230.

MR. EPSTEIN: 2:30?

THE COURT: Yes.

MR. EPSTEIN: Now, Judge, if there are any

issues with respect to the certificate of compliance, do you want me to just go ahead and file a motion with a return date of September 30th?

THE COURT: That's fine.

MR. EPSTEIN: Okay.

THE COURT: Thank you. 9/30/21 Huntley Dunaway refusal at 2:30.

MR. EPSTEIN: Have a nice day.

(Whereupon at this time the matter was concluded.)

C E R T I F I C A T I O N

I hereby certify that this is a true and accurate transcript.

_____

CHLOE M. STEFANELLI
OFFICIAL COURT REPORTER

PEOPLE'S EXHIBIT C

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD incident #:	NY21-1829/16272884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038616-Y000669069 transmitted on November 5, 2021 at 2:48 PM contained 3 files:

Category	Name	Type	Size	Note
Other	Fortune, Angelo DCN2018-0456.pdf	PDF	7.65 MB	
Other	Fortune, Angelo DCN2020-0071.pdf	PDF	9.76 MB	
Other	FortuneAngeloDCN20180456.pdf	PDF	221.47 KB	

PEOPLE'S EXHIBIT C

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038616-Y000669069 transmitted on November 5, 2021 at 2:48 PM contained 3 files:

Category	Name	Type	Size	Note
Other	Fortune, Angelo DCN2018-0456.pdf	PDF	7.65 MB	
Other	Fortune, Angelo DCN2020-0071.pdf	PDF	9.76 MB	
Other	FortuneAngeloDCN20180456.pdf	PDF	221.47 KB	

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038828-Y000669069 transmitted on November 9, 2021 at 2:16 PM contained 1 file:

Category	Name	Type	Size	Note
Other	Molina Supplimental COC.pdf	PDF	298.9 KB	

PEOPLE'S EXHIBIT D

PEOPLE'S EXHIBIT D

CITY COURT: CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

MICHAEL MOLINA

Defendant.

----------X

SUPPLEMENTAL CERTIFICATE OF COMPLIANCE CPL 245.50 (1) CPL 245.60

DKT: CR#003495-21

SCI/IND:

SUPPLEMENTAL CERTIFICATE OF COMPLIANCE

I, Assistant District Attorney Philip Mellea, certify pursuant to CPL 245.50 (1) and CPL 245.60, that, after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, except for those items and information that are the subject of an order pursuant to CPL 245.70, the People have learned of additional material or information and have disclosed and made available to defendant all such additional material or information identified and/or attached in the accompanying Supplemental Disclosure Index.

The material and information disclosed may include items, information, and material not required to be disclosed under CPL 245.20 but which are disclosed in the exercise of the People's discretion.

245.20(1)(k) disclaimer - The People reserve the right, at a future date, to object to or to move *in limine* to prevent the admission into evidence of, or questioning of witnesses about, these matters. Furthermore, there may be materials and information disclosed pursuant to other sections of CPL 245.20(1), and not separately highlighted under this section, that could constitute responsive materials under this section.

STATEMENT OF READINESS

☒ The People confirm and announce their readiness for trial on all counts charged in this matter.

Dated: November 9, 2021

Respectfully submitted,

MIRIAM E. ROCAH
District Attorney of Westchester County
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

BY: *Philip Mellea*
Philip Mellea
Assistant District Attorney

Doc. # 1048625
1/2/20

DISCOVERY DISCLOSURE INDEX PURSUANT TO CPL 245.20 AND 245.50
NEW ROCHELLE CITY COURT BUREAU
PEOPLE v. DOCKET NO.CR-

DISCOVERABLE ITEM	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
Accusatory Instruments						
A) CPL § 710.30 Statement/Id Notices						
B) Grand Jury Testimony						
C) Civilian Witness List- See police reports						
D) Law Enforcement Witness List- See police reports						
E) Witness Statements/Relevant Information						
E(1) Police Reports						
E(2) Supporting Depositions						
E(3) Owner's Depositions						
E(4) Supplemental Reports						
E(5) CSU Reports						
E (6) Detective Reports						
E (7) Ballistics Report/ Rosario					√	
E (8) Detention/Booking Paperwork						
E (9) CAD						
E (10) P.O./Det. Handwritten notes						
E (11) Property/Evidence Forms						
E (12) HIPPA Forms						
E (13) Consent Forms						
F) Expert Opinion Evidence- See Portal						
G) Tapes and Electronic Recordings –						
G(1) 911 call						
G (2) Radio Transmissions						
G (3) Surveillance Video						
G (4) Booking Video						
G (5) City Camera Video Interview IN CAR						
H) Photographs and Drawings						
H (1) Photographs-CSU and Precinct - FILE						
H (2) Photographic Arrays/Single Photo ID						
H (3) Booking Photographs						
I) 450.10 Photographs						
J) Lab Reports/ Lab Rosario						
K) Impeachment Material on Witnesses	171			√		
L) Promises/Inducements to Witnesses						
M) Property/Evidence Possessed by Defendant						
N) Search warrant Documents						
O) List of Tangible Evidence for Trial see police report						
P) Judgments of Conviction for Witnesses						
Q) Pending Cases against civilian witnesses						
R) See Attached Discovery Materials[1]						

[1] "Attached discovery materials," includes any materials and information sent electronically via the defense counsel portal.

Doc. # 1048625
1/2/20

S) VEHICLE & TRAFFIC OFFENSES	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
S(1)DWI Supporting Deposition/BOP/710.30						
S(2) Report of Refusal						
S (3) Refusal Warnings						
S (4) DWI Investigative Notes						
S (5) BAC Report						
S (6) Operational Checklist						
S (7) Calibration & Maintenance Records						
S (8) Operator Certification						
S (9) DMV Abstract Documents						
S (10) MV-104 Accident Report						
ALCOHOLIC INF REPORT FIELD SOBRIETY TESTS						
T) Computer crime evidence						
U) Electronically created or stored information - cell phone downloads						

OTHER

Completed by: ADA Philip Mellea
Assistant District Attorney

Date: 11/9/2021

RECIPROCAL DISCOVERY FOR THE PROSECUTION

PLEASE TAKE NOTICE, the District Attorney reminds defendant and counsel for defendant of defendant's reciprocal discovery obligations pursuant to the provisions of Article 245 of the Criminal Procedure Law.

PLEASE TAKE NOTICE, that subject to constitutional limitations and the statutory provisions of CPL 245.10 (2) and CPL 245.20(4)(c), no later than thirty calendar days after being served with the prosecution's CPL 245.50(1) certificate of compliance, defendant shall disclose to the prosecution, and permit the prosecution to discover, inspect, copy, or photograph, any material and relevant evidence within the possession or control of defendant or counsel for defendant, which defendant intends to introduce at trial or a pretrial hearing and which is discoverable under:

CPL 245(1)(f) – Relating to Expert Opinion Evidence

CPL 245(1)(g) – Relating to Tapes or Other Electronic Recordings

CPL 245(1)(h) – Relating to Photographs and Drawings Made or Completed by a Witness

CPL 245(1)(j) – Relating to Examinations, Tests, Experiments or Comparisons

CPL 245(1)(l) – Relating to Promises, Rewards, Inducements, and Requests for Consideration

CPL 245(1)(o) – Relating to Tangible Property

FURTHER BE REMINDED, that subject to constitutional limitations and the statutory provisions of CPL 245.10 (2) and CPL 245.20(4)(b), no later than thirty calendar days after being served with a certificate of compliance by the People, pursuant to CPL 245.50 (1), defendant shall disclose to the prosecution:

(1) The names, addresses, and birth dates of those persons other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing; and

(2) All statements, written or recorded or summarized in any writing or recording, of those persons, other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing.

Respectfully submitted,

Miriam E. Rocah
District Attorney
Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

Doc. # 1048625
1/2/20

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY ADDENDUM CPL § 245.10 & 245.20

PEOPLE v Michael Molina DOCKET NO. CR-3495-21

245.20(1)(C). In addition to those names referenced in the attached discovery materials[2], the people may call the following non-law enforcement witnesses during the prosecution of this case, who can be reached at the below telephone numbers:

	Name	Contact Information
1.		
2.		
3.		
4.		
5.		

245.20(1)(D). In addition to those names referenced in the attached discovery materials, the people may call the following law enforcement witnesses in during the prosecution of this case:

	Name	Agency
1.		
2.		
3.		
4.		
5.		

245.20(1)(F).. The information about the expert witness is unknown for disclosure at this time. This information will be disclosed when it is received.

245.20(1)(M). The following tangible property was possessed or obtained from the defendant or co-defendants:

	Item	Location of Item	(Actual/Constructive/Abandoned)
1.			
2.			
3.			
4.			
5.			

245.20(1)(O). The prosecution intends to introduce all tangible property referenced in the discovery materials and the above list.

245.20(1)(P). The People hereby consent to inspection of any judgements of conviction for all defendants and persons designated as potential prosecution witnesses. Please contact the respective branch office to schedule an appointment during which time the items will be made available for inspection and copying subject to any protective order.

245.20(1)(R). See attached discovery materials for the approximate date, time and place of the charged offenses, arrest of the defendant, and seizure of the defendant if applicable. If additional information is required, it is as follows:

245.20(1)(U). The People hereby consent to the inspection of any electronically created or stored information including cellular telephone downloads. Please contact the respective Branch Office and schedule an appointment when the materials will be made available for copying. Please bring a thumb drive or alternate means to copy the above evidence.

---

[2] "Attached discovery materials," includes all information and material send electronically via the defense counsel portal.

CHG COURT: New Rochelle
COUNTY OF WESTCHESTER : STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

- against -

Michael Molina Defendant

LOCAL CRIMINAL COURT
CERTIFICATE OF
COMPLIANCE
CPL 245.50 (1)

DKT: # 3495-21

SCI/IND: #

CERTIFICATE OF COMPLIANCE

I, Assistant District Attorney S.Martinez, certify pursuant to CPL 245.50(1), that, after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, except for those items and information that are the subject of an order pursuant to CPL 245.70, the People have disclosed and made available to defendant all known material and information subject to discovery, which material and information is identified and/or attached in the accompanying Disclosure Index and Discovery Addendum.

With the exception of materials or information withheld pursuant to CPL 245.70, the materials and information provided with this form are those that are in the actual possession of, or known to, the People. The People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL 245.20(1) but which have been disclosed in an exercise of the People's discretion.

245.20(1)(k) disclaimer - The People reserve the right, at a future date, to object to or to move *in limine* to prevent the admission into evidence of, or questioning of witnesses about, these matters. Furthermore, there may be materials and information disclosed pursuant to other sections of CPL 245.20(1), and not separately highlighted under this section, that could constitute responsive materials under this section.

STATEMENT OF READINESS

X The People confirm and announce their readiness for trial on all counts charged. The People hereby certify that all counts charged in the accusatory instrument meet the requirements of sections 100.15 and 100.40 of this chapter and those counts not meeting the requirements of sections 100.15 and 100.40 of this chapter have been dismissed.

Dated: 7/28/, 2021

Respectfully submitted,

Miriam E. Rooah
District Attorney of Westchester County
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

BY: _____
Assistant District Attorney

RECIPROCAL DISCOVERY FOR THE PROSECUTION

PLEASE TAKE NOTICE, the District Attorney reminds defendant and counsel for defendant of defendant's reciprocal discovery obligations pursuant to the provisions of Article 245 of the Criminal Procedure Law.

PLEASE TAKE NOTICE, that subject to constitutional limitations and the statutory provisions of CPL 245.10 (2) and CPL 245.20(4)(c), no later than thirty calendar days after being served with the prosecution's CPL 245.50(1) certificate of compliance, defendant shall disclose to the prosecution, and permit the prosecution to discover, inspect, copy, or photograph, any material and relevant evidence within the possession or control of defendant or counsel for defendant, which defendant intends to introduce at trial or a pretrial hearing and which is discoverable under:

CPL 245(1)(f) – Relating to Expert Opinion Evidence

CPL 245(1)(g) – Relating to Tapes or Other Electronic Recordings

CPL 245(1)(h) – Relating to Photographs and Drawings Made or Completed by a Witness

CPL 245(1)(j) – Relating to Examinations, Tests, Experiments or Comparisons

CPL 245(1)(l) – Relating to Promises, Rewards, Inducements, and Requests for Consideration

CPL 245(1)(o) – Relating to Tangible Property

FURTHER BE REMINDED, that subject to constitutional limitations and the statutory provisions of CPL 245.10 (2) and CPL 245.20(4)(b), no later than thirty calendar days after being served with a certificate of compliance by the People, pursuant to CPL 245.50 (1), defendant shall disclose to the prosecution:

(1) The names, addresses, and birth dates of those persons other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing; and

(2) All statements, written or recorded or summarized in any writing or recording, of those persons, other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing.

Respectfully submitted,

Miriam E. Rocah
District Attorney
Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

Doc. # 1048636

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY DISCLOSURE INDEX PURSUANT TO CPL 245.20 AND 245.50

[redacted]

PEOPLE v Michael Molina DOCKET NO. CR-3495-21

DISCOVERABLE ITEM	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
Accusatory Instruments	5			✓		
A) CPL § 710.30 Statement/Identification Notices					✓	
B) Civilian Witness List					✓	
C) Law Enforcement Witness List	1	✓				
D) Witness Statements/Relevant Information						✓
E(1) Police Reports	4			✓		
E(2) Supporting Depositions English and Spanish						✓
E(3) Owner's Depositions						✓
E(4) Supplemental Reports						✓
E (6) Detective Reports						✓
E (7) Ballistics Report/ Rosario						✓
E (10) P.O./Det. Handwritten notes						✓
E (11) Property/Evidence Forms	2			✓		
E (12) HIPPA Forms						✓
E (13) Consent Forms						✓
E) Expert Opinion Evidence- See Portal						✓
G(1) 911 call						✓
G (2) Radio Transmissions + Sprint				✓		
G (3) Surveillance Video						✓
G (4) Booking Video						✓
G (5) City Camera Video						✓
G (6) Body Camera Video						✓
H (1) Photographs-CSU and Precinct						✓
H (2) Photographic Arrays/Single Photo ID						✓
H (3) Booking Photographs						✓
I) 450.10 Photographs						✓
J) Lab Reports/ Lab Rosario						✓
K) Impeachment Material on Civilian Witnesses						✓
K) Impeachment Material on Police Witnesses	4½			✓		
L) Promises/Inducements to Witnesses						✓
M) Property/Evidence Possessed by Defendant						✓
N) Search warrant Documents						✓
O) List of Tangible Evidence for Trial						✓
P) Judgments of Conviction – Civilian Witnesses						✓
P) Judgments of Conviction – Police Witnesses						✓
Q) Pending Cases Against Civilian Witnesses						✓
Q) Pending Cases Against Police Witnesses						✓
R) Bill of Particulars – see Accusatory Instrument						✓

S) VEHICLE & TRAFFIC OFFENSES	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
S(1)DWI Supporting Deposition/BOP/710.30 Notice	2			✓		
S(2) Report of Refusal	1			✓		
S (3) Refusal Wamings	1			✓		
S (4) DWI Investigative Notes	1			✓		
S (5) BAC Report	2					✓
S (6) Operational Checklist				✓		
S (7) Calibration & Maintenance Records	41			✓		
S (8) Operator Certification	2					✓
S (9) DMV Abstract Documents						✓
S (10) MV-104 Accident Report						✓
T) Computer crime evidence						✓
U) Electronically created or stored information - cell phone downloads						
						✓
EJustice Report						✓
N/A @ N/A						✓
DAT				✓		
Driver's License/Registration	2			✓		
RAP Sheet	6			✓		
Miranda Warnings	1					✓
Store Receipt				✓		
Impound Form/ Tow Receipt	1					✓
Order of Protection						✓
1K Responses – Civilian Witnesses						
1K Responses – Police Witnesses	2			✓		
Return to Court Reminder						✓

OTHER Drager Printout	2			✓		
Communications/background	12			✓		
Dall / Rall	4			✓		
Third Party ID	1			✓		
Mugshot	2			✓		

Completed by: Date:

Sarah Martinez 7/28/21

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[1] "Attached discovery materials," includes all information and material send electronically via the defense counsel portal.

- Please contact the White Plains Branch to schedule an appointment during which time items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.
- To the extent that the statement notices reference recordings that have not previously been provided, the Office of the District Attorney hereby consents to their inspection. Please contact the White Plains Branch at 914-422-6265 to schedule an appointment during which time the items will be made available for inspection and copy subject to protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY ADDENDUM CPL § 245.10 & 245.20

PEOPLE v Michael Molina DOCKET NO. 3495-21

245.20(1)(C). In addition to those names referenced in the attached discovery materials[1], the people may call the following non-law enforcement witnesses during the prosecution of this case, who can be reached at the below telephone numbers:

	Name	Contact Information
1.		
2.		
3.		
4.		
5.		

245.20(1)(D). In addition to those names referenced in the attached discovery materials, the people may call the following law enforcement witnesses in during the prosecution of this case:

	Name	Agency
1.	Tpr. Fortune	NYSP
2.	Tpr. McMahon	
3.		
4.		
5.		

245.20(1)(F). The information about the expert witness is unknown for disclosure at this time. This information will be disclosed when it is received.

245.20(1)(M). The following tangible property was possessed or obtained from the defendant or co-defendants:

	Item	Location of Item	(Actual/Constructive/Abandoned)
1.			
2.			
3.			
4.			
5.			

245.20(1)(O). The prosecution intends to introduce all tangible property referenced in the discovery materials and the above list.

245.20(1)(P). The People hereby consent to inspection of any judgements of conviction for all defendants and persons designated as potential prosecution witnesses. Please contact the respective branch office to schedule an appointment during which time the items will be made available for inspection and copying subject to any protective order.

245.20(1)(R). See attached discovery materials for the approximate date, time and place of the charged offenses, arrest of the defendant, and seizure of the defendant if applicable. If additional information is required, it is as follows:

245.20(1)(U). The People hereby consent to the inspection of any electronically created or stored information including cellular telephone downloads. Please contact the respective Branch Office and schedule an appointment when the materials will be made available for copying. Please bring a thumb drive or alternate means to copy the above evidence.

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[1] "Attached discovery materials," includes all information and material send electronically via the defense counsel portal.

- Please contact the White Plains Branch to schedule an appointment during which time items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.
- To the extent that the statement notices reference recordings that have not previously been provided, the Office of the District Attorney hereby consents to their inspection. Please contact the White Plains Branch at 914-422-6265 to schedule an appointment during which time the items will be made available for inspection and copy subject to protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0031766-Y000669069 transmitted on July 8, 2021 at 4:52 PM contained 12 files:

Category	Name	Type	Size	Note
	MOLINAARRESTREPORT.pdf	PDF	81.7 KB	
	MolinaMichael10275884.pdf	PDF	342.34 KB	
	MOLINAMICHAELBILLLAB23LAB23DREFUSALNOTES.pdf	PDF	138.02 KB	
	MOLINAMICHAELCALIBRATIONGASRECORD.pdf	PDF	885.83 KB	
	MOLINAMICHAELCRIMINALHISTORY.pdf	PDF	107.86 KB	
	MOLINAMICHAELDRAGERPRINTOUT.pdf	PDF	53.01 KB	
	MOLINAMICHAELDWIPACKET.pdf	PDF	86 KB	
	MOLINAMICHAELLICENSEREGISTRATIONHISTORY.pdf	PDF	84.93 KB	
	MOLINAMICHAELMUGSHOT.pdf	PDF	26.02	

			KB	
	MOLINAMICHAELPERSONALPROPERTYRECORD.pdf	PDF	37.5 KB	
	MOLINAMICHAELTHIRDPARTY.pdf	PDF	15.11 KB	
	MOLINAMICHAELUTT.pdf	PDF	117.98 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0032348-Y000669069 transmitted on July 16, 2021 at 5:36 PM contained 2 files:

Category	Name	Type	Size	Note
Digital Evidence	Recorded on 11-Jun-2021 at 23.48.37 (3E90E)IG02515437).zip	Compressed	255.01 KB	
Other	STSOCX121071314470.pdf	PDF	67.43 KB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA - Y000669069
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0033077-Y000669069 transmitted on July 28, 2021 at 2:29 PM contained 19 files:

Category	Name	Type	Size	Note
Other	DDI.pdf	PDF	260.97 KB	
Other	Fortune, Angelo Resume 4-23-21.pdf	PDF	220.56 KB	
Other	Fortune_Angelo_NYSP_11_09_20.pdf	PDF	28.53 KB	
Other	McMahon, Meghan Resume 4-20-2021.pdf	PDF	201.12 KB	
Other	McMahon_Meghan_NYSP_06_22_21.pdf	PDF	16.21 KB	
	MOLINAARRESTREPORT.pdf	PDF	81.7 KB	
	MolinaMichael10275884.pdf	PDF	342.34 KB	
	MOLINAMICHAELBILLLAB23LAB23DREFUSALNOTES.pdf	PDF	138.02 KB	

	MOLINAMICHAELCALIBRATIONGASRECORD.pdf	PDF	885.83 KB	
	MOLINAMICHAELCRIMINALHISTORY.pdf	PDF	107.86 KB	
	MOLINAMICHAELDRAGERPRINTOUT.pdf	PDF	53.01 KB	
	MOLINAMICHAELDWIPACKET.pdf	PDF	86 KB	
	MOLINAMICHAELLICENSEREGISTRATIONHISTORY.pdf	PDF	84.93 KB	
	MOLINAMICHAELMUGSHOT.pdf	PDF	26.02 KB	
	MOLINAMICHAELPERSONALPROPERTYRECORD.pdf	PDF	37.5 KB	
	MOLINAMICHAELTHIRDPARTY.pdf	PDF	15.11 KB	
	.MOLINAMICHAELUTT.pdf	PDF	117.98 KB	
Digital Evidence	Recorded on 11-Jun-2021 at 23.48.37 (3E90E)IG02515437).zip	Compressed	255.01 KB	
Other	STSOCX121071314470.pdf	PDF	67.43 KB	

PEOPLE'S EXHIBIT E

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038979-Y000669069 transmitted on November 10, 2021 at 5:02 PM contained 2 files:

Category	Name	Type	Size	Note
Other	Fortune, Angelo DCN2015-0100 (unsubstantiated).pdf	PDF	1.52 MB	
Other	Fortune, Angelo DCN2018-0023 (unsubstantiated).pdf	PDF	1.72 MB	

PEOPLE'S EXHIBIT F

PEOPLE'S EXHIBIT F

CITY COURT: CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

---X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

MICHAEL MOLINA

Defendant.

---X

SUPPLEMENTAL CERTIFICATE OF COMPLIANCE
CPL 245.50 (1)
CPL 245.60

DKT: CR#003495-21

SCI/IND:

SUPPLEMENTAL CERTIFICATE OF COMPLIANCE

I, Assistant District Attorney Philip Mellea, certify pursuant to CPL 245.50 (1) and CPL 245.60, that, after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, except for those items and information that are the subject of an order pursuant to CPL 245.70, the People have learned of additional material or information and have disclosed and made available to defendant all such additional material or information identified and/or attached in the accompanying Supplemental Disclosure Index.

The material and information disclosed may include items, information, and material not required to be disclosed under CPL 245.20 but which are disclosed in the exercise of the People's discretion.

245.20(1)(k) disclaimer - The People reserve the right, at a future date, to object to or to move *in limine* to prevent the admission into evidence of, or questioning of witnesses about, these matters. Furthermore, there may be materials and information disclosed pursuant to other sections of CPL 245.20(1), and not separately highlighted under this section, that could constitute responsive materials under this section.

STATEMENT OF READINESS

☒ The People confirm and announce their readiness for trial on all counts charged in this matter.

Dated: November 10, 2021

Respectfully submitted,

MIRIAM E. ROCAH
District Attorney of Westchester County
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

BY: *Philip Mellea*
Philip Mellea
Assistant District Attorney

Doc. # 1048625
1/2/20

DISCOVERY DISCLOSURE INDEX PURSUANT TO CPL 245.20 AND 245.50
NEW ROCHELLE CITY COURT BUREAU
PEOPLE v. Molina DOCKET NO.CR-003495-21

DISCOVERABLE ITEM	PAGES ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
Accusatory Instruments					
A) CPL § 710.30 Statement/Id Notices					
B) Grand Jury Testimony					
C) Civilian Witness List- See police reports					
D) Law Enforcement Witness List- See police reports					
E) Witness Statements/Relevant Information					
E(1) Police Reports					
E(2) Supporting Depositions					
E(3) Owner's Depositions					
E(4) Supplemental Reports					
E(5) CSU Reports					
E (6) Detective Reports				√	
E (7) Ballistics Report/ Rosario					
E (8) Detention/Booking Paperwork					
E (9) CAD					
E (10) P.O./Det. Handwritten notes					
E (11) Property/Evidence Forms					
E (12) HIPPA Forms					
E (13) Consent Forms					
F) Expert Opinion Evidence- See Portal					
G) Tapes and Electronic Recordings –					
G(1) 911 call					
G (2) Radio Transmissions					
G (3) Surveillance Video					
G (4) Booking Video					
G (5) City Camera Video Interview IN CAR					
H) Photographs and Drawings					
H (1) Photographs-CSU and Precinct - FILE					
H (2) Photographic Arrays/Single Photo ID					
H (3) Booking Photographs					
I) 450.10 Photographs					
J) Lab Reports/ Lab Rosario					
K) Impeachment Material on Witnesses	66		√		
L) Promises/Inducements to Witnesses					
M) Property/Evidence Possessed by Defendant					
N) Search warrant Documents					
O) List of Tangible Evidence for Trial see police report					
P) Judgments of Conviction for Witnesses					
Q) Pending Cases against civilian witnesses					
R) See Attached Discovery Materials[1]					

[1] "Attached discovery materials," includes any materials and information sent electronically via the defense counsel portal.

Doc. # 1048625
1/2/20

OC

S) VEHICLE & TRAFFIC OFFENSES

	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A	NONE PRESENTLY KNOWN
S(1)DWI Supporting Deposition/BOP/710.30						
S(2) Report of Refusal						
S (3) Refusal Warnings						
S (4) DWI Investigative Notes						
S (5) BAC Report						
S (6) Operational Checklist						
S (7) Calibration & Maintenance Records						
S (8) Operator Certification						
S (9) DMV Abstract Documents						
S (10) MV-104 Accident Report						
ALCOHOLIC INF REPORT FIELD SOBRIETY TESTS						
T) Computer crime evidence						
U) Electronically created or stored information - cell phone downloads						

OTHER

Completed by: ADA Philip Mellea
Assistant District Attorney

Date: 11/10/2021

RECIPROCAL DISCOVERY FOR THE PROSECUTION

PLEASE TAKE NOTICE, the District Attorney reminds defendant and counsel for defendant of defendant's reciprocal discovery obligations pursuant to the provisions of Article 245 of the Criminal Procedure Law.

PLEASE TAKE NOTICE, that subject to constitutional limitations and the statutory provisions of CPL 245.10 (2) and CPL 245.20(4)(c), no later than thirty calendar days after being served with the prosecution's CPL 245.50(1) certificate of compliance, defendant shall disclose to the prosecution, and permit the prosecution to discover, inspect, copy, or photograph, any material and relevant evidence within the possession or control of defendant or counsel for defendant, which defendant intends to introduce at trial or a pretrial hearing and which is discoverable under:

CPL 245(1)(f) – Relating to Expert Opinion Evidence

CPL 245(1)(g) – Relating to Tapes or Other Electronic Recordings

CPL 245(1)(h) – Relating to Photographs and Drawings Made or Completed by a Witness

CPL 245(1)(j) – Relating to Examinations, Tests, Experiments or Comparisons

CPL 245(1)(l) – Relating to Promises, Rewards, Inducements, and Requests for Consideration

CPL 245(1)(o) – Relating to Tangible Property

FURTHER BE REMINDED, that subject to constitutional limitations and the statutory provisions of CPL 245:10 (2) and CPL 245.20(4)(b), no later than thirty calendar days after being served with a certificate of compliance by the People, pursuant to CPL 245.50 (1), defendant shall disclose to the prosecution:

(1) The names, addresses, and birth dates of those persons other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing; and

(2) All statements, written or recorded or summarized in any writing or recording, of those persons, other than defendant, whom defendant intends to call as witnesses at trial or a pretrial hearing.

Respectfully submitted,

Miriam E. Rocah
District Attorney
Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	MICHAEL MOLINA
Court:	New Rochelle City Court
Ind/SCI or Local Court Docket #:	
Local PD Incident #:	NY21-1829/10275884
Incident Date:	June 11, 2021

Attorney Information

Attorney's Name:	Steven B. Epstein
Attorney's Email Address:	sepstein@barketepstein.com

Discovery Package Information

DP-0038986-Y000669069 transmitted on November 10, 2021 at 5:22 PM contained 1 file:

Category	Name	Type	Size	Note
Other	Molina_Certificate_of_Compliance_11102021.docx	MS Word	63.81 KB	

EXHIBIT 3

CITY COURT: NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MICHAEL MOLINA,

Defendant.

REPLY AFFIRMATION

DOCKET 3495-21

I, STEVEN EPSTEIN, an attorney duly admitted to practice law in the Courts of this State, affirm under penalty of perjury that the following statements are true:

1. I am an attorney associated with Barket Epstein Kearon Aldea & LoTurco, LLP, counsel to the Defendant, MICHAEL MOLINA, and I am familiar with the facts of this case and with the proceedings that have been had in the matter to date.

2. I make this Affirmation in further support of an application for an Order determining the People have not met their obligations pursuant to CPL §245.20 and pursuant to CPL § 30.30(5).

3. Unless otherwise specified, the information in this affirmation is based upon an inspection of the records in this case, upon communications between defense counsel and prosecutors, and upon information derived from relevant legal authorities.

4. The Defendant filed a motion dated September 28, 2021, objecting to the People's certificate of compliance pursuant to CPL §30.30(1)(b) and §170.30(e).

5. On September 30, 2021, this Court set a motion schedule requiring the People to file any opposition papers by October 28, 2021.

6. On October 22, 2021, and again October 25, 2021, ADA Phillip Mellea contacted Defendant's counsel by telephone to request a two-week extension of time to file opposition papers.

7. Since the Motion was for relief pursuant to CPL 30.30 and it was Defendant's position that the certificate of compliance was invalid and still had not been cured, defense counsel expressed a reluctance to grant the request but relented as a matter of professional courtesy on the condition that the People consent to one week of the extension being charged to the People for speedy trial calculations. ADA Mellea sent defense counsel a confirming e mail which is attached as Exhibit "A."

8. The People filed their opposition papers dated November 11, 2021.

9. The Defendant offers this Affirmation in reply to the People's Opposition papers.

10. What the People ignore entirely in their opposition papers yet concede implicitly and by virtue of not challenging Defendant's assertions in his motion is that the certificate of compliance filed on July 28, 2021, was improper, invalid and illusory.

11. Quite simply, C.P.L. §245.20(1)(k)(iv) required that the People, as a prerequisite to filing a certificate of compliance turn over "[a]ll 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...(iv) impeach the credibility of a testifying prosecution witness"

12. There is no dispute that it was not until November 10, 2021, that the People turned over what they now allege to be a completed set of voluminous documents that relate to evidence and information known to police that tends to impeach the credibility of Trooper Angelo Fortune. All of which as the Defendant's motion asserted should have been disclosed before filing a certificate of compliance. Thus, not controverted by the People is the essence of the motion itself, *i.e.*, that the People failed to disclose to the defense as part of their initial discovery obligation all that was required by them *before* they could make a valid statement of trial readiness -- and there

is no cognizable basis under the current law by which the People's failure to meet their discovery obligations can be excused.

13. What should be most troubling to this Court is that no explanation for the People's failures, which have delayed these proceedings has even been offered other than the argument that any time-period after an invalid certificate is filed must not be charged to the People as motion practice. This argument if accepted would frustrate the very purpose of discovery reform which by tying it inextricably to speedy trial was meant to compel prosecutors to disclose that which must be disclosed under the law.

14. Moreover, if this interpretation were to be accepted by the Court there would be nothing to stop prosecutors from filing illusory certificates of compliance simply to stop the speedy trial clock from expiring and force Defendant's to file motions.

15. Critical to the analysis of these facts is that is that it must be presumed that the People either acted in bad faith when they filed the certificate of compliance or acted recklessly in utter disregard for their obligations under the statute. This presumption arises from the People's choice to remain silent as to any excuse for not complying with their discovery obligations and simply ask this Court to condone their actions and cloak them in the protections of motion practice which were only required by their own failures.

16. There is support for charging the People with such periods of time in similar cases where motions are necessitated by the conduct of the People and created an impediment to the proceedings advancing to trial. In *People v. McKenna*, 76 N.Y.2d 59, 555 N.E2d 911 (1990), the Court was faced with an analogous situation to the facts as presented here. The Defendant filed an Omnibus Motion which sought, among other things, the inspection of grand jury minutes. In

charging the People with all time during their delay in producing the grand jury minutes despite it being during the period of otherwise excludable motion practice the Court stated:

> "...the People's concededly negligent failure to provide the Grand Jury minutes for five months after their statement of readiness was made mandates dismissal of the indictment under CPL 30.30. In contrast to the discovery delays considered in *Anderson*, the People's omission did not merely impair defendant's ability to proceed to trial. Rather, because the trial could simply not go forward until the CPL 210.30 motion was decided, the People's dilatory conduct in failing to provide the minutes necessary to that decision was a direct, and virtually insurmountable, impediment to the trial's very commencement (cf., *People v. Allen*, 66 N.Y.2d 529, 542, 498 N.Y.S.2d 119, 488 N.E.2d 1231 [dismissal not required under CPL 30.30, in part because undelivered Rosario material "was not due until after the jury had been sworn"]). As such, the prosecutorial failure here must be deemed to be one having a direct bearing on the People's readiness, since the People can hardly claim to be "ready" when they have not done all that is required of them to bring the case to the point where it may be tried."

McKenna, 76 N.Y.2d at 64; *see also People v Roscoe*, 210 AD2d 1003 (App Div. 4th Dept. 1994).

17. Just as in *McKenna* the People should not be made to benefit, and the Defendant's rights to a speedy trial prejudiced by the People's knowing and deliberate failure to do that which they must do by law, particularly when the People engage in dilatory conduct which created an impediment to the case advancing to trial absent the filing of this motion itself.

18. Another decision relevant to the Court's analysis is *People v. Otero*, 70 Misc.3d 526 (Albany City Ct. 2020). In *Otero*, the defendant argued that in light of the speedy trial reforms, none of the excludable time provisions under CPL 30.30 (4) and specifically 4 (b) – ever apply where the People's lack of readiness is due to lack of discovery compliance. The trial court rejected that contention as being contrary to legislative intent. However, the facts in *Otero* are

different in a significant respect. The court went on to determine that the People were entitled to exclude an adjourned period under Subdivision 4 (b) – the continuance consented to or requested by the defendant excludable time provision. 4 (b) entitles the People to exclusion of an adjournment requested or consented to by the defendant, irrespective of whether the continuance results in the delay at issue, under principles of estoppel or waiver. The delay in the present case "results from" or is caused by a particular fact or circumstance. One such excludable time provision is 4 (a), which allows for exclusion of time resulting from or caused by pretrial motions. That excludable time provision was not at issue in *Otero* as it is here. The Court in *Otero* correctly makes this point: "Many of the CPL § 30.30 exclusions, however, deal with delays that have no impact on the People's ability to provide discovery. For example, delays relating to defense motion practice (CPL § 30.30[4][a]), joinder issues (CPL § 30.30[4][d]), and the out-of-jurisdiction detention of defendants (CPL § 30.30[4][e])." Since the delay in this case did not result from the circumstance being asserted as the basis to exclude time (the pretrial motion), the "defense motion practice" had "no impact on the People's ability to provide discovery" and thus should not trigger exclusion under CPL 30.30 (4) (a).

19. It is also particularly egregious for the People to request a two-week extension of time to file opposition papers, offer to accept one week of such an adjournment as chargeable time in a writing sent to this Court and now ask this Court to disregard that representation based simply on a cloak of protection, they now claim they are afforded by filing an invalid certificate of compliance. Such an application of discovery reform and its intended purposes cannot be manifest from these circumstances.

20. If this Court is inclined to exclude the period of time for motion practice pursuant to CPL 30.30(4)(a), we ask as an alternative remedy that the court impose a sanction under , CPL § 245.80 which governs sanctions for discovery violations, and permits a court to impose, in addition to the sanctions listed therein, "such other order as it deems just under the circumstances." (CPL § 245.80[2]. We ask that the Court as a sanction charge the People with the time occasioned by their failure to produce discovery which caused the delayed hearing and the filing of this motion. This is especially warranted in the case before the Court in which the People have offered no good faith basis for failing to produce discovery and it's deceptive statements made to counsel and the Court with occasioned by their request for an extension of time to file opposition papers.

21. Notwithstanding the sweeping statutory changes encompassed in Article 245, the well-established principle remains that statements of readiness, or "certificates of compliance" as they are now called, may become invalid due to changed circumstances or where representations of readiness are challenged as illusory. *See People v. Sibblies*, 22 N.Y.3d 1174, 1181 (Graffeo J., concurring) (a statement of readiness may be considered illusory "where the People do not provide an explanation for the change in circumstances between the initial statement of readiness and the subsequent admission that the People were not ready to proceed" such that the prior statement of readiness did not accurately reflect the People's position.

22. In sum, the People filed a certificate of compliance prior to completing their obligations under CPL §245.20 the Defendant requests the Court enter an Order rejecting its certificate of compliance and statement of readiness, charge them with all time until they filed the subsequent certificate of readiness on November 9, 2021, and dismiss these charges pursuant to CPL §30.30.

Dated: Garden City, New York 11530
December 1, 2021

Respectfully submitted by:

Steven Epstein, Esq.
Barket Epstein Kearon Aldea &LoTurco, LLP
666 Old Country Road, Suite 700
Garden City, New York 11530
(516) 745-1500

CITY COURT: NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MICHAEL MOLINA,

Defendant.

AFFIDAVIT OF SERVICE

DOCKET 3495-21

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

Suzanne O'Donoghue, being duly sworn, deposes and says, under the pains and penalties of perjury, the following is true:

1. I am over eighteen (18) years of age, not a party to the above-captioned case, and reside in Suffolk County, New York.

2. On December 1, 2021, I served a true copy of our **REPLY AFFIRMATION IN FURTHER SUPPORT OF DEFENDANT'S OBJECTION TO CERTIFICATE OF COMPLIANCE PURSUANT TO CPL §30.30(1)(b) and §170.30(e)**, by depositing same in a postpaid properly addressed wrapper, in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee as follows:

ADA Philip Mellea
Westchester County District Attorney's Office
New Rochelle Branch
475 North Avenue, 2nd Floor
New Rochelle, NY 10801

Suzanne O'Donoghue

Subscribed and sworn to before me
this 1st day of December, 2021.

Notary Public

LENIKA RODRIGUEZ
NOTARY PUBLIC, State of New York
No. 01RO6147482
Qualified in Suffolk County
Commission Expires June 5, 2022

EXHIBIT A

Steven Epstein

From: Philip Mellea <PMellea@westchesterda.net>
Sent: Wednesday, October 27, 2021 2:05 PM
To: Steven Epstein
Subject: FW: Peple v. Michael Molina CR-3495-21

Sorry, originally sent to wrong email address.

Phil

Philip Mellea | Assistant District Attorney
Criminal Courts & Grand Jury Division | New Rochelle City Court Branch
New Rochelle City Court Building
475 North Avenue, New Rochelle, NY 10801
Main 914-813-5800 | Fax 914-813-5806
pmellea@westchesterda.net
www.WestchesterDA.net

From: Philip Mellea
Sent: Wednesday, October 27, 2021 1:54 PM
To: Nikita Mebane <nmebane@nycourts.gov>; Noel Rivera <nrivera@nycourts.gov>; 'sepstein@barketein.com' <sepstein@barketein.com>
Cc: New Rochelle ADAs <attorneys@westchesterda.net>; Kerrie Williams <KWilliams@westchesterda.net>
Subject: People v. Michael Molina CR-3495-21

Good afternoon:

Please be advised that this matter was scheduled for People's response to the Defendant's motion today. On consent, the parties have agreed to adjourn the People's response for two weeks that being 11/11/2021. It should be further noted, that the People will be charged with 7 days of the adjournment. The defendant will still have two weeks to reply to the People's response 11/25/2021 and the Court shall have 12/24/2021 to render their decision.

Please understand that the date of which the defendant shall respond by and the date the Courts may render a decision, apparently fall on a Holiday. Both of these date are at the discretion of the Court. The only date which is definite in nature should be the 11/11/2021 date for the People to respond.

Thank you in advance,

Phil Mellea

Philip Mellea | Assistant District Attorney
Criminal Courts & Grand Jury Division | New Rochelle City Court Branch
New Rochelle City Court Building
475 North Avenue, New Rochelle, NY 10801
Main 914-813-5800 | Fax 914-813-5806
pmellea@westchesterda.net
www.WestchesterDA.net

Confidential Email

This e-mail communication and any files transmitted with it contain privileged and confidential information from the Westchester County District Attorney's Office. If you have received this e-mail in error, please delete it and notify the sender by return e-mail. If you are not the intended recipient you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. Thank you.

CITY COURT: NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MICHAEL MOLINA,

Defendant.

DOCKET: 3495-21

REPLY AFFIRMATION IN FURTHER SUPPORT OF DEFENDANT'S OBJECTION TO CERTIFICATE OF COMPLIANCE PURSUANT TO CPL §3030(1)(b) and §170.30(e)

BARKET EPSTEIN KEARON ALDEA & LOTURCO, LLP
Attorneys for Defendant
666 OLD COUNTRY ROAD
SUITE 700
GARDEN CITY, NEW YORK 11530
(516) 745-1500
Fax: (516) 745-1245

EXHIBIT 4

On August 10, 2021, the People advised the Court, the defendant and the defendant's counsel on the record that the certificate of compliance was filed via their office's discovery portal and declared their readiness for trial. In response, defense counsel requested pre-trial hearings and stated that if an objection to certificate of compliance was found a motion would be filed on September 30, 2021, the date set for hearings.

On September 28, 2021, the defendant filed the instant motion seeking an order dismissing the accusatory instruments pursuant to CPL 30.30(1)(b) and 170.30(e) and the Sixth and Fourteenth Amendments of the United States Constitution. The defendant argues that the People were not ready for trial when they filed the certificate of compliance as they did not complete their discovery obligations under CPL 245.20. Specifically, the defendant asserts that it is undisputed that the People did not produce the disciplinary file of the arresting state trooper Angelo Trooper Fortune, which is required under CPL 245.20(1)(k)(iv), until November 10, 2021, as the trooper is a key prosecution witness. In the alternative, the defendant seeks an order from the Court invalidating the People's certificate of compliance and imposing sanctions against the People under CPL 245.80, for the People's discovery violations as the People have failed to offer an explanation for said violations in this case.

The People oppose the instant motion arguing that it is well within its time limits under CPL 30.30 and that only 26 days are chargeable to the People. The People also assert that they have exercised due diligence and that the certificate of compliance was filed in good faith. Moreover, the People argue that the defense has not been prejudiced by the delay in providing discoverable state police records as there have yet to have any adversarial proceeding in the case.

Although the papers submitted on this motion are filled with learned and interesting discussions of the interplay between CPL 30.30 and 245, especially with the newly developing

case law surrounding CPL 245, the Court, however, finds that it needs to look no further than the clear and unambiguous language of CPL 245 to address the defense's challenge to the People's certificate of compliance; the statutory interpretation is dispositive. Initial discovery is governed by CPL 245.20. The People's obligations are clearly stated in CPL 245.20(1):

> the prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control.

Moreover, CPL 245.20(1)(k) provides that

> 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: ... (iv) impeach the credibility of a testifying prosecution witness; ... Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information. The prosecutor shall disclose the information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier than the time period for disclosure in subdivision one of section 245.10 of this article.

In the instant case, at issue is when Trooper Fortune's disciplinary records should have been produced. As the summary of his disciplinary file indicates, the investigation on the most recent complaint against Trooper Fortune, on a case which also involved a refusal, was completed on or about December 16, 2020, and resulted in a finding of poor judgment, and for which the trooper was censured on January 7, 2021. Clearly, this information that was in possession of the state police when the defendant was arraigned on July 2, 2021; and therefore, pursuant to CPL 245.20(1)(k)(iv) the People were required to disclose this information as soon as practicable after the defendant's arraignment. Instead, disclosure of this information did not occur until November 10, 2021. Thus, the Court finds that the filing of the certificate of compliance on July 28, 2021, was clearly not in accordance with the CPL 245.20(1)(k)(iv).

When information that is discoverable is disclosed belatedly and in violation of Article 240, CPL 245.80(1) provides that the Court may impose an appropriate remedy or sanction for discovery violation(s) if the party entitled to discovery shows it was prejudiced. In pertinent part, CPL 245.80(2), provides that the Court may "preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence . . . ."

In this matter, defendant's counsel has shown under the totality of the circumstances that it was prejudiced when the People filed its certificate of compliance on July 28, 2021, when it did not provide pertinent information that tended to impeach the credibility of the prosecution's witness, Trooper Fortune. Accordingly, as the Court has found the People in violation of its discovery obligations, the Court pursuant to CPL 245.80 sanctions the People by the precluding the testimony of Trooper Fortune and by precluding the use of any evidence procured by Trooper Fortune in this matter.

The parties are directed to appear January 25, 2022, at 9:30 a.m., for further proceedings.

The foregoing constitutes the decision and order of the court.

Dated: January 14, 2022
New Rochelle, New York

MATTHEW J. COSTA, JUDGE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF WESTCHESTER)

Deborah A. Trimarchi, being duly sworn, deposes and says that on the 22nd day of February 2022, she served one (1) copy of this *NOTICE OF MOTION TO REARGUE PURSUANT TO CPLR 2221(d) WITH MEMORANDUM OF LAW AND EXHIBITS 1 THROUGH 4* upon: *Steven Epstein, Esq., Barket Epstein Kearon Aldea & LoTurco, LLP, 666 Old Country Road, Suite 700, Garden City, New York 11530* by enclosing a true copy in a securely sealed postpaid wrapper and sending via UNITED PARCEL SERVICE overnight to the above-referenced address.

Deponent further states that the party named above is the attorney for the defendant herein, and their last known address, from papers served upon this Office, is as stated above.

Deponent is over the age of 18 years.

Sworn to before me this 22nd
day of February 2022

Notary Public
KIM JEFFREY
Notary Public, State of New York
No. 01JE6304495
Qualified in Westchester County
Commission Expires May 27, 2022

SIR:

PLEASE TAKE NOTICE that the within is a true copy of an order duly entered in the County Clerk's Office, White Plains, Westchester County, New York on the day of , 2022.

Date:

Yours, etc.

District Attorney of Westchester County

Office and Post Office Address:
Courthouse
White Plains, N.Y.

To:

SIR:

PLEASE TAKE NOTICE that the within order will be presented for settlement and signature to the Hon....., one of the judges of the within named Court at the Courthouse, White Plains, N.Y. at 10 A.M. on the ..... day of ....., 20.....

Dated ..... 20.....

Yours, etc.

District Attorney of Westchester County
Office and Post Office Address:
Courthouse
White Plains, N.Y.

To.....Esq.

CITY COURT CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MICHAEL MOLINA,

Defendant.

New Rochelle City Court Docket No.: CR-3495-21

----------X

NOTICE OF MOTION TO REARGUE PURSUANT TO CPLR 2221(d) WITH MEMORANDUM OF LAW AND EXHIBITS 1 THROUGH 4

----------X

MIRIAM E. ROCAH
District Attorney of Westchester County
Office and Post Office Address:
County Courthouse
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601

To: Steven Epstein, Esq.

EXHIBIT 5

CITY COURT OF THE CITY OF NEW ROCHELLE
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GUSTAVO VILLAMARES SERRANO,
Defendant.

----------X

Docket No.: CR 5662-21

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the annexed affirmation of Dennis W. Light, Esq., dated January 24, 2022, all the papers and proceedings heretofore had herein, an application will be made before this Honorable Court at the courthouse located at 475 North Avenue, New Rochelle, New York 10804, on the 4th day of April, 2022, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

1. striking the People's Certificate of Compliance dated January 4, 2022, pursuant to Criminal Procedure Law §§ 30.30(5) and 245.50(4), on the grounds it is improper, illusory and, therefore, invalid based on People's non-compliance with their automatic discovery obligations pursuant to CPL § 245.20 and the 35-day time restrictions set forth in CPL § 245.10(1)(a)(ii), as amended; and

2. For such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
January 24, 2022

Yours, etc.,
RANERI, LIGHT & O'DELL, PLLC
Attorneysl for Defendant
150 Grand Street, Suite 502
White Plains, New York 10601
(914) 948-5525
By:

Dennis W. Light, Esq.

To: Westchester County District Attorney
New Rochelle Branch Office
475 North Avenue.
New Rochelle NY 10801-3426

CITY COURT OF THE CITY OF NEW ROCHELLE
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GUSTAVO VILLAMARES SERRANO,
Defendant.

----------X

Docket No.: CR 5662-21

AFFIRMATION

DENNIS W. LIGHT, ESQ., an attorney duly admitted and licensed to practice law before the courts of the State of New York hereby affirms, pursuant to CPLR §2106, and states, upon the penalty for perjury, as follows:

1. That I am a member of Raneri, Light & O'Dell, PLLC, the attorneys of record for the above-named Defendant;

2. That I am fully familiar with the hereinafter facts and circumstances by reason of a file maintained in my office;

3. That the statements that hereinafter follow are made upon personal knowledge unless alleged to be made on information and belief and as to those statements I believe them to be true;

4. That this affirmation is respectfully submitted in support of the Defendant's instant application for an Order striking the People's Certificate of Compliance dated January 4, 2022, pursuant to Criminal Procedure Law §§ 30.30(5) and 245.50(4), on the grounds it is improper, illusory and, therefore, invalid based on People's non-compliance with their automatic discovery obligations pursuant to CPL § 245.20(1) and the 35-day time restrictions set forth in CPL § 245.10(1)(a)(ii), as amended.

Relevant Procedural History

5. On October 1, 2021, at approximately 7:06pm, the Defendant was arrested by the Westchester County Police – Department of Public Safety and charged with violating Vehicle and Traffic Law §§ 1192.2. Driving While Intoxicated Per Se, 1192.3. Driving While Intoxicated and 509.1. Unlicensed Operator.

6. On November 22, 2021, the Defendant was arraigned with counsel and plead NOT GUILTY to the aforesaid charges, and the matter adjourned by People for service of automatic discovery pursuant to CPL § 245.20.

7. Beginning on November 24, 2021, the People served their first of several electronic discovery packages on the Defendant through to December 20, 2021, as evidenced by the 4-Discovery Transmittal Notices annexed hereto as Exhibit "1."

8. As amended, the People statutorily had 35-days from the aforesaid date of Defendant's arraignment, or by December 27, 2021 to perform their initial discovery obligations, and then serve and file a Certificate of Compliance pursuant to CPL § 245.50(1), which document would expressly announce that they are, in fact, ready for trial within 90-days ninety days of the commencement of the instant criminal action as prescribed by CPL § 30.30(1)(b).

9. Following receipt of the People's December 1, 2021, electronic discovery package, the Defendant caused his attorney to serve a written request for disclosure and production of the investigating police officers' DWI detection and training manuals on proper administration of the HGN test, which has been deemed a "scientific case" by the courts of the State of New York and, therefore, discoverable under CPL § 245.20(1)(j)(see, Letter by Dennis W. Light, Esq. dated Dec. 6, 2021, annexed hereto as Exhibit "2").

10. Moreover, the People's video evidence also reveals the investigating officers may have violated the 20-minute observation rule that is required to precede a scientific breath test that, in case, is alleged to have been conducted on Defendant using a Datamaster DMT and, therefore, the respective user manual is, likewise, discoverable under CPL § 245.20(1)(j)(see, Ex. "2").

11. The Court is respectfully informed that CPL § 245.20(1)(a-u) is "a ***non-exhaustive*** list of the items the People must disclose [and] is not to be interpreted narrowly, as CPL § 245.20(7) mandates, 'There shall be a presumption in favor of disclosure when interpreting sections 245.10 and 245.25, and subdivision one of section 245.20 …' " See, People v. Pennant, 2021 NY SlipOP 21277, 2 (Dist. Ct., 1st Dist., Nassau Co., Oct. 15, 2021); see also, People v. Perez, 2021 NY SlipOp 50374(U), 3 (Crim. Ct., Bronx Co., Apr. 8, 2021)(the prosecution, with limited exception, is required to "make a diligent, good faith effort to ascertain the existence of discoverable material or information and make it available for discovery); People v. Edwards, 2021 NY SlipOp 50944(U), 4 (Crim. Ct., New York Co., Oct. 8, 2021)(Legislature's intent to require broad disclosure under CPL Article 245 is manifest); Hudson Police Local 3979 v. Bower, 2021 NY SlipOp 21318, 3 (Sup. Ct., Columbia Co., Nov.

24, 2021)(Article 78 proceeding holding broad and all-inclusive discovery was the intent of the Legislature when it enacted CPL 245).

12. The People are not without "tools" to oppose a Defendant's request for materials the prosecution may claim to be non-discoverable, to wit: DWI training and Datamaster DMT user manuals, but must notify a defendant in writing that such information will not be disclosed pending a determination and ruling of the court. CPL § 245.10(1)(a)(iv)(A).

13. When discoverable materials are, despite diligent, good faith efforts, not in the actual possession of the prosecution, the time period may be extended pursuant to a motion pursuant to CPL § 245.70(2). CPL § 245.10(1)(a)(iv)(B).

14. Here, the People failed to put Defendant on notice that they would be withholding or not producing the requested manuals pending a determination and ruling by the Court, nor did the prosecution make an application for extension of time to produce such materials, notwithstanding the legislative proviso that "all items and information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency shall be deemed to be in the possession of the prosecution." CPL § 245.20(2).

15. On January 4, 2022, the People served Defendant via the electronic portal with a Discovery Disclosure Index ("DDI") pursuant to CPL §§ 245.20 and 245.50, which is annexed hereto as Exhibit "3" and, among other things, indicated the following:

- Impeachment Material on Witnesses was "N/A,"
- Judgments of Conviction for Witnesses was "Sent Via Portal,"
- Calibration & Maintenance Records and Operator Certification were "Sent Via Portal,"
- Dylan Dewysockie and Kelsey Picciano are identified by the People on the DDI as potential, non-law enforcement witnesses that may be called to testify during prosecution of this case, along with an addendum stating that "[t]he People have acted with due diligence to discover the existence of impeachment material with respect to civilian witnesses **by checking our internal records and inquiring of each civilian witness**" and that "**[w]e have received no relevant information from any sources (emphasis added),**" and

- No law enforcement witnesses are identified by the People on the DDI as required by CPL § 245.20(1)(d) although an addendum provided to Defendant states that "[t]he People have acted with due diligence to discover the existence of impeachment material with respect to police witnesses **by checking our internal records and inquiring of the police department and of the individual officers.**"

16. Shortly after filing the DDI on January 4, 2022, the People served that same day the purported Certificate of Compliance annexed hereto as Exhibit "4" expressly announcing their readiness for trial on all counts charged on the express assertion that, "after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, …, the People have disclosed and made available to defendant all known material and information subject to discovery, which material and information is identified and/or attached in the accompanying Disclosure Index and Discovery Addendum."

17. On January 4, 2022, the Defendant appeared with counsel and after conducting its inquiry of the People, pursuant to CPL § 30.30(5), the Court adjourned the case for purposes of permitting the Defendant time, pursuant to CPL § 245.50(4), to make an application challenging the People's aforesaid Certificate of Compliance dated January 4, 2022.

Statutory Materials and Information not dislcosed by the People

18. By Legislative Act effective January 1, 2020, all defendants in the State of New York became statutorily entitled to receive automatic discovery from the prosecution that included **but is not limited to** the materials and information prefaced throughout CPL § 245.20(1).

19. The Legislature, in other words, has established CPL § 245.20(1)(a-u) as the "floor" to statutory disclosure whereas the common law had previously held the materials and information set forth in the now repealed CPL Article 240 as the "ceiling" for discovery in criminal cases.

CPL § 245.20(1)(j)-

20. Under CPL § 245.20(1)(j), the People are statutorily required to disclose "[a]ll 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 … scientific tests … relating to the criminal action or proceeding

which were made by or at the request or direction of a public servant engaged in law enforcement activity … which the prosecutor intends to introduce at trial or a pre-trial hearing.

21. According to P.O. Baker and the D.W.I. Supporting Deposition and Bill of Particulars annexed hereto as Exhibit "5," it is alleged that the Defendant failed a Horizontal Gaze Nystagmus ("HGN") test and "[b]ecause the HGN test deals with 'involuntary physiological movements of the eye' and how these movements could be affected by the consumption of alcohol and drugs, the test is considered 'scientific in nature'." See, People v. Strauser, 2017 NY MiscLexis 2589, 8, 2017 NY SlipOP 50885(U), 3 (City Ct., Fulton Co., 2017), *citing to*, People v. Wernick, 89 NY2d111, 651 NYS2d 392 (1996), People v. Middleton, 54 NY2d 42, 444 NYS2d 581 (1981).

22. The HGN test, however, has not been conclusively determined to be generally accepted or reliable, and Appellate Courts in New York State consider it reversible error to allow testimony regarding the HGN without laying a proper foundation. See, Id., *relying on*, People v. Heidelmark, 214 AD2d 767, 624 NYS2d 656 (3rd Dept., 1995).

23. The Defendant respectfully submits that, following the People's attempt to lay a foundation for P.O. Baker to testify regarding the HGN test results in this matter, the Defendant should have the training manuals and/or books P.O. Baker will rely on for the making of an opinion regarding the Defendant's BAC on October 1, 2021, at approximately 7:13pm. See, Id. at 9, 2017 NYSlipOp at 3 (HGN test must be administered in the proper, standardized way for foundational purposes as promulgated by National Highway Traffic Safety Administration).

24. Additionally, the Subject Test report annexed hereto as Exhibit "6" as produced by the Datamaster dmt, S/N 105806, namely: 0.16 at 20:53, are clearly the results of a scientific test allegedly performed by P.O. Nerney that, as a matter of law, require the People disclose the respective user/operating manual to the Defendant.

25. The audio video recordings objectively show that the Defendant was not under constant observation by law enforcement in the twenty (20) minutes leading up to his breath test and, therefore, the user/operating manual is discoverable material relevant to the validity of Defendant's reported BAC on the Subject Test report (see, Ex. "6").

26. The Defendant respectfully submits that disclosure of the aforementioned SFST training manuals and/or books, along with the respective Datamaster user/operating manual is necessary, material and relevant to Defendant have an adequate opportunity to conduct an

effective cross-examination respectively of P.O. Baker and P.O. Nerney at trial or pre-trial hearings.

27. It is noteworthy to point out that the People have never expressly claimed the aforementioned materials and information are non-discoverable pursuant to CPL § 245.20(1)(a)(iv)(A), nor have they sought a protective order preventing disclosure of same pursuant to CPL § 245.70(1), or an extension of time for such disclosure pursuant to CPL § 245.70(2).

28. By reason of the foregoing, the Defendant respectfully submits that the People have not satisfied their disclosure obligations pursuant to CPL § 245.20(1)(j) and, therefore, should be found by the Court not actually ready for trial for purposes of CPL § 30.30 since the People have not filed a valid and proper certificate as required by CPL § 245.50(1). See, CPL § 245.50(3).

CPL § 245.20(1)(k)-

29. Under CPL § 245.20(1)(k), the People are statutorily required to disclose "[a]ll 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: … impeach the credibility of a testifying prosecution witness …"

30. Here, the People produced on December 8, 2021, and disclosed "Police Witness 1k Questions" forms from three (3) members of the Westchester County Police – Department of Public Safety, namely: Kris Marco dated 12/6/21, Kirk Baker dated 8/24/21 and Niall Nerney dated 3/6/20 annexed hereto as Exhibit "7."

31. At the time of the People's foresaid production, two of the three foregoing forms contain "stale" information and, in particular, the information on P.O Nerney's form precedes its disclosure by more than twenty (20) months, which deficiencies and statutory non-compliance were raised before the Court on January 4, 2022.

32. Without any legal authority, the People thereafter served Defendant on January 10, 2022, with a purportedly "updated" form for P.O. Marco dated 1/10/22, a second "undated" form for P.O. Baker and a "never seen before" form for P.O. Hearle dated 1/07/2022, annexed hereto as Exhibit "8" and all produced by the People after the Certificate of Compliance and Statement of Readiness were served on January 4, 2022.

33. Most importantly, the form for P.O. Nerney dated 3/6/20 has never been updated and utterly void for its limiting language on whether the witness is aware of "any other **substantiated** administrative, personnel or civilian complaints implicating the witness's honesty and integrity? (**emphasis added**)" (see, Ex. "7").

34. It is respectfully submitted that, assuming for a moment that the use of a "Police Witness 1k Questions" form is a proper and acceptable discovery practice by the People which the Defendant does not concede to be procedurally correct, such a form must disclose whether the witness is aware of any administrative, personnel or civilian complaints implicating the witness's honesty and integrity, and not limit such response to only substantiated ones.

35. The Court is respectfully reminded that CPL Article 245 dramatically increased a criminal defendant's right to meaningful discovery of impeachment materials excluding only exonerated or unfounded complaints. See, People v. Montgomery, 2022 NY MiscLEXIS 73, 2022 NY SlipOp 22009 (Sup. Ct., NY County Jan. 12, 2022); see also, People v. Barralaga, 73 Misc3d 510, 515-6, 153 NYS3d 808, 813 (Crim. Ct., NY County, Sept. 10, 2021).

36. When the Legislature greatly reduced the confidentiality of law enforcement records by repealing Civil Rights Law § 50-a, "all information and evidence that 'tends to impeach the credibility of a testifying witness' must be disclosed to the defense (CPL § 245.20(1)(k)." Barralaga at 515, 153 NYS3d at 813.

37. The prosecution's statutory disclosure obligation under CPL § 245.20(1)(k), therefore, requires more than providing a list or summaries of complaints filed against all testifying officers. Id., see also, People v. Kelly, 71 Misc3d 1202(A), 142 NYS3d 788 (Crim. Ct., NY County, Mar. 19, 2021) (the use of impeachment materials ultimately falls soundly in the trial court's discretion, however, the People must provide defense with all underlying materials for substantiated and unsubstantiated cases against officers); People v. Cooper, 2021 NY MiscLEXIS 678, 2021 NY SlipOp 21039 (County Ct., Erie Co., Feb. 23, 2021) (summaries of records will not suffice, the entire record, subject to statutorily approved redactions, must be provided to the defendant).

38. Moreover, the use of a self-reporting police officer 1k questionnaire form is, likewise, an insufficient disclosure procedure and not good faith, diligent and reasonable inquiry into the existence of impeachment materials insofar as the People, pursuant to 22 NYCRR §§ 200.16 and 200.27, are under court order that confirms their disclosure obligations pursuant to

Brady v. Maryland, 373 US 83 (1963), Giglio v. United States, 405 US ISO (1972), People v Geaslen, 54 NY2d 510 (1981), and their progeny, where the Chief Judge DiFiore's model order directs the prosecution should review not only their internal files but the files of law enforcement directly related to the prosecution or investigation of this case. See, Administrative Order of the Chief Administrative Judge of the Courts, AO291/17 and Model Order annexed hereto as Exhibit "8."

39. Aside from the foregoing discovery issue regarding disclosure and production of law enforcement personnel and disciplinary records, it is worth mentioning that the Defendant has located a federal civil action in U.S. District Court, Eastern District, involving "Kirk A. Baker" as a named defendant, and 2-state civil actions where "Niall Nerney" is a named plaintiff in labor law claims (see, Exhibit "10").

40. The first factual question to be raised is whether the foregoing civil cases involve P.O. Baker and P.O. Nerney and, if so, then why did the People not disclose their existence to the Defendant and, secondarily, then a defense assessment may be made as to whether they contain information that tends to impeach the credibility of a testifying witness.

41. The Defendant respectfully submits that the People's failure to affirmatively state on their discovery addendum that civil case records have been searched and none found to involve any testifying witness is non-compliance with the prosecution's Brady/Giglio disclosure obligations as codified by CPL § 245.20(1)(k)(iv).

42. Turning to the prosecution's civilian witnesses, the People's DDI identifies Kelsey Picciano as a potential testifying witness but the prosecution fails to provide any CPL § 245.20(1)(k) information favorable, or otherwise, to the Defendant about this witness, which disclosure circumstance is inconsistent with the Civilian Witness Questions form provided to the Defendant for Dylan Dewysockie annexed hereto as Exhibit "11."

43. By reason of the foregoing, the Defendant respectfully submits that the People have not satisfied their disclosure obligations pursuant to CPL § 245.20(1)(k) and, therefore, should be found by the Court not actually ready for trial for purposes of CPL § 30.30 since the People have not filed a valid and proper certificate as required by CPL § 245.50(1). See, CPL § 245.50(3).

CPL §245.20(1)(p)-

44. Under CPL § 245.20(1)(p), the People are statutorily required to disclose "[a] complete record of judgments of conviction for … all persons designated as potential prosecution witnesses pursuant to paragraph (c) of this subdivision …"

45. The People's DDI states that Judgments of Conviction for Witnesses has been "Sent Via Portal" (see, Ex. "3").

46. The defense, however, respectfully submits that a thorough review of all discovery materials and information sent via the portal does not reveal the existence of any Judgments of Conviction for Witnesses, which is contrary to the foregoing prosecution statement.

47. By reason of the foregoing, the Defendant respectfully submits that the People have not satisfied their disclosure obligations pursuant to CPL § 245.20(1)(p) and, therefore, should be found by the Court not actually ready for trial for purposes of CPL § 30.30 since the People have not filed a valid and proper certificate as required by CPL § 245.50(1). See, CPL § 245.50(3).

CPL § 245.20(1)(s)-

48. Under CPL § 245.20(1)(s), the People are statutorily required, among other things, to disclose "the certification certificate, if any, held by the operator of the [Datamaster dmt, S/N 105806]."

49. The Subject Test report indicates P.O. Nerney maintains Permit Number 49049, however, his valid and current certification certificate, as required by 10 NYCRR 59.7, has not been disclosed to Defendant by the People.

50. Also under this subsection (s), the People are ordered to disclose and produce "records of gas chromatography related to the certification of all reference standards."

51. Here, the gas chromatography records for Reference Standard: 21170, in this particular case have not been disclosed by the People in violation of their mandatory disclosure obligations (see, Ex. "6").

52. The Defendant is respectfully providing the Court with a 3-page excerpt out of a 58-page gas chromatography record, for example purposes only, from another criminal case, which did satisfy CPL § 245.20(1)(s), as it would relate to the certification of a reference standard (see, Exhibit "12").

enforcement officers and civilian witnesses, along with excluding all breath test results and information.

62. The foregoing alternate application is being respectfully made by reason of the People's collective, non-compliance with their automatic discovery obligations pursuant to CPL § 245.20(1) and the 35-day time restrictions set forth in CPL § 245.10(1)(a)(ii), as amended.

63. No previous application for the relief sough herein has been made to this Court or any other court of competent jurisdiction.

WHEREFORE, the Defendant respectfully requests the Court grant the main relief sought herein in its entirety and strike the People's Certificate of Compliance based on an improper, illusory and invalid statement of readiness for trial.

Dated: White Plains, New York
January 25, 2022

Respectfully submitted,

Dennis W. Light, Esq.

EXHIBIT "1"

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villanueva Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rtslawoffice.com

Discovery Package Information

DP-0039882-Y01000972G transmitted on November 24, 2021 at 2:47 PM contained 3 files:

Category	Name	Type	Size	Note
Accusatory Instrument	Black and White2221.pdf	PDF	171.52 KB	
	Supplemental Narrative.pdf	PDF	48 KB	
	WC-02021-21.pdf	PDF	2.66 MB	

EXHIBIT "1"

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0039882-Y010009726 transmitted on November 24, 2021 at 2:47 PM contained **3** files:

Category	Name	Type	Size	Note
Accusatory Instrument	Black and White3221.pdf	PDF	171.52 KB	
	Supplemental Narrative.pdf	PDF	48 KB	
	WC-02021-21.pdf	PDF	2.66 MB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0039882-Y010009726 transmitted on November 24, 2021 at 2:47 PM contained 3 files:

Category	Name	Type	Size	Note
Accusatory Instrument	Black and White3221.pdf	PDF	171.52 KB	
	Supplemental Narrative.pdf	PDF	48 KB	
	WC-02021-21.pdf	PDF	2.66 MB	

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name: Gustavo Villamares Serrano
Court:
Ind/SCI #:
Local Court Docket #:
Local PD Incident #: WC-02021-21
Incident Date: October 1, 2021

Attorney Information

Attorney's Name: Dennis W. Light
Attorney's Email Address: dwlight@rlslawoffice.com

Discovery Package Information

DP-0040028-Y010009726 transmitted on November 30, 2021 at 4:59 PM contained **24** files:

Category	Name	Type	Size	Note
	!DISCOVERY CHECKLIST WC-02021-21.pdf	PDF	394.11 KB	
	062821WestchesterCoDPS_BTDLab105806.pdf	PDF	948.13 KB	
	062821WestchesterCoDPS_SIMMP5045.pdf	PDF	520.88 KB	
	105806 Weekly Test 09-23-2021.pdf	PDF	52.95 KB	
	105806 Weekly Test 10-10-2021.pdf	PDF	24.11 KB	
	911 Export_WC-02021-21.zip	Compressed	440.99 KB	
	ACC_REPORT_01_MV104A_DIAGRAM-W5WS100DMWRW4.pdf	PDF	95.44 KB	
Accident	ACC_REPORT_01_MV104A-	PDF	185.52	

			KB	
Investigation	W5WS100DMWRW4_Redacted.pdf		704.96 MB	
Video	AXON_Body_2_Video_2021-10-01_1927.mp4	Video	415.44 MB	
Video	AXON_Body_2_Video_2021-10-01_1929.mp4	Video	105.79 MB	
Video	AXON_Body_2_Video_2021-10-01_1950.mp4	Video	161.4 MB	
Video	AXON_Body_2_Video_2021-10-01_1952.mp4	Video	77.57 MB	
Video	AXON_Body_2_Video_2021-10-01_1958.mp4	Video	4.9 GB	
Video	AXON_Fleet_2_IR_Video_2021-10-01_1911.mp4	Video	1.22 GB	
Video	AXON_Fleet_2_Video_2021-10-01_1911.mp4	PDF	13.16 KB	
Police Report	BLOTTER_WC-100173-21_Redacted.pdf	PDF	1.26 MB	
	copyofimpactfile_65U0JGHFJ_1128-21.pdf	Video	138.69 MB	
	DVRHDPSHQ1_02021-21_VILLAMARES SERRANO, GUSTAVO.HQ.BOOKING.2.mp4	Video	1 GB	
	DVRHDPSHQ1_02021-21_VILLAMARES SERRANO, GUSTAVO.HQ.BOOKING.mp4	Video	118.76 MB	
	DVRHDPSHQ1_02021-21_VILLAMARES SERRANO,GUSTAVO.Booking.mp4	PDF	453.47 KB	
	Nerney BAO.pdf	PDF	32.37 KB	
	PO Marco signed Supplemental Narrative.pdf	Compressed	3.1 MB	
	Radio Export_WC-02021-21.zip	PDF	237.05 KB	
	SimSoln21170.pdf			

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0040604-Y010009726 transmitted on December 8, 2021 at 1:00 PM contained 3 files:

Category	Name	Type	Size	Note
1K	Baker_Kirk_WCPD_08_24_2021 (2).pdf	PDF	1.09 MB	
1K	Marco_Kris_WCPD_12_06_2021.pdf	PDF	20.56 KB	
1K	Nerney_Niall_WCPD_03_06_20.pdf	PDF	22.02 KB	

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0041338-Y010009726 transmitted on December 20, 2021 at 1:44 PM contained **1** file:

Category	Name	Type	Size	Note
1K	DD 1K GVillamares.pdf	PDF	124.04 KB	

EXHIBIT "2"

EXHIBIT "2"

RANERI, LIGHT & O'DELL, PLLC

MICHAEL J. RANERI ϕ
DENNIS W. LIGHT †
KEVIN D. O'DELL »
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Fax: (914) 948-5505
website: www.rlslawoffice.com
email: office@rlslawoffice.com

ADMITTED IN
• NY
† NY, NJ & CT
» NY & NJ
ϕ NY & DC

December 6, 2021

VIA REGULAR MAIL

Office of the Westchester County District Attorney
New Rochelle Branch Office
475 North Avenue
New Rochelle NY 10801-3426

Re: People v. Gustavo Villamares Serrano
New Rochelle City Court
Docket No.: CR5662-21

Dear Counselors:

As you know, this office represents the Defendant in the above-referenced criminal matter. The undersigned is in receipt of preliminary discovery that, among other things, reveals the police officer's employment of a "scientific test" to wit, HGN (and VGN) and, therefore, the Defendant contends that the respective investigating police officer's SFST training manual must be disclosed pursuant to CPL §245.20(1)(j).

"CPL § 245.20(1) provides a ***non-exhaustive*** list of the items the People must disclose. This list is not to be interpreted narrowly, as CPL § 245.20(7) mandates, 'There shall be a presumption in favor of disclosure when interpreting sections 245.10 and 24.25, and subdivision one of section 245.20 …' " See, People v. Pennant, 2021 NY Slip OP 21277, 2 (Dist. Ct., 1st Dist., Nassau Co., Oct. 15, 2021); see also, People v. Perez, 2021 NY Slip Op 50374(U), 3 (NYC Crim. Ct., Bronx Co., Apr. 8, 2021)(the prosecution, with limited exception, is required to "make a diligent, good faith effort to ascertain the existence of discoverable material or information and make it available for discovery); People v. Edwards, 2021 NY Slip Op 50944(U), 4 (NYC Crim. Ct., New York Co., Oct. 8, 2021)(Legislature's intent to require broad disclosure under CPL Article 245 is manifest); Hudson Police Local 3979 v. Bower, 2021 NY Slip Op 21318, 3 (Sup. Ct., Columbia Co., Nov. 24, 2021)(Article 78 proceeding holding broad and all-inclusive discovery was the intent of the Legislature when it enacted CPL 245).

In furtherance of all the foregoing, the video evidence further indicates the police officer's non-compliance with the 20-minute personal observation period that must precede breath testing and, accordingly, the Defendant calls for disclosure of the DWI detection and investigation manual used to train the police officer in this area of evidence collection and, more likely than not, the disclosure should also include the Datamaster DMT operation and procedure manual as applicable to the aforementioned observation issue.

Your office's anticipated compliance with CPL Article 245 will be appreciated.

Yours truly,
RANERI, LIGHT & O'DELL, PLLC

Dennis W. Light, Esq.

DWL/dl

cc: File

New Rochelle City Court
475 North Avenue
New Rochelle NY 10801-3426

EXHIBIT "3"

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villanueva Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rislawoffice.com

Discovery Package Information

DP-0041887-Y01000972o transmitted on January 4, 2022 at 9:22 AM contained 1 file:

Category	Name	Type	Size	Note
Other	GVS DI.pdf	PDF	476.06 KB	

EXHIBIT "3"

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name: Gustavo Villamares Serrano
Court:
Ind/SCI #:
Local Court Docket #:
Local PD Incident #: WC-02021-21
Incident Date: October 1, 2021

Attorney Information

Attorney's Name: Dennis W. Light
Attorney's Email Address: dwlight@rlslawoffice.com

Discovery Package Information

DP-0041887-Y010009726 transmitted on January 4, 2022 at 9:22 AM contained **1** file:

Category	Name	Type	Size	Note
Other	GVS DI.pdf	PDF	476.06 KB	

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY DISCLOSURE INDEX PURSUANT TO CPL 245.20 AND 245.50
NEW ROCHELLE BRANCH

PEOPLE v GUSTAVO VILLAMARES-SERRANO

DISCOVERABLE ITEM	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A
Accusatory Instruments				X	
A) CPL § 710.30 Statement/Identification Notices					X
B) Grand Jury Testimony					X
C) Civilian Witness List- See police reports				X	
D) Law Enforcement Witness List- See police reports				X	
E) Witness Statements/Relevant Information					X
E(1) Police Reports				X	
E(2) Supporting Depositions					X
E(3) Owner's Depositions					X
E(4) Supplemental Reports				X	
E(5) CSU Reports					X
E (6) Detective Reports					X
E (7) Ballistics Report/ Rosario					X
E (8) Detention/Booking Paperwork				X	
E (9) CAD				X	
E (10) P.O./Det. Handwritten notes					X
E (11) Property/Evidence Forms					X
E (12) HIPPA Forms					X
E (13) Consent Forms					X
F) Expert Opinion Evidence- See Portal					X
G) Tapes and Electronic Recordings				X	
G(1) 911 call				X	
G (2) Radio Transmissions				X	
G (3) Surveillance Video					X
G (4) Booking Video				X	
G (5) City Camera Video					X
H) Photographs and Drawings					X
H (1) Photographs-CSU and Precinct					X
H (2) Photographic Arrays/Single Photo ID					X
H (3) Booking Photographs					X
I) 450.10 Photographs					X
J) Lab Reports/ Lab Rosario (YPD and WC)					X
K) Impeachment Material on Witnesses					X
L) Promises/Inducements to Witnesses					X
M) Property/Evidence Possessed by Defendant				X	
N) Search warrant Documents					X
O) List of Tangible Evidence for Trial					X
P) Judgments of Conviction for Witnesses				X	
Q) Pending Cases against civilian witnesses				X	
R) See Attached Discovery Materials[1]				X	

[1] "Attached discovery materials," includes any materials and information sent electronically via the defense counsel portal.

S) VEHICLE & TRAFFIC OFFENSES

	PAGES	ATTACHED HERETO	INSPECTION CONSENTED	SENT VIA PORTAL	N/A
S(1)DWI Supporting Deposition/BOP/710.30 Notice				X	
S(2) Report of Refusal					X
S (3) Refusal Warnings				X	
S (4) DWI Investigative Notes					X
S (5) BAC Report				X	
S (6) Operational Checklist					X
S (7) Calibration & Maintenance Records				X	
S (8) Operator Certification				X	
S (9) DMV Abstract Documents				X	
S (10) MV-104 Accident Report				X	
T) Computer crime evidence					X
U) Electronically created or stored information - cell phone downloads					X

OTHER

DISCOVERY CHECKLIST				X	
DRIVERS LICENSE				X	
DALL / RALL				X	
IMPOUND / INVENTORY REPORT				X	
RAP SHEET				X	
BODYCAMERA VIDEOS				X	

Completed by:

Date:

Kieran McGrath

ADA KIERAN MCGRATH

December 8, 2021

[1] Please contact the Branch Office to schedule an appointment during which time the items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE
DISCOVERY ADDENDUM CPL § 245.10 & 245.20

PEOPLE v GUSTAVO VILLAMARES-SERRANO DOCKET NO.

245.20(1)(C). In addition to those names referenced in the attached discovery materials[2], the people may call the following non-law enforcement witnesses during the prosecution of this case, who can be reached at the below telephone numbers:

Name	Contact Information
Dylan dewysockie	See police reports
Kelsey Picciano	See police reports

245.20(1)(D). In addition to those names referenced in the attached discovery materials, the people may call the following law enforcement witnesses in during the prosecution of this case:

Name	Agency

245.20(1)(F). The information about the expert witness is unknown for disclosure at this time. This information will be disclosed when it is received.

245.20(1)(M). The following tangible property was possessed or obtained from the defendant or co-defendants:

Item	Location of Item	(Actual/Constructive/Abandoned)

245.20(1)(O). The prosecution intends to introduce all tangible property referenced in the discovery materials and the above list.

245.20(1)(P). The People hereby consent to inspection of any judgements of conviction for all defendants and persons designated as potential prosecution witnesses. Please contact the respective branch office to schedule an appointment during which time the items will be made available for inspection and copying subject to any protective order.

245.20(1)(R). See attached discovery materials for the approximate date, time and place of the charged offenses, arrest of the defendant, and seizure of the defendant if applicable. If additional information is required, it is as follows:

245.20(1)(U). The People hereby consent to the inspection of any electronically created or stored information including cellular telephone downloads. Please contact the respective Branch Office and schedule an appointment when the materials will be made available for copying. Please bring a thumb drive or alternate means to copy the above evidence.

---

[2] "Attached discovery materials," includes all information and material send electronically via the defense counsel portal.
Doc # 1051351 (1/3/20)

[1] Please contact the Branch Office to schedule an appointment during which time the items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

CPL §245.20(1)(p) and (q) addendum regarding testifying prosecution witnesses

PEOPLE v GUSTAVO VILLAMARES-SERRANO DOCKET NO.

The people have acted with due diligence to discover the existence of impeachment material with respect to civilian witnesses by checking our internal records and inquiring of each civilian witness.

X ☐ We have received no relevant information from any sources.

or

☐ We have received information relating to a past criminal conviction and/or current pending charges.

☐ We have received information relating to a past civil judgement and/or a pending civil case

[1] Please contact the Branch Office to schedule an appointment during which time the items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

CPL §245.20(1)(k)(iv) addendum regarding testifying police witnesses

PEOPLE v GUSTAVO VILLAMARES-SERRANO DOCKET NO.

The people have acted with due diligence to discover the existence of impeachment material with respect to police witnesses by checking our internal records and inquiring of the police department and of the individual officers.

☐ We have received no relevant information from the department.

or

☐ We have received information relating solely to founded personnel complaints from the department.

☐ The police witnesses have declined to answer impeachment questions.

or

☐ The police witnesses have answered all questions except regarding unfounded, unsubstantiated, or exonerated complaints contained in their personnel file.

[1] Please contact the Branch Office to schedule an appointment during which time the items will be made available for inspection and copy subject to any protective order. Please bring a thumb drive or alternate means to copy the above referenced digital evidence.

EXHIBIT "4"

Westchester County District Attorney's Office
Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamayor Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-020211-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0041895-Y010009726 transmitted on January 4, 2022 at 10:03 AM contained 1 file:

Category	Name	Type	Size	Note
Other	GVS COC.pdf	PDF	125.97 KB	

EXHIBIT "4"

EXHIBIT "4"

Westchester County District Attorney's Office

Discovery Package Transmittal Notice

Case Information

Defendant's Name:	Gustavo Villamares Serrano
Court:	
Ind/SCI #:	
Local Court Docket #:	
Local PD Incident #:	WC-02021-21
Incident Date:	October 1, 2021

Attorney Information

Attorney's Name:	Dennis W. Light
Attorney's Email Address:	dwlight@rlslawoffice.com

Discovery Package Information

DP-0041895-Y010009726 transmitted on January 4, 2022 at 10:03 AM contained **1** file:

Category	Name	Type	Size	Note
Other	GVS COC.pdf	PDF	125.97 KB	

CITY COURT : CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER : STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

- against -

GUSTAVO VILLAMARES-SERRANO
Defendant

LOCAL CRIMINAL COURT
CERTIFICATE OF
COMPLIANCE
CPL 245.50 (1)

DKT: #

SCI/IND: #

CERTIFICATE OF COMPLIANCE

I, Assistant District Attorney KIERAN MCGRATH, certify pursuant to CPL 245.50(1), that, after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, except for those items and information that are the subject of an order pursuant to CPL 245.70, the People have disclosed and made available to defendant all known material and information subject to discovery, which material and information is identified and/or attached in the accompanying Disclosure Index and Discovery Addendum.

With the exception of materials or information withheld pursuant to CPL 245.70, the materials and information provided with this form are those that are in the actual possession of, or known to, the People. The People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL 245.20(1) but which have been disclosed in an exercise of the People's discretion.

245.20(1)(k) disclaimer - The People reserve the right, at a future date, to object to or to move *in limine* to prevent the admission into evidence of, or questioning of witnesses about, these matters. Furthermore, there may be materials and information disclosed pursuant to other sections of CPL 245.20(1), and not separately highlighted under this section, that could constitute responsive materials under this section.

STATEMENT OF READINESS

X ☐ The People confirm and announce their readiness for trial on all counts charged. The People hereby certify that all counts charged in the accusatory instrument meet the requirements of sections 100.15 and 100.40 of this chapter and those counts not meeting the requirements of sections 100.15 and 100.40 of this chapter have been dismissed.

Dated: January 4, 2022

Respectfully submitted,

MIRMAM E. ROCAH
District Attorney of Westchester County
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

BY: Kieran McGrath
Assistant District Attorney

EXHIBIT "5"

D.W.I. SUPPORTING DEPOSITION AND BILL OF PARTICULARS

WESTCHESTER COUNTY POLICE

C/T/V COURT OF:	CASE NUMBER:	BLOTTER NUMBER:	CAD NUMBER:
C/New Rochelle	WC-2021-21	WC-100173-21	W21090654
			DWI NUMBER: 21-132

STATE OF NEW YORK: COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

VS.

DEFENDANT INFORMATION:				
DEFENDANT NAME: (Last) VILLAMARES SERRANO		(First) GUSTAVO		(M)
DEFENDANT DOB: 07/25/1980	GENDER: MALE	ARRESTING OFFICER/SHIELD: PO. BAKER 1058		
DEFENDANT ADDRESS 75 WALLER AVE		(CITY/TOWN/VILLAGE) WHITE PLAINS	(STATE) NY	(ZIP) 10605

The above named DEFENDANT is charged by Simplified Traffic Information: Ticket Number(s): WS61DMXK02, WS61DMXKGZ,WS61DMXKKG (or attached accusatory instrument) with OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS contrary to section 1192 of the Vehicle and Traffic Law. A Supporting Deposition and/or Bill of Particulars pursuant to Section 100.25 and 200.95, respectively, of the Criminal Procedure Law are hereby provided as follows: The UNDERSIGNED COMPLAINANT, upon direct knowledge unless otherwise specified, avers that the DEFENDANT, on or about the 1ST day of OCTOBER, 2021, at or about 19 13 hours, operated a (color) BLACK (year/make) 2012 DODGE motor vehicle bearing State of NY registration number JHD8418 in a NORTH erly (direction) on HUTCHINSON RIVER PKWY, a public highway/parking lot in (Municipality) C/New Rochelle. County of Westchester, State of New York while in an intoxicated/impaired condition by alcohol and/or drugs and/or having a .16 % blood alcohol content.

GENERAL INFO:		REASON FOR STOP:	
ARREST DATE:	10/01/2021	TIME OF STOP: 19:13 HOURS	VTL SECTIONS:
ARREST TIME:	1957	☐ VTL VIOLATIONS	
LICENSE STATE:	NY	☐ ERRATIC OPERATION (NOTE)	
MOTORIST ID#:	357239523	☑ ACCIDENT – Check type	☑ Prop. ☐ PI ☐ SPI ☐ FATALITY
VEHICLE STATUS:	Impounded	☐ CIVILIAN COMPLAINT	
ROAD CONDITIONS:	Dry	☐ CHECKPOINT	
TRAFFIC CONDITIONS:	Moderate	☐ OTHER (NOTE)	
WEATHER:	Clear	COMMENTS:	

PRIOR CONVICTIONS:

Section	How Many	Date of Last
☐ 1192.1		
☐ 1192.2		
☐ 1192.3		
☐ 1192.4		
☐ 1192.5		
☐ Out of State		

VEHICLE OPERATION SHOWN BY:

- ☑ OFFICER OBSERVATIONS
- ☐ CIVILIAN / WITNESS ID ☐ SHOW UP ☐ LINE UP ☐ PHOTO

DATE: 10/01/2021 TIME: 1913 LOCATION: HRP N/B @ MILL RD

- ☐ ADMISSION (SEE 710.30 NOTICE)
- ☐ DEFENDANT AT WHEEL
- ☑ DEFENDANT NEAR THE VEHICLE
- ☑ KEYS IN THE IGNITION
- ☑ MOTOR RUNNING
- ☐ DEFENDANT INJURED IN CRASH ☐ OTHER:

VERIFICATION:

ARRESTING OFFICER SIGNATURE: P. O.

PROBABLE CAUSE FOR ARREST:

OBSERVATIONS OF DEFENDANT	PERFORMANCE OF FIELD TESTS	ADMISSIONS BY THE DEFENDANT:
☑ DRIVING	PERFORMED PASS / FAIL REFUSED	ORAL ☐ WRITTEN ☐ CONDUCT ☐ (COMPLETE 710.30)
☑ ODOR OF ALCOHOLIC BEVERAGE	☑ DISABLED Specify:	OTHER EVIDENCE:
☑ IMPAIRED SPEECH	☑ GAZE NYSTAGMUS ☐ Pass ☑ Fail ☐ Refused	☐ OPEN CONTAINER ALCOHOLIC BEV. IN/NEAR VEHICLE
☑ IMPAIRED MOTOR CONDITION	☑ WALK AND TURN ☐ Pass ☑ Fail ☐ Refused	☑ POSITIVE BREATH SCREENING TEST
☐ ODOR OF MARIHUANA	☑ ONE LEG STAND ☐ Pass ☑ Fail ☐ Refused	☐ RESISTED APPREHENSION
☑ BLOOD SHOT EYES	☐ FINGER TO NOSE ☐ Pass ☐ Fail ☐ Refused	☐ CIVILIAN WITNESS(ES)
☑ GLASSY EYES	☐ MODIFIED RHOMBERG BAL. TEST ☐ Pass ☐ Fail ☐ Refused	☐ VIDEO
☑ SWAYING	☐ FINGER COUNT ☐ Pass ☐ Fail ☐ Refused	OTHER:
☑ STAGGERING	☐ RECITING THE ALPHABET ☐ Pass ☐ Fail ☐ Refused	HOW OBTAINED?:
☐ OTHER:	☐ LACK OF CONVERGENCE ☐ Pass ☐ Fail ☐ Refused	BY WHOM?:
	☐ OTHER TEST:	

NO ALCOHOL AFTER STOP SHOWN BY:	CHEMICAL TEST INFORMATION:
☑ CONTINUAL POLICE OBSERVATION	TYPE OF TEST: ☑ BREATH ☐ URINE ☐ BLOOD
☐ ADMISSIONS (COMPLETE 710.30)	☑ DWI WARNINGS GIVEN GIVEN BY: PO NERNEY #1139
☐ CIVILIAN WITNESS(ES)	☐ REFUSAL LAST REFUSAL TIME:
OTHER:	☐ BREATH TEST B.A.C. .16 % TIME: 20:53 PM
PRESENT CHARGES:	BREATH TEST OPERATOR: PO NERNEY #1139
	DRE PERFORMED BY:
☐ DWAI (VTL 1192.1)	INSTRUMENT NUMBER: 105806 MODEL #:
☑ DWI (BLOOD ALCOHOL CONTENT) (VTL 1192.2)	SIM LOT #: 21170 AMPOULE #:
☑ DWI INTOX (VTL 1192.3)	BLOOD TEST:
☐ AGGRAVATED DWI (OVER .18%) (VTL 1192.2AA)	DRAWN BY: ☐ NURSE ☐ PHYSICIAN ☐ EMT ☐ LAB TECH
☐ DWI DRUGS (VTL 1192.4)	BLOOD TEST:
☐ DWI Combined Drugs/Alcohol (VTL 1192.4A)	COLLECTOR'S NAME:
☑ OTHER VTL – NOTE SECTIONS: VTL-5091	URINE OR BLOOD SUBMISSION: TIME: WITNESS: LOCATION:
☐ OTHER OFFENSES: NOTE LAW/SECTIONS:	COURT ORDERED BLOOD TEST: JUDGE: NAME OF ADA NTFD:
☐ CURRENT SUSPENSION/REVOCATION (NOTE):	COMMENTS/NOTES:

PHONE CALL(s): DATE: 10/01/2021 TIME: 22:00 PM NUMBER CALLED: 914-629-0420
☐ REFUSED NOTES: DAUGHTER

VERIFICATION: False Statements made herein are ~~punishable~~ as Class "A" misdemeanor pursuant to section 210.45 of the Penal Law

ARRESTING OFFICER SIGNATURE: P.O. SHIELD: 1058 DATE: 10/01/2021

SUPPORTING DEPOSITION SERVED BY: LOCATION: WCPD HQ DATE: 10/01/2021

EXHIBIT "6"