

THE PEOPLE OF THE STATE OF NEW YORK,

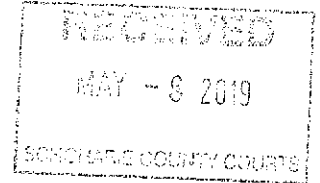
- against -

**ANSWER TO
DEMAND TO PRODUCE**

**NAUMAN HUSSAIN a/k/a SHAWN HUSSAIN
a/k/a ARSLAN HUSSAIN,
DOB: 01/09/1990**

Indictment No. 2019-33

Defendant.



SUSAN J. MALLERY, ESQ., District Attorney for Schoharie County, for Answer to Defendant's Demand to Produce, pursuant to CPL 240.20, affirms under penalty of perjury:

1. It is well settled that items not enumerated in CPL 240.20 are not (presently) discoverable (*People v. Colavito*, 87 NY 2d 423, 427; *Sacket v. Bartlett*, 241 AD2d 970). During the course of a criminal action, it is not within the authorized powers of the court to compel disclosure that is not provided for by the statute (*Pittari v. Pirro*, 258 AD2d 202). The court may not grant discovery applications for which there is no statutory basis (*Pirro v. LaCava*, 230 AD2d 909). With this being acknowledged, the People have voluntarily provided extensive discovery outside the scope of CPL Section 240.20.
2. CPL 240.20-1 sanctions 11 pre-trial discovery demands, several of which are irrelevant to this prosecution. The People shall comply with CPL 240.20-1 rather than individually respond to defendant's demands.
3. Defendant was served with the People's Notice of Intent to Offer Evidence at his arraignment and a "Continuation of 710.30 Notice" was personally served on Attorney Lee Kindlon on April 22, 2019 and April 24, 2019 and are included again on the electronic portable storage device. Pursuant to CPL 710.30, it notified defendant of the sum and substance of statements he made to public servants. Notwithstanding defendant's answers to routine processing questions, the People are not in possession of any other material within the scope of 240.20-1(a).
4. Neither defendant nor a co-defendant testified before the Grand Jury. Thus, the People are not in possession of any material within the scope of CPL 240.20-1(b).
5. Pursuant to CPL 240.20-1(c), attached hereto or included with the electronic discovery portable storage device, are any written report or documents or portions thereof concerning a physical or mental examination or scientific test or experiment relating to the criminal action or proceeding which was made by or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial:

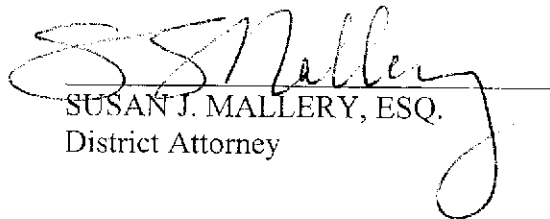
- a. New York State Police Forensic Laboratory reports- Supplemental Report-NYSP 18TG-00215, Latent Print Processing Report
 - b. Final Forensic Toxicology Fatal Accident Report from FAA. The supporting documents are available for review and copying.
 - c. Crime Scene Summary- Autopsy (20)
 - d. NYSP Arrest Report
 - e. NYSP Incident Report will be provided upon its completion
 - f. NYPS Supplemental Report with Latent Print Report 01/28/19
 - g. NYSP Evidence Pertaining to Victims
 - h. Brian Chase Report
 - i. Investigator Jeremy Shultis Report will be provided upon receipt
 - j. Death Certificates
 - k. Cell Phone Records- any additional reports received will be provided pursuant to CPL 240.20
 - l. CDR Reports
 - m. I-pad Reports
 - n. GPS Reports with supplemental reports
 - o. New York State Department of Transportation Records
 - p. 20 Final Autopsy Reports by Michael Sikirica M.D. are available to review
 - q. New York State Department of Transportation Violation Proceeding Records from Alicia McNally- October 6, 2017, May 4, 2018 and October 5, 2018
 - r. Safety Management Systems Profile
 - s. CAD Incident Detail
 - t. Out of Service Vehicle MC 64 and MV65 from NYSDOT
 - u. G2018-1006 Pix4D
 - v. G2018-1006 Pix3D 2nd scene
 - w. Scanner
 - x. Gen-2a Evidence Record Continuation sheets, Crime Laboratory Case Receipt Record, Return to Submitting Agency-Pick up records
 - y. Chad Smith emails
6. The NTSB conducted an independent separate investigation that is not under our control. New York State Police and NTSB shared information. We were informed by Counsel of NTSB that the NTSB will not share its information to any agency other than the New York State Police.
 7. The People have made inquiry and are not aware of any other materials or property which the People are required to disclose that is not subject to a Grand Jury Subpoena. Should anything further come to the People's attention, the same will promptly be disclosed. The People are further willing to provide early discovery if the Court orders the release of Grand Jury Subpoenaed documents.
 8. Pursuant to CPL 240.20-1(d), the People are aware of the following photographs and drawings relating to the criminal action or proceedings made or completed by a public servant engaged in law enforcement activity, or made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce into evidence and therefore the People provide copies of :
 - a. Photographs from Brian Chase
 - b. Photographs from New York State Police, including Trooper Roy

- c. Photographs- Schoharie County Sheriff's Office scene photos.
 - d. Photographs from Martin Duffy
 - e. Photographs of Limousine
 - f. Photographs of the Infiniti and contents
 - g. Photographs of the accused's personal property
 - h. Mug shot
 - i. Accident reconstruction drawings will be provided upon receipt
 - j. Photographs of autopsies are available to review upon request to schedule appointment.
9. The People have made inquiry and are not aware of any other materials or property which the People are required to disclose. Should anything further come to the People's attention, the same will promptly be disclosed.
10. Pursuant to CPL 240.20-1(e), there are no other photographs, photocopies or other reproductions made by or at the direction of a police officer, peace officer, or prosecutor of any property prior to its release pursuant to the provisions of Penal Law 450.10, irrespective whether the People intend to introduce at trial the property, or the photograph, photocopy or other reproduction. Should anything further come to the People's attention, the same will promptly be disclosed.
11. Pursuant to CPL 240.20-1(f), there was property obtained from the defendant including: 2001 Ford Excursion Limousine and its components and parts and 3 tan limousines. A 2012 Infiniti motor vehicle was obtained from the defendant and returned to the defendant. Additional personal property was obtained from the defendant. See nine page list of property obtained from the defendant from of the Infiniti included in the 710.30 Ready Notice. Counsel may also inspect that evidence upon prior appointment with the New York State Police. General 2 and 2a forms, Search & Seizure Receipts and Inventory sheets, case notes, Property/Latent Lift Logs, Evidence Recorder 10 17 18 filed in connection with the investigation are attached. The General 2 and 2 a are evidence sheets that describe the nature, location and collection date of physical evidence. Further, photographs of the property have been provided.
12. Pursuant to CPL 240.20-1(g), tapes, other electronic recordings which the prosecutor intends to introduce at trial
- a. Audio recordings memorializing the 911 call and subsequent police communications.
 - b. NYSP video of the scene
 - c. Video of intersection of State Route 30s and Highway Route 20
 - d. Video of defense expert's initial examination of the limousine will be provided upon receipt of the video
 - e. Videos of Limo
 - f. There are additional videos obtained by Grand Jury Subpoena. The People seek to turn them over with order from the Court. See attached letter from Honorable George R. Bartlett, III.
13. Pursuant to CPL 240.20-1(h) and in accordance with the People's obligation under Brady v. Maryland (373 US 83), the People are not aware of any evidence that tends to exculpate defendant. Nor has any witness received benefits in exchange for testimony. It is impossible to know what might be potentially

construed or interpreted as Brady material in the absence of being informed of the defense theory. The People could more specifically tailor our Brady response should defendant reveal that information. However, in accordance with Brady, the People provide two depositions of Janice M. Vunk and Ashley Geers that are inconsistent with either the GPS information or the majority of witness statements. The People have some medical records and pharmacy records of the driver Scott Lisinicchia available upon Court order.

14. Pursuant to CPL 240.20-1(i), the approximate date, time and place of the crimes charged are in the indictment. The acts and omissions attributed to defendant's mens rea occurred between July 22, 2016 and October 6, 2018 at approximately 1:55 p.m. Defendant was arrested on or about October 10, 2018 at approximately 11:12 a.m. in the vicinity of Interstate 787, Watervliet, New York.
15. The People are not in possession of any material within the scope of CPL 240.20-1 (j).
16. The People are not in possession of any material within the scope of CPL 240.20-1(k).
17. Pursuant to CPL 240.35 and 240.80, compliance with the remainder of defendant's discovery demands is refused because the demanded material is either beyond the scope of CPL 240.20 or need not be disclosed before a pre-trial hearing (CPL 240.44) or trial (CPL 240.45), or was obtained by Grand Jury Subpoena and the Court denied the People's request to turn said information over to the defense at this time.
18. Due to the volume and timing of the discovery demand, the People reserve our rights to apply for protective orders for the use or admission of certain evidence provided.

Dated: May 8, 2019


SUSAN J. MALLERY, ESQ.
District Attorney