

STATE OF NEW YORK
ORLEANS COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIDAVIT
Indictment No [REDACTED]

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
TOWN OF [REDACTED])

[REDACTED], 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 the attorney for the defendant, [REDACTED].
2. I make this affidavit in support of my motion to dismiss the indictment.
3. Unless otherwise stated, this affidavit is made upon information and belief, the sources of which are my review of the indictment and the grand jury minutes.
4. In the indictment, [REDACTED] is charged with twenty-five counts arising from seven separate incidents.
5. Upon motion of the defendant, the Court may dismiss an indictment where “the evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense” or where “the proceeding otherwise fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result” (CPL 210.20[1][b], [c]).

6. In this case, the indictment was both insufficient and defective.
7. The only evidence connecting ██████████ to any of the crimes charged in the indictment is the hearsay statement of ██████████, a non-testifying co-defendant. ██████████ statement was elicited through the testimony of Investigators ██████████ (15-18, 41-42, 45-47, 71-74, 100-103, 120-121, 145-147; numbers in parentheses refer to pages of the grand jury minutes).
8. With exceptions not relevant here, “the provisions of article sixty, governing rules of evidence and related matters with respect to criminal proceedings in general, are, where appropriate, applicable to grand jury proceedings” (CPL 190.30[1]).
9. Article sixty incorporates judicially created rules of evidence (CPL 60.10). One of these is the rule against hearsay, which is a statement “made out of court and ... sought to be introduced for the truth of what [the witness] asserted” (People v. Nieves, 67 NY2d 125, 131 [1986]). Such a statement is admissible only if the People demonstrate that it “fell within one of the exceptions to the hearsay rule” (id.).
10. Although ██████████ statement was admissible against her, there is no hearsay exception that made it admissible against ██████████.
11. Thus, “the use of defendant ██████████ statement against defendant ██████████ was inadmissible hearsay and thus improper, prejudicial, and in violation of the rules of evidence” (People v. Jackson, 148 Misc2d 886, 889 [NY Sup. Ct. 1990]).
12. Although not every elicitation of hearsay testimony renders an indictment defective, it is fatal where “the remaining evidence is insufficient to sustain the indictment” (People v. Rawlinson, 175 AD3d 1109, 110 [4th Dept. 2019], quoting

People v. Huston, 88 NY2d 400, 409 [1996]; cf. People v. Carey, 241 AD2d 748, 751 [3d Dept. 1997] [although affidavit of co-defendant “was hearsay vis-a-vis this defendant, the resulting indictment was not dependent on this document but was based on sufficient sworn testimony from other witnesses which adequately supported the indictment against defendant”]).

13. Here, the remaining evidence was insufficient to sustain the indictment.
14. Additionally, the indictment is defective because “the amount of hearsay evidence which was offered ... was overwhelming” (People v. Harris, 15 Misc3d 994, 1003 [NY Co. Ct. 2007]), and the People failed to advise the grand jury that [REDACTED] [REDACTED] statement could not be considered against [REDACTED]
15. The method used to obtain the indictment violated the principles of our grand jury system. It cannot be allowed to stand.

