

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

Indictment No. [REDACTED]

[REDACTED]

YOUR HONOR:

Please take notice that at a term of Erie County Court, [REDACTED], at 2:00 p.m. on [REDACTED] [REDACTED] or as soon thereafter as counsel can be heard, the defendant will move for the following relief.

1. An Order striking the prosecution's original and supplemental certificates of compliance and dismissing the indictment pursuant to CPL 30.30.
2. In the alternative, the imposition of sanctions pursuant to CPL 245.80.
3. Any further relief the Court deems proper.

Respectfully submitted,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DATED: [REDACTED]
Hamburg, NY

TO:

Hon. [REDACTED]

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

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF
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v.

NOTICE OF MOTION

Indictment No. [REDACTED]

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
TOWN OF HAMBURG)

[REDACTED], an attorney licensed to practice in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. Along with [REDACTED] I am counsel to the defendant, who is charged in this indictment with two counts of attempted murder in the second degree (Penal Law §§ 110.00, 125.25[1]), assault in the first and second degrees (Penal Law §§ 120.10[1], 120.05[2]), and criminal possession of a weapon in the second degree (Penal Law § 265.03[3]). The charges arise from the defendant's alleged shootings of [REDACTED], [REDACTED].
2. I make this affidavit in support of the relief requested below.

The prosecution's certificates of compliance should be stricken, and the indictment should be dismissed pursuant to CPL 30.30.

3. On [REDACTED] charges were filed related to the second shooting.
4. The defendant was arraigned on the indictment, which included the charges from both shootings, on [REDACTED].
5. The prosecution had six months from the commencement of the criminal actions to be ready for trial (CPL 30.30[1][a]). For the charges related to the second shooting, this date was [REDACTED] 2021; for the charges related to the first shooting, this date was [REDACTED].

6. A statement of readiness is not valid unless accompanied by a certificate of compliance with prosecution's discovery obligation (CPL 30.30[5]). This obligation is to disclose "all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including ... [a]ll tapes or other electronic recordings" (CPL 245.20[1][g]).
7. However, when the prosecution filed and served their original certificate of compliance, two items discoverable under CPL 245.20(1)(g) – additional apartment surveillance video and body worn camera footage from the first shooting – were not included.
8. The additional surveillance video was not turned over until November 29, 2022. Although the defense had previously received a DVD labeled "apartment building surveillance video," this footage was not included.
9. The prosecution filed and served a supplemental certificate of compliance on December 14, 2022. The prosecution did not include this disclosure in its supplemental certificate of compliance, nor did it provide an explanation for the untimely disclosure.
10. The body camera footage was not turned over until _____, 2022. Although the supplemental certificate of compliance does include the body camera, it does not provide an explanation for the untimely disclosure.
11. "Any supplemental certificate of compliance **shall detail the basis for the delayed disclosure** so that the court may determine whether the delayed disclosure impacts the propriety of the certificate of compliance" (CPL 245.50[1-a], emphasis added).
12. Without these explanations, the Court cannot conclude that the original certificate of compliance was valid. Both certificates are fatally defective.
13. Therefore original and supplemental certificates of compliance should be stricken, along with the prosecution's statement of readiness.
14. Because the prosecution was not ready for trial within six months of arraignment, the indictment should be dismissed pursuant to CPL 30.30.

In the alternative, sanctions should be imposed for the discovery violations.

15. If the court does not order a dismissal pursuant to CPL 30.30, the defense requests that a sanction be imposed for the discovery violations.
16. Where, as here, “material or information is discoverable under [Article 245] but is disclosed belatedly, the court shall impose a remedy or sanction that is appropriate and proportionate to the prejudice suffered by the party entitled to disclosure” (CPL 245.80[1][a]).
17. The court may “instruct the jury that it may draw an adverse inference regarding the non-compliance, preclude or strike a witness’s testimony or a portion of a witness’s testimony, admit or exclude evidence, order a mistrial, order the dismissal of all or some of the charges provided that, after considering all other remedies, dismissal is appropriate and proportionate to the prejudice suffered by the party entitled to disclosure” (CPL 245.80[2]).
18. Had these disclosures been timely, the defense would have been in a far better position to investigate and obtain evidence related to the first shooting.
19. Given the gravity of the discovery violations, dismissal is an appropriate sanction.
20. In the alternative, the defense requests the issuance of an adverse inference instruction.

For the reasons stated, the relief described above should be granted, along with any further relief this Court deems proper.

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