

Part 62 JAN 31 2023

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 62

X

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

STEVEN MCENANEY

Defendant.

X

PLEASE TAKE NOTICE that, upon the annexed affirmation of *Richard C. Southard* and any attached exhibits, a motion will be made at 9:30 a.m. on the 23rd day of February, 2023 an order granting the following relief:

- I. Motion for a bill of particulars pursuant to CPL 200.90, requiring the District Attorney to file a bill of particulars with the court and to serve a copy thereof upon the defendant;
- II. Motion for Discovery pursuant to CPL Article 240;
- III. Motion for the delivery to the defendant of all evidence favorable to the defendant under the authority of Brady v. Maryland, 373 U.S. 83 (1963);
- IV. Motion for preclusion of the introduction of any evidence of the defendant's statements pursuant to CPL 710.30 for which the defendant had not received timely notice;
- V. Motion for preclusion of the introduction of evidence of any identification pursuant to CPL 710.30 for which the defendant had not received timely notice;
- VI. Motion to Controvert the Search Warrants and suppress all evidence obtained as a result of the unlawful searches of defendant pursuant to CPL 710.20 and 690.10 in violation of defendant's right against unlawful search and seizure;
- VII. Motion for the court to examine the stenographic grand jury minutes, pursuant to CPL 210.30, for the purpose of determining whether the evidence before the grand jury was legally sufficient to support the charges contained in the indictment;
- VIII. Motion to dismiss the indictment, pursuant to CPL 210.20 and CPL 210.30, on the ground that the evidence before the grand jury was not legally sufficient or pursuant to CPL 210.20 and CPL 210.35, that the grand jury proceeding was defective;

- IX. Motion to preclude the District Attorney from questioning the defendant concerning any alleged previous bad acts, arrests or convictions, pursuant to People v. Sandoval, 34 NY2d 371 (1974);
- X. Motion for reservation of defendant's right to supplement these motions or make further motions;

Granting such other and further relief as this court deems just and proper.

Dated: January 24, 2023

Yours,



Richard C. Southard
Attorney for Defendant
291 Broadway, Suite 800
New York, NY 10007
(212) 385-8600

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 62

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THE PEOPLE OF THE STATE OF NEW YORK,

AFFIRMATION

- against -

Indictment #70297-22

STEVEN MCENANEY

Defendant.

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RICHARD C. SOUTHARD, an attorney duly licensed in the State of New York, affirms the following under penalties of perjury:

1. I represent the defendant in the above-captioned matter.
2. I make this affirmation in support of the relief sought in the annexed Notice of Motion.
Annexed hereto are defendant's demand for discovery and a bill of particulars.
3. The sources of the information and grounds for my belief reflected in this affirmation are conversations with defendant, the assigned Assistant District Attorney, available court records, and the voluntary disclosure form provided by the District Attorney.
4. Upon information and belief, the defendant Steven Mcenaney, was arrested on March 9, 2022 and charged with one count of Penal Law §230.25 (1), Promoting Prostitution in the Third Degree.
5. The defendant was arraigned on a silent indictment charging him with one count of Penal Law §230.25 (1), Promoting Prostitution in the Third Degree on March 9, 2022 and entered a plea of "not guilty" to said charge.

I. BILL OF PARTICULARS

The defense requests the court direct the People to respond to those items refused by the People, if any, in their response to the Bill of Particulars included in defendant's Demand for Discovery. Defendant cannot adequately prepare for pre-trial hearings and trial without this information which I believe is within the control and knowledge of the District Attorney of New York County and that same may not be obtained by any other source.

II. DISCOVERY AND INSPECTION

To the extent not previously disclosed, pursuant to CPL 240.40 the defendant requests that the Court direct the People to provide the defendant with the following property which is or with the exercise of due diligence could come, within the possession or control of the prosecutor on the ground that such discovery is material to the preparation of the defense and that the requests herein are reasonable. If the Court should refuse to permit defendant's Motion for Discovery for any material requested herein, defense counsel requests that copies of such documents be placed in a sealed envelope and attached to the Court's file for purposes of any subsequent appeal:

1. Any written, recorded or oral or observed statement of the defendant (and of any co-defendant or co-conspirator, whether charged or not, including any alleged escorts or prostitutes interviewed by the District Attorney's Office in connection with this investigation), including all notes, summaries, or memoranda concerning such statements made by any law enforcement agent or by any person acting under the direction of, or in cooperation with any law enforcement agent. Also, state whether the defendant and or co-conspirator was advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), the name of the officer who advised the defendant of his rights and the date, time and

location when the warnings were given. Also, state whether such defendant or co-conspirator requested a lawyer. If so, the time and location of such request and to whom such request was made; also, include any written, recorded or oral statement of the defendant made to a private citizen that the People intend to offer at trial either on their direct case or on cross-examination of defendant.

2. Any transcript of testimony relating to the criminal action or pending against the defendant, given by the defendant, or any agent or employee of the defendant (or by any co-defendant whether charged or not) before any grand jury or other proceeding;

3. All statements of witnesses and/or any notes concerning such statements made by any law enforcement officer, including but not limited to, any physical description of the alleged perpetrator, the names of the witnesses providing descriptions, the names of law enforcement officers to whom they were provided, and the date, time and location where such description was given and any reports or documents relating to such description;

5. If the defendant was viewed or observed by any witness other than a law enforcement officer at any stage of the proceedings, the name and address of the witness and the circumstances under which the observations took place;

6. Names and addresses of all witnesses (including government employees, agents, or informants) to any events which form the basis for these charges;

7. Names of all law enforcement personnel present when the accused was taken into custody. Names of all law enforcement personnel present when any statement attributed to the defendant was made or recorded;

8. Names of all law enforcement personnel present at any search performed in connection with this case; and whether any search warrants were applied for, granted or denied and any inventory of said warrants.

9. Any photograph or drawing relating to the criminal proceeding taken or made by a public servant engaged in law enforcement activity or by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial;

10. Any photograph or drawing purporting to contain the likeness of a human being that was shown to prospective witnesses or made with the participation of any witness (including the names of all persons participating in the preparation of such sketches or compositions, the names and addresses of all persons to whom the photographs or drawings were exhibited, as well as any documents that reflect the date, time, circumstances and result of such exhibition including any questions asked or statements made at any such preparation or exhibition);

11. Any photograph, photocopy, or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of Penal Law §450.10, regardless of whether the People intend to introduce at trial the property, or the photograph, photocopy or other reproduction, including booking photographs; and photographs of scratch marks and abrasions to defendant's back, torso, arms and hands taken at the time of defendant's filing of a complaint against the complaining witness, which preceded his arrest.

12. Any audio or video tapes or other electronic recordings made of the defendant by police officials, including the name of the person who made the recording;

13. Any tapes or other electronic recordings that the prosecutor intends to introduce at trial

regardless of whether such recording was made during the course of the criminal transaction; including but not limited to video pertaining to defendant's arrest.

14. Copies of all documents, police reports, notes, or memoranda, prepared or maintained by police officials containing information relating to this investigation including but not limited to:

- a. copies of all search and/or arrest warrants, together with all supporting affidavits and any other documents in support of any warrant that resulted in the arrest of the defendant or the seizure of any property in this case;
- b. any documents reflecting by whom, the exact date, time, location and manner in which the events underlying the charged offense were reported to the police, including handwritten and typed arrest reports, UF61 or other complaint reports, pre-arrangement forms, aided reports, supervisor's reports, Unusual Occurrence Reports, Evidence Collection Unit Reports, Stop and Frisk Reports, OLBS Worksheets, Police Service Request cards, complaint follow-ups, Stop and Frisk Reports, on-line booking sheets, precinct log book entries and handwritten and typed notes of any officer participating in the investigation leading to defendant's indictment;
- c. the exact time and manner by which a law enforcement official was first alerted to the incident which resulted in the defendant's arrest;
- d. tape recordings, complaint logs, and transcripts relating to any "911" call or call to the police relating to the crime charged;
- d. tape recordings, dispatcher logs, transcripts or memoranda recording any police communications during the investigation of the crime charged, including but not limited to, a check of defendant's drivers license, license plates, vehicle and of the seized weapon;
- e. any notes made by police officials concerning their investigation, whether to be used at trial or not;
- f. any grand jury referral forms;
- g. any portion of any police department manual, directive, or policy statement governing the police conduct of this investigation in any respect;
- h. diagrams, charts or other intended to be used at trial by prosecution witnesses or by the prosecutor
- i. any signatures or writing samples taken of defendant during the booking process;
- j. any written waiver or any evidence of any evidence of waiver alleged by the People to have been made by defendant concerning any statutory or Constitutional rights.
- k. any radio communications relating to the observation of defendant, his conduct, or relating to defendant's arrest in general.

15. An itemized description of any property recovered or seized during the investigation of the charges, the person or place from which the property was taken, the person effecting such seizure or receiving the property, the date or dates the property was seized or recovered, and whether such seizure

was pursuant to a warrant;

16. Any records or documents, including handwritten notes, relating to any test or analysis performed on any physical evidence or sample seized.

17. The name and field of expertise of each person that the People intend to call at trial as an expert witness, as well as:

- a. the field and subject matter of the expert's expected testimony;
- b. a copy of the resume or curriculum vitae of the expert;
- c. for each scientific examination or test performed, the name, author, and chapter of any reference manual or authoritative text referred to or relied upon;
- d. if this expert has previously testified for the People the date, case name, Court, indictment or docket number of the case in which the expert testified, as well as copies of any transcripts of that testimony.

18. Disclosure of the criminal record of the defendant within the possession or control of the prosecution;

19. CPL 240.20(2) specifically requires disclosure of the items requested above relating to scientific or physical examination or tests. The People can articulate no prejudice to them in allowing the defense adequate discovery of scientific data and procedures. Any refusal to provide such information can only be for the purpose of retaining some perceived tactical advantage, at the expense of the defense.

20. The items requested are in the exclusive possession, custody, and control of the government and the defendant has no other means of ascertaining the disclosures requested. The items requested are not privileged. The items and information are material to this cause and the issues of guilt or innocence and punishment to be determined in this cause, if any. The defendant will not properly be prepared to go to trial without such information and inspection, nor can the defendant adequately prepare a defense

to the charges against him without it. Absent such discovery the defendant's rights under the Constitution will be violated to his irreparable injury and thus deprive the accused of a fair trial herein.

21. Pursuant to CPL 240.43, People v. Betts, 70 N.Y.2d 289, 520 N.Y.S.2d 370, 514 N.E.2d 865 (1987), and People v. Ventimiglia, 52 N.Y.2d 350, 438 N.Y.S.2d 261, 420 N.E.2d 59 (1981), the defendant requests that the People deliver to the undersigned complete information concerning all specific instances of the defendant's prior *uncharged* criminal, vicious, or immoral conduct that the People intend introduce as direct evidence at trial, or upon cross examination, to impeach the credibility of the defendant, should he choose to testify at trial. Pursuant to CPL 240.43, the defense requests that the Court order the prosecution to provide this information within three days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

22. To the extent that the prosecution introduces evidence of uncharged crimes in its direct case, the defense requests that it be provided with all *Rosario* material of the witness relating to such uncharged crimes. People v. Lineszy, 212 A.D.2d 548, 622 N.Y.S.2d 325 (2d Dep't 1995).

23. Defendant also requests that the Court order the prosecution to provide any discovery to which the defendant is entitled pursuant to People v. Rosario, 9 N.Y.2d 286, 213 N.Y.S.2d 448, 173 N.E.2d 881, 7 A.L.R.3d 174 (1961), and CPL 240.45 to the defendant within three days, excluding Saturdays, Sundays and holidays, prior to the commencement of any hearing and/or trial relating to this matter.

24. The defendant requests disclosure of any other information required to be disclosed by the People pursuant to the New York or United States Constitutions.

III. BRADY

1. Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the defendant requests that the prosecution provide all information, in whatever form available, supporting the position that the defendant did not commit the crime(s) charged, including but not limited to:

- a. Any record of previous arrests or convictions or any other evidence or information demonstrating participation in dangerous, vicious, immoral or criminal behavior on the part of the victim, and/or any persons intended to be called as witnesses by the prosecutor, including but not limited to "rap sheets", police personnel records, or other memoranda; *see People v. Pressley, 234 A.D.2d 954, 652 N.Y.S.2d 436 (4th Dep't 1996); People v. Pressley, 91 N.Y.2d 825, 652 N.Y.S.2d 436, 689 N.E.2d 525(1997).*
- b. Any statements known to be false or erroneous made to a public servant engaged in law enforcement activity or a grand jury or a court by persons intended to be called as witnesses;
- c. Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witness on any occasion gave false, misleading or contradictory information regarding the charge at bar or any related matters, to persons involved in law enforcement or to their agents or informers;
- d. Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witnesses have given statements that are or may be contradictory to each other;
- e. Any information recounting a misidentification of the defendant as a perpetrator of the crime(s) charged or indicating a failure on the part of any potential witness to identify the defendant as the perpetrator of the crime(s) charged;
- f. Any information indicating that any prospective prosecution witness, has or had a history of mental or emotional disturbance;
- g. Full disclosure of any consideration, promise of consideration, or expectation of consideration offered to any prospective prosecution witness, including any unindicted co-conspirators, but not limited to, leniency, favorable treatment, assistance with respect to any pending legal proceeding, or any reward or other benefit whatsoever that will or could be realized by the witness as a result of the witness's testimony;
- h. Any threats, express or implied, direct or indirect, made to any prosecution witness and unindicted co-conspirators, including criminal prosecution or investigation, any change in the probationary, parole, or custodial status of the witness, or any other pending or potential legal disputes between the witness and the prosecution or over which the prosecution has a real, apparent, or perceived influence;
- i. Complete information of each occasion when each witness who was or is an informer, accomplice, or co-conspirator has testified before any court or grand jury, including date, caption, and indictment number of the case;
- j. Any malfunction of any instrumentality used for any scientific test for a period of 24 hours immediately prior to the test or analysis involving the defendant until 24 hours thereafter;
- k. Any repetition of any scientific test and any differing results obtained;

- l. Any lack of qualification by any person performing any scientific test in connection with this matter;
- m. Any information to the effect that all or some of the evidence that may be utilized by the People at trial was illegally or improperly obtained or was obtained even partially as the result of the improper acquisition of some other evidence or information;
- n. All evidence in the possession, custody or control of the District Attorney or any police agency, the existence of which is known to the District Attorney, or which by due diligence may become known to the District Attorney, which may be, or may tend to be favorable or exculpatory to the defendant, and which is or may be material to the issue of guilt or punishment.

IV. PRECLUSION OF STATEMENT EVIDENCE.

- Defendant moves for preclusion of statement evidence upon the following basis:
- 1. Defendant has not received notice of any statements alleged to have been made by defendant served within the statutorily prescribed fifteen (15) days, therefore should any newly alleged statements be alleged for which the defendant has not received notice, they must be precluded for lack of notice. CPL 710.30; see People v. Lopez, 84 N.Y.2d 425, 618 N.Y.S.2d 879, 643 N.E.2d 501 (1994); People v. O'Doherty, 70 N.Y.2d 479, 522 N.Y.S.2d 498, 517 N.E.2d 213 (1987).

V. PRECLUSION OF IDENTIFICATION EVIDENCE

- 1. Defendant did not receive notice of any police arranged identification procedures pursuant to CPL 710.30(1)(b); therefore, Defendant moves for preclusion for lack of notice of any non-noticed identification procedures. CPL 710.30; see People v. Lopez, 84 N.Y.2d 425, 618 N.Y.S.2d 879, 643 N.E.2d 501 (1994); People v. O'Doherty, 70 N.Y.2d 479, 522 N.Y.S.2d 498, 517 N.E.2d 213 (1987).

VI. MOTION TO CONTROVERT SEARCH WARRANT AND SUPPRESS EVIDENCE RECOVERED

- 1. For an Order pursuant to C.P.L. §§ 710.20 and 690.10 directing that any and all

evidence and property recovered pursuant to a search warrant executed at 22 Molly's Way, Salt Point NY 12578 (the target location) be suppressed on the grounds set forth herein or in the alternative to grant a hearing to determine the same and for such other and further relief as this Court deems just and proper.

2. Pursuant to CPL 710.20, the defendant moves that all evidence seized or discovered as a result of the search of the target location be suppressed, since, upon information and belief, the warrant was issued without probable cause for the following reasons:

3. No search warrant may be issued unless it is supported by probable cause to believe that

an offense has been committed or that evidence of criminality may be found in a certain

location. People v. Bigelow, 66 NY2d 417(1985). People v. Pinchback, 82 NY2d 857 (1993). In

addition, probable cause can be based only on facts made known to the issuing judge at the time

the search warrant application was decided. People v. Nieves, 36 NY2d 396 (1975). People v.

Asaro, 34 AD2d 968 (1970). Based upon the redacted search warrant application provided to the defendant, the search was based upon imprecise, stale and unreliable information and was not supported by probable cause. Moreover, the warrant was overbroad.

a. The defendant has standing to contest the legality of the search warrant issued in this matter as he has a reasonable expectation of privacy in his residence.

b. The warrant with which the property was seized was issued without probable cause. Other than the target location being defendant's residence there is no evidence provided by any informant or

investigator that the target location was used in connection with any criminality; or that any evidence of criminality would be there; to the contrary, Complainant -1 indicates explicit photos were taken at a different location. Complainant-1 also alleges giving money to defendant, there is no evidence that she gave him money in the target location or even that she was ever inside the target location. In fact any money claimed to be electronically sent, can be corroborated via bank records without intrusion into Defendant's home. Complainant-1 refers to a "work apartment" which might yield evidence but this is a distinct location from the target location. The Complainant-1 also references packages being shipped to addresses belonging to a Joe Dimenna: 10 E. 67 St and 3 Halsey Path. but other than using Amazon packages to establish the defendant's residence; there is no proof whatsoever establishing that evidence would be located there. No witnesses observed defendant conducting any criminal business at the target location nor did any witness observe evidence there. The analogy would be the police searching a drug dealer's residence months after observing him conduct a street sale at a different location. In order to search the dealer's residence months later, they would need the drug seller's consent or an informing witness testifying they recently saw contraband/evidence at the residence? Complainant spoke of hidden cameras at the "work apartment", not the target location, which the investigator concludes based on pure conjecture, that the defendant would have preserved these recordings. This is complete speculation on the part of the investigator. There is no evidence to substantiate that any recordings of any kind were saved, much less that they would be at the target location. It is equally as likely that the surveillance equipment re-recorded over itself, as most security cameras do. The investigator also concluded that the target location would be the "likely location" for these recordings without any proof that the recordings were saved or any reliable information that they weren't in a safety deposit box, or hidden at the work apartment or some other location not overtly linked to the defendant.

c. The warrant under which the property was seized was overly broad with regard to the property authorized to be seized; Given the lack of any reliable information that evidence was located at the target premises; the search warrant was drafted in the broadest possible terms listing every possible electronic data, storage and communication device. On the bottom of Page 3, it describes: Any and all data, information, or images evidencing internet usage history for the time period **January 1, 2012 to present** (emphasis added). This is more than ten years prior to the application for the warrant and it's likely that any crimes from that time period would be beyond the Statute of Limitations. The scope of the warrant was overbroad covering over a ten year period.

d. The information provided by the informant was stale and therefore could not be the basis for establishing probable cause. Generally speaking, a court must be satisfied that the information in an application for a search warrant must be sufficiently current so as to establish that the property sought is presently at the designated location. People v. Loewel, 50 AD2d 483 (1977). There is no set time limit fixed by the courts to determine whether or not the information is stale. People v. Mendez, 199 AD2d 182 (1993). However, in People v. Edwards 69 NY2d 814 (1987), the Court of Appeals found that information in an application for a search warrant was stale where ten days had passed between the events that established probable cause and the issuance of the warrant. Complainant-1 provided information in the Fall and Winter of 2021 of a prior relationship with defendant and February of 2022; it is my belief that Complainant had no continued relationship with defendant after Fall of 2021 and that information provided was relating to events that occurred 6 months prior and in most instances, longer than that. This is also supported by the investigator's prior warrants of email accounts which date back to April and July of 2019, almost three full years before a warrant was sought for the target location. Unfortunately, some key dates have been redacted out but in the unredacted sections, there is

not any credible evidence provided in the search warrant affidavit that indicates that even if there was evidence of a crime in 2019 or before Fall 2021 that it would still be there at the time of this search warrant application. This warrant application was nothing more than a fishing expedition. Consequently, all evidence obtained as a result of the exploitation of an unlawful warrant must be suppressed as “tainted fruit” of the Constitutional violation. Wong Sun v. United States, 371 U.S. 471 (1963). The defendant therefore moves, pursuant to CPL 710.20 to suppress all evidence seized from the target location. The defendant requests this motion to suppress be granted summarily pursuant to CPL 710.60(2) or in the alternative, Defendant requests a Mapp hearing to determine the lawfulness of the arrest and seizure of property.

VII. MOTION TO INSPECT GRAND JURY MINUTES

1. Pursuant to CPL 210.30(2), the defendant requests an examination by the Court and defense counsel of the stenographic minutes of the Grand Jury proceeding, including the District Attorney’s charge and instructions on the law, for the purpose of deciding the defendant’s Motion to Dismiss and/or reduce the Indictment, *infra*.

2. Pursuant to CPL 210.30(3), the defendant requests that the Court order a release of those portions of the Grand Jury minutes that are relevant to the determination of defendant’s Motion to Dismiss, *infra*, so that defense counsel may effectively present written and/or oral argument in support thereof. As of the writing of this motion, they have not been turned over.

VIII. MOTION TO DISMISS THE INDICTMENT PURSUANT TO CPL 210.20, CPL 210.30 AND CPL 210.35

1. The defendant moves that the indictment against him be dismissed pursuant to CPL article 210

based on the grounds that the evidence before the grand jury was not legally sufficient to establish the offense(s) charged, or any lesser included offense, to wit:

Since Defendant has no access to the transcripts of the proceedings or charging instructions, in the interest of justice, and in order to insure that the defendant is fully informed of the basis for the indictment in this case and that the Court disclose the minutes inspected and the grand jury testimony to defense counsel, pursuant to CPL 210.30(3), so that I might more effectively represent the accused on this motion to dismiss.

3. I respectfully request to be advised by cover letter from the prosecutor or from the court's office as to the date when the grand jury minutes are provided to the court.

4. Defendant requests that the Court examine the legal instructions to the grand jury. The defendant further requests that the instructions to the grand jury be disclosed to defense counsel so that the accuracy and sufficiency of the prosecutor's instructions to the grand jury might be evaluated and so that any appropriate motions might be made by the defense.

5. In addition, defendant moves that the indictment be dismissed based on the factual basis and legal authority set forth below, namely:

- a. The arrest of the defendant was wholly without probable cause.
- b. The grand jury proceeding was defective within the meaning of CPL 210.35.
- c. The statute defining the offense charged is unconstitutional or otherwise invalid.

IX. MOTION TO PRECLUDE PURSUANT TO PEOPLE V. SANDOVAL AND UNCHARGED ACTS

1. Pursuant to People v. Sandoval, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413 (1974), the

4. I have endeavored to make appropriate transcript of my previous Motion all pertinent prior to this

defendant requests that the People be precluded from asking any questions concerning defendant's arrest record, conviction record, or any prior immoral, vicious, or other bad acts. The presentation of such information to the jury in this case would greatly prejudice the defendant, far outweighing any probative value such information might have. The defendant requests a hearing as to any such evidence the prosecution seeks to introduce at trial. The defense will wait until the District Attorney supplies the defendant's criminal record, as well as a list of any of the defendant's prior uncharged criminal, vicious, or immoral conduct sought to be used for purposes of cross examination pursuant to CPL 240.43 before asking for preclusion of specific crimes or acts.

2. Pursuant to CPL 160.40, defendant requests that the Court provide defendant with a copy of defendant's Division of Criminal Justice Services report to enable defendant to prepare for a *Sandoval* hearing.

Detroit January 24, 2013

X. MOTION FOR HEARINGS AND SUBSEQUENT MOTIONS

1. Should the Court not grant any of the relief requested above at the time these motions are argued, I request that the Court schedule hearings relating to the same so that the defendant may have an opportunity to produce evidence in support of the relief requested.

Attorneys for Plaintiff
(212) 338-8400

2. More specifically, the defendant requests the following hearings:

- a. Mapp.
- b. Sandoval

3. I request that any hearing ordered and had in this case, with the exception of a *Sandoval* hearing, be held at least twenty (20) days prior to the commencement of trial in order to allow sufficient time for the transcription of the minutes of such hearings.

4. I have endeavored to encompass within this Omnibus Motion all possible pretrial requests

for relief, based upon the information that is now available to me. I request that the Court grant me leave to submit subsequent motions, should facts discovered through this motion or hearings related to this motion, indicate that additional relief may be warranted. Moreover, should additional specific allegations of fact be necessary to support any of the requests herein, defendant asks for leave to supplement this motion as necessary.

5. Subject to the resolution of the aforesaid motions, defendant reserves the right to speedily move to suppress any other unlawfully seized evidence upon discovery of facts relating thereto. Defendant further requests the reservation of the right to request an adjournment after pre-trial hearings to investigate information developed at said hearings pursuant to People v. Peacock, 31 NY2d 907.

Granting such other and further relief as this court deems just and proper.

Dated: January 24, 2023

Yours,



Richard C. Southard
Attorney for Defendant
291 Broadway, Suite 800
New York, NY 10007
(212) 385-8600

information orally given by the defendant to police officers who have arrested him. This demand also encompasses any writing concerning the substance of information given by the defendant to police officers who have arrested him.

SUPREME COURT OF THE STATE OF NEW YORK
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b. Any police property voucher and police receipt for property comprising a list of property that the defendant either had in his possession when arrested with or

THE PEOPLE OF THE STATE OF NEW YORK, DEMAND FOR DISCOVERY

removed from - against - ~~test upon arrest including recent Indictment #70297-2022 and of Correction~~

dealing with the safety, safety, safety of defendant's person on the date of arrest.

STEVEN MCENANEY

c. Any written, recorded or oral statement the defendant made to a private citizen that the People

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wanted to utilize at trial either in their direct case or on cross-examination of defendant.

DISCOVERY

d. Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant or by a co-defendant to be tried jointly, before any Grand Jury.

I. PLEASE TAKE FURTHER NOTICE that pursuant to CPL 240.20 the defendant hereby demands

a. Any written report or document or portion thereof concerning a physical or mental examination, that the District Attorney disclose and make available for inspection, photographing, copying or testing or any analysis or experiment, relating to the criminal action or proceeding and which was made by, the following property:

b. The results of a transaction of a public servant engaged in law enforcement activity or which was

c. a. Any written, recorded or oral statement of the defendant and of any codefendant to be tried jointly, made other than in the course of the criminal transaction to a public servant engaged in law

enforcement activity or to a person then acting under his direction or in cooperation with him. This

d. Any photograph or drawing relating to the criminal action or proceeding which was made or encompasses all statements made by defendant regardless of whether the People intend to offer such statement at trial in their direct case or on cross examination of defendant. Such statements should include but are not limited to any form signed by the defendant concerning: 1) statements made by the defendant to police officers about the physical condition of the defendant while in custody, and 2)

e. Crime scene photographs and drawings.

information orally given by the defendant to police officers who have recorded it. This demand also encompasses any writing containing the substance of information given by the defendant to police officers.

- b. Any police property voucher and police receipts for property containing a list of property that the defendant either had in his possession when arrested and/or containing a list of property that the police removed from the defendant upon arrest, including records held by the Department of Correction dealing with their taking custody of defendant's person on the date of arrest.
- c. Any written, recorded or oral statement of the defendant made to a private citizen that the People intend to offer at trial either on their direct case or on cross-examination of defendant.
- d. Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant or by a co-defendant to be tried jointly, before any Grand Jury.
- e. Any written report or document or portion thereof concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding and which was made by, or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial.
- f. Any photograph or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial. This includes but is not limited to:
 1. Crime scene photographs and drawings.

2. Any arrest photograph of the defendant or other photograph of the defendant which came into police custody.
 3. Photographs of any lineups involving the pending case.
 4. Any photographs exhibited to witnesses including that of the defendant and or other persons involved in any photo identification proceeding, whether or not an identification was made by a witness.
 5. Any composite sketch or drawing attempting to depict any of the alleged perpetrators of the crime.
 6. Photographs of any witnesses or alleged victims showing the physical condition of that person.
 7. Photographs of police department flyers which attempt to depict any property involved in the pending case which would include but is not limited to property alleged to have been stolen during the commission of the crime or property seized from the defendant or a codefendant.
- h. Any other property obtained from the defendant or codefendant to be tried jointly.
 - i. Any tape or other electronic recordings which the prosecutor intends to introduce at trial irrespective of whether such recording was made during the course of the criminal action.
 - j. Anything required to be disclosed, prior to trial to the defendant by the prosecutor, pursuant to the constitution of this state or of the United States.
 - k. Any audio or video tapes, computer printouts or entries, or other electronic recordings made in the course of the investigation or preparation of this case, including but not limited to communications of any kind received, sent or monitored the Office of Emergency Communications, copy of any E-mail, voice mail, answering machine tapes or messages, dictation tapes, computer disks, CD ROMs, or any other computer records or electronic media in which such records are stored, as well as copies of any documents, tapes or other media of any nature concerning any electronic surveillance, "trap and trace"

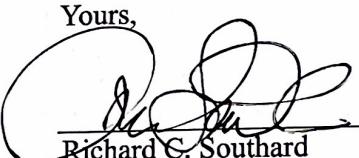
devices, alpha or numeric pager messages, telephonic or other electronic communications of any type;

III. PLEASE TAKE FURTHER NOTICE that pursuant to CPL 240.20 and 240.40 the defendant hereby demands that the District Attorney present and make available for inspection and copying any audio, visual or other electrical recordings, *inter alia*, any and all police radio transmissions made on any radio frequency relating to this case, and any 911 tapes that contain communications by any witness that the District Attorney intends to call as a witness at trial.

IV. PLEASE TAKE FURTHER NOTICE that pursuant to CPL 240.35 and 240.80(2), any refusal by the District Attorney to disclose information upon the grounds that it is reasonably believed to be not discoverable by this demand or that a protective order would be warranted must be made and served upon defense counsel and filed with the court within fifteen (15) days of the service of this demand, must be in writing, and must set forth the grounds of such belief as fully as possible.

VII. PLEASE TAKE FURTHER NOTICE that, pursuant to CPL 240.80(3), absent a refusal by the district attorney to comply with this demand, compliance with this demand must be made within fifteen (15) days of the service of this demand.

Yours,


Richard G. Southard
Attorney for Defendant
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