




STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff


NOTICE OF MOTION
TO DISMISS

-VS-


Defendant

PLEASE TAKE NOTICE that on  at 9:15 a.m., or as soon thereafter as counsel can be heard, the defendant will move this Court to (i) strike the prosecution's original Certificate of Compliance effective , 2021, along with their Supplemental Certificate of Compliance, to (ii) dismiss the Indictment on the ground that the prosecution of the defendant has violated his right to a speedy trial pursuant to CPL 30.30(1)(a), (iii) impose appropriate sanctions, including dismissal of all of the Indictment or at the very least, the Hate Crime count of the Indictment based on the continued failure to comply with New York State Discovery Law in a statutorily required timely manner, and (iv) as a result of the prosecution's actions or inactions, a clear Brady violation has denied Mr  of his constitutionally protected due process rights and ability to prepare a defense and therefore sanctions must be imposed by this Court.

DATED: 
Buffalo, New York

Respectfully Submitted,


STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

SUPPORTING AFFIRMATION

-VS-

Defendant

██████████, an attorney admitted to practice law in this State, under penalty of perjury pursuant to CPLR 2106(a), affirms and subscribes the following statements to be true.

1. I am counsel for the defendant, ██████████, who is charged in this Indictment with one count of aggravated harassment in the second degree as a hate crime (Penal Law §§ 240.30[1][a], 485.05[1][b]) and three additional counts of aggravated harassment in the second degree. Count Two, which charges the hate crime, arose from an alleged communication from the defendant to Hunter Myers on December 21, 2019.
2. The defendant was charged by felony complaint on ██████████, meaning that the prosecution had until ██████████ to be ready for trial (CPL 30.30[1][a]). However, on ██████████, the Governor suspended the speedy trial statute, and the suspension lasted 198 days before being lifted on ██████████. Assuming that the suspension extended the prosecution's time to be ready for trial by 198 days, the 30.30 date was pushed back to ██████████.

3. The prosecution served their original Certificate of Compliance and declared ready on the Indictment on [REDACTED], with 38 days remaining in the speedy trial period.
4. On [REDACTED] the Defense served an Omnibus Motion which (i) requested sanctions for the prosecution's failure to comply with New York State Discovery law in a prompt and statutorily required manner. In addition, the Omnibus Motion challenged the legality and sufficiency of the Indictment, specifically with regard to the hate crime count, and (ii) challenged the grand jury presentment as legally insufficient and improper.
5. On [REDACTED], the prosecution took a statement, attached to this motion as Exhibit A, from [REDACTED]. In the statement, [REDACTED] recounted a conversation he had with the defendant and [REDACTED] in the early morning hours of December 22, 2019. [REDACTED] said that [REDACTED] the defendant told him that they burned Hunter Myers' house down. The prosecutor then explored the defendant's motives.

Q. Did they tell you why?

A. I already knew why.

Q. What do you think you know about why they did that?

A. It was because of his girlfriend. His friend that was a girl. I don't know how to explain it better than that.

Q. That's okay. Whose girlfriend?

A. Hunter's girlfriend at the time.

Q. What was the issue with Hunter's girlfriend at the time as far as [REDACTED] and [REDACTED] were concerned?

A. ██████ loved her.

Q. Okay.

A. I don't know.

Q. And was no longer with her; is that it?

A. Correct.

Q. So you believe that's the reason this happened?

A. Yes.

(Exhibit A, pp. 6-7).

6. As alleged in the Indictment, the communication forming the basis of Count Two was sent the day before the arson. It is clear from ██████'s statement that the source of the defendant's animosity toward ██████ at this point in time was the love triangle relationship, not the fact that he was Jewish. The statement negates an essential element of the crime: that the defendant committed the act constituting the offense "in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person" (Penal Law § 485.05[1[b]]).
7. In addition to the prosecution's constitutional obligation to disclose material favorable to the defense (*Brady v. Maryland*, 373 US 83 [1963]), they have a parallel statutory obligation to disclose all information "that tends to ... negate the defendant's guilt as to a charged offense" (CPL 245.20[1][k][i]). ██████ statement certainly falls into this category.
8. However, for 315 days, the prosecution did not disclose the statement.

9. On [REDACTED], via email at 5:33 PM (see Exhibit B attached) , the prosecution filed and served a Supplemental Certificate of Compliance and the statement from [REDACTED] a. The statement was not labeled as *Brady* material, and the Supplemental Certificate of Compliance did not provide any explanation for why the statement was not turned over at the time it was taken or even in a reasonable period thereafter.
10. The prosecution must perform its supplemental discovery obligations “as soon as practicable but not later than fifteen calendar days prior to the first scheduled trial date” (CPL 245.10[1][b]).
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]).
12. The original Certificate of Compliance should be deemed invalid as of [REDACTED]
[REDACTED]
13. The Supplemental Certificate of Compliance did not detail the reason for the delay in disclosure.
14. In summary, the prosecution continues to be in violation of the law. No effort has been made to explain their actions and inactions as required by Statute. [REDACTED] statement revealed that the source of [REDACTED] animosity toward [REDACTED] on [REDACTED] and 22. [REDACTED] was the relationship with the girl, not the fact that [REDACTED] is Jewish.
15. The continued failure to comply with the law places [REDACTED] in an untenable position and in effect, denies him due process.

16. On Monday, [REDACTED] the People telephonically contacted the undersigned and formally offered a plea to one non-hate crime A Misdemeanor, which, in effect, eliminates the hate crime Count. This Motion is designed to protect [REDACTED] Constitutional and Statutory rights in a situation where the Discovery violations are not resolved. It is no way a rejection by [REDACTED] of that plea offer.

17. Accordingly, [REDACTED] respectfully requests that the Indictment be dismissed and / or for all appropriate sanctions.

DATED: [REDACTED]
Buffalo, New York

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

TO: HON. [REDACTED]
ERIE COUNTY SUPREME COURT

[REDACTED].
Erie County District Attorney
25 Delaware Avenue
Buffalo, NY 14202