

STATE OF NEW YORK
ERIE COUNTY : BRANT TOWN COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

YOUR HONOR:

Please take notice that at a term of court held at 6:00 p.m. on December __, 2022 or as soon thereafter as counsel can be heard, the defendant will move to (i) strike the certificate of compliance filed on June 1, 2022 and (ii) dismiss the charges on the ground that he was denied his right to a speedy trial.

Respectfully yours,

Attorney for the Defendant

DATED: December __, 2022
Amherst, NY

TO:

Hon. _____
Brant Town Court
1272 Brant North Collins Rd.
Brant, NY 14027

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

TATE OF NEW YORK
ERIE COUNTY : BRANT TOWN COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

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

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

1. I am the attorney for the defendant, who was charged by simplified information with two counts of driving while intoxicated (Vehicle and Traffic Law §§ 1192[2], [3]) and several traffic infractions.
2. I make this affirmation in support of my motion to dismiss the charges on the ground that “[t]he defendant has been denied the right to a speedy trial” (CPL 170.30[1][e]).
3. As the highest charge is a misdemeanor punishable by a sentence of imprisonment of more than three months, the prosecution had 90 days from the commencement of the criminal action to be ready for trial (Penal Law § 30.30[1][b]). They were not.
4. A statement of readiness must be preceded or accompanied by a certificate of compliance with the prosecution’s discovery obligations (CPL 30.30[5]). Additionally, for a local criminal court accusatory instrument, the prosecution must certify that all counts meet the facial sufficiency requirements of CPL 100.15 and 100.40 (CPL 30.30[5-a]).
5. On ██████████ the defendant appeared in ██████████ in response to an appearance ticket, commencing the criminal action (Penal Law § 30.30[7][b]).
6. I made my first appearance as counsel on February 10, 2022.
7. On ██████████, 111 days after my first appearance, the prosecution filed and served a certificate of compliance and statement of readiness.
8. There was no excludable time between my first appearance and the statement of readiness.

9. On July 7, 2022, 147 days after my first appearance, the prosecution served me with the defendant's blood draw results, which are discoverable under CPL 245.20(1)(j). Although required by CPL 245.50(1) and (1-a), no supplemental certificate of compliance was served, let alone one that detailed the basis for the delayed disclosure.
10. There was no excludable time the statement of readiness and the serving of the additional discovery.
11. Because the prosecution have failed to establish that the certificate of compliance was filed "in good faith and reasonable under the circumstances," it is invalid (CPL 245.50[1]).
12. Even if the certificate of compliance was valid, it was not filed and served until well after the speedy trial clock ran out.

For these reasons, the Court should strike the certificate of compliance and dismiss the charges.
