

KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW
2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500
(Fax) 732-572-0030

website: www.njlaws.com

DATE

Name and Address

RE:

Dear

Please be advised that I represent the defendant in the above entitled matter. Please accept this letter brief in support of Defendant's motion for additional discovery.

Demand has previously been made that the prosecutor provide and the complainant provide us with discovery pursuant to Rule 3:13-3, Rule 5:5-1 and Rule 7:4-2(g).

The Court Rules require that the State provide defense counsel with the following:

- 1) books, tangible objects, papers or documents obtained from or belonging to him
- 2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the you but are not recorded;
- 3) grand jury proceedings recorded pursuant to R.3:6-6;
- 4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of you;
- 5) reports or records of prior convictions of the defendant,
- 6) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the State;
- 7) names and addresses of any persons whom you know to have relevant evidence or information including a designation by you as to which of those persons may be called as witnesses;
- 8) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of you and any relevant records of prior conviction of such persons;
- 9) police reports which are within the possession, custody, or control of you;

10) warrants, which have been completely executed, and the papers accompanying them including the affidavits, transcript or summary of any oral testimony, return and inventory;

11) names and addresses of each person whom you expect to call to trial as an expert witness, his qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

A defendant is entitled under Brady v Maryland 337 US 83, 83 S. Ct. 1194, 10 L Ed. 2d 215 (1963) to examine material and obtain discovery of exculpatory evidence which may deflect suspicion to others.

In State v Feldman 254 N.J. Super. 754 (Law Div. 1992), the defendant was charged with burglary. The state contended it had latent fingerprints on stolen items, first obtained through use of the Automated Fingerprint Information System. Thereafter a Sheriff's office made a manual fingerprint comparison. □ Defendant sought additional discovery from the State including information entered into and produced by the (AFIS). The state refused to provide the requested information. The Court held this was discoverable information under Rules 13-3(a)(4) and (7). The Court found without merit the State's contention that the material was no discoverable because no part of the AFIS would be offered into evidence at trial.

The court stated:

"Evidence offered by a criminal defendant for the purpose of proving that someone else committed the offense for which he is charged is relevant if it" has a rational tendency to engender a reasonable doubt with respect to an essential feature of the State's case'. State v Koedatich 112 NJ 225, 298 (1988), cert den. 109 S. Ct. 813 (1989). Such evidence is relevant if it has a rational tendency to lessen the credibility of an essential feature of the State's case even though it does not render the evidence attacked 'Entirely unbelievable'. State v Jorgensen, 241 NJ Super. 345, 350-352 (App. Div. 1990). relevancy is defined as "evidence having any tendency in reason to prove any material fact", Evid Rule 1 (2), and whether someone else may have committed the crime is certainly relevant. " State v Feldman 254 N.J. Super. 754

The court in Feldman ordered the additional discovery requested, being

satisfied that information entered into and produced by AFIS may produce relevant evidence and must be given to the defendant. Also since the AFIS operator makes the initial identification, his or her name and curriculum vitae of the operator were also relevant and must be given to the defendant.

All public documents and items in possession of the State have not been provided, despite request. Individuals facing charges in municipal courts have been guaranteed the right to discovery. Discovery is a matter of right in all Municipal Court cases and criminal matters. State v Young 242 NJ Super. 467 (App. Div. 1990); State v Ford 240 NJ Super. 44 (1990); State v Polasky 216 NJ Super. 549 (Law Div. 1986); State v Tull 234 NJ Super. 560 A. 2d 1331 (1989).

Very truly yours,

KENNETH A. VERCAMMEN

KAV: