Supreme Court
of the
State of New York

JUAN M. MERCHAN
JUDGE OF THE COURT OF CLAIMS
SUPREME COURT, CRIMINAL TERM
FIRST JUDICIAL DISTRICT

CHAMBERS
100 CENTRE STREET
NEW YORK, N.Y. 10013

Via Email

February 22, 2024

Susan R. Necheles
Necheles Law LLP
1120 Sixth Avenue, 4th Floor
New York, NY 10036

Re: *People v. Trump*, Ind. No. 71543-2023

Dear Ms. Necheles:

As you are aware, at the conference conducted on February 15, 2024, the parties expressed disagreement regarding Defendant's reciprocal discovery obligations pursuant to Criminal Procedure Law ("CPL") § 245.20(4). Following some discussion on the record, Assistant District Attorney (ADA) Steinglass asked this Court to "eliminate any residual confusion[.]"

First, I address your claim that this Court's prior ruling about reciprocal discovery was limited to the context of expert witnesses. Specifically, you argue "… what your honor was ordering last time specifically had to do with the expert witness. It was limited and did not reach the issue of whether Sub O went to the defense." Transcript of February 15, 2024, Page 61. That is simply not correct. While it is true that this Court's prior ruling, contained in an e-mail dated October 4, 2022, addressed a dispute between the parties over a defense expert witness, it is incorrect that the ruling was limited to the issue of expert witnesses only. It could not because such a ruling would be contrary to the clear reading of CPL § 245.20.

Second, you are correct that CPL § 245.20(1)(o) imposes upon the People the dual responsibility of disclosure and designation and CPL § 240.25(4) merely imposes upon the defense an obligation to disclose. However, the absence of a designation requirement within the context of the instant dispute is of no practical consequence. That is because CPL § 245.20(1)(o) pertains to "any material and relevant evidence … which the defendant intends to introduce at trial or a pre-trial hearing …" In other words, on the defendant's direct case. Thus, for all intents and purposes, the

materials are essentially "designated" by virtue of being disclosed. Defendant's repeated protestations that CPL § 245.20(4) does not apply to materials introduced into evidence on cross examination and that the defense has no obligation to present a case or introduce evidence are superfluous. This Court is well aware that Defendant has no burden of proof or duty to present evidence at trial. This Court's ruling is limited to materials and evidence introduced on Defendant's direct case – period. This Court does not suggest anything different, nor does it believe the People have demanded anything different. However, Defendant's repeated argument that his discovery obligations are merely "responsive" goes much too far and is not supported by a plain reading of § 245.20(4). *See also* CPL § 245.10(2) - "The defendant shall perform his or her discovery obligations under subdivision four of section 245.20 of this article not later than thirty calendar days after being served with the prosecution's certificate of compliance pursuant to subdivision one of section 245.50 of this article[.]" The CPL clearly imposes upon Defendant a reciprocal discovery obligation.

Therefore, Defendant is hereby directed to immediately comply fully with his reciprocal discovery obligations pursuant to CPL § 245.20(4). Defendant is reminded of the requirements for the filing of a Certificate of Compliance pursuant to CPL § 245.50. Last, Defendant is further reminded of the remedies available to this Court for non-compliance pursuant to CPL §245.80 which include, among other things, preclusion of evidence.

I hope this clarifies any lingering confusion.

Very truly yours,

Juan M. Merchan
Judge Court of Claims
Acting Justice Supreme Court

cc: Todd Blanche, Esq.
Gedalia Stern, Esq.
Assistant District Attorneys of record
Court file