

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

Indictment No [REDACTED]

YOUR HONOR:

Please take notice that at a term of Erie County Court, [REDACTED], held at 9:30 a.m. on March [REDACTED] or as soon thereafter as counsel can be heard, the defendant will move for an order directing Mr. [REDACTED] to be tried separately from co-defendant [REDACTED]

Respectfully yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DATED: [REDACTED]
Buffalo, New York

TO:

Hon. [REDACTED]

Erie County District Attorney
25 Delaware Ave.
Buffalo, New York 14202

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

Indictment No. [REDACTED]

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

[REDACTED] an attorney licensed to practice in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. Along with [REDACTED] I am counsel to Mr. [REDACTED], who is charged jointly with [REDACTED] with two counts of murder in the second degree (Penal Law §§ 125.25[1], [2]), two counts of assault in the first degree (Penal Law §§ 120.10[1], [3]), two counts of assault in the second degree (Penal Law § 120.05[2]), two counts of assault in the third degree (Penal Law § 120.00[2]), criminal possession of a weapon in the second degree (Penal Law § 265.03[3]), and criminal possession of a firearm (Penal Law § 265.01-B[1]).
2. I make this affirmation in support of my motion for Mr. [REDACTED] to be tried separately from Ms. [REDACTED]. This affirmation is made upon information and belief, the sources of which are my review of the file and my conversation with counsel for Ms. [REDACTED].
3. The allegation underlying the indictment is that Mr. [REDACTED] fired several shots out of a vehicle driven by Ms. [REDACTED], causing the death of a young child and injuries to other individuals.
4. Even where charges against two defendants are properly joined, the court, upon motion of a defendant, “may for good cause shown order in its discretion that any defendant be tried separately from the other” (CPL 200.40[1]). Good cause includes, but is not limited to, a finding that the defendant “will be unduly prejudiced by a joint trial” (*id.*).

5. After a conversation with counsel for ██████████, I anticipate that her defense will be that ██████████ coerced her into driving the vehicle from which the shots were allegedly fired.
6. This will run counter to ██████████ defense that he was not present at the scene of the shooting.
7. There is a substantial risk that counsel for ██████████ pursuit of his client's defense will undermine ██████████ (*People v. Feliciano*, 189 AD3d 416, 419 [1st Dept. 2020]). If this happens, counsel will effectively become a "second prosecutor" and may be able to elicit otherwise inadmissible evidence to ██████████ detriment (*id.*).
8. Additionally, I anticipate that the prosecution will introduce jail calls by ██████████ which may incriminate ██████████. Any admissions in these calls are inadmissible against ██████████, and playing them before the jury would make ██████████ an unsworn witness against him.
9. The confrontation clause of the Sixth Amendment requires separate trials where, as here, "the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant are deliberately spread before the jury in a joint trial" (*Bruton v. United States*, 391 US 123, 135-136 [1968]).
10. The only way to safeguard ██████████ constitutional rights is to order that the defendants be tried separately.

For these reasons, severance should be granted.

██████████.