

EXHIBIT 8

EXHIBIT 9

EXHIBIT 10

EXHIBIT 11

CITY COURT OF THE CITY OF NEW ROCHELLE
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GUSTAVO VILLAMARES SERRANO,
Defendant.

Docket # CR-5661-21

DECISION AND ORDER

BRITTANY BURK, A.D.A.
Office of the District Attorney
Westchester County
New Rochelle Branch
475 North Avenue
New Rochelle, NY 10801

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Costa, J.:

The following papers were read on this motion:

Notice of Motion with Affirmation in Support and
Exhibits 1-12

Affirmation in Opposition and Memorandum of Law with
Exhibits (Referenced but not provided)

Reply Affirmation with Exhibits A-E

1, 2-8

9-27

28-35

In this criminal matter, the defendant Gustavo Villamares Serrano is charged with violating: VTL 1192.3 Driving While Intoxicated; VTL 1192.2 Driving While Intoxicated per se, and VTL 509(1) Unlicensed Operator of Motor Vehicle. The defendant was arraigned on these charges on November 22, 2021. The defendant entered a plea of not guilty to all charges. The case was adjourned to December 6, 2021, for the People to provide discovery and again to January 4, 2022, for the People to provide discovery.

On January 4, 2022, the People filed their Certificate of Compliance and announced their readiness for trial on the record and the Defendant, through counsel, objected. A motion schedule was set at that time.

On January 25, 2022, the defendant filed the instant motion seeking an order striking the People's Certificate of Compliance dated January 4, 2022, pursuant to 245.20. In addition, the defendant requests an order precluding certain evidence and witnesses. 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 the People did not comply with automatic discovery, that the People did not respond to Defendant's request for discovery of additional materials it deemed discoverable upon review of initial discovery, that the People did not request leave to demonstrate a good cause showing why they did not have a duty to disclose, and that the People did not disclose certain impeachment evidence regarding the witnesses.

The People oppose the instant motion. The People 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 is not entitled to the discovery formally requested in writing by the Defendant.

The Court acknowledges the newly developing case law surrounding CPL 245 and that it is currently unsettled. 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.

At issue in the instant case are several items of discovery the Defendant claims should have been disclosed prior to or at the time of filing the Certificate of Compliance. The Defendant

claims that the people should be sanctioned for failing to turn over any impeachment evidence tending to discredit the witnesses in the instant matter. However, tellingly no evidence of the same has been discovered and the people claim none exists. Although the Court does agree with the Defendant's contention that the precursory, stale, and limited disclosure of the witnesses' disciplinary history does not comply with the spirit of the statute, absent any actual impeachment evidence, this Court would struggle to find prejudice against the Defendant.

The Defendant points out that pursuant to CPL 245.20(1)(s) the People must disclose and produce "the certification certificate, if any, held by the operator of the machine or instrument." In their papers, the People point to an undesignated "attached Exhibit" that was not submitted or attached to their reply papers. The Defendant does provide what is purported by the People to be the certificate and what was in fact disclosed (Defendant's Exhibit A). It is inadequate, as the Defendant has produced a redacted copy of an actual New York State Department of Health Breath Analysis Operator Permit, and it is clearly not what was disclosed by the People. In the same vein, the People point in their papers to a non-existent "Exhibit" purported to be "records of gas chromatography related to the certificate of all reference standards." Once again, the Defendant did provide what was disclosed by the people (Defendant's Exhibit B) and similarly to the Breath Analysis Operator Permit this disclosure falls short of what is required by the statute.

The Defendant also claims that he was entitled to certain discoverable items that have not been disclosed and that this request for additional discovery was made in writing. Specifically, the Defendant requested, by letter dated December 6, 2021, "the respective investigating police officer's SFST training manual," as well as, "the DWI detection and investigation manual... the Datamaster DMT operation and procedure manual." (Defendant's Exhibit 2) The people contend that this information is not discoverable. However, the statute clearly provides a remedy for these

types of discovery disputes. CPL 245.35 requires the prosecutor and defense counsel to "diligently confer to attempt to reach an accommodation," this section further provides for the opportunity to confer the matter with the court. The people have made no mention of any efforts that would demonstrate compliance with this section. CPL 245.10(1)(a)(iv), 245.20(5) & 245.70 requires a party take leave of the Court and show good cause exists for declining to comply with the discovery request. None of those statutory remedies were followed by the People.

When information that is discoverable is not disclosed and in violation of Article 245, CPL 245.80(1) provides that the Court may impose an appropriate remedy or sanction for discovery violation(s). 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 has shown under the totality of the circumstances that it was prejudiced when the People filed its certificate of compliance on January 4, 2022, when the People did not provide automatic discovery required by CPL 245.20(1)(s) and when they failed to request leave of the Court for a determination on whether the discovery requested by the Defendant was in fact discoverable.

Accordingly, as the Court has found the People in violation of its discovery obligations, pursuant to CPL 245.80, it sanctions the People by precluding any testimony regarding the Datamaster chemical test and the Standard Field Sobriety Test. In addition, the Court finds the People's filing of the Certificate of Compliance and announcement of readiness improper and illusory, therefore striking the Certificate of Compliance. The Court denies the portion of the Defendant's motion requesting preclusion of all the testimony of law enforcement and civilian witnesses.

The foregoing constitutes the decision and order of the court.

Dated: April 4, 2022
New Rochelle, New York


MATTHEW J. COSTA, JUDGE