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February 16, 2016

Danielle Brennan, Esquire
Deputy Attorney General
Department of Justice
Carvel State Office Building, Seventh Floor
820 North French Street
Wilmington, DE 19801

Re: State of Delaware v. XXXXXXXXXXXXX
Date of Arrest: April 6, 2014
Ticket No.: XXXXXXXXXXXXXXXXXXXXX
Arresting Officer: XXXXXXXXXXXXX

Dear Ms. Brennan:

Please be advised that I represent the Defendant in the above-captioned matter. This letter is written to request that the following material or information be produced pursuant to Superior Court Criminal Rule 16 and/or Court of Common Pleas Criminal Rule 16. Please provide a paragraph by paragraph response as required by Johnson v. State, 550 A.2d 903, *910-911 (Del., 1988):

1. Any written or recorded statement or confession made by the Defendant, no matter to whom made and whether or not intended by the Defendant as a formal statement of confession, including but not limited to the tape of the conversation done while in custody. This request includes any videotape of the Defendant made by a police vehicle in-car video recorder. This request further includes the RECOM, 10/10 tapes and 911 tape recordings.

2. The substance of any oral statement which the State intends to offer in evidence at the trial, made by the Defendant, whether before or after arrest, in response to interrogation by any person then known by the Defendant to be a law enforcement agent, or a private security guard, including but not limited to the tape of the conversation done while in custody.

3. A statement as to whether each of the statements of the Defendant, disclosed in your response to Requests 1 and 2 supra, were preceded by advice of the Defendant's Miranda rights. If so, please provide a copy of any written waiver of rights executed by the Defendant, including but not limited to the tape of the conversation done while in custody.

4. Written reports of accident reconstructions, autopsies, ballistics tests, fingerprint analysis, handwriting analysis, blood, urine and breath tests or any other scientific examination conducted in connection with this case, including Alcohol Influence Reports, as well as the State of Delaware Uniform Traffic Collision Report, polygraph examinations and all documents generated in connection with the scientific examination. Such written reports are to include all preliminary notes made by the examiner, including but not limited to the police officer(s)' field notes and the recording of the conversation done while in custody. This request includes the calibration records for the portable breath test and the Intoxilyzer machine. Also, if there was any videotaping of the Defendant at the police station, any and all said videotapes should thus be provided to defense counsel together with the above-referenced requested documentation. This request includes the videotape taken of Defendant at the police station during the 20-minute observation time and also during the taking of the Intoxilyzer test.

5. Any written report of physical or mental examination of the Defendant by a physician, dentist, psychologist, psychiatrist, or police officer, such written reports to include all scientific tests or experiments and preliminary notes made by the examiner in connection with the physical or mental examination.

6. Any materials in the possession of the State which tend to exculpate the Defendant or which would serve to mitigate punishment of the Defendant if Defendant were to be convicted of any of the charged offenses, including but not limited to:

- (a) Any conflicting or contradictory statement made by any potential State witness, whether such statement or statements are internally conflicting or contradictory or conflict or contradict statements made by other State witnesses. See Giglio v. United States, 405 U.S. 150, 154 (1972); Boyer v. State, Del. Supr., 436 A.2d 1118, 1126-27 (1981).
- (b) Any evidence in the possession of the State indicating that a State's witness has a conviction for a felony or for forgery in any degree. This request is not limited to convictions in New Castle County. See authority in support of Request 8(a).
- (c) The substance of any promise, inducement or other consideration offered by the State or Federal Government to any State witness, whether or not said promise, inducement or other consideration was offered as a specific quid pro quo in return for the witness' cooperation with the State in this particular case. See authority in support of Request 8(a).
- (d) A statement as to whether any State's witness has ever served as an informant, paid or unpaid, for local, State or Federal law enforcement. See also Weber v. State, Del. Supr., 457 A.2d 674, 679-83 (1983).
- (e) A statement as to whether any State's witness has ever failed a polygraph examination in connection with this Case. See authority in support of Request 6(a).
- (f) The results of any physical, psychological or psychiatric examination of any State's witness in the possession of the attorney General or in the possession

of any State agency, if such results indicate difficulties of any State's witness regarding perception or truthful recollection of events, including such difficulties in perception or recollection as might result from drug or alcohol dependency. See authority in support of Request 8(a).

- (g) Disclosure of any potentially exculpatory evidence lost or destroyed by the State. See Deberry v. State, Del. Supr., 457 A.2d 744 (1983).

7. Disclosure of all facts relevant to any motion to suppress evidence or to dismiss the indictment which might be filed on the Defendant's behalf. See Pierson v. State, Del. Supr., 351 A.2d 860, 861 (1976).

8. A list of books, papers, documents or other tangible objects in the possession of the State, including photographs, diagrams and any writing that the State intends to introduce, relevant to the offense, whether or not the State intends to offer said tangible objects into evidence. This request specifically includes any DUI checkpoint discovery relevant to the case as required by State v. McDermott, 1999 WL 1847364 (Del.Com.Pl.) (This request specifically includes all statistical information, relied upon by the Office of Highway Safety in establishing the DUI Checkpoint, including a copy of the actual traffic statistics and data supplied by the respective police agency, that were forwarded to the Office of Highway Safety.) This request specifically includes any calibration records of the Intoxilyzer machine and the calibration records of the portable breath test devices (PBT). Failure to provide these Intoxilyzer or PBT records will be taken to assume that no such records exist.

9. Copies of any books, papers, documents or other tangible objects in the possession of the State, relevant to the offense, whether or not the State intends to offer said tangible objects in evidence. See State v. Walker, 2005 WL 1898928 (DE Common Pleas)

10. Any videotapes or photographs in the possession of the State, relevant to the offense, whether or not the State intends to offer said tangible objects in evidence. This includes in car videotapes in use at the time of police contact with my client and also video tapes of the Intoxilyzer room at the time of my client's testing or interview (to include the 20 minutes prior to testing).

11. A copy of the RECOM audio tape in which the arresting police officer called in the initial stop and or contact with my client as well as the Detail Call For Service Report.

12. Prior statements of all State witnesses. If such will not be provided at this time, please let me know when you will provide such statements. I would hope that we can work out a reasonable arrangement whereby all statements will be provided prior to trial to avoid any disruption in the trial process.

13. Disclosure of whether or not any evidence or testimony has been produced or compelled pursuant to Attorney General subpoena under 29 Del. Code §2508(a) subsequent to the return of the indictment herein. See In Re: Grand Jury Proceedings (Schofield I), 486 F.2d 85, 91 (3rd Cir. 1973); United States v. Pack, 150 F. Supp. 262, 263 (D. Del. 1957).

14. The identity of any experts the State intends to call to testify as well as the substance of their opinions, as well as any evidence the State may present at trial under Rules 702,

703 or 705 of the Delaware Rules of Evidence.

15. A copy of the criminal history, also known as a rap sheet, for the Defendant.
16. Standard Operating Procedure of the police agency involved:
 - a. Regarding retention of raw Field Notes of investigating police officers
 - b. Regarding use and retention of Dashboard Video Recordings by police officers
 - c. Regarding use and retention of Intoxilyzer Room Video Recordings by police officers

SPECIFIC DUI DISCOVERY

FOR EITHER BREATH OR BLOOD CASE

17. Written reports of accident reconstructions, autopsies, ballistics tests, fingerprint analysis, handwriting analysis, blood, urine and breath tests or any other scientific examination conducted in connection with this case, and all documents generated in connection with the scientific examination.

18. Disclosure of any evidence which the State may present at trial under Rule 702, 703, or 705 of the Delaware Uniform Rules of Evidence. The disclosure should include the identity of the witness, his or her expert qualifications to opine in this case, the substance of the opinions to be expressed and the nature and method of any scientific testing carried out by the expert.

19. Most recent Records of Proficiency Testing and Certification of any Forensic Laboratory which calibrated the Intoxilyzer or which analyzed blood or urine samples in this matter

20. Calibration, maintenance and "out of service" records of any scientific instrument relied upon by any State's witness as a basis for, or in connection with, his testimony. This includes any Intoxilyzer or the Gas Chromatograph, any PBT, any radar or laser gun or any speedometer. As to the Intoxilyzer, the request includes the "flimsies" reflecting the actual calibration test results as well as the summary sheet reflecting same. As to the Intoxilyzer, the request includes all repair and/or maintenance records for the Intoxilyzer machine, as listed by serial number, for the calendar year of the Defendant's arrest. As to the Chromatograph, the request includes the yearly calibration and inspection records of the machine.

NOTE: Our experience recently has been that some maintenance and "out of service" records for the Intoxilyzer are found only in the Master book for each machine maintained by the State Chemist. Accordingly we ask that you make the appropriate request for these records of the State Chemist and not rely solely on the police Intoxilyzer book.

FOR A BREATH CASE

21. Records reflecting the preparation of the solution designed to simulate either a reading of .05 or .10 grams of alcohol per 210 liters of breath used to calibrate the Intoxilyzer in this case. Also records reflecting the determination that such solutions accurately simulate each of the foregoing readings.

FOR A BLOOD CASE

22. Records reflecting the preparation of ethanol standards, whole blood controls and blank free agent used to calibrate the Gas Chromatograph in this case. Also records reflecting the determination that such standards, controls and agents actually contain what they purport to contain.

23. All chain of custody records of blood samples to include copies of the exterior (front and back) of sealed evidence transmission envelopes.

24. Name and business address and telephone number of any person in possession, custody or control of the blood sample at any time from the time it was taken to the time it was tested.

25. Documents setting forth:

- a. Procedures established by the Delaware State Police Crime Laboratory to receive blood evidence for testing,
- b. Qualification standards approved by the Delaware State Police Crime Laboratory met by the analyst who analyzed blood in this case, and
- c. The Standard Operating Procedure for Blood Alcohol Analysis approved by the Delaware State Police Crime Laboratory

26. With respect to the blood draw, please provide any and all information provided to the Magistrate or any other party involved, related to the issuance of the Warrant. If the warrant was secured via phone, please provide a transcript of all phone and/or text messages.

27. With respect to the blood draw, please identify the name of the Magistrate who issued the Warrant.

The foregoing is to be construed as a specific request for all such materials in the possession of the Attorney General, and for the production of such material in the custody of any law enforcement agency, private, local, State or Federal, which has taken part in the investigation leading to the instant indictment. If your response to this letter does not indicate that only the files of the Attorney General have been searched, I shall take such an unqualified response as signifying a complete search of all appropriate law enforcement files as set forth above.

If in your response to these specific requests you provide only police reports regarding this matter I shall assume that any materials or information requested, which is not contained in your response, does not exist.

This is also to request that you take the appropriate steps to assure that there are no attempts to interview my client by any law enforcement agent under your control or supervision,

whether or not the proposed interview deals with the subject matter of this case. In addition, if you are aware that law enforcement agents not under your control or supervision wish to interview my client, please advise such agents that I have requested that no such attempts at interview take place, no matter what the subject of the proposed interview.

Please consider this letter a request pursuant to 21 Del. Code Section 4177(h)(4) for the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist and any person in the chain of custody as a witness in the proceeding.

Pursuant to 21 Del. Code Section 4177(h)(4) consider this a request for the personal appearance of every person in the chain of custody of any chemical sample obtained from the defendant including the phlebotomist.

Pursuant to 10 Del. Code Sections 4330, 4331 and 4332, consider this a request for the personal appearance of the Forensic Toxicologist, Forensic Chemist and any person in the chain of custody as a witness in the proceeding.

If you have any questions, please contact me at your earliest convenience.

Very truly yours,

Richard B. Ferrara

RBF/amf