

STATE OF NEW YORK
ERIE COUNTY (SUPREME) COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

DEFENDANT

NOTICE OF MOTION

Town Court Docket No.

YOUR HONOR:

Please take notice that at a term of Erie County (Supreme) Court held at 2:00 p.m. on _____, 2023 or as soon thereafter as counsel can be heard, the defendant will move this Court for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions, pursuant to CPL 510.10(1).

_____, 2023

Respectfully yours,

ATTORNEY, ESQ.
Attorney at Law

TO:

Hon. _____

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

STATE OF NEW YORK
ERIE COUNTY (SUPREME) COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

Town Court Docket No.

DEFENDANT

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

ATTORNEY, ESQ., an attorney licensed to practice law in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. I am counsel to the defendant, who is charged in Concord Town Court with burglary in the third degree (Penal Law § 140.20), unauthorized use of a vehicle in the third degree (Penal Law § 165.05), and criminal mischief in the third degree (Penal Law § 145.05[2]).
2. I make this affirmation in support of my motion for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions. This affirmation is made upon information and belief, the source of which is my review of the charging papers, the defendant's criminal history, and notes from the arraigning attorney.
3. "When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall, in accordance with this title, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit the principal to the custody of the sheriff" (CPL 510.10[1]).
4. At arraignment, the local criminal court committed the defendant to the custody of the Sheriff, for the purpose of conducting a forensic examination (CPL 730.20). It had no

authority to do so (*People ex rel. Molinaro v. Warden, Rikers Island*, __ NY3d __, 2022 NY Slip Op 07093 [2022]).

5. This Court has the authority (CPL 530.30[1][a]) and the obligation to order his release.
6. The defendant is not charged with a qualifying offense enumerated in CPL 510.10(4)(a)-(q), (u). He is not serving a sentence of probation or post-release supervision (CPL 510.10[4][r]). He does not qualify for sentencing as a persistent felony offender (CPL 510.10[4][s]). And he was not released on his own recognizance or on non-monetary conditions on a pending charge involving harm to an identified person or property when this offense was alleged to have occurred (CPL 510.10[4][t]).
7. As such, the law requires that defendant be released on his own recognizance or, in the alternative, non-monetary conditions.
8. The trial court, however, concluded that remand was in order to conduct a forensic examination. CPL 730.20(2) and (3) allow as follows:

When the defendant is not in custody at the time a court issues an order of examination, because [the defendant] was theretofore released on bail or on [their] own recognizance, the court may direct that the examination be conducted on an out-patient basis, and at such time and place as the director shall designate. If, however, the director informs the court that hospital confinement of the defendant is necessary for an effective examination, the court may direct that the defendant be confined in a hospital designated by the director until the examination is completed (CPL 730.20[2]).

When the defendant is in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective examination, the sheriff must deliver the defendant to a hospital designated by the director and hold [the defendant] in custody therein, under sufficient guard, until the examination is completed (CPL 730.20[3]).

9. Read together, these provisions make clear, that, absent the director (CPL 730.10[4]) informing the court that hospitalization is necessary, where the defendant is out of custody the examination may only be conducted on an out-patient basis. Here, to our knowledge, there has been no such communication from the director.

10. In *ex rel. Molinaro*, the Court of Appeals concluded that relator was not in custody at the time of arraignment because, like here, he was not charged with a qualifying offense. As such, CPL 730.20(2) is controlling. The examination must be conducted on an out-patient basis. The defendant should be released.
11. I waive the defendant's appearance at any appearance on this motion.

ATTORNEY, ESQ.

HON. _____, Presiding.

At a term of the Erie County (Supreme)
Court held on _____, 2023.

STATE OF NEW YORK
ERIE COUNTY (SUPREME) COURT

THE PEOPLE OF THE STATE OF
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ORDER

Town Court Docket No.

After reading the affirmation of ATTORNEY, ESQ., and hearing any argument in opposition,
it is hereby

ORDERED that the defendant be released on his own recognizance.

HON.