

BUFFALO CITY COURT
STATE OF NEW YORK : ERIE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

v.

██████████,

Defendant.

NOTICE OF MOTION

Buffalo City Court Docket No.

██████████

Please take notice that on June 16, 2022, at 9:30 a.m. or as soon thereafter as counsel can be heard, the defendant will move this Court, pursuant to CPL 170.30(1)(a) and 170.35(1)(a), to dismiss the complaint on the ground that it is facially insufficient.

(ATTORNEY)

Counsel for the Defendant

DATED: June __, 2022
Buffalo, NY

TO: Hon. _____
Buffalo City Court
50 Delaware Ave.
Buffalo, NY 14202

██████████
██████████████████
Erie County District Attorney's Office
25 Delaware Ave.
Buffalo, NY 14202

BUFFALO CITY COURT
STATE OF NEW YORK : ERIE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

v.

████████████████████

Defendant.

SUPPORTING AFFIDAVIT

Buffalo City Court Docket No.

████████████████████

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

(ATTORNEY), ESQ., being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York.
2. I am counsel for the defendant, ████████████████████, who is charged with criminal possession of a weapon in the fourth degree (Penal Law § 265.01[4]) for his alleged possession of a shotgun with a previous conviction on ████████████████████.
3. I make this affidavit in support of my motion to dismiss the misdemeanor complaint on the ground that it is facially insufficient. Unless otherwise stated, this affidavit is made upon information and belief, the sources of which are the charging papers and the relevant statutes.
4. After arraignment on a misdemeanor complaint, a local criminal court may, upon motion of the defendant, dismiss the complaint on the ground that it is defective within the meaning of CPL 170.35 (CPL 170.30[1][a]). A complaint is defective, in relevant part, if “it is not sufficient on its face pursuant to the requirements of [CPL] 100.40” (CPL 170.35[1][a]).
5. An misdemeanor complaint is sufficient on its face when (a) it substantially conforms to the requirements of CPL 100.15 and (b) the factual allegations “provide reasonable cause to

believe that the defendant committed the offense charged in the accusatory part of such instrument” (CPL 100.40[4]).

6. The offense of criminal possession of a weapon in the fourth degree under Penal Law §265.01(4) is committed when a person “possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense.”
7. The previous conviction alleged in the complaint is for the misdemeanor of attempted criminal possession of a weapon in the fourth degree on [REDACTED]
8. Penal Law § 265.00(17) defines “serious offense,” and it includes any offense that involves “illegally using, carrying or possessing a pistol or other dangerous weapon, but it does **not** include any offense that involves **attempted** possession of a weapon (Penal Law § 265.00[17][a]).
9. Because the misdemeanor complaint fails to make out an essential element of the crime, it does not provide reasonable cause to believe that the defendant committed the offense of criminal possession of a weapon in the fourth degree.

Accordingly, the complaint should be dismissed as facially insufficient.

(ATTORNEY), ESQ.

June __, 2022

(NOTARY PUBLIC)