

SUPREME COURT
COUNTY OF ERIE :: STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

**DEFENDANT’S NOTICE OF
MOTION**

v.

Ind. No.: [REDACTED]

[REDACTED]

Defendant.

PLEASE TAKE NOTICE that, upon the affirmation of [REDACTED], attorney for Defendant, dated April __, 2022, a motion will be made before this Court, on the __ day of __, 2022, at __ a.m., or as soon thereafter as counsel can be heard for an Order granting Defendant the following relief:

1. Granting counsel access to [REDACTED], NY 14211, pursuant to CPL § 245.30(2);
2. Precluding cross-examination of the Defendant on his prior criminal conduct;
3. For such other and further relief as to this Court may seem just and proper.

Pursuant to CPLR § 2214(b), answering papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: Buffalo, New York
April __, 2022

[REDACTED]

TO: Erie County District Attorney’s Office
25 Delaware Avenue
Buffalo, New York 14202
[REDACTED]

THE PEOPLE OF THE STATE OF NEW YORK,

**DEFENDANT’S AFFIRMATION
IN SUPPORT OF MOTION**

v.

████████████████████

████████████████████

Defendant.

████████████████████, an attorney duly licensed to practice in the State of New York, affirms the following under penalty of perjury, pursuant to CPLR § 2106:

1. I am the attorney for the Defendant, ████████████████████, in the above-captioned action and I make this Affirmation in support of the relief sought in the annexed Notice of Motion.

2. Unless otherwise stated, the factual allegations set forth herein are made upon information and belief and are based upon information obtained by or provided to Defense Counsel thus far, including an investigation of the facts related to this case. No previous request for the relief sought herein has been made.

ACCESSING AND INSPECTING THE PREMISES

3. The Defendant has been charged with PL §§ 220.16(1), 220.16(12), 220.09(1), 220.03, 220.50(1), 220.50(2), 220.50(3), and 221.05, stemming from the execution of a search warrant by members of law enforcement at ████████████████████, Buffalo, NY 14211 (hereinafter “Gittere” or “the Premises”) on or about September 18, 2019.

4. Subsequent to the abovementioned police raid, the People provided Defense Counsel with certain photographs ostensibly taken by law enforcement officers inside Gittere at the time the

warrant was executed. However, upon information and belief, none of these photographs show the room within the Premises where [REDACTED] was initially detained upon law enforcement's entry.

Moreover, while the photographs purport to show various items allegedly recovered from the Premises by members of law enforcement, they fall considerably short of depicting the structure, configuration, organization, size, and/or measurable layout of the Premises itself.

5. Upon Defense Counsel's information and belief, the People's theory of possession is based on [REDACTED] – and his property's – proximity to the drugs that were allegedly photographed and recovered from the Premises. The disclosed photographs do not permit any reasonable person to discern the size and layout of the Premises, and thus do not permit any reasonable person to discern Mr. [REDACTED] proximity to anything recovered from within the Premises.

6. [REDACTED] has a fundamental right to investigate and present a defense, and access into Gittere is the only way to exercise this right. Should [REDACTED] be denied access to Gittere, he will be deprived of fundamental evidence and/or information relevant to putting on his defense.

7. Further, Defense Counsel has not been provided with any discovery that depicts the interior layout of Gittere by any alternative means, and as such, an order granting Defense Counsel access to the Premises is not duplicative, unreasonable, or unduly burdensome. *See* CPL § 245.30(2); *People v. Cruz*, 136 N.Y.S.3d 693 (Sup. Ct. Kings County 2020).

8. Finally, Defense Counsel's investigator visited the Premises and was informed by the tenant of the lower unit that the upper unit is unoccupied. The investigator then contacted the owner of the Gittere Street property, [REDACTED], about gaining access into the unit for purposes outlined in this motion. [REDACTED] has been unwilling to entertain Defense Counsel's request, even going so far as to completely deny ownership of the Premises, despite his name being listed as the property owner on

the Erie County Department of Real Property Tax Services Parcel Search web link,¹ a copy of which is attached hereto as **Exhibit A**. [REDACTED] has a listed downstate mailing address of [REDACTED] [REDACTED] [REDACTED] and, upon information and belief and according to the lower tenant, the apartment at Gittere is currently unoccupied, so there is no significant privacy interest at stake for this Court to consider before ruling on this motion. *See* CPL § 245.30(2); *Cruz*, 136 N.Y.S.3d 693. As such, Mr. Archibald moves this Court for an order granting Defense Counsel and its investigators access to Gittere, pursuant to CPL § 245.30(2), to inspect, photograph, and take measurements.

PRECLUDING [REDACTED] CRIMINAL HISTORY

9. Defense Counsel fears that if [REDACTED] testifies at trial on his own behalf, the People will cross-examine him regarding his prior criminal convictions and/or any prior specific criminal and/or immoral acts. The introduction of such evidence would deprive [REDACTED] of a fair trial, in that it would have a disproportionately prejudicial influence on the factfinder, while providing them minimal probative value on the issue of [REDACTED] credibility.

10. [REDACTED] therefore moves this Court, pursuant to *People v. Sandoval*, 43 N.Y.2d 371 (1974), to preclude the People from cross-examining him on any of his prior criminal convictions and any prior specific criminal and/or immoral acts.

11. Pursuant to CPL § 240.43, [REDACTED] requests that the People provide notice of all specific instances of his prior uncharged criminal, vicious, or immoral conduct of which the People have knowledge and which the People intend to use at trial for purposes of impeaching his credibility. [REDACTED] [REDACTED] requests a hearing before trial to determine the admissibility of any such evidence and any evidence of prior criminal convictions. *Id.*

¹ **Erie County Parcel Search:**
[https://paytax.erie.gov/\(S\(spkgzuywkcu53hmwasmkfk\)\)/WebPortal/WEB_PT_MAIN.aspx?command=REPORTPARAMETERSTYLE&style=&group=Group2](https://paytax.erie.gov/(S(spkgzuywkcu53hmwasmkfk))/WebPortal/WEB_PT_MAIN.aspx?command=REPORTPARAMETERSTYLE&style=&group=Group2)

WHEREFORE, I request that this Court grant the relief sought in the Notice of Motion attached hereto.

DATED: April __, 2022

