

STATE OF NEW YORK  
ERIE COUNTY COURT

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THE PEOPLE OF THE STATE  
OF NEW YORK

v.

**NOTICE OF MOTION**  
IND-7 [REDACTED]

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YOUR HONOR:

Please take notice that upon the attached affirmation of [REDACTED], ESQ., the defendant will move, at a term of Erie County Court, Part 17, at 9:30 a.m. on [REDACTED] 2023 or as soon thereafter as counsel can be heard, for an order (i) striking the prosecution's [REDACTED] 2020 certificate of compliance and (ii) dismissing the indictment for a speedy trial violation (CPL 30.30[1][a], 210.20[1][g]).

DATED: [REDACTED], 2023  
Buffalo, New York

Respectfully,

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

TO:

Hon. Sheila A. DiTullio

Erie County District Attorney  
25 Delaware Ave.  
Buffalo, New York 14202

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THE PEOPLE OF THE STATE  
OF NEW YORK

v.

**NOTICE OF MOTION**

IND [REDACTED]

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STATE OF NEW YORK            )  
COUNTY OF ERIE            )        ss.  
CITY OF BUFFALO            )

[REDACTED], ESQ., 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 counsel to the defendant, [REDACTED], who is charged in this indictment with course of sexual conduct against a child in the second degree (Penal Law § 130.80[1][a]) and sexual abuse in the second degree (Penal Law § 130.60[2]).
2. I make this affirmation in support of the relief described below.
3. Unless otherwise stated, this affirmation is made upon information and belief, the source of which is my review of the case file, discovery, and motion papers.
4. On [REDACTED] 2020, a direct indictment was filed against Mr. [REDACTED]. The prosecution had six months from that date to file a valid certificate of compliance and statement of readiness (CPL 30.30[1][a], [5]).
5. On [REDACTED] 2020, the prosecution filed a certificate of compliance and stated its readiness for trial.
6. On [REDACTED] 2023, eleven days before trial, the prosecution turned over additional discovery and filed a supplemental certificate of compliance.
7. The additional discovery included (i) notes from a Child Protective Services (CPS) case worker, [REDACTED], from various dates in 2018 and (ii) a transcript of a Family Court proceeding from [REDACTED], 2019. [REDACTED], an employee of the District Attorney's Office, were also designated as prosecution witnesses.

8. The prosecution attempts to justify these late disclosures by (i) the fact that material was not previously in its possession and (ii) the fact that [REDACTED] were just identified as witnesses.
9. The late disclosures reveal that the original certificate of compliance and statement of readiness were invalid. Because the speedy trial period has long since expired, the indictment must be dismissed.

**The CPS Notes.**

10. The notes detail [REDACTED] investigation of the allegation against Mr. [REDACTED]. They incorporate statements from the complainant, Mr. [REDACTED], and others with relevant information.
11. The notes also name two people whom the complainant told about the alleged abuse.
12. When material or information discoverable under CPL 245.20(1) exists but is not within the prosecutor's possession, custody, or control, "[t]he prosecutor shall make a diligent, good faith effort to ascertain [its] existence ... and to cause such material or information to be made available for discovery" (CPL 245.20[2]).
13. The prosecution knew, or should have known, about the existence of this material. They learned about the case from CPS -- in fact, from [REDACTED] directly. But they did not make a diligent, good faith effort to ascertain the existence of the material or make it available for discovery.
14. "No adverse consequence to the prosecution ... shall result from the filing of a certificate of compliance in good faith and reasonable under the circumstances" (CPL 245.50[1]). But the prosecution's failure to obtain and disclose the notes of the CPS investigation was not reasonable.
15. Thus, the original certificate of compliance was invalid.

16. “A statement of readiness made at a time when the People are not actually ready is illusory and is insufficient to stop the running of the speedy trial clock” (*People v. Gaskin*, 214 AD3d 1353, 1354 [4th Dept. 2023]).
17. The prosecution's failure to comply with its discovery obligations deprived Mr. [REDACTED] a speedy trial. The indictment must be dismissed.

For the reasons stated, the motion should be granted.

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[REDACTED] ESQ.