



SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Atlantic County
Criminal Courts Complex
4997 Unami Boulevard
Mays Landing, N.J. 08330-2054
(609) 909-8135

July 9, 2018

Mary Linehan, Esq.
Office of the Public Defender
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FILED

JUL 09 2018

Seth Levy, A/P
Atlantic County Prosecutor's Office
4997 Unami Boulevard
Mays Landing, NJ 08330

Bernard E. DeLury, Jr., P.J.Cr.

Re: State v. Ferdinand Augello, et al.
Indictment No. 18-04-00517
Motion to Compel Discovery

Dear Counselors:

This letter decision is rendered in response to the Defendant's Motion to Compel Discovery. The several defendants in this indictment have sought production of a letter purportedly written by James Kauffman before his apparent suicide at the Hudson County Jail on January 26, 2018 (hereinafter "the Kauffman Letter"). The Court has reviewed the Kauffman Letter and has determined to **GRANT** the request for production of the Kauffman Letter to the parties to the

instance criminal matter. However, the discovery of the Kauffman Letter is subject to a Protective Order to be explained below, and in the attached Order.

CHARGES

- Count 1: First Degree Racketeering-Employee Participates-Violence, contrary to N.J.S.A. 2C:41-2c and Racketeering-Conspire to Engage in Racketeer, contrary to N.J.S.A. 2C:41-2d;
- Count 2: Leader Of Narcotics Trafficking Network, contrary to N.J.S.A. 2C:35-3;
- Count 3: Third Degree Manufacturing/Distributing CDS or Intent To Manufacture/Distribute CDS, contrary to N.J.S.A. 2C:35-5a(1) and CDS - Manufacture/Distribute/ Possess with the Intent to Distribute - Other Schedule I II III I, contrary To N.J.S.A. 2C:35-5b(13);
- Count 4: First Degree Conspiracy - Agree/Engage in Conduct Constituting a Crime, contrary to N.J.S.A. 2C:5-2a(1) and CDS - Manufacture/Distribute/Possess with the Intent to Distribute - Other Schedule I II III I, contrary to N.J.S.A. 2C:35-5b(13);
- Count 5: First Degree Murder – Purposely, contrary to N.J.S.A. 2C:11-3a(1).

PROCEDURAL HISTORY

On June 7, 2018, Ferdinand Augello filed a motion to compel the State to produce a letter purportedly written by James Kauffman before his apparent suicide at the Hudson County Jail on January 26, 2018. On June 14, 2018, the Court ordered the State to obtain and produce a true and un-redacted copy of the Kauffman Letter for an *in camera* review.

On April 9, 2018, Paul Pagano joined this motion. On April 18, 2018, Cheryl Pizza joined this motion. On June 13, 2018, Tabatha Chapman joined this motion. On June 21, 2018, Beverly Augello joined this motion.

The State produced the Kauffman Letter and the Court received it on July 2, 2018. Thereafter, the Court conducted an *in camera* review of the Kauffman Letter. The Kauffman Letter consists of six (6) handwritten pages containing approximately 1600 words with an attached

handwritten note. The Kauffman Letter is not addressed to anyone in particular, however, the attached note indicates that “These 6 yellow pages are for my attorney and my wife. Thank you in advance for your help. Sincerely, JMK MD.” It appears the author’s intention was to make a “deathbed statement,” with respect to the State’s allegations that gave rise to the charges in the indictment. In summary, the Kauffman Letter purports to describe how the author became involved with the distribution of prescription narcotics and how that involvement gave rise to threats against him and his family that culminated in the death of April Kauffman. The author then outlined his continuation in the narcotics distribution after the homicide.

ANALYSIS

I. DISCOVERY

Discovery requests by a defendant are governed by R. 3:13-3 of the New Jersey Rules of Court. If a defendant can show that the materials requested are relevant and fall within the list of those to which he is entitled, his rights to those materials are subject only to the court’s power to issue a protective order under R. 3:3-13(e)(1).

Generally, the scope of permissible discovery in criminal cases is “extremely broad, automatic and bilateral” in the pre-trial stages. See State v. Satkin, 127 N.J. Super. 306, 309 (App. Div. 1974). A defendant’s right to discovery includes all materials enumerated in R. 3:13-3(c)(1-9):

1. Books, tangible objects, papers or documents obtained from or belonging to the defendant;
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 prosecution but not recorded;
3. 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 the prosecutor;

4. Reports or records of prior convictions of the defendant;
5. Books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the State;
6. Names, addresses, and birthdates of any persons whom the State knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;
7. Record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the State and any relevant record or prior conviction of such persons;
8. Police reports which are within the possession, custody, or control of the prosecutor;
9. Names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's 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. Except in the penalty phase of a capital case if this information is requested and not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

Those materials not subject to discovery are set forth in R. 3:13-3(e) and include:

- Any party's work product
- Internal reports
- Memoranda
- Documents made by that party or the party's attorney or agents in connection with the investigation, prosecution, or defense of the matter

Relevance is measured in terms of the opportunity of the defendant to present a complete defense. State v. Gilchrist, 381 N.J. Super. 138, 143-44 (App. Div. 2005). This is guaranteed to the accused under the U.S. Constitution and the New Jersey State Constitution. U.S. CONST. amend. VI; N.J. CONST. art. I, para. 10. "Relevant evidence" is defined as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. R. 3:13-3(c) requires the prosecutor to permit the defendant to inspect and copy or

photograph relevant material in his custody or control.

In determining whether evidence is relevant, the inquiry should focus upon “the logical connection between the evidence and a fact in issue.” State v. Darby, 174 N.J. 509, 519 (2002) (quoting State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990)). If a defendant can show that the materials requested are relevant and fall within the list of those to which either party is entitled, their rights to those materials are subject only to the Court’s power to issue a protective order under R. 3:3-13(f). Upon motion and for good cause, the Court has the power to issue a protective order(s) denying or restricting access to the record(s) being sought. See R. 3:13(e)(2).¹ In order to grant such a motion, there must be a legitimate and disclosed need by the prosecutor to keep such materials from the other party. The court may consider several factors, which include, but are not limited to:

- Protection of witnesses and others;
- Maintenance of secrecy as required for effective investigation of criminal activity; and
- Confidential relationships and privileges recognized by law. R. 3:13-3(f)(1).

The determination is committed to the discretion of the trial judge, and the discretion must be exercised in a manner that does not deprive a defendant in a criminal case of rights that are critical to a fair trial. State v. Garcia, 131 N.J. 67, 79-80 (1993).

Along with considering the rights of a criminal defendant, the Court is also required to take into account the rights of victims. See Richard Pompelio, Crime Victim’s Rights, A Guide for Practitioners and Service Providers in the State of New Jersey 1 (2009). In enacting the Victims’ Rights Amendments, the Legislature found “that without the participation and cooperation of

¹ “In determining the motion, the Court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.” Id.

crime victims and witnesses, the criminal justice system would cease to function. The rights of these individuals should be given full recognition and protection.” N.J.S.A. 52:4b-35.

DECISION

In this case it is apparent that the author of the Kauffman Letter was familiar with the allegations against the defendants contained in the indictment. The Kauffman Letter sets forth details related to the involvement of the “Pagans” and certain named defendants pertaining to the allegations of drug distribution and the homicide of April Kauffman. The Kauffman Letter also details certain other events leading up to the alleged homicide and its aftermath. The Kauffman Letter also contains references to persons involved with James Kauffman of a personal nature which do not appear to be relevant to the instant litigation.

Therefore, certain aspects of the Kauffman Letter are relevant to the investigation of this matter by both sides and have a “logical connection between the evidence [in this case] and a fact in issue.” Darby, 174 N.J. at 519. Moreover, R. 3:13-3(c)(1) and (5) appear to apply to the Kauffman Letter in as much as James Kauffman, while not a defendant in the indictment, is named as a co-conspirator in the State’s view of the racketeering allegations.

Accordingly, the State shall produce complete and un-redacted copies of the Kauffman Letter to counsel for the defendants in this case. However, the production of the Kauffman Letter is subject to the following restrictions upon the parties:

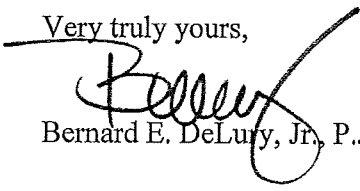
1. The Court’s determination of some relevancy pertaining to the Kauffman Letter shall not be deemed a determination of relevancy for trial or of admissibility as evidence. Such issues, should they arise, shall abide trial.
2. Pursuant to R. 3:13(e)(2), the Court has determined that the Kauffman Letter shall not be provided to or distributed to any person or entity not a party to this matter. The Court has made this determination to protect the defendants’ right to a fair trial, to ensure the impartiality of the jury pool, and to prevent the exposure of potentially private and personal communications between the

- purported author of the Kauffman Letter and persons unrelated to the instant case.
3. Counsel for the defendants may not permit a copy of the Kauffman Letter to be kept by any of the defendants. The defendants may read the letter in the presence of their counsel or his or her agent, and may make notes of the letter if they desire. However, any such notes are subject to the restrictions set forth in section 2, above.

CONCLUSION

The Court has determined to **GRANT** the Defendant's Motion to Compel Discovery of the Kauffman Letter. The production of the Kauffman Letter is subject to the attached Protective Order. The Court will maintain in its records a copy of the Kauffman Letter.

Very truly yours,


Bernard E. DeLury, Jr., P.J.Cr.

BED/jrf

Enclosed: Protective Order.

CC: James Grimley, Esq.
A. Charles Peruto, Jr., Esq.
Timothy Reilly, Esq.
Oded Weinstock, Esq.
Kevin Smith, Esq.
A. Harold Kokes, Esq.

PREPARED BY THE COURT
Superior Court of New Jersey
Criminal Courts Complex
4997 Unami Boulevard
Mays Landing, NJ 08330

FILED

JUL 09 2018

Bernard E. DeLury, Jr., P.J.Cr.

STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - CRIMINAL
PLAINTIFF	:	ATLANTIC COUNTY
	:	
V.	:	INDICTMENT 18-04-0517-T-INV
	:	
FERDINAND AUGELLO	:	MOTION TO COMPEL
TABITHA CHAMPMAN	:	
PAUL PAGANO	:	ORDER FOR PRODUCTION
BEVERLY AUGELLO	:	AND PROTECTION
GLENN SEELER	:	
JOSEPH MULHOLLAND	:	
CHERYL PIZZA,	:	
	:	
DEFENDANTS	:	

THIS MATTER HAVING BEEN OPENED TO THE COURT upon the defendants' Motion to Compel Discovery the Kauffman Letter, Mary Linehan, Esq., appearing; and, the State having consented to the Court's *in camera* inspection of such documents, Seth Levy, Chief Assistant Atlantic County Prosecutor appearing; and, the Court having completed its *in camera* inspection; and

THE COURT hereby finding that the Kauffman Letter may be relevant to the investigation of the case; and, the Court having set forth its reasons for production in its Letter Decision of July 9, 2018, hereby **GRANTS** the Defendant's motion to compel the production of the Kauffman Letter.

THEREFORE, IT IS ON
THIS 9th day of July 2018,

ORDERED that the Kauffman Letter, as an un-redacted and complete copy, is hereby discoverable. The State will provide such copies to all defense counsels forthwith;

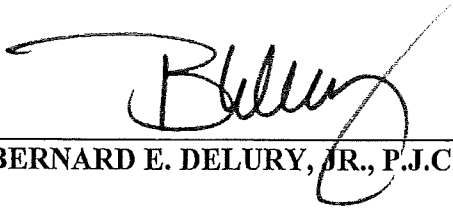
IT IS FURTHER ORDERED that the discovery is subject to this Protective Order with the following restrictions:

- Production of the Kauffman Letter shall be made only to counsel of the named defendants in this case and to the Assistant County Prosecutor(s) assigned to this case (currently Chief Assistant Seth Levy).
- Neither side may disclose information pertaining to the Kauffman Letter to any person or entity not a party in this matter. The parties may disclose copies of the Court's Letter Decision and the instant Order.
- The defendants shall not be permitted to retain a copy of the Kauffman Letter. The defendants may read the letter in the presence of their counsel or his or her agent, and may make notes of the letter if they desire. However, any such notes are subject to the restrictions set forth above.

IT IS FURTHER ORDERED that the parties shall exercise due care to ensure that no one is permitted unauthorized access the Kauffman Letter. Due care includes, but is not limited to, keeping the documents in a separate file in a secure location with appropriate markings identifying restrictions on their use (e.g., "Confidential Documents. Do not copy, release, or disseminate without the permission of the Superior Court. If found, return immediately to the Superior Court of New Jersey.").

IT IS FURTHER ORDERED that the use of information contained or derived from the Kauffman Letter for any purpose other than as set forth above, shall be a violation of this Order

and subject to the contempt powers of the Court. The Court will maintain a complete sealed copy of the Kauffman Letter in the Court's records.



BERNARD E. DELURY, JR., P.J.Cr.