

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DANIEL PENNY,

Defendant.

AUTOMATIC
DISCOVERY FORM
AND CPL § 710.30
NOTICE

Docket No. CR-
013702-23NY

A. BILL OF PARTICULARS

The People intend to prove that in the commission of the offense(s) charged:

Daniel Penny acted as a principal accomplice both

A description of the offense(s) charged; the approximate date, time, and location of each offense; and the approximate date, time and place of arrest are provided collectively in section B.1 below, the charging document(s), and in the accompanying production of discovery.

B. DISCOVERY

With the exception of materials or information withheld subject to an order issued or anticipated pursuant to CPL § 245.70 or former CPL § 240.50, 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. Pursuant to CPL § 245.20(1)(o), the People intend to introduce at any pre-trial hearing or trial all tangible property listed herein and disclosed to the defense. Pursuant to CPL §§ 245.10(1)(a) and 245.60, the People will produce additional discoverable material(s) and information should they come into the possession of, or become known to, the People, or as protective orders impacting upon the disclosure of such items are resolved. *(Should counsel for the defendant wish to discover, inspect, copy, photograph, or test any document or item listed below, counsel should contact the undersigned assistant.)*

1. Occurrence, Seizure and Arrest (CPL § 245.20(1)(r))

a. Occurrence

Date: 5/1/2023
App. Time: 2:25 PM
Place: Broadway Lafayette Manhattan, NY

b. Seizure

Date: 5/12/2023
App. Time: 8:05 AM
Place: 19 Elizabeth Street Manhattan, NY

c. Official Arrest Information

Date: 5/12/2023
App. Time: 8:05 AM
Place: 19 Elizabeth Street Manhattan, NY

2. LAW ENFORCEMENT ACTIVITY

a. Statements (CPL § 245.20(1)(a))

If checked, the People hereby disclose, pursuant to CPL § 245.20(1)(a), written, oral or recorded statements of a defendant, made to a public servant engaged in law enforcement activity or to a person then acting under his or her direction or in cooperation with him or her. For those statements attributable to the defendant, notice is hereby served, pursuant to CPL § 710.30(1)(a), that the People intend to offer such statements at trial.

Statement #: 1
Date: 5/1/2023
Approximate Time: 4:24 PM
Location: 19 Elizabeth Street Manhattan, NY
Individual Made To: Detective Michael Medina & Detective Brian McCarthy
Substance of Statement: Videotaped statement provided May 17, 2023 via eDiscovery

Statement #: 2
Date: 5/1/2023
Approximate Time: 2:33 PM
Location: inside of the subway station at Broadway-Lafayette, Manhattan

Individual Made To: Police Officer Teodoro Tejada and Sergeant Carl Johnson

Substance of Statement: I just put him out. I just put him in a chokehold. He came on and he threw shit, he's like I don't give a shit, I'm going to go to prison for life and stuff, so I just came up behind him and put him in a chokehold. He was threatening everybody.

Statement #: 3

Date: 5/1/2023

Approximate Time: 2:33 PM

Location: inside of the subway station at Broadway-Lafayette, Manhattan

Individual Made To: Police Officer Osvaldo Ortiz

Substance of Statement: He came on, threw all his shit down, was very aggressive, going crazy. I was behind him, put him in a choke.

Statement #: 4

Date: 5/1/2023

Approximate Time: 2:33 PM

Location: inside of the subway station at Broadway-Lafayette, Manhattan

Individual Made To: Police Officer Isatou Ceesay

Substance of Statement: The guy came in, he threw shit, he's like I'm ready to go to prison for life, I'm ready to die, I'm ready to die, and I was standing behind him. I think I might have just put him in a choke, put him down. We just went to the ground. He was trying to roll up, I had him pretty good, I was in the Marine Corps. My phone number is [REDACTED]

Statement #: 5

Date: 5/1/2023

Approximate Time: 2:33 PM

Location: inside of the subway station at Broadway-Lafayette, Manhattan

Individual Made To: Police Officer Dennis Kang

Substance of Statement: He was rolling, he was rolling, when he was in a choke he was going crazy. He came on, threw shit, was like I'm going to go to prison forever.

Statement #: 6
Date: 5/1/2023
Approximate Time: 2:33 PM
Location: inside of the subway station at Broadway-Lafayette, Manhattan
Individual Made To: Police Officer Osvaldo Ortiz
Substance of Statement: A man was acting irate, dropping things on the floor, saying he doesn't care if he goes to jail, he doesn't care if he gets killed or does. He was pacing back and forth on the car I came from behind and put him in a chokehold. People in the subway were afraid for their safety.

b. Identification

If checked, notice is hereby served, pursuant to CPL § 710.30(1)(b), that the People intend to offer at trial testimony regarding an observation of defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the charges, to be given by a witness who has previously identified defendant.

c. Property Release (CPL § 245.20(1)(i))

If checked, one or more photographs, photocopies, and reproductions were made by or at the direction of law enforcement personnel of property prior to its release pursuant to PL § 450.10. Any such photographs, photocopies and reproductions are included in the electronic discovery separately provided to counsel for the defendant.

3. DOCUMENTARY EVIDENCE

a. Grand Jury Testimony (CPL § 245.20(1)(b))

The People are disclosing the transcribed testimony of all witnesses who testified in the grand jury.

b. Witness Statements (CPL § 245.20(1)(e))

If checked, written, recorded, or summarized statements, made by persons who have evidence or information relevant to an offense with which the defendant is charged or to any potential defense thereto, are disclosed pursuant to our discovery obligation.

c. Photographs and Drawings (CPL § 245.20(1)(h))

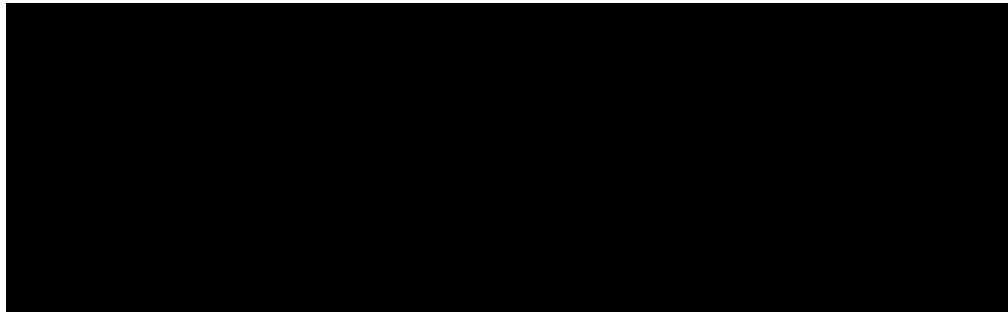
If checked, photographs and drawings, made or completed by a public servant engaged in law enforcement activity, or made by a person whom the

prosecutor intends to call as a witness at trial or a pre-trial hearing, or which relate to the subject matter of a case, are disclosed pursuant to our discovery obligation.

d. Scientific and Medical Reports (CPL § 245.20(1)(j))

If checked, reports, documents, records, data, calculations or writings concerning physical or mental examinations or scientific tests or experiments or comparisons, relating to the criminal action or proceeding, that were or will be made by or at the request or direction of a public servant engaged in law enforcement activity or were or will be made by a person whom the People intend to call as a witness at trial or a pre-trial hearing, or which the People intend to introduce at trial or a pre-trial hearing are, or will be, disclosed as follows.

i. Medical Records – Will be disclosed



iii. Toxicology Report - Currently unavailable

iv. Autopsy Report - Currently unavailable

The reports noted as currently unavailable will be disclosed expeditiously once received.

e. Search Warrant Materials (CPL § 245.20(1)(n))

If checked, one or more search warrants were executed in connection with this case.

Documents related to the search warrant(s), including, but not limited to, the warrant itself, warrant application, and, where they exist, supporting affidavits, police inventories of seized property, and transcripts or oral communications offered in support of the warrant application, are disclosed pursuant to our discovery obligation.

f. VTL Offenses (CPL § 245.20(1)(s))

If checked, records exist of calibration, certification, inspection, repair or maintenance of machines and instruments utilized to perform scientific tests and experiments. Such records for the six months prior to the test(s)

are disclosed pursuant to our discovery obligation. Records created six months or more after the tests were conducted will be disclosed as prescribed in the statute.

4. ELECTRONIC EVIDENCE

a. Electronic Recordings (CPL § 245.20(1)(g))

If checked, the following electronic recordings were made or received in connection with this case and are, or will be, disclosed as follows.

- i. 911 Calls – Will be disclosed
- ii. Police Radio Runs – Will be disclosed
- iii. Videotaped statement of Witness #16 – Will be disclosed
- iv. Videotaped statement of Witness #4 – Will be disclosed
- v. Body Worn Camera video – Will be disclosed
- vi. 2 cellphone videos from Witness # 9 – Will be disclosed
- vii. 2 cellphone videos from Witness # 22 – Will be disclosed
- viii. Cellphone video from Witness #1 – Will be disclosed
- ix. MTA Video surveillance from May 1, 2023 – Will be disclosed
- x. MTA Video surveillance from April 30, 2023 – Will be disclosed

The People currently intend to introduce the above-noted electronic recordings at a future hearing or trial.

b. Electronic Information (CPL § 245.20(1)(u))

If checked, the People possess electronically-created or stored information that was obtained from the defendant or from a device owned or accessed by the defendant; or was obtained from a source other than the defendant. Said information is, or will be, disclosed as follows.

- i. DEFENDANT's Facebook Account – Will be disclosed
- ii. WITNESS # 22's cell phone data – Will be disclosed
- iii. MTA rail report – Will be disclosed
- iv. MTA metrocard swipe information for witness #6 – Will be disclosed
- v. MTA metrocard swipe information for witness #10 – Will be disclosed

5. PHYSICAL EVIDENCE

a. Defendant / Co-defendant Property (CPL § 245.20(1)(m))

If checked, the following tangible objects were obtained from or possessed by the defendant or a co-defendant. Any item not listed as recovered from the defendant's person was constructively possessed by the defendant and all co-defendants. Unless otherwise noted, the items listed below were recovered either at or about the time of the defendant's arrest and/or during a search of persons or places by a public servant or an agent thereof. The People currently intend to introduce this property at trial or at a pre-trial hearing.

Where the People have indicated that they intend to rely on a statutory presumption regarding possession of any property, the People may also argue that the defendant additionally had physical or constructive possession of said property. The People do not concede here that the defendant has standing to contest the seizure of any evidence based on an indication here of reliance upon a statutory presumption.

b. Other Tangible Property (CPL § 245.20(1)(o))

If checked, there exists tangible property, in addition to any property already disclosed pursuant to CPL § 245.20(1)(m), that may relate to the subject matter of this case. The People currently intend to introduce this property at trial or at a pre-trial hearing.

6. FURTHER DISCLOSURES

a. Computer Offenses (CPL § 245.20(1)(t))

If checked, disclosure is hereby made of the time, place and manner of a violation of Unauthorized Use of a Computer (Penal Law § 156.05) or Computer Trespass (Penal Law § 156.10):

b. Other Disclosures

If checked, disclosure is hereby made of the following information or materials not otherwise included in other sections of this document.

c. Lost or Destroyed Documents

If checked, disclosure is hereby made of the following materials or documents that have been destroyed or, despite diligent, good faith efforts to locate the items, lost.

C. PROTECTIVE ORDERS

If checked, the People have filed or will file one or more motions for a protective order pursuant to CPL § 245.70. Therefore, under CPL §§ 245.10(1)(a), 245.20(5), 245.70, the People have withheld, or requested an extension of the time period for discovery of, potentially discoverable materials pending, or pursuant to, a ruling of the court. The particular paragraphs of CPL § 245.20 pursuant to which the information would otherwise be discoverable are noted, where applicable, within this document. The discoverable portions of such materials have been disclosed to the extent practicable.

D. SUPPLEMENTAL DISCOVERY - SANDOVAL

If checked, the People provide notice, pursuant to CPL § 245.20(3), that all information found within the defendant's NY and III e-justice record, including, but not limited to, the defendant's names and/or aliases, dates of birth, addresses, complete record of arrests, convictions, sentences, and the facts related thereto, will be the subject of a *Sandoval* motion should this case proceed to trial. Other misconduct and criminal acts learned of by the People, and which we intend to include in a future *Sandoval* motion, will be disclosed in accordance with CPL § 245.10(1)(b).

E. ADDITIONAL DISCOVERY / NOTICE

In the interest of open, reciprocal discovery, and to the extent permissible under statutory and constitutional law, the People request the following additional disclosures and/or notices:

1. To the extent that the defendant believes that the discovery provided by the People is incomplete, provide the undersigned ADA with a list of the missing materials in the possession, custody, or control of the prosecution or persons under the prosecution's direction or control and describe how they "relate to the subject matter of the case."
2. The names and adequate contact information for all persons not listed in the Witness Name and Contact section whom the defendant knows to have evidence or information relevant to any offense charged or any potential defense thereto, and all statements, written or recorded or summarized in any writing or recording, for those persons.
3. To the extent that the defendant has served or intends to serve notice of intent to introduce psychiatric evidence pursuant to CPL § 250.10(1), timely written notice of such intention, and any and all documentation and information relevant to properly assess such assertion by the defendant.

4. To the extent that the defendant intends to argue that he or she should be sentenced to an alternative sentence pursuant to CPL § 60.12, any statements, documents, or material in support of such assertion.
5. To the extent that the defendant is in possession of information that mitigates his or her culpability or is otherwise relevant to the question of sentence, early notice of such information. If the defendant wishes to have an opportunity to speak with the assistant assigned to this case to discuss any factor relevant to culpability or sentence, contact the Assistant District Attorney named below.


NOTES: Information related to civilian, police and expert witnesses, discoverable pursuant to CPL §§ 245.20(1)(c), 245.20(1)(d), 245.20(1)(f), 245.20(1)(k), 245.20(1)(l), 245.20(1)(p), and 245.20(1)(q), is contained in a separate addendum served on defense counsel. Any defense motion or request addressed to the above-captioned case should be directed to the attention of the Assistant District Attorney named below, who is assigned to this case.

Dated: New York, New York
June 28, 2023

Respectfully submitted,

Alvin L. Bragg, Jr.
District Attorney
New York County

By:


Joshua Steinglass
Assistant District Attorney
Of Counsel

