

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

██████████

YOUR HONOR:

Please take notice that on ██████████ at 3:00 p.m. or as soon thereafter as counsel can be heard, the defendant will move this Court for (i) inspection of the Grand Jury minutes pursuant to CPL 210.30(1) and (ii) dismissal of the indictment pursuant to CPL 210.20(1)(b) on the ground that the evidence before the Grand Jury was not legally sufficient to establish the offense charged or any lesser included offense.

████████████████████
████████████████
████████████████
████████████████

DATED: ██████████
Buffalo, NY

TO:

Hon. ██████████

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

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

██████████ ██████████

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

██ 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 ██████████, who is charged in this indictment with assault in the second degree (Penal Law § 120.05[3]).
2. I make this affidavit in support of my motion to (i) inspect the Grand Jury minutes pursuant to CPL 210.30(1) and (ii) dismiss the indictment pursuant to CPL 210.20(1)(b) on the ground that the evidence before the Grand Jury was legally insufficient to establish the offense charged or any lesser included offense.
3. A person is guilty of assault in the second degree, in relevant part, when, with intent to prevent a police officer from performing a lawful duty, he causes physical injury to such officer (Penal Law § 120.05[3]).
4. Upon motion of the defendant, the Court may dismiss the indictment on the ground that “the evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense” (CPL 210.20[1][b]).
5. Here, the Grand Jury minutes failed to establish the essential element that the officer was performing a lawful duty when he sustained the injury.
6. On ██████████, a shooting victim was brought to the Erie County Medical Center (ECMC), PO ██████████ obtained the following information: that the occupants of a

Kia Sorrento with a specific license plate number “brought the individual that was shot to the hospital” (5; numbers in parentheses refer to pages of the Grand Jury minutes). The information was relayed over the police radio, and PO [REDACTED] was among a group of officers who spotted the vehicle shortly thereafter. After the police attempted to pull over the vehicle, the occupants, including the defendant, took off on foot [REDACTED] gave chase and slipped in the snow, fracturing his fibula (26-31).

7. “[T]he police may pursue a fleeing defendant if they have a reasonable suspicion that defendant has committed or is about to commit a crime” (*People v. Martinez*, 80 NY2d 444, 446 [1992]). Otherwise, the defendant has the legal right to run away without being chased.
8. Because PO [REDACTED] was acting pursuant to information provided by another officer, his actions must satisfy the requirements of the fellow officer rule. [REDACTED] was the **receiver** of the information, and PO [REDACTED], who obtained and forwarded the original information, was the **sender**.
9. Where probable cause is required for the police to act lawfully, and an officer is acting on information provided by another officer, “the People must demonstrate that the sender or sending agency itself possessed the requisite probable cause to act” (*People v. Lypka*, 36 NY2d 210, 213 [1975]). The same principle applies here, except that the prosecution need only prove that the **sender**, PO [REDACTED], possessed the reasonable suspicion necessary to justify PO [REDACTED] seizure.
- 10 [REDACTED] information – that the defendant and the other occupants of the Kia Sorrento had taken a shooting victim to the hospital – provided a reasonable belief that the occupants were **witnesses** to a crime, but not reasonable suspicion that they had committed or were about to commit a crime. The police have no authority to seize witnesses in the absence of a material witness order issued pursuant to CPL Article 620.

11. As such, PO [REDACTED] had no legal right to pursue the defendant, so “the evidence was legally insufficient to establish that the officer was injured while undertaking a lawful duty” (*People v. Everett*, 82 AD3d 1666, 1667 [4th Dept. 2011]).
12. If any argument is made that the driver of the vehicle broke any laws during the car chase, there is no evidence in the Grand Jury minutes that the defendant was the driver.

Accordingly, the indictment must be dismissed.

[REDACTED]