CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART D

THE PEOPLE OF THE STATE OF NEW YORK v. JONATHAN MAJORS, Defendant.	Docket No.: CR-008579-23NY

DEFENDANT JONATHAN MAJORS' MOTION TO DISMISS PURSUANT TO C.P.L. § 30.30 AND ACCOMPANYING DOCUMENTS

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INTRODUCTION

From the beginning of this case, the People have had incontrovertible evidence that Jonathan Majors is innocent of these charges, that Grace Jabbari was not injured by him at all, and that Mr. Majors is the real victim of several crimes perpetrated by Ms. Jabbari. In fact, the NYPD has determined there is probable cause to arrest Grace Jabbari for the crimes she committed against Mr. Majors.

But rather than dismiss false charges against an innocent black man, the People instead have willfully withheld evidence of his innocence, buried evidence proving that his white accuser is lying, and interfered with the NYPD's attempts to investigate and arrest Ms. Jabbari. In failing to disclose this information to the defense in accordance with their *Brady/Giglio* and statutory discovery obligations, the People have denied Mr. Majors his right to a speedy trial. For these reasons and those explained below, Mr. Majors respectfully moves this Court for an order dismissing the accusatory instrument pursuant to C.P.L. § 30.30(1)(b), as he has been denied his statutory right to a speedy trial, and for such other and further relief as the Court deems just and proper.

PROCEDURAL BACKGROUND

On March 25, 2023, Mr. Majors was arrested and charged via misdemeanor complaint with Assault in the Third Degree, Aggravated Harassment in the Second Degree, Attempted Assault in the Third Degree, and Harassment in the Second Degree. Mr. Majors was released on his own recognizance and the Court adjourned the matter to May 8, 2023.[1]

On April 7, 2023, the People provided the defense with a small amount of automatic discovery required by C.P.L. § 245.20. The People followed that initial production up with

[1] The Court administratively adjourned the next date to May 9, 2023, instead of May 8, 2023.

another small batch of automatic discovery on April 10, 2023. However, for months following, the defense continued to request that the People comply with C.P.L. § 245.20. As discussed in detail below, not until August—over 4 months after Mr. Majors' arrest—did the People provide additional discovery as required, and when they did, they provided over 2 terabytes of data that was still incomplete.

On May 2, 2023, Mr. Majors filed a motion seeking leave of the Court to litigate certain matters under seal (the "Motion for Leave"). From Mr. Majors' March 25, 2023, arraignment until the May 2, 2023, filing of the Motion for Leave, the People are charged with **37 days**.

In court on May 9, 2023, the People served and filed a Superseding Information. At that court appearance, the Court set a briefing schedule on the Motion for Leave: the People's response to the Motion for Leave was to be filed by May 23, Mr. Majors was to file his reply by May 31, and the Court would render a decision on or before June 13, 2023. The following day (off-calendar), the Court adjusted the briefing schedule slightly by moving the "decision date" from June 13 to June 20, 2023.

On May 19, 2023, seventeen days after receiving the Motion for Leave and four days before their response was due, the People asked for a two-week extension to file their response. Over Mr. Majors' objection, the Court granted the People's request, maintaining the decision date of June 20, 2023, but moving the People's opposition deadline to June 5 and Mr. Majors' reply deadline to June 13.

Three days later, on May 22, 2023, the Court advised that Mr. Majors should request the Court's permission to file the Motion for Leave itself under seal (*i.e.* file a motion for permission to file the Motion for Leave under seal) ("Motion to Seal"). At Mr. Majors' request, the Court granted him until May 24, 2023, to file the sealing application, which he did timely. The People

took no position on the sealing application, and filed their response to the Motion for Leave on June 5, 2023.

On June 20, 2023, the Court denied the Motion to Seal, and as a result of the denial, the defense withdrew the Motion for Leave.[2] The Court adjourned the case to August 3, 2023, for trial.

On August 3, 2023, the parties appeared for trial. The People were not ready and had yet to provide automatic discovery. Likewise, the People had yet to file a COC despite over 130 days elapsing since Mr. Majors' arrest.

On August 4, 2023, the People finally served an Automatic Discovery Form and Certificate of Compliance ("COC") and provided over 2 terabytes of discovery material.[3] On August 7, 2023, the People served and filed a Statement of Readiness ("SOR").[4] The People then filed Supplemental Certificates of Compliance, along with some further discovery, on August 7, August 8, and August 11, 2023.[5] Because all of the People's COCs were fatally defective for the reasons discussed below, the People's SOR filed on August 7, 2023, was invalid and illusory.

On August 8, 2023, the People applied for a protective order that would shield certain enumerated pieces of information from public disclosure. From the Court's June 20, 2023, denial of the Motion to Seal until the August 8, 2023, filing of the People's protective order

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[2] This motion assumes that the time between the May 2, 2023, filing of the Motion for Leave and the Court's June 20, 2023, denial of it is not chargeable to the People. Mr. Majors does not waive, and expressly reserves, all arguments to the effect that any part of any time period treated as excludable for the purposes of this motion should in fact be chargeable to the People.

[3] *See* Exhibit A.

[4] *See* Exhibit B.

[5] *See* Exhibit C.

application, the People are charged with **49 days**. On August 9, 2023, the defense consented to the protective order. On August 11, 2023, the Court granted the People's application for the Protective Order upon consent.

On August 18, 2023, the People filed an application to modify the Protective Order to allow disclosure of certain portions of the protected information. From the Court's August 11, 2023, grant of the protective order until the August 18, 2023, filing of the People's protective order modification application, the People should be charged with an additional **7 days**. The People can and should also be charged from the time the defense unequivocally consented to the Protective Order on August 9, 2023, which is an additional **2 days**.[6] Again, on August 22, 2023, the defense consented to the modified Protective Order application filed on August 18, 2023.

On August 9, 2023, the People made their first *Brady* disclosure: namely, they disclosed that Dr. William K. Chiang, a physician who had treated Ms. Jabbari at Bellevue Hospital, stated that a fracture like the one Ms. Jabbari sustained on her finger is only commonly found in patients who had direct trauma, usually found from hitting an object or from falling, and that it was "possible but uncommon" that the fracture was consistent with pulling, grabbing, or twisting a hand or finger—as the People and Ms. Jabbari allege.[7]

As of August 21, 2023—five months following Mr. Majors' arrest—the People had still failed to disclose that in June 2023, the NYPD determined that there was probable cause to arrest

[6] *See People v. S.E.*, 79 Misc. 3d 1233(A), at *3 (N.Y.Crim.Ct. 2023) (People's motion to reduce accusatory instrument failed to stop clock because "the matter did not require any deliberation whatsoever"); *compare People v. Erby*, 68 Misc. 3d 625, 638 (N.Y. Sup. Ct. 2020) (motion for protective order stopped clock notwithstanding defendant's purported consent because the "consent was equivocal at best" and in reality "the parties did not arrive at an agreement until the next court date").

[7] *See* Exhibit D.

Ms. Jabbari for the crimes she committed against Mr. Majors.[8] Based on the People's willful failure to provide this *Brady* material, the defense was forced to rely upon news reports.[9] The defense was subsequently informed by the NYPD that the People attempted to "deactivate" the open NYPD I-Card and urged the NYPD not to investigate or charge Ms. Jabbari. These communications about Ms. Jabbari's imminent arrest, regardless of whether they are in writing, must be disclosed under C.P.L. § 245.20(1)(k), including but not limited to date, time, individuals involved, and substance of each communication. None of this has ever been disclosed to the defense—even to this date. Evidence impeaching in nature, such as benefits conferred on a witness, must be disclosed to the defense under *Brady* principles. The obligation of the prosecution to disclose arises not from the form or labeling of the benefits but from either the understanding reached between the parties, wherein the witness's cooperation is exchanged for some *quid pro quo* from the prosecution, or the prosecution conferring benefits to the witness even without a tacit agreement. Given the significance of these benefits in potentially influencing the credibility of Ms. Jabbari as a witness, the full details of the benefits conferred to her must be disclosed to the defense. The People have wholly failed to do so. The prosecution's

[8] The People failed to provide a copy of the I-card for Ms. Jabbari's arrest issued in June 2023 as part of discovery prior to filing their COC. Therefore, the People's COC was invalid. The People only provided a copy of the I-Card on September 1, 2023, following the defense's repeated demands for it.

[9] *See*, *e.g.*, Jonah E. Bromwich & Chelsia Rose Marcius, *N.Y.P.D. Has Evidence to Arrest Woman Who Said Jonathan Majors Hit Her*, N.Y. Times (June 29, 2023), https://www.nytimes.com/2023/06/29/nyregion/jonathan-majors-accuser.html; Laura Italiano, *NYPD seeks arrest of Marvel star Jonathan Majors' ex-girlfriend in latest domestic-assault plot twist*, Insider (June 29, 2023), https://www.insider.com/ex-girlfriend-of-marvel-kang-actor-jonathan-majors-wanted-nypd-2023-6.

failure to provide these details prior to filing the COC and SOR is improper as it violates C.P.L. §§ 245.20(1)(k) and (l).

On August 21, 2023, pursuant to C.P.L. § 245.35, Mr. Majors sent a deficiency letter to the People outlining their various failures to comply with their statutory and constitutional disclosure obligations, including those discussed in this motion.[10] Most notably, this includes, but is not limited to, the People's failure to provide *Brady/Giglio* material. However, the People also failed to provide:

1. All 911 calls placed at the time of the incident or immediately thereafter at Centre Street and Canal Street (pursuant to C.P.L. § 245.20(1)(g));
2. All Radio Runs at the time of the incident or immediately thereafter at Centre Street and Canal Street which led to the police responding to the location (pursuant to C.P.L. § 245.20(1)(g));
3. All SPRINT reports from the time of the incident or immediately thereafter at Centre Street and Canal Street (pursuant to C.P.L. § 245.20(1)(g));
4. A copy of the I-Card for Ms. Jabbari's arrest (pursuant to C.P.L. §§ 245.20(1)(k) and (l));
5. All correspondence between the District Attorney's Office and the NYPD regarding the investigation into Grace Jabbari and the I-Card for Ms. Jabbari's arrest (pursuant to C.P.L. §§ 245.20(1)(k) and (l));
6. An inventory of all property seized under the search warrants (pursuant to C.P.L. § 245.20(1)(n)); and
7. The metadata of all photos provided as the date and time of the photos relate to the subject matter of the case (pursuant to C.P.L. § 245.20(1)(h)).

Also on August 21, 2023, Mr. Majors served on the People a request for a bill of particulars pursuant to C.P.L. § 200.95 as the accusatory instrument and Automatic Discovery Form fail to adequately specify where each act of the alleged conduct occurred and which alleged injury is associated with which specific act of alleged conduct.[11]

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[10] *See* Exhibit E.

[11] As the Court recognized, the mere sending of a request for a bill of particulars does not constitute a motion for the purposes of calculating speedy trial time, as the People are required to provide particulars, pursuant to C.P.L. § 245.20, and the defense's request only highlighted the People's further failure to comply with the statute.

On August 25, 2023, on consent of the defense, the Court granted the People's August 18, 2023, application to modify the protective order.

On September 1, 2023, the People sent a letter to the defense purporting to respond to the People's failure to comply with their *Brady/Giglio* obligations and statutory discovery obligations.[12] The same day, the People filed another Supplemental Certificate of Compliance and again moved for a protective order, this time seeking to prevent disclosure of a single specified document that the People had failed to previously disclose under *Brady/Giglio*. That motion remains pending. The People should be charged with an additional **7 days** from August 25, 2023, to September 1, 2023.

On September 3, 2023, the People provided an additional *Brady* disclosure via email: that the People had informed Ms. Jabbari earlier that day that she would receive compensation for her travel and lodging to the U.S. for the purposes of testifying at trial.[13]

On September 5, 2023, pursuant to C.P.L. § 245.35, the defense requested a conference call with the People to further confer regarding the People's deficient discovery production, including their failure to provide *Brady/Giglio* material. Having received no response from the People, the defense followed up again on September 6 and 7, 2023. The People finally responded indicating that they refuse to have any discussions by telephone.[14] The People also filed another Supplemental Certificate of Compliance on September 7, 2023.[15]

Because the People are charged with at least a total of 100 days—and indeed 102 days, if the defense's unambiguous consent to the People's modification of the Protective Order resumed

[12] *See* Exhibit F.

[13] *See* Exhibit G.

[14] *See* Exhibit H.

[15] *See* Exhibit I.

the speedy trial clock—then their speedy trial time is past expired. And yet, currently, the People have *still* failed to comply with their *Brady/Giglio* and statutory discovery obligations.

ARGUMENT

I. THE PEOPLE HAVE FAILED DRAMATICALLY TO MEET THEIR FUNDAMENTAL OBLIGATION TO TURN OVER EXCULPATORY EVIDENCE PURSUANT TO *BRADY*/*GIGLIO*

A. Applicable Law

For many decades, a core premise of our judicial system has been that "it is disclosure, rather than suppression, that promotes the proper administration of criminal justice."[16] For that reason, due process requires prosecutors to disclose to a criminal defendant the evidence in the government's possession that is both material and favorable to that defendant.[17] "Favorable evidence" is any evidence that tends to negate the defendant's guilt or to impeach the credibility of the government's witnesses.[18]

The *Brady* doctrine both "safeguards the fundamental princip[le] that a trial is a search for the truth" and "protects the Government's unique interest in a criminal prosecution 'not [to] win a case, but [ensure] that justice shall be done.'"[19] As a result, "[w]hen *Brady* material is withheld, the Government's case is 'much stronger, and the defense case much weaker, than the full facts would have suggested.'"[20] By guarding against such an abuse of state power, *Brady* disclosure serves "to ensure that a miscarriage of justice does not occur."[21]

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[16] *United States v. Baum*, 482 F.2d 1325, 1331 (2d Cir. 1973).

[17] *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).

[18] *Giglio v. United States*, 405 U.S. 150, 154–155 (1972).

[19] *United States v. Thomas*, 981 F. Supp. 2d 229, 232 (S.D.N.Y. 2013) (alterations in original) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

[20] *Thomas*, 981 F. Supp. 2d at 232 (quoting *Kyles v. Whitley*, 514 U.S. 419, 429 (1995)).

[21] *United States v. Bagley*, 473 U.S. 667, 675 (1985).

For its part, New York law reflects just as potent a concern for the right of the criminal defendant to the disclosure of exculpatory evidence as federal jurisprudence.[22] Not only does New York require a prosecutor to err on the side of disclosure, C.P.L. § 245.20 specifically requires:

> (k) All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: (i) negate the defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment. ***Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information. The prosecutor shall disclose the information expeditiously upon its receipt and shall not delay disclosure if it is obtained earlier than the time period for disclosure in subdivision one of section 245.10 of this article.***
>
> (l) A summary of all promises, rewards and inducements made to, or in favor of, persons who may be called as witnesses, as well as requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement.[23]

B. The People's *Brady* Disclosures To Date

As noted, the People have made two *Brady* disclosures in this case. First, that an interview with the People's potential expert witness (Dr. Chiang) yielded an opinion by that witness that a fracture like the one Ms. Jabbari sustained on her finger is commonly found in

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[22] *See*, *e.g.*, N.Y. Crim. Proc. Law § 245.20(7) (establishing "a presumption in favor of disclosure when interpreting" New York's criminal discovery statutes); *People v. Soto*, 193 N.Y.S.3d 677, 682 (N.Y.Crim.Ct. 2023) ("As the United States Supreme Court advised, '[t]he prudent prosecutor will resolve doubtful questions in favor of disclosure.'") (alterations in original) (quoting *United States v. Agurs*, 427 U.S. 97, 108 (1976)).

[23] C.P.L. §§ 245.20(1)(k) and (l) (emphasis added).

patients who had direct trauma—the kind usually found from hitting an object or from falling—and that it was "possible but uncommon" that the fracture was consistent with pulling, grabbing, or twisting a hand or finger.[24] Second, that the People intend to compensate Ms. Jabbari for her travel and lodging to the U.S. for the purposes of testifying at trial.[25]

This does not come close to satisfying the People's constitutional obligations based on the facts herein. Upon recent confirmation from the People, there is no dispute that the NYPD has issued an I-Card for Ms. Jabbari's arrest. Yet, the People only recently belatedly disclosed the existence of the I-Card upon the insistence of the defense. C.P.L. § 245.20(1)(k) requires disclosure "expeditiously upon its receipt." The People have still failed to disclose what involvement the People have had in the NYPD's investigation into Ms. Jabbari's crimes, including the People's purported attempt to deactivate the I-Card and interference into the NYPD's investigation and prospective arrest. Of course, there is no way of knowing whether this list is exhaustive, or even whether it scratches the surface, given the People's failure to meet this basic requirement of fundamental fairness.[26]

The People's response on this issue is unfathomable:

> As you are fully aware, the New York City Police Department decides whether sufficient probable cause exists to issue an I-card. As with all cases, when a formal arrest is made, our

[24] *See* Exhibit D.

[25] *See* Exhibit G.

[26] In their September 1, 2023, letter, the People flatly denied that they had given any undisclosed benefits to Ms. Jabbari, claiming that "[a]t no time has the District Attorney's Office entered into any formal or informal agreement with Ms. Jabbari where a benefit was offered or conferred in exchange for her testimony." Exhibit F at 1-2; *see also* Exhibits L-O (photographs of injuries sustained by Mr. Majors at the hands of Ms. Jabbari). The People also maintained that unless and until Ms. Jabbari is arrested, there is nothing to disclose with regard to her I-Card. *Id*. at 2. In this regard, the People take an impermissibly narrow view of what constitutes *Brady* disclosure, and they did not, in any case, address the other evidence Mr. Majors identified as having been withheld.

> Office will conduct a holistic evaluation to determine the prosecutorial merit of moving forward. Until an arrest takes place, an evaluation is conducted, and a decision is made about Ms. Jabbari's case, there is nothing to disclose.[27]

The People's attempt to bury their head in the sand is in direct contravention of C.P.L. § 245.20(1)(k) which requires the People to disclose evidence and information, including what is known to police or other law enforcement agencies. Their excuse that this is an NYPD determination and not a District Attorney determination flippantly flies in the face of the statute. Further, the evidence the People have failed to disclose squarely negates Mr. Majors' guilt, supports his defense, and impeaches Ms. Jabbari's credibility, which is precisely why other subparts of C.P.L. § 245.20(1)(k) mandate disclosure.

C. The People Impermissibly Buried Other Exculpatory Evidence That They Did Provide

On the other hand, some of the evidence that is inconvenient to the People's case was buried in volumes of discovery rather than withheld altogether. Along those lines, the People's *Brady* disclosures should, at a bare minimum, have identified the following evidence as *Brady* material:

- Statements that the driver of the car made to the People that Ms. Jabbari was the obvious aggressor in the altercation with Mr. Majors, which went so far as to characterize Ms. Jabbari as "psycho girl";
- Statements made to the People by Holly Blakely, a friend of Ms. Jabbari's who spoke to her on the phone on March 25, to the effect that Ms. Jabbari had admitted she had been "really scrappy" (*i.e.*, violent) with Mr. Majors and that she did not know how she had hurt her finger;
- Video footage in the People's possession showing that just eight minutes after the altercation with Mr. Majors (in which, to reiterate, she attacked *him*), Ms. Jabbari was not only completely unharmed but was describing what had just happened by

[27] Exhibit F at 2 (footnote omitted).

repeatedly insisting that Mr. Majors had texts from another woman on his phone, and making no reference to suffering physical violence of any sort;[28]

- Video footage in the People's possession showing Ms. Jabbari in Loosie's nightclub in the hours following the alleged incident dancing and, in so doing, being led and twirled, ballroom dance-style, by her supposedly broken finger;[29]

- Notes of the People's interview with Ben Totty, Ms. Jabbari's friend who cared for her on the afternoon of March 25, 2023, who reported that contrary to the People's account of Ms. Jabbari as afraid to return to Mr. Majors' apartment, she refused to leave the apartment after returning to it, despite Totty's urging her to do so; and

- Totty's report in his interview that Ms. Jabbari spent three hours on March 25, 2023, being evaluated in a psychiatric ward.

A prosecutor's disclosure obligations under both the U.S. Constitution and that of the State of New York are not met simply by unloading a large volume of documents onto the defendant that somewhere contain exculpatory evidence.[30] The People cannot seriously dispute that the evidence discussed above is both material and favorable to Mr. Majors. The People's attempt to bury it also constitutes a *Brady* violation.

[28] *See* Exhibits J-1 and J-2.

[29] *See* Exhibits K-1, K-2, and K-3.

[30] *See*, *e.g.*, *People v. Wagstaffe*, 120 A.D.3d 1361, 1363-64 (2d Dep't 2014) (prosecution's "deliver[y of] the subject documents interspersed throughout a voluminous amount of other documentation, without specifically identifying the documents at issue at the time of the delivery … deprived the defendants of a meaningful opportunity to employ that evidence during their cross-examination of the prosecution's witnesses"); *People v. Garcia*, 46 A.D.3d 461, 463 (1st Dep't 2007) (items of exculpatory evidence that were "buried in a voluminous amount of discovery provided shortly before trial, and were not identified as Brady material … did not satisfy the People's obligation"). Simply put, "the Government cannot hide Brady material as an exculpatory needle in a haystack of discovery materials." *United States v. Thomas*, 981 F. Supp. 2d 229, 239 (S.D.N.Y. 2013) (collecting cases).

II. THE PEOPLE HAVE FALLEN SHORT ON THEIR STATUTORY DISCLOSURE OBLIGATIONS UNDER C.P.L. § 245.20, WHICH RENDERS THEIR CERTIFICATE OF COMPLIANCE AND STATEMENT OF READINESS INVALID AND ILLUSORY

When an accusatory instrument charges a defendant with at least one misdemeanor punishable by a sentence of imprisonment of more than three months, but no felonies, the People are required to be ready for trial within **ninety days** of the commencement of the action. C.P.L. § 30.30(1)(b). Although the defendant has the initial burden of asserting that the People's "30.30 time" has expired, the burden switches to the People to demonstrate that certain periods within that time should be excluded pursuant to statutorily enumerated exemptions.[31]

As of January 1, 2020, Section 30.30 also requires that "[a]ny statement of trial readiness … be accompanied or preceded by a certification of good faith compliance with the disclosure requirements of section 245.20 of this chapter."[32] In other words, "absent an individualized finding of special circumstances," a proper, good-faith certificate of automatic discovery compliance is a "prerequisite to the People being ready for trial."[33] Thus, a statement of readiness "is invalid if it is accompanied or preceded by" a certificate of compliance "that is later determined to be improper, where no special circumstances exist." *Id*.

Courts routinely hold that where the People have demonstrably failed to meet their automatic disclosure obligations under C.P.L. § 245.20 before filing their certificate of compliance, that certificate of compliance is invalid, causing any certificate of readiness that the

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[31] *See* C.P.L. § 30.30(4); *People v. Santos*, 68 NY2d 859, 861 (1986).

[32] C.P.L. § 30.30(5).

[33] *People v. Hamizane*, --- N.Y.S.3d ----, 2023 WL 4852253, at *2 (2d Dep't July 13, 2023) (citing C.P.L. §§ 30.30(5), 245.20(1), 245.50(3)).

People filed based on it to be illusory, which in turn requires a finding that the certificate of readiness did not, in fact, stop the speedy trial clock.[34]

The People filed a SOR in this proceeding on August 7, 2023. Subsequent investigation has revealed, however, that in addition to falling short of their *Brady/Giglio* obligations as discussed above—which alone invalidate the COC and SOR—the People have also failed to comply with no fewer than **five** different provisions of C.P.L. § 245.20—any one of which is *also* enough to render their COC invalid and their SOR illusory. First, the People have failed to disclose all 911 calls, Radio Runs, and SPRINT reports that are germane to this case, in violation of C.P.L. § 245.20(1)(g). The only 911 call disclosed by the People was the call Mr. Majors made upon returning to his apartment and finding Ms. Jabbari appearing to be unconscious. However, it is clear from the videos provided by the People that at least one bystander at the Chinatown scene of the altercation between Mr. Majors and Ms. Jabbari the evening before

[34] *See*, *e.g.*, *People v. Wiaffe*, 2023 WL 5521001, at*4 (N.Y.Crim.Ct. Aug. 28, 2023) (dismissing case where "the People filed a certificate of 'compliance' without first complying with their automatic discovery obligations"); *People v. Hacamet*, 79 Misc. 3d 904, 911 (N.Y.Crim.Ct. 2023) (SOR ineffective to toll speedy trial clock because People "filed a certificate of discovery 'compliance' without doing anything regarding impeachment material known to the police," thereby rendering SOR "illusory"); *People v. Pierna*, 74 Misc. 3d 1072, 1089 (N.Y.Crim.Ct. 2022) (People's SOR not filed in good faith and thus ineffective to stop clock where "at the time of the filing of the People's COC, [defendant] only received the memo book of "a single officer even though "body worn camera footage place[d] dozens of additional officers on the scene," and People provided no "information whatsoever as to what, if any, efforts they made to obtain the missing memo books before they filed their COC"); *People v. Nisanov*, 78 Misc. 3d 1224(A), at *1 (N.Y.Crim.Ct. 2023) (dismissing case where "People failed to comply with their discovery obligations for over 90 days after commencing" it inasmuch as they disclosed "only summary letters about their police witnesses' disciplinary matters"); *People v. Olah*, 79 Misc. 3d 1240(A), at *7 (N.Y.Crim.Ct. 2023) ("[T]he People opted to simply file a certificate of 'compliance' without actually complying with the statute. That renders their readiness illusory. And where the People do not carry out their own responsibility of filing a proper certificate within their own readiness period, they alone carry the blame for exhausting § 30.30.").

called 911 and that an NYPD patrol car responded to the location. Upon request of the defense, the People responded that they:

- "have turned over all 911 calls related to this case and are unaware of any additional 911 calls";
- "have turned over all radio runs related to this incident and are unaware of the existence of any additional radio runs or any police officers that responded to the incident location"; and
- "have turned over all sprint reports related to the case and are unaware of any additional sprint reports."[35]

The People's claim that they are not aware of additional 911 calls, radio runs, or sprint reports rings hollow and is irrelevant. The People have been in possession of video surveillance which shows NYPD vehicles responding at 1:10 a.m. to the scene where Ms. Jabbari assaulted Mr. Majors on March 25, 2023. (They arrived nine minutes after Mr. Majors fled from Ms. Jabbari the third and final time.) The People are well aware that NYPD patrol officers are required to provide information over the radio about their location and response to any incident location, yet claim they are unaware of its existence here. Moreover, the People cannot bury their head in the sand to discharge their statutory obligations. Notably, C.P.L. § 245.20(1)(k) refers to "[a]ll evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case." Likewise, C.P.L. § 245.20(2) states that "[f]or purposes of subdivision one of this section, all items and information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency **shall be deemed to be in the possession of the prosecution**" (emphasis added). Plainly, the People are deemed to be in possession of all 911 calls and cannot

[35] Exhibit F at 2-3.

simply claim to be unaware of their existence, including when there is evidence to indicate that additional 911 calls and radio runs exist.

The People have failed to detail what, if any, effort has been made to secure additional 911 calls, radio runs, or sprint reports from the scene of the altercation, other than stating they are unaware of their existence. In fact, upon defense investigation, we have been informed that the NYPD possesses at least one other 911 call from the scene of the altercation (though we have not been provided with any such record). This unprovided 911 call, radio run, and SPRINT report is crucial to the case and the People have conceded that they have failed to provide any of these iteMs. On this basis alone, the People's COC is invalid, their SOR is illusory, and the accusatory instrument must be dismissed.[36]

Next, the People have not turned over correspondence between the District Attorney's Office and the New York City Police Department (including regarding Ms. Jabbari's I-Card) regarding the investigation into Ms. Jabbari's crimes against Mr. Majors, nor given a full accounting of the benefits they have conferred on Ms. Jabbari, in violation of C.P.L. §§ 245.20(1)(k) and (l). Nor have the People turned over NYPD's "Wanted Flyer" for Ms. Jabbari. This too renders the People's SOR illusory and warrants dismissal of the accusatory instrument.[37] The prejudice to Mr. Majors that results from these discovery

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[36] *See People v. Audino*, 75 Misc. 3d 969, 974 (N.Y.Crim.Ct. 2022) (dismissing case on finding the People filed COC without having produced "certain radio runs, 911 call audio, memo books, and video of the incident"); *People v. Aquino*, 72 Misc. 3d 518, 521 (N.Y.Crim.Ct. 2021) (same, as to "911 call, radio run, and property vouchers").

[37] *See People v. Toussaint*, 78 Misc. 3d 504, 511 (N.Y.Crim.Ct. 2023) (COC invalid for failure to disclose "[a]ll evidence and information … that tends to impeach the credibility of a testifying prosecution witness," including "[e]vidence of a police witness's prior bad act") (internal quotation marks and alterations omitted) (citing *People v. Smith*, 27 N.Y.3d 652, 661(2016)); *People v. Spaulding*, 75 Misc. 3d 1219(A), at *2 (N.Y.Crim.Ct. 2022) (same, collecting Appellate Division case law and that of "innumerable lower courts [that] have held the same"). *See also People v. Cartagena*, 76 Misc. 3d 1214(A), at *4 (N.Y.Crim.Ct. 2022) (expressly

deficiencies is unmistakable, but dismissal would be warranted even if there were no prejudice at all.[38]

Nor can the People claim that they have substantially complied with the law, whether through supplemental COCs or otherwise. It is true that in some cases, failure to make automatic disclosures has been excused under a "good-faith" exception "when the People, even though unsuccessful, have substantially complied and demonstrate that they have made their best efforts to obtain all discoverable material."[39] Still, "where the People fail to set forth their efforts to locate items of discovery or determine that they do not exist, or the efforts they describe do not amount to due diligence, their certificate may be invalidated."[40] The People have made no attempt to do so in response to the defense's August 21, 2023, discovery deficiency letter.

In addition, courts have "reject[ed] the proposition that a [supplemental COC] can be used to cure defects in the original" because the C.P.L. provision allowing for supplemental COCs provides that '[i]f *additional discovery* is subsequently provided … a supplemental certificate shall be served.'"[41] In other words, "[t]he section unambiguously references the

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rejecting People's argument that I-Cards are "categorically beyond the reach of automatic discovery" because they are "administrative records").

[38] *See, e.g., People v. Gaskin*, 214 A.D.3d 1353, 1355 (4th Dep't 2023) ("On a CPL 30.30 motion, the question is not whether defendant was prejudiced by an improper certificate of compliance."); *People v. Pizzulli,* 79 Misc. 3d 1217(A), at *3 (N.Y.Crim.Ct. 2023) ("[T]he court rejects the People's arguments about "prejudice"—a consideration wholly irrelevant to this C.P.L. § 30.30 motion.") (citing *People v. Hamilton*, 46 NY2d 932, 933-34 (1979)); *People v. Rafoel*, 77 Misc. 3d 1231(A), at *3 (N.Y.Crim.Ct. 2023) ("[N]o appellate court has ever applied a 'prejudice' … analysis to a C.P.L. § 30.30 motion challenging a certificate of compliance.") (collecting authorities).

[39] *People v. Knorr*, 152 N.Y.S.3d 556, 561 (N.Y. Just. Ct. 2021).

[40] *Id*.

[41] *People v. Andrews*, 79 Misc. 3d 1244(A) (N.Y.Crim.Ct. 2023) (emphasis in original) (quoting C.P.L. § 245.50(1)).

disclosure of additional information but will not shield the People from failing to disclose evidence already known to them at certification, nor, arguably, from investigating evidence which they had reason to believe existed."[42]

In summary, the People's multifaceted failure to comply with § 245.20 and with *Brady*/*Giglio* voids the COC and the SOR. The People have done nothing to mitigate these issues, and still withhold highly significant discovery due to the defense under C.P.L. § 245.20. The People have failed to provide these required materials within the statutorily required time frame, and, as a result, the case must be dismissed pursuant to C.P.L. § 30.30(1)(b).

CONCLUSION

For the foregoing reasons, Mr. Majors respectfully moves this Court to dismiss the accusatory instrument pursuant to New York C.P.L. § 30.30(1)(b).

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New York, New York

Respectfully submitted,

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[42] *Id*.