

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

**AFFIRMATION IN SUPPORT OF APPLICATION
FOR JUDICIAL SUBPOENA**

██████████

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

██████████, an attorney licensed to practice law 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 is charged in this indictment with criminal possession of a weapon in the second degree (Penal Law § 265.03[3]).
2. I make this affirmation in support of my application for the issuance of a judicial subpoena to ██████████, Director of the 911 Communications Center at the Erie County Department of Central Police Services, ██████████.
3. According to the discovery provide by the prosecution, the search of the defendant was based upon a 911 call that ...
4. The subpoena would direct ██████████ the director of the department that handles 911 calls in Erie County, to appear to testify at the suppression hearing in this case and to bring all documents relevant to the 911 call, including the recording of the call itself and the Complaint Summary Report.
5. "Any criminal court may issue a subpoena for the attendance of a witness in any criminal action or proceeding in such court" (CPL 610.20[1]). The showing required to sustain a subpoena is "that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome" (CPL 610.20[4]).

6. The contents of the 911 call are relevant to the central issue in the suppression hearing: whether the police possessed the founded suspicion necessary to ask the defendant for permission to search his person.
7. The defense intends to call [REDACTED] as a witness to authenticate the 911 recording, which we will then offer into evidence at the suppression hearing.
8. Because the arresting officer was acting on the information provided by the 911 operator, his actions must satisfy the requirements of the fellow officer rule. The officer was the **receiver** of the information, and the 911 operator was the **sender**.
9. Where probable cause is required for the police to act lawfully, and an officer is acting on information provided by another officer, “the People must demonstrate that the sender or sending agency itself possessed the requisite probable cause to act” (*People v. Lypka*, 36 NY2d 210, 213 [1975]). The same principle applies here, except that the prosecution need only prove that the **sender** possessed the founded suspicion necessary to justify the **receiver’s** actions.
10. For these reasons, the defense has made the necessary showing to sustain the subpoena.

[REDACTED]

HON. [REDACTED] Presiding.

At a term of the Erie County Supreme Court held on November __, 2022.

STATE OF NEW YORK
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[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] Department of Central Police Services
[REDACTED]
Buffalo, NY 14203

You are commanded to appear in person before Hon. [REDACTED], a Judge of the Erie County Supreme Court, [REDACTED] located at 25 Delaware Avenue, Buffalo, NY 14202, on the ___ day of November, 2022 at _____ to give testimony in the trial of the People of the State of New York v [REDACTED] and to bring with you any recordings and documents relating to a 911 call received on [REDACTED], concerning an incident on [REDACTED] in the City of Buffalo.

HON. [REDACTED]