

STATE OF NEW YORK  
ERIE COUNTY SUPREME COURT

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THE PEOPLE OF THE STATE OF  
NEW YORK

v.

NOTICE OF MOTION

████████████████████

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██  
████████████████████

Please take notice that at 9:30 a.m. on ████████████████████ or as soon thereafter as counsel can be heard, the defendant will move this Court for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions, pursuant to CPL 510.10(1).

DATED:        November 9, 2022  
                 Buffalo, NY

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

TO:    Hon. ████████████████████  
  
Erie County District Attorney  
25 Delaware Ave.  
Buffalo, NY 14202

STATE OF NEW YORK  
ERIE COUNTY SUPREME COURT

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THE PEOPLE OF THE STATE OF  
NEW YORK

v.

SUPPORTING AFFIRMATION

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

██████████, an attorney admitted to practice in the courts of this State, under penalties of perjury, affirms the truth of the following statements.

1. I am appearing as counsel to the defendant, ██████████, who is charged in ██████████ City Court with resisting arrest (Penal Law § 205.30) and disorderly conduct (Penal Law § 240.20[3]). The court fixed bail at \$5,000.
2. I make this affidavit in support of my motion for an order releasing the defendant on his own recognizance or, in the alternative, on non-monetary conditions. This affidavit is made upon information and belief, the source of which is my review of the charging papers, the relevant legal authority, and the defendant's criminal history.
3. "When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall, in accordance with this title, by a securing order release the principal on the principal's own recognizance, release the principal under non-monetary conditions, or, where authorized, fix bail or commit the principal to the custody of the sheriff" (CPL 510.10[1]).
4. A court is authorized to fix bail or commit a defendant to the custody of the sheriff **only** if he or she is charged with a qualifying offense (CPL 510.10[4]).
5. The defendant is not charged with a qualifying offense.

6. This is not a proper application of the “Harm + Harm” provision of the bail statute, under which the court may fix bail “any felony or class A misdemeanor involving harm to an identifiable person or property ... where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property” (CPL 510.10[4][t]).
7. Although the defendant does have other charges pending against him, resisting arrest does not involve harm to an identifiable person or property, and disorderly conduct is a violation.
8. I waive the defendant’s appearance at any appearance on this motion.

Accordingly, the defendant must be released on his own recognizance or, in the alternative, on non-monetary conditions.

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HON [REDACTED], Presiding.

At a term of the Erie County Supreme  
Court held on [REDACTED] [REDACTED] [REDACTED].

STATE OF NEW YORK  
ERIE COUNTY SUPREME COURT

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THE PEOPLE OF THE STATE OF NEW YORK

v.

ORDER

[REDACTED]

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[REDACTED]  
[REDACTED]

After reading the affidavit of DAVID HERATY, ESQ., and any argument in opposition, it is hereby  
ORDERED that the defendant be released on his own recognizance.

\_\_\_\_\_  
HON. [REDACTED]

GRANTED: [REDACTED] [REDACTED] day of November,

[REDACTED]