AMHERST TOWN COURT STATE OF NEW YORK : ERIE COUNTY	
THE PEOPLE OF THE STATE OF NEW YORK	
V.	NOTICE OF MOTION
, Defendant.	
PLEASE TAKE NOTICE that on the	, or as soon thereafter as counsel can be
heard, the defendant will move this Court,	pursuant to <i>Crawford v. Ally</i> (197 AD3d 27 [1st Dept. 2021]), to
conduct an evidentiary hearing to determ	ine the appropriateness and scope of the temporary order of
protection issued on	

Erie County District Attorney's Office 25 Delaware Ave. Buffalo, NY 14202

Hon.

AMHERST TOWN COURT

STATE OF NEW YORK : ERIE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

V.	SUPPORTING AFFIDAVIT

,				
Defendant.				
STATE OF NEW YORK	)			
COUNTY OF ERIE	)	SS.		
CITY OF BUFFALO	)			

., being duly sworn, deposes and says:

- 1. I am an attorney duly licensed to practice law in the State of New York. I am counsel for the defendant, who is charged with harassment in the second degree (Penal Law §240.26[1]).
- 2. I make this affidavit in support of my motion for an evidentiary hearing on the "appropriateness and scope" of the temporary order of protection [TOP] issued on June 16, 2022 (*Crawford v. Ally*, 197 AD3d 27 [1<sup>st</sup> Dept. 2021]). Unless otherwise stated, this affidavit is made on information and belief, the sources of which are my review of the charging papers and discussions with my client.
- 3. "In order to issue a TOP, and thereby deprive a defendant of significant liberty and property interests, there must be an articulated reasonable basis for its issuance" (*Crawford*, 197 AD3d at 33). "[W]hen the defendant presents the court with information showing that there may be an immediate and significant deprivation of a substantial personal or property interest upon issuance of the TOP, the Criminal Court should conduct a prompt evidentiary hearing on notice to all parties and in a manner that enables the judge to ascertain the facts necessary to decide whether or not the TOP should be issued" (*id.* at 34).

- 4. Pursuant to CPL 530.12(1)(A), this Court should consider whether the TOP as issued is likely to achieve its purpose in the absence of such condition. To make that evaluation, Courts may consider my client's "conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons."
- has no other place to live and has been living in his car since the OOP was issued. Although he is currently employed, he does not have the financial means to rent an apartment nor is he receiving any public assistance as he was residing with his mother. Upon information and belief, the complainant does not want to pursue the pending charges against.
- 6. As the First Department noted in Crawford, "[t]he impact of being barred from one's home, even temporarily, can be far-reaching" (197 AD3d at 33).
- 7. This set of facts and circumstances, at a minimum, compels a prompt evidentiary hearing concerning the scope of the TOP.

Accordingly, the defendant respectfully requests that the evidentiary hearing be granted.

(Notary Public)