

STATE OF NEW YORK
NYS SUPREME COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

REPLY AFFIRMATION

vs.

[REDACTED]

[REDACTED]

Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

[REDACTED] ESQ., under penalty of perjury, deposes and says:

1. I am an attorney at law duly licensed to practice my profession in the State of New York. As the attorney for the defendant herein, [REDACTED] I am familiar with the facts and circumstances surrounding the allegations contained in the accustory instruments by reason of my own personal investigation, review of all pleadings, and review of CPL 245 discovery.

2. This affirmation is submitted in reply to the People's Response in Opposition to the Defendant's Order to Show Cause.

3. The 38 paragraph Response fails to set forth any reasons why the Defense' requested relief should not be granted.

4. Paragraph 26 argues that the *in camera* testimony of a confidential informant is a sealed document in possession of the

Clerk of the Court, however it fails to set forth any mechanism for the sealing of the *in camera* materials in this case. Instead, it cites CPL 160.50(1)(c) - which involves the sealing of documents upon termination of a criminal action in favor of the accused, and CPL 170.55 - which relates to eavesdropping and video surveillance warrants. Neither section addresses search warrants, which are covered under CPL 690.

5. Paragraph 27 argues that *in camera* applications made before a Court are sealed and may only be disclosed upon a showing of good cause. That paragraph also incorrectly cites CPL 700.55(1), which deals with eavesdropping and video surveillance warrants.

6. Paragraph 28 then cites Hines v. Karassik, 47 NY2d 659, for the proposition that there are a very limited and strictly enumerated set of circumstances upon which a Court may unseal *in camera* testimony. That case, however, had nothing to do with *in camera* search warrant application testimony. It dealt with a request by a grievance committee to unseal records from a case where an attorney defendant had been acquitted of criminal conduct. Such a holding has nothing to do with this case. Regardless, there is certainly a set of circumstances warranting unsealing in this case to the prosecution, to wit: their CPL 245 obligation to turn over a transcript of all testimony or other oral communications offered in support of the search warrant application.

7. In sum, the prosecution has set forth no authority directing that the requested discovery be possessed under seal by the Clerk of the Court.

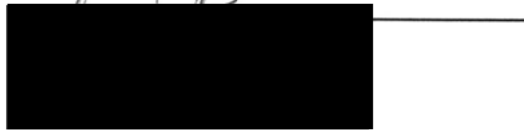
8. Whether or not the subject discovery is correctly so possessed under seal by operation of law, the prosecution can certainly show good cause to the issuing Court why the materials should be unsealed and handed over to the prosecution so that it can fulfill its CPL 245 obligations by providing transcripts to the Defense.

9. The defendant has a Constitutional Right and a statutory right pursuant to CPL 245 to be able to make a **knowing** decision on whether to plead guilty. CPL 245.20(1)(n) addresses automatic discovery to the defendant of the transcript of all testimony or other oral communications offered in support of the warrant application. CPL 245.20(k(vi)) addresses automatic discovery to the defendant of information known to law enforcement which may provide a basis for a motion to suppress evidence. CPL 245.25(1) mandates that such discovery be provided before the defendant accepts or rejects a pre-indictment plea offer. CPL 240.20(7) provides that there shall be a presumption in favor of disclosure when interpreting sections 245.25 and 245.20 (the sections involved in this Order to Show Cause).

10. The granting of the requested relief apparently will cause a change in how search warrant application materials are handled by the Court and the prosecution in this county. That is

not a reason to not follow what is clearly now the law. This is similar to the Buffalo Police not wanting to turn over disciplinary records after the repeal of 50-A. The legislature has spoken. The Defense is simply asking that the new law be followed.

WHEREFORE, it is respectfully requested that the Court grant the relief requested herein and afford this Defendant such other and further relief as is just under all the other circumstances of this case.

A handwritten signature in dark ink is written over a solid black rectangular redaction box. The signature consists of several vertical strokes and a horizontal line extending to the right.