

STATE OF NEW YORK
ORLEANS COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION TO DISMISS
Indictments Nos. [REDACTED]

YOUR HONOR:

Please take notice that upon attached affirmation of [REDACTED], ESQ., at a term of Orleans County Court held at 3:00 p.m. on [REDACTED], 2023 or as soon thereafter as counsel can be heard, the defendant will move to dismiss both indictments pursuant to CPL 210.20(4).

Respectfully yours,

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

DATED: September __, 2023
Buffalo, New York

TO:

Hon. Sanford Church
Orleans County Courthouse
27 North Platt Street
Albion, New York 14411

Anthony M. Bruce, Esq.
Orleans County Special District Attorney
39 Ellicott Street
Batavia, New York

STATE OF NEW YORK
ORLEANS COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

Indictments Nos. [REDACTED]

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

[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 the attorney for the defendant, [REDACTED]. Under Indictment [REDACTED] he is charged with trespass (Penal Law § 140.05) and tampering with a witness in the fourth degree (Penal Law § 215.10[a]). Under Indictment [REDACTED] he is charged with trespass (Penal Law § 140.05), harassment in the second degree (Penal Law § 240.26[1]), criminal mischief in the second degree (Penal Law § 145.10), making a terroristic threat (Penal Law § 490.20[1]), and making a threat of mass harm (Penal Law § 240.78[1]).
2. On February 9, 2023, this Court found that Mr. Bruce’s appointment as special District Attorney violated County Law § 701(1)(a), which requires the special District Attorney to have an office in the county or an adjoining county.
3. The Court vacated the appointment and dismissed the indictments on this ground. Although not specifically cited, the applicable statute is CPL 210.20(1)(a), which authorizes a dismissal upon a defective Grand Jury proceeding.
4. Mr. Bruce then resubmitted the charges to a new Grand Jury without obtaining permission from the Court, resulting in the indictments that are currently pending.
5. Following a dismissal based, in relevant part, on a defective Grand Jury proceeding, the prosecutor must obtain judicial authorization to resubmit the case to a new Grand Jury. “[I]n the absence of

authorization to submit or resubmit, the order of dismissal constitutes a bar to any further prosecution of such charge or charges, by indictment or otherwise, in any criminal court within the county” (CPL 210.20[4]).

6. Because there is a “legal impediment to conviction of the defendant for the offense[s] charged,” the indictments must be dismissed (CPL 210.10[1][h]).
7. If the indictments are dismissed, no permission to resubmit should be granted, as the speedy trial period has long since expired.

For the reasons stated, the indictments should be dismissed with prejudice.

██████████, ESQ.