

ERIE COUNTY COURT
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

NOTICE OF MOTION

-against-

Indictment No.:

Defendant.

PLEASE TAKE NOTICE that, upon the affirmation of _____, Esq., attorney for Defendant, affirmed August ____, 2022, and the attached exhibits, the undersigned will move the Erie County Court, Part ____, located at 25 Delaware Avenue, Buffalo, New York 14202, on _____, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an Order granting Defendant the following relief:

Compelling pursuant to CPL §245.30(3) by requiring the Erie County Office of the Medical Examiner to _____.

Pursuant to CPLR 2214 (b), answering papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: Buffalo, New York
August __, 2022

Attorney for Defendant

TO: Erie County District Attorney's Office
25 Delaware Avenue
Buffalo, New York 14202
(T): 716-856-2656

Counsel for OCME

THE PEOPLE OF THE STATE OF NEW YORK,

**AFFIRMATION IN SUPPORT
OF MOTION**

-against-

Indictment No.:

Defendant.

_____, ESQ., an attorney duly licensed to practice in the State of New York,
affirms the following under penalty of perjury, pursuant to CPLR § 2106:

1. I am the attorney for the defendant in the above-captioned matter and I submit this Affirmation in support of the relief sought in the annexed Notice of Motion.
2. Unless otherwise stated, the factual allegations set forth herein are made upon information and belief and are based upon information obtained by or provided to defense counsel thus far, including the accusatory instrument and other papers filed in connection with this action, and an investigation of the facts related to this case. No previous request for the relief sought herein has been made.
3. The defendant was arrested on _____ and charged by felony complaint on _____, 2022. Defendant was charged with one count of Criminal Possession of a Firearm (P.L. §265.01-b(1)). A copy of the felony complaint is attached hereto as **Exhibit A**.
4. Subsequently, Defendant was indicted on _____, 2022, charged with two (2) counts of Criminal Possession of a Firearm (P.L. §265.01-b(1)). A copy of the Indictment is attached hereto as **Exhibit B**.

DISCOVERY AND INSPECTION

5. The defendant respectfully requests disclosure of evidence and materials under the control and/or within the possession of the People. (See CPL §245.20).
6. The Erie County Office of the Medical Examiner (OCME) is under the direction and/or control of The People
7. Specifically, the defendant requests that this Court order the People to disclose _____.
8. Pursuant to CPL §245.30 (3), if the request is reasonable and the defendant is unable to obtain the requested materials without undue hardship, the court may order the People to disclose such materials and information that relate to the subject matter of the case.
9. Here, the defendant’s request includes information that can only be obtained through the People via the OCME, and it unequivocally relates to the subject matter of the case.
10. Disclosure of the materials and information regarding the _____ is necessary for the defense to adequately _____.
11. As such, it is respectfully requested that this Court order the Erie County District Attorney’s Office and OCME to produce to defense counsel, the requested _____, so that a proper and adequate _____ in this case may be completed to _____.
12. However, if the defendant’s request to obtain these materials is denied, it is respectfully requested that the defendant be granted leave to bring a further motion regarding _____.

LEAVE TO FILE ADDITIONAL AND LATE MOTIONS

13. Defendant has attempted to include all possible pretrial requests for relief, based upon the information now available. It is requested that the Court grant Defendant leave to submit later motions, should facts discovered through this motion, indicate that additional relief may be warranted.

WHEREFORE, it is respectfully requested that the Court grant the relief requested in the Notice of Motion attached hereto.

DATED: August __, 2022

, ESQ.

At a Term of the *[name of court]* held in and for the County of *[name of county]*, at the Courthouse thereof, *[address of courthouse]*, New York, on the *[ordinal number of day]* day of *[name of month]* *[identification of year]*.

HON. _____ PRESENT, J.S.C.

The People of the State of New York,

ORDER GRANTING
DISCOVERY

v.

Indictment/Docket No. *[number]*

Defendant.

WHEREAS, defendant has moved, pursuant to CPL § 245.30 (), for an order of discovery of _____ in the possession and control of The People via the Erie County Office of the Medical Examiner (OCME); and

WHEREAS, this Court has considered the *[oral argument/written submissions]* of defense counsel, the People and the OCME who has possession and control over the discoverable materials; and

WHEREAS, this Court has considered defendant's expressed need for _____; the risk that defendant will be deprived of evidence or information relevant to the case; the position of the prosecutor; and the position of OCME; and whether the probative value of access can be preserved by alternative means.

NOW THEREFORE, IT IS HEREBY

ORDERED that *[name of defense counsel]*, and/or a representative, be granted discovery of

_____, and the same shall be shipped to _____, by
_____, no later than _____, 2022.

Dated: *[date of order]*

Enter,

[Name of judge]

[Judge/Justice]

[Title of court]