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June 19, 2023

BY EMAIL:
Robert P. Schwartz
Senior Assistant District Attorney
Kings County District Attorney's Office

Re: *People v. Jordan Williams*, CR-021000-23KN (Kings County)

Dear Mr. Schwartz:

On behalf of my client Jordan Williams, please accept this letter motion with respect to the above-captioned case. Pursuant to New York Criminal Procedure Laws and various precedent, counsel makes the following requests as it relates to the Grand Jury proceeding in connection to this matter:

I. THAT MR. WILLIAMS PRESERVES HIS RIGHT TO TESTIFY AT THE GRAND JURY PURSUANT TO CPL § 190.50

Your office was previously served both orally and in writing as it relates to Mr. Williams' intent to testify in front of this grand jury pursuant to CPL § 190.50. Your office has previously acknowledged receipt of this notice *via* electronic mail.

II. THAT THE PEOPLE COMPLY WITH THEIR LEGAL OBLIGATIONS PURSUANT TO *BRADY* AND ITS PROGENY

The People have the obligation, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, to present any exculpatory evidence to the grand jury. Indeed, a

> prosecutor's discretion in presenting the case to the Grand Jury ... *is not unbounded*, for it is settled that at a Grand Jury proceeding,

> the prosecutor performs the dual role of advocate and public officer, charged with the duty not only to secure indictments but also to see that justice is done; as a public officer he owes a duty of fair dealing to the accused and candor to the courts. The prosecutor's *duty of fair dealing* extends not only to the submission of evidence, but also to instructions on the law.

People v. Lancaster, 69 N.Y.2d 20, 26 (1986) (emphasis supplied); *see also* ABA Criminal Justice Standards for the Prosecution Function, at §3-4.6(e) (a "prosecutor with personal knowledge of evidence that directly negates the guilt of a subject ... should present or otherwise disclose that evidence to the grand jury. The prosecutor should ... present other non-frivolous evidence claimed to be exculpatory"). The District Attorney must present exculpatory evidence to the grand jury when it could "materially influence" the grand jury's investigation. *See Lancaster*, supra, at 25-26. Within the purview of *Brady*, the grand jury must be presented with:[1]

1. The *Entire* Videotaped Statement Made by Mr. Williams to Law Enforcement at the Police Precinct;[2]

2. The *Entire* Video Footage (Compilation/Enhanced Compilation and/or Raw Video) from Inside the Subway Which Depicts the Events Taking Place Before, During, and After this Incident;[3]

3. The Photographs of Mr. Williams and Ms. Yasmeen Ratliff.[4]

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[1] This is not intended to be a complete list of all *Brady* evidence which must be presented. Rather, any other evidence in possession of the District Attorney's office falling within this scope but which is otherwise not currently known to exist by my office must also be presented.

[2] *People v. Isla*, 96 A.D.2d 789 (1st Dept. 1983) ("we must admonish the District Attorney for not reporting to the Grand Jury any more than the first half of defendant's statement. ... The Grand Jury was *entitled to the full story* so that it could make an independent decision that probable cause existed") (emphasis supplied); *see e.g. People v. Pelchat*, 62 N.Y.2d 97, 105-09 (1984). Further, while we believe this video contains exculpatory statements pursuant to *Brady*, the statement also supports a complete defense to the crimes charged and is therefore required to be presented to the grand jury pursuant to CPL §§ 210.20(1)(c), 210.35(5). *See* Part V, *infra.*

[3] *People v. Ballinger*, 67 Misc.3d 1242(A) (Sup. Ct., Bronx Co. 2020) (ruling that failure to introduce the surveillance footage in the grand jury "impaired the integrity").

[4] *See* Exhibit A (sent *via* electronic mail attachments).

III. THAT THE PEOPLE PRESENT TO THE GRAND JURY THE FOLLOWING REQUEST AS IT PERTAINS TO WITNESSES TO BE PROFFERED TO IT

"A defendant or person against whom a criminal charge is being or is about to be brought in a grand jury proceeding may request the grand jury, either orally or in writing, to cause a person designated by him to be called as a witness in such proceeding. The grand jury may as a matter of discretion grant such request and cause such witness to be called ...." *See* CPL § 190.50(6); *see also* CPL § 190.50(3) (grand jury may direct the prosecution to serve subpoenas for witnesses).

While it is my understanding that these witnesses and others are already known to law enforcement and your office,[5] the defense nevertheless respectfully ***demands*** that the following be provided to the grand jury in the event that you do not elect to call such witnesses to the grand jury under your own volition and discretion. This letter is also appended hereto as Exhibit B.

> Dear Members of the Grand Jury: As a person being investigated by this Grand Jury, I respectfully request that you cause the following witnesses to be called as witnesses before you.
>
> 1. [redacted]
> 2. [redacted]
> 3. [redacted]
> 4. [redacted]
> 5. [redacted]
>
> These witnesses can be made available at the grand jury to testify. Alternatively, the grand jury can directly subpoena these witnesses at their residence. As an eyewitness to the matter under

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[5] In the event that you do not currently have contact information for these witnesses, I will soon provide you with a supplemental email with a phone number for each.

[6] Please note that a polish interpreter is required for this witness. Please contact this witness's son-in-law, [redacted] to arrange for her presence at the grand jury.

[7] While no view of the evidence supports charges being presented as towards this witness, counsel hereby submits that this witness, in accordance with all others, is automatically granted transactional immunity as it pertains to her testimony. *See* CPL § 190.40(2)(a).

investigation, each witness has relevant knowledge and information which would exonerate Mr. Williams of the charges submitted by the District Attorney's Office. Thank you in advance for your consideration.

Jordan Williams
By: Jason Goldman (counsel)
275 Madison Avenue
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New York, New York 10016

To be sure, the district attorney ***must*** inform the grand jury about a defendant's request that it hear the testimony of a particular witness pursuant to CPL § 190.50(6). The prosecutor must present a defense witness when the grand jury votes to hear from that witness. *See* CPL § 190.50(3); *see also People v. Butterfield*, 267 A.D.2d 870, 873 (3rd Dept. 1999) ("a defense request pursuant to C.P.L. § 190.50[6] is timely if delivered or communicated to the prosecutor at any time prior to the presentment of the case to the Grand Jury"). The prosecutor must issue a subpoena for the witness if necessary. *See* CPL § 190.50(3). If the prosecution refuses to communicate the defense's CPL § 190.50(6) request to the grand jury – or incorrectly or misleadingly describes it, or otherwise acts to dissuade the grand jury from acting on it – that can be grounds for dismissal of an indictment because the error prejudicially "impaired the integrity" of the proceeding. *See* CPL §§ 210.20(1)(c), 210.35(5); *People v. Butterfield*, 267 A.D.2d 870, 873-74 (3rd Dept. 1999); *People v. Moore*, 132 A.D.2d 776 (3rd Dept. 1987).

IV. ANY EXPERT TESTIMONY (*I.E.* MEDICAL EXAMINER) AND/OR EVIDENCE (*I.E.* AUTOPSY) PERTAINING TO CAUSE OF DEATH MUST OMIT "HOMICIDE"

While counsel is not currently in possession of the autopsy as it relates to this incident nor will be present at the time of any testimony from a medical examiner, counsel submits that neither the autopsy nor medical examiner may refer to the cause of death as a "homicide" should that be their opinion. Appellate courts have squarely ruled that an expert witness may not relate an opinion that the manner of death was "homicide," and a death certificate or autopsy report (offered in evidence as a public record or business record) also may not refer to the manner of death as "homicide." *See e.g., People v. James*, 123 A.D.2d 644, 645 (2d Dept. 1986) ("the People's expert medical witness should not have been permitted to testify that, in his opinion, the victim's death was 'homicidal'"); *see also People v. Every*, 146 A.D.3d 1157, 1166 (3rd Dept. 2017) ("It is well established that such characterization [*i.e.*, medical testimony describing the victim's death as a 'homicide'] improperly invades the province of the jury").

V. THAT THE PEOPLE CHARGE AND INSTRUCT THE GRAND JURY IN ACCORDANCE WITH CPL §§210.20(1)(c), 210.35(5)

Improper failure to instruct on a complete defense in the grand jury prejudicially "impairs the integrity" of the proceeding and requires dismissal of the indictment. *See* CPL §§210.20(1)(c), 210.35(5); *see also People v. Samuels*, 12 A.D.3d 695, 697 (2d Dept. 2004) (indictment dismissed on appeal based on improper failure to instruct on justification defense); *People v. Jenkins*, 185 Misc.2d 319 (Sup. Ct., Kings Co. 2000) ("choice of evils" justification defense charge in a weapon-possession case); *see also People v. Goetz*, 68 N.Y.2d 96, 115-16 (1986) ("where the evidence suggests that a complete defense such as justification may be present, the prosecutor must charge the grand jurors on that defense, providing enough information to enable them to determine whether the defense, in light of the evidence, should preclude the criminal prosecution ... [and] to allow it to intelligently decide that there is sufficient evidence tending to disprove justification ..."); *People v. Samuels*, 12 A.D.3d 695, 698 (2d Dept. 2004) ("In determining whether the evidence supports a [complete] defense [in the grand jury], the record must be viewed in the *light most favorable to the defendant*") (emphasis supplied); *People v. Ball*, 35 N.Y.3d 1009 (2020) (failure to instruct on the justification defense regarding the use of physical force to protect persons and premises during the course of a burglary ... impaired the integrity of the grand jury); *People v. Grant*, 113 A.D.3d 875, 876 (2d Dept. 2014) (temporary and lawful possession of a weapon); *People v. Samuels*, 12 A.D.3d 695, 697 (2d Dept. 2004) (justification).

Significant omissions in instructions in the grand jury also have required dismissal. For example, in *People v. Calkins*, 85 A.D.3d 1676, 1677 (4th Dept. 2011), the appellate court dismissed the indictment because "defendant was exposed to the possibility of prejudice by the deficiencies in the prosecutor's charge regarding justification." Specifically, "[a]lthough the prosecutor properly charged the grand jury regarding justification based on the use of physical force in defense of a person with respect to the charge of assault in the second degree, the prosecutor failed to instruct the jury that such defense was also applicable to the charge of criminal mischief in the third degree." *Id.* Likewise, in *People v. Albergo*, 181 A.D.2d 683, 684 (2d Dept. 1992), "the fundamental integrity of the grand jury proceeding was impaired and the defendant prejudiced by the prosecutor's omission of an instruction" that a finding of justification on a greater count precluded indictment on lesser counts to which the defense also applied.

As such, the grand jury in this matter must be charged pursuant to the following instructions, which are appended to this submission as Exhibit C:[8]

1. JUSTIFICATION: USE OF DEADLY PHYSICAL FORCE IN DEFENSE OF A PERSON PENAL LAW 35.15 (2);

2. TEMPORARY AND LAWFUL POSSESSION.

It is imperative that the Grand Jury had been read the instructions of both justification (as it relates to any and all murder, manslaughter, and assault charges, and as it relates to any and all weapons charges), and temporary and lawful possession (as it relates to any and all weapons charges).

According to the temporary and lawful possession instruction, possession of a weapon "may be innocent and not criminal" where it is "temporary and not for an unlawful purpose." Ex. C. In determining if possession is non-criminal, jurors are instructed to look at the manner in which the weapon came into the defendant's possession, the length of time the defendant possessed it, and whether the defendant had intent to use it unlawfully or to safely dispose of it. *Id.* In *People v. Spry*, 2016 WL 122098, at *1 (Jan. 11, 2016), the court observed a situation where a defendant was found with a knife in his vehicle, and subsequently stated to law enforcement: "I gotta protect myself." Based on this evidence, the court deemed it a reasonable inference that the defendant did in fact possess the knife solely for self-defense, and determined that the "statutory presumption of intent to use unlawfully, and the competing inference that defendant's intent was to use the knife for the lawful purpose of self-protection are of equal and opposite strength." *Id.* at *2 (emphasis supplied); *see also People v. Oldham*, 54 Misc.3d 303, 308–09 (Crim. Ct. N.Y. Co. 2016) (reasonable cause did not support finding that defendant had intent to use a box cutter unlawfully; although statutory presumption of intent applied, defendant told police officer that he possessed the box cutter "to protect myself," and since the facts favored equally guilty intent and innocent intent, the reasonable cause standard was not met); *cf. People v. Richards*, 22 Misc.3d 798, 806 (Crim. Ct. N.Y. Co. 2008) (defendant, drunk and aggressive while in possession of an unsheathed knife, deemed to be possessing the weapon with the intent to use it unlawfully); see *also People v. Jenkins*, 185 Misc.2d 319 (Sup. Ct., Kings Co. 2000) ("choice of evils" justification defense charge in a weapon-possession case).

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[8] This list is not intended to be a complete list of instructions and charges to the grand jury. Indeed, other evidence in the possession of your office may warrant additional charges which pertain to the complete defense doctrine.

Even if Mr. Williams possessed the knife prior to the incident, and had it in his pocket until the altercation, a similar analysis applies, with the same conclusion that he only intended to use it in a lawful manner for self-protection. Indeed, the current evidence does not support that Mr. Williams had brandished or removed the knife prior to being assaulted. *See Spry, supra*, at *2; *cf. People v. Persen*, 185 A.D.3d 1288, 1291 (3d Dept. 2020) (defendant knowingly possessed a dangerous knife with intent to use it unlawfully where defendant "pulled out a knife [and] chased the victim with it [while] threatening to kill him, and [then] threw the knife at him, hitting him in the back") (emphasis supplied); *cf. People v. Califano*, 84 A.D.3d 1504, 1505 (3d Dept. 2011) (defendant possessed a knife with intent to use it unlawfully where testimony showed that after he was cut on the face by an unknown person, defendant was handed a knife by an unidentified person, who told him that the person who cut him ran in the direction of the parking lot, after which defendant "turned and ran towards the parking lot swinging wildly") (emphasis supplied) (internal quotations omitted).

VI. COUNSELS RESERVES THE RIGHT TO SUPPLEMENT THIS LETTER MOTION WITH ADDITIONAL REQUESTS

Sincerely,

Jason Goldman, Esq.
Counsel for Mr. Williams