

COURT: ERIE COUNTY COURT
COUNTY OF ERIE : STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

██████████,

Defendant.

NOTICE OF MOTION

Hon. ██████████, J.C.C.

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

1. Compelling Discovery and Inspection pursuant to CPL §245.30(3);
2. Suppression of Physical Evidence;
3. Suppression of Defendant’s Statements;
4. Sandoval Ruling
5. Request for Hearings
6. Leave to File Additional/Late Motions

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

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

COURT: ERIE COUNTY COURT
COUNTY OF ERIE : STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

**AFFIRMATION IN SUPPORT OF
DEFENDANT’S MOTION**

-against-

████████████████████

████████████████████,

Defendant.

████████████████████, 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 ████████████████████, 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**. Subsequently, Defendant was indicted on April 14, 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

4. The defendant respectfully requests disclosure of evidence and materials under the control and/or within the possession of the People.

5. Specifically, the defendant requests that this Court order the People to disclose the documents, materials, sheets, etc. that documented and recorded the following: (1) the Grand Jury attendance for every day of testimony presented in this case, including the date on which the Grand Jury voted on the matters related to this case; and (2) the charges submitted and voted on by the Grand Jury, including the completed votes.

6. 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.

7. Here, the defendant's request includes information that can only be obtained through the People and it unequivocally relates to the subject matter of the case.

8. Disclosure of the materials and information regarding the Grand Jury attendance, as well as the materials documenting the charges submitted to the Grand Jury and the completed votes, is necessary for the defense to adequately review the Grand Jury proceedings and determine whether they were in compliance with CPL §190.25(1).

9. As such, it is respectfully requested that this Court order the Erie County District Attorney's Office to produce to defense counsel, the requested Grand Jury materials, so that a proper and adequate review of the Grand Jury proceedings in this case may be completed to ascertain whether or not such proceedings were in compliance with the applicable law.

10. 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 the inspection of the Grand Jury Minutes and dismissal of the indictment.

SUPPRESSION OF PHYSICAL EVIDENCE

11. The defendant moves to suppress the physical evidence that was seized from her house by law enforcement without first obtaining a search warrant.

12. A review of the records provided by the People shows that through police investigation and interviews of neighbors, Defendant had been living at [REDACTED], Buffalo, New York, with her grandmother, [REDACTED], for quite some time. Therefore, Defendant had a reasonable expectation of privacy in her home and has standing to bring this motion.

13. On [REDACTED], Buffalo Police officers entered the defendant's residence at [REDACTED], Buffalo, New York in connection with a domestic disturbance.

14. At that time, Defendant was transported to ECMC for a medical evaluation.

15. After defendant was removed from the house, Buffalo Police officers began to search multiple floors of the house, including locked rooms, and weapons were allegedly found within.

16. There was no search warrant issued for Defendant's house prior to the search, nor were there exigent circumstances preventing the police from obtaining a search warrant prior to their search.

17. In a recent similar case, the Fourth Department held that such a search could not be justified under the emergency exception to the warrant requirement. *People v. Hidalgo-Hernandez*, 200 A.D.3d 1681 (4th Dept. 2021). In *Hidalgo-Hernandez*, the police responded to a 911 call from a woman who found her roommate unconscious on the floor of their apartment. *Id.* at 1682. The initial group of officers who responded found that the woman was deceased. *Id.* Subsequently, an officer, who was also an evidence technician, arrived on scene, learned that the woman was deceased, observed the body in the bathroom, and then began to search the remainder of the residence. *Id.* During this search, the officer searched unrelated bedrooms, took photographs, and found a digital scale with suspected drug residue and suspected drugs. *Id.* This information was used to obtain a search warrant, which resulted in the

discovery of drugs and a firearm. Id. The Fourth Department held that prior to the search, the officer had already observed the deceased body in the bathroom and there was no information that could be a possible assailant still in the residence or an ongoing risk of harm. Id. at 1683. Furthermore, the Court found that the officer did not have probable cause between the emergency of the unresponsive woman on the bathroom floor that once existed and the search of the bedrooms in the residence. Id.

18. While the facts here are slightly different, the underlying rationale for suppression is the same. Here, the Buffalo Police Officers responded to a “domestic” call and upon arriving found the defendant and her deceased grandmother in the first-floor living room of the home.

19. A review of the body camera footage shows that the officers entered the home, secured the defendant, and removed her from the home. The footage further reveals that officers interviewed neighbors who stated that the defendant’s grandfather was previously deceased.

20. Although the officers clearly saw the deceased individual in the first-floor living room of the home, secured and removed the defendant from the home, and were advised that the defendant’s grandfather passed away months prior, the body camera footage shows officers searching multiple rooms on the first floor, the locked basement, and multiple locked rooms on the second floor.

21. Throughout the body camera video, the officers continue to indicate that the defendant’s grandfather, who had passed away months prior, still lived at the home, in an apparent attempt to justify their warrantless search.

22. As such, the Buffalo Police Officers here were armed with similar knowledge as the officer in *Hidalgo-Hernandez*, were aware that no emergency situation was continuing, and entered multiple locked locations within the defendant’s home.

23. Therefore, the search of Defendant’s house was illegal and the evidence seized must be suppressed. In the alternative, if the Court does not grant the defendant’s motion to suppress the physical

evidence obtained from the illegal search, it is respectfully requested that the Court grant a hearing regarding the same.

SUPPRESSION OF STATEMENTS

24. The defendant further moves to suppress statements made to law enforcement personnel, which were involuntarily made or otherwise obtained in violation of Defendant's rights under the constitutions of the State of New York and the United States of America, as well as C.P.L. § 60.45.

25. The People have indicated the intention to introduce into evidence at trial statements of Defendant made while she was in custody.

26. As set forth above, Defendant was transported to Erie County Medical Center due to law enforcement concerns that she was suffering from a mental health crisis.

27. While Defendant was restrained at ECMC, law enforcement personnel interrogated her for multiple hours. During the course of this investigation, Defendant advised the detectives that were questioning her that she did not understand the *Miranda* warnings that were read to her. Notwithstanding, law enforcement personnel continued to interrogate Defendant regarding the alleged incident.

28. As such, Defendant asserts that because of the conduct of law enforcement during the interrogation, Defendant's statements were made involuntarily.

29. Therefore, the Defendant's statements were involuntary and obtained illegally and must be suppressed.

SANDOVAL

30. Pursuant to the authority of *People v. Sandoval*, 24 N.Y2d 371 (1974), it is respectfully requested that the Court order that the People immediately furnish to Defense Counsel a copy of Ms. [REDACTED] complete criminal history and set forth details concerning all alleged prior commissions of

specific criminal, vicious, or immoral acts which the People may wish to use to impeach the credibility of Ms. Harris in the event that she chooses to testify on her own behalf at trial.

31. It is further requested that this Court clarify the extent of permissible cross-examination of Ms. Harris and conduct an evidentiary hearing, if necessary, in order to rule, in advance, with respect to this issue.

32. This motion is made to assure [REDACTED] will be afforded a fair trial by eliminating the exposure of unnecessarily prejudicial facts, should she elect to testify. This motion is also made to remove any fears that [REDACTED] may have concerning such prejudicial matters so that they will not prevent her taking the stand and participating in her own defense.

33. This motion seeks to prevent the prejudice that would inure to [REDACTED] if matters that do not bear on credibility are brought to the attention of the jury. Furthermore, a limiting instruction would not limit the consideration of such evidence merely to the questions of the credibility of the witness and, therefore, would be ineffective at the time of trial.

REQUEST FOR HEARINGS

34. Should the Court not grant any of the relief requested above at the time these motions are argued, it is requested that the Court schedule hearings relating to the same so that the defendant may have an opportunity to produce evidence in support of the relief requested.

35. More specifically, the defendant requests the following hearings:

- a. *Mapp*
- b. *Huntley*
- c. *Sandoval*

36. Pursuant to *People v. Sanders*, 31 N.Y.2d 463, 341 N.Y.S.2d 305, 293 N.E.2d 555 (1973), it is requested that any hearing ordered and had in this case, with the exception of a *Sandoval*

hearing, be held at least twenty (20) days prior to the commencement of trial in order to allow sufficient time for the transcription of the minutes of such hearings.

LEAVE TO FILE ADDITIONAL AND LATE MOTIONS

37. 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

[Redacted Signature]