

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

THE PEOPLE OF THE STATE OF NEW YORK,

v.

NOTICE OF MOTION
Indictment Number: 70297-2022

STEVEN MCENANEY

PLEASE TAKE NOTICE, that upon the annexed affidavit, and all the prior papers and proceedings herein, Lawrence P. LaBrew, Esq., of the Law Office of Lawrence LaBrew, will move this Court, at Part 62, at the Courthouse at Courthouse at 100 Centre Street, New York County, New York, New York 10013, on the 29th day of February 2024 at 9:30 in the morning, or as soon thereafter as counsel can be heard, for an order – pursuant to N.Y. CRIM. PROC. LAW § 220.60 (3) – granting the following relief:

1. Allowing the Defendant to withdraw his plea of guilty to the Indictment on the grounds of Ineffective Assistance of Counsel, and that the Court grant any other relief that it deems just proper, and equitable.

DATE: 30 January 2024
New York, New York

Yours,

Lawrence P LaBrew

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Case No. Indictment Number 70297-2022

TO: District Attorney Alvin Bragg
New York County District Attorney's Office
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New York, New York 10013
by: ADA Keith Savino
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SUMMARY OF THE ARGUMENT.....

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

ATTORNEY AFFIDAVIT IN SUPPORT
OF THE MOTION
Indictment Number: 70297-2022

v.

Defendant STEVEN MCENANEY

Defendant

for a lot of stuff. There is no support in the record that Mr. Hessey's statements from the
Lawrence P. LaBrew Esq., an attorney duly admitted to practice in the Courts of this
State, hereby swear under the penalty of perjury, pursuant to N.Y. C.P.L.R. § 2106, that the
following statements are true, and as to those made upon information and belief that he believes
them to be true:

2. I am the attorney for the Defendant Steven McEnaney.
3. This affidavit is in support of the Defendant's Motion to withdraw his plea of guilty
pursuant to N.Y. CRIM. PROC. LAW § 220.60 (3) for ineffective assistance of counsel
pursuant to Sixth Amendment to the United States Constitution, and Article 1, Section 6
of the New York State Constitution. U.S. CONST. amend. VI; N.Y. CONST. art. I, § 6.

SUMMARY OF THE ARGUMENT

4. In this case there was no investigation whatsoever by prior Counsel. The lack of an
investigation resulted in the failure of Counsel to ascertain the facts in this case. There
cannot be a knowing, intelligent, voluntary plea if the Counsel fails, at the least, to

learn the basic facts that established reasonable cause to believe that the Defendant committed a crime. The Defendant was not provided with effective assistance of counsel, because prior Counsel never made a motion to obtain a redacted version of the grand jury minutes: in effect, that amounts to a failure to investigate the essential facts that formed the basis of the indictment. Those basic facts could form the predicate information for a motion to dismiss the indictment based on a violation of the statute of limitations. The Defendant was not provided with effective assistance of Counsel, because prior Counsel told the Defendant that the Judge hated him, and that the Judge wanted to put him away for a lot of stuff. There is no support in the record that indicates any animus from the Court towards the Defendant, unless the aforementioned remarks were made to prior Counsel, when prior Counsel had an off the record meeting – with the Judge and the Assistant District Attorney – without the Defendant being present, and against the Defendant's wishes where substantive issues were discussed. Mr. McEneney had a right to be present at said meeting: he had “peculiar knowledge that would [have been] ... useful in advancing the Defendant’s position, or countering the Prosecution’s position.” Especially since prior Counsel did even have any knowledge about the facts that were presented to the grand jury because he never utilized the criminal procedure law – or the appellate process as outlined by the Court in the Court’s protective order – to obtain the grand jury minutes. The Defendant was prejudiced, because he entered a guilty plea without receiving the effective assistance of counsel. *a significant but not indispensable element in assessing*

STANDARD OF REVIEW *People v. Cahan, 5 N.Y.3d 147,*

5. The United States Supreme Court has established a two-pronged test for determining

when a Defendant's Sixth Amendment right to the effective assistance of counsel has been violated. Under the two-pronged test it must first be shown "that counsel's representation fell below an objective standard of reasonableness ... under prevailing professional norms." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). Second, a "[d]efendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). See also *People v. Honghirun*, 29 N.Y.3d 284, 56 N.Y.S.3d 275 (2017).

6. Pursuant to Article I, § 6 of the New York State Constitution, the Court of Appeals has "adopt[ed] a rule somewhat more favorable to defendants." *People v. Turner*, 5 N.Y.3d 476, 480, 806 N.Y.S.2d 154 (2005). In the State of New York, effective assistance of counsel "has long been whether the defendant was afforded 'meaningful representation.'" *People v. Henry*, 95 N.Y.2d 563, 565, 721 N.Y.S.2d 577 (2000), quoting *People v. Benevento*, 91 N.Y.2d 708, 712, 674 N.Y.S.2d 629 (1998); see *People v. Baldi*, 54 N.Y.2d 137, 147, 444 N.Y.S.2d 893 (1981) and *People v. Saunders*, 193 A.D.3d 766, 145 N.Y.S.3d 121 (2nd Dept. 2021).

- a. The New York State standard of meaningful representation "does not require a defendant to fully satisfy the prejudice test of Strickland, although we continue to regard a defendant's showing of prejudice as a significant but not indispensable element in assessing meaningful representation." *People v. Caban*, 5 N.Y.3d 143, 155–156, 800 N.Y.S.2d 70 (2005) quoting *People v. Stoltz*, 2 N.Y.3d 277, 284,

778 N.Y.S.2d 431 (2004) (*internal quotes omitted*). In the State of New York, any prejudice component focuses on the “fairness of the process as a whole rather than its particular impact on the outcome of the case.” *People v. Benevento*, 91 N.Y.2d 708, 714, 674 N.Y.S.2d 629 (1998).

- b. The Court of Appeals has also noted that even though a conscious decision by a defense attorney to act or not to act in a certain way, in a certain instance, may be characterized as a “strategy” or “tactic,” that conscious decision may still not amount to an “objectively reasonable and legitimate trial strategy under the circumstances and evidence presented.” *People v. Berroa*, 99 N.Y.2d 134, 138, 753 N.Y.S.2d 12, (2002). The fact that a purposeful position taken by Counsel can be regarded as “strategy” does not insulate a Court from making a determination that ultimately characterizes the attorney’s actions as ineffective representation. “[U]nsupportable” and “harmful” strategies constitute ineffective assistance of counsel, the same as no strategy at all. See *People v. Bartley*, 298 A.D.2d 160, 748 N.Y.S.2d 18 (1st Dept. 2002). As explained by (former Chief) Judge Korman of the Eastern District:

[N]ot all strategic choices are sacrosanct. Merely labeling [defense counsel]’s errors “strategy” does not shield his trial performance from Sixth Amendment scrutiny ... [citations omitted]. To the contrary, “certain defense strategies or decisions may be ‘so ill chosen’ as to render counsel’s overall representation constitutionally defective [citations omitted]. *Quartararo v. Fogg*, 679 F. Supp. 212, 247 (E.D.N.Y. 1988).

7. Under both federal law and New York State law, even an isolated error can easily amount to ineffective assistance of counsel. See *Murray v. Carrier*, 477 U.S. 478, 496, 106 S. Ct.

2639 (1986), *citing United States v. Cronic*, 466 U.S. 648, 657 n.20, 104 S. Ct. 20397 (1984), *People v. Flores*, 84 N.Y.2d 184, 188–189, 615 N.Y.S.2d 662 (1994). Therefore, “[a] single error may qualify as ineffective assistance, but only when the error is sufficiently egregious and prejudicial as to compromise a defendant’s rights. (see *People v. Hobot*, 84 N.Y.2d 1021, 1022 [1995]); *People v. Flores*, 84 N.Y.2d 184, 188 [1994].” *People v. Turner*, 5 N.Y.3d 476, 480, 806 N.Y.S.2d 154 (2005).

8. See also *People v. Casey*, 149 A.D.3d 771, 50 N.Y.S.3d 528 (2nd Dept. 2017), *People v. Ladd*, 220 A.D.2d 849, 850, 632 N.Y.S.2d 233, 235 (3rd Dept. 1995) (“The People’s argument that defendant waived the right to challenge the constitutionality of his June 10, 1993 conviction of attempted assault in the second degree, because it was based on a bargained plea of guilty, is without merit. Defendant’s plea of guilty on June 10, 1993 was not a waiver of his right to claim ineffective assistance of counsel since “‘the voluntariness of the plea depends on whether counsel’s advice’ was within the range of competence demanded of attorneys in criminal cases””), and *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985) (“We hold, therefore, that the two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the Strickland v. Washington test is nothing more than a restatement of the standard of attorney competence already set forth in *Tollett v. Henderson*, *supra*, and *McMann v. Richardson*, *supra*. The second, or ‘prejudice,’ requirement, on the other hand, focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable

probability that, but for counsel's errors, he would not have pleaded guilty and would

have insisted on going to trial.”).

ARGUMENT, FACTS, AND PROCEDURAL HISTORY

9. The Defendant was arraigned on the Indictment on 9 March 2022: he was represented by a public defender, or an attorney paid by the government, at his arraignment. The Defendant is charged with one count of Promoting Prostitution in the Third Degree (N.Y. PENAL LAW § 230.25-1). Exhibit 1: Indictment.
10. Upon information and belief, that being the Defendant's NYSID report, the Defendant has not had any prior contact with the criminal justice system.
11. The Defendant retained Mr. Richard Southard as his attorney on 1 November 2022.
12. Mr. Southard provided ineffective assistance of counsel because Mr. Southard never conducted an investigation of the facts in the case, prior Counsel never made a motion to dismiss the indictment on the grounds that the indicted charge was time barred by the Statute of Limitations; and, Mr. Southard never investigated the statue of limitations claim, because he never made any effort to obtain the grand jury minutes. Upon information and belief, that being Mr. Richard Southard, he never received the grand jury minutes because of a Protective Order issued by the Court. Upon information and belief, that being ADA Savino, he never turned over the grand jury minutes to defense counsel because of a protective order issued by the Court. The four corners of the Protective Order do not prevent access to the grand jury minutes. Exhibit 6 (Protective Order). And even a liberal interpretation of the protective order – construing the order as preventing Defense Counsel access to the grand jury minutes – was subject to appellate review based

- on the explicit language in the protective order.
13. The plea of the Defendant was not a knowing, intelligent voluntary plea of guilty because the Defendant, and his attorney, were not provided with any sworn grand jury testimony that the grand jury used to determine whether there was legally sufficient evidence to support the charges, or reasonable cause to believe that the Defendant committed the crime. **Prior Counsel never took any action to obtain the grand jury minutes.**
14. The names and addresses of the witnesses is not necessary for an attorney to evaluate the evidence as it related to the case against the Defendant. Based on the record, the Court never entered an Order denying the Defense access to the grand jury minutes. And even if the Court had entered a Protective Order with regard to the release of the grand jury minutes, prior Counsel failed to make any type of written motion to challenge that determination.
15. **The record is devoid of any effort by Mr. Southard to obtain the grand jury minutes to begin to investigate – less lone make – a motion to dismiss on the grounds that the statute of limitations had expired.** The Defendant's attorney filed an **Omnibus Motion in this case on or about 31 January 2023.** Exhibit 2: Defense Omnibus Motion. In the Notice of Motion, prior Counsel moved for the following relief:
- a. A Motion for Discovery pursuant to Article 240 of the Criminal Procedure Law. Article 240 of the Criminal Procedure Law was repealed effective 1 January 2020.
 - b. In section II of the Omnibus Motion, former Counsel moved for discover pursuant to N.Y. CRIM. PROC. LAW § 240.40. The statute was repealed effective 1 January 2020 and replaced by Article 245 of the Criminal Procedure Law.

- c. In prior Counsel's Omnibus Motion, Prior Counsel made numerous other requests for discovery pursuant to repealed Article 240 of the Criminal Procedure Law.
 - d. In section VII (2) of the omnibus motion, prior Defense Counsel requested release of the grand jury minutes pursuant to N.Y. CRIM. PROC. LAW § 210.30 (3). Grand Jury minutes are automatically disclosed – absent a protective order – pursuant to N.Y. CRIM. PROC. LAW § 245.20 (1) (b).
 - i. As stated earlier, there was no protective order denying the defense access to the grand jury minutes in this case.
 - e. Prior Counsel also filed a demand for discovery pursuant to various sections of repealed Article 240 of the Criminal Procedure Law.
16. Prior Counsel's Omnibus Motion does not contain an application to dismiss the Indictment on the grounds that this action was not commenced within the Statute of Limitations. N.Y. CRIM. PROC. LAW §§ 210.20 (1) (f); 30.10. The Defense never received the grand jury minutes so that a determination could be made as to whether a motion to dismiss the Indictment – pursuant to N.Y. CRIM. PROC. LAW §§ 210.20 (1) (f), and N.Y. CRIM. PROC. LAW § 30.10 – should have been filed.
- a. *People v. Harris*, 26 N.Y.3d 321, 328, 22 N.Y.S.3d 393, 397-98 (2015) (“Claims such as defendant's, presenting a clear-cut, objectively unreasonable failure by counsel to obtain the dismissal of a time-barred count, instance precisely the sort of breakdown in the adversary process understood in Strickland to be the quintessential ground for and target of an ineffective assistance claim (Strickland v Washington, 466 US at 696). And, under Strickland, it is irrelevant that the

- omission is not ‘completely dispositive’ of the entire case. All a defendant must show is ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding [6] would have been different’ (id. at 694 [emphasis added]). It is obvious that this standard is met where an attorney unaccountably allows the submission of a time-barred count for which his client is convicted.”),
- b. In *People v. Turner*, 5 N.Y.3d 476, 481, 806 N.Y.S.2d 154, 157 (2005) (“The ultimate issue here is whether appellate counsel was ineffective for failing to argue that trial counsel was ineffective. That question depends on whether trial counsel was clearly ineffective, and that question in turn depends on how strong defendant’s statute of limitations defense was. We conclude that it was a winning argument; that trial counsel could not reasonably have thought that the defense was not worth raising; that appellate counsel could not reasonably have thought that she should not argue trial counsel’s ineffectiveness; and that therefore an ‘egregious and prejudicial’ error, rising to the level of ineffective assistance, has occurred.”).
17. The Prosecution in their response to the prior Defense Counsel’s Omnibus Motion states that “The People have provided all the discovery to which the defendant is entitled under Article 245. The additional items that the defendant seeks are not in the People’s possession, custody or control, or persons under the People’s direction or control. The People are aware of our obligation, under CPL § 245.20(2) to ‘make a diligent good faith effort to ascertain the existence of material or information discoverable under CPL §

245.20(1) where it exists but is not within' our control, and will provide such discovery under the timelines established in CPL § 245.20(1)." Exhibit 3: Prosecution Response to prior Counsel's Omnibus Motion.

18. The Court issued a decision on the Omnibus Motion on 23 February 2023. Exhibit 4: Decision and Order. There is no mention of discovery: (1) the Prosecution in their papers claimed that they had fulfilled all of their discovery obligations, and (2) the Defense did not utilize the statutory process – pursuant to N.Y. CRIM. PROC. LAW §§ 245.30 (3) or 245.35 to obtain any discovery. There was no waiver of discovery, in this case, pursuant to N.Y. CRIM. PROC. LAW § 245.75.
19. The failure to provide discovery – in and of itself – is not a basis for setting aside a conviction; however, the failure to obtain the grand jury minutes so that the Defense can put on a effective defense amounts to ineffective assistance of counsel.
20. The Assistant District Attorney, and prior Defense Counsel, both claim that the Court issued a protective order denying the defense access to the grand jury. However, this is belied by the facts in this case.
21. Based on present Defense's Counsel review of the court file, there are no Defense written motions filed requesting, or responding to request, for a protective order. On 12 April 2023, the Prosecution made an oral argument for a protective order. Exhibit 5: Court Minutes. The Court issued a Protective Order; however, the Order did not prevent Defense Counsel from obtaining the grand jury minutes to find out what evidence was the basis for the indictment in this case. Exhibit 6: Protective Order. And to the extent that prior Counsel may have construed that Order as prohibiting access to the grand jury

- minutes, prior Counsel did not file a written response opposing the Prosecution's application, and prior Counsel did not appeal the Court's protective order.
22. Upon information and belief, that being Mr. McEneney, Mr. Southard was meeting with the District Attorney, and the Court, against the Defendant's wishes, and the Defendant was not present. Upon information and belief, that being the Defendant, Mr. McEneney informed prior Counsel that he wanted to be present at any meeting between the Court and the Prosecution, along with his Defense Attorney. Under New York State law, Mr. McEneney has a right to be present at a criminal proceeding where he is a Defendant, if he might have peculiar knowledge that would be useful in advancing the Defendant's position, or countering the Prosecution's position. Exhibit 7: Defendant's Affidavit with attached e-mails. *People v. Sprowal*, 615 N.Y.S.2d 328, 331; 84 N.Y.2d 113, 118 (1994), *People v. Dokes*, 584 N.Y.S.2d 761, 764, 79 N.Y.2d 656, 660 (1992), and *People v. Morales*, 591 N.Y.S.2d 825, 829, 80 N.Y.2d 450, 456 (1992). The Defendant's input would be even more important in a case where the Defense has not factual information related to the evidence that was present to the grand jury to support the charges in this case.
23. Upon information and belief, that being the Defendant, the Defendant stated in his affidavit that prior Counsel told him that the Judge hated him and that the Judge wanted to put him away for a lot of stuff. Exhibit 7: Defendant's Affidavit with attached e-mails to prior Counsel. However, based on the court minutes from 12 April 2023, the Court had no animus toward the Defendant. Prior Counsel's interpretation of the Judge's disposition towards the Defendant is not supported by the record. Comments directed towards the

Defendant – by prior Counsel – such as those stated above, served no strategic purpose

except to **scare and coerce the Defendant into pleading guilty.**

24. This is a case where the Defendant pled guilty, and the prior Defense Attorney conducted no investigation whatsoever in the case. ~~not provided with effective assistance of counsel~~

a. *See e.g., Woodard v. Collins*, 898 F.2d 1027, 1029 (5th Cir. 1990) (“First, a court generally must strongly presume that counsel has exercised reasonable professional conduct. Strickland, 466 U.S. at 690, 104 S. Ct. at 2065 and Samples, 897 F.2d at 196. No such presumption, however, is warranted when a lawyer advises his client to plea bargain to an offense which the attorney has not investigated. Such conduct is always unreasonable.”), and *Smith v. Mahoney*, 611 F.3d 978, 986-87 (9th Cir. 2010) (“We hold that Smith's defense attorney's performance fell below an objective standard of reasonableness because he failed to investigate the facts of the crime, failed to investigate Smith's mental state at the time of the crime, and failed to discuss possible defenses before Smith pled guilty. Smith's intent to plead guilty mitigated, but did not eliminate, his attorney's duty to reasonably investigate. See *Langford v. Day*, 110 F.3d 1380, 1386-87 (9th Cir. 1996). Despite Smith's insistence on pleading guilty, his defense attorney failed to adequately investigate the circumstances of the crime.”).

CONCLUSION

Defendant McEnaney has been denied effective assistance of Counsel under the United States Constitution, and under the New York State Constitution. The federal standard, under the

Sixth Amendment to the United States Constitution, has been violated because prior “counsel’s representation fell below an objective standard of reasonableness … under prevailing professional norms;” and, but for prior Counsel’s unprofessional errors, Defendant McEnaney would not have pled guilty. The Defendant was not provided with effective assistance of counsel pursuant to Article I, Section 6 of the New York State Constitution, because the Defendant was not afforded “meaningful representation.” The Defendant’s plea of guilty was not a knowing, intelligent, voluntary plea of guilty, because he did not receive effective assistance of Counsel.

WHEREFORE, the Defendant respectfully asks that this Court exercise its’ discretion and allow the Defendant to withdraw his plea of guilty – in this case – because the Defendant was not provided with effective assistance of counsel pursuant to Article I, Section 6 of the New York State Constitution; and, the Defendant was not provided with effective assistance of Counsel pursuant to the Sixth Amendment to the United States Constitution.

DATE: 30 January 2024
 New York, New York

Respectfully,

Lawrence P LaBrew

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EXHIBIT 1

B001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

STEVEN MCENANEY,

Defendant.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses the defendant of the crime of **PROMOTING PROSTITUTION IN THE THIRD DEGREE**, in violation of Penal Law §230.25(1), committed as follows:

The defendant, in the County of New York, during the period from on or about May 1, 2012 to on or about January 19, 2018, knowingly advanced and profited from prostitution by managing, supervising, controlling, and owning, alone and in association with others, a house of prostitution and a prostitution business and enterprise involving prostitution activity by two and more persons for prostitution.

ALVIN L. BRAGG, JR.
District Attorney

B002

Case No. Indictment Number 70297-2022

EXHIBIT 2

B003

Savino
70

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

X

THE PEOPLE OF THE STATE OF NEW YORK,

REC'D FEB 21
2024 U.S. DISTRICT COURT
P 3:17

- against -

NOTICE OF MOTION

Indictment #70297-2022

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;

B004

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY PART 3

- 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;

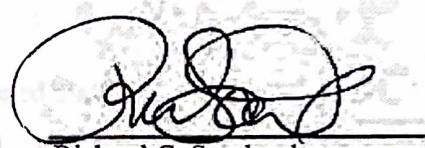
STEVEN MCENANEY

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

Dated: January 24, 2023

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 case.
2. I make this affirmation in support of the above motions.
Amended hereto are defendant's demand for disclosure and the motion for trial by jury.
3. The sources of the information and grounds for the affirmations contained 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.



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

B005

Case No. Indictment Number 70297-2022

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

X

THE PEOPLE OF THE STATE OF NEW YORK,

AFFIRMATION

- against -

Indictment #70297-22

STEVEN MCENANEY

Defendant.

X

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.

B006

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:

the observations took place;

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

Case No. Indictment Number 70297-2022

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;

e. 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;

f. any notes made by police officials concerning their investigation, whether to be used at trial or not;

g. any grand jury referral forms;

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.

(1987), and *People v. Vendimia*, 52 N.Y.2d 259, 413 N.Y.S.2d 261, 420 N.E.2d 59 (1981).

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; upon cross examination, to impeach the 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.

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III. BRADY

1. Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), 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;

1. 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.

is given without probable cause for the following reasons:

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).

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

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).

by a reasonable expectation of privacy in his residence.

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.

inquiry claimed to be electronically sent, can be corroborated via bank records without intrusion into Defendant's home. Complainant I refers to a "work apartment" which must contain evidence but this is 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:

to addresses belonging to a Joe DiMenna, 10 E. 67 St and 3 Halsey Path, but other than using Amazon

3. No search warrant may be issued unless it is supported by probable cause to believe that evidence would be located there. No witnesses observed defendant conducting any criminal business at the target location nor did any witness observe evidence thereof. The analogy would be the police searching 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

Informing witness testifying they recently saw contraband/evidence at the residence? Complainant 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

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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 Grand Jury, defense requests that the Court inspect the grand jury minutes that form 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

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.

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.

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

a. Any written record or oral statement of the defendant made during his confinement to be tried, made after even in the course of the criminal trial, or before or after his trial, or engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him. This encompasses all statements made by defendant regardless of whether the People intend to call such witness in their direct case or on cross examination of defendant. Such statements should not be held as confidential 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)

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information or statement by the defendant to police officers who have arrested it. This demand also encompasses any writing concerning the substance of information given by the defendant in, 1) the

SUPREME COURT OF THE STATE OF NEW YORK
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X

b. Any police property voucher and police receipts for property containing a list of property that the
THE PEOPLE OF THE STATE OF NEW YORK,

DEMAND FOR DISCOVERY

arose from the defendant upon arrest, including records held by the Department of Correction

- against -

Indictment #70297-2022

c. Any writing with their task of custody of defendant's person on the date of arrest.

STEVEN MCENANEY

c. Any written, recorded or oral statement of the defendant made to a public servant from the People's
Defendant.

X

intended to assist the People on 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
that the District Attorney disclose and make available for inspection, photographing, copying or testing
the following property:

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
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)

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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.

B023

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"

B024

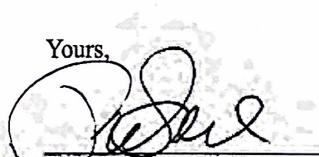
devices, alpha or numeric pager messages, telephonic or other electronic communications of any type;

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

B025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EXHIBIT 3

THE PEOPLE OF THE STATE OF NEW YORK

against

STEVEN MCENANY,

Defendant.

AFFIRMATION IN
RESPONSE TO THE
DEFENDANT'S
OMNIBUS MOTION

IND-70297-22

Keith Savino, an attorney admitted to practice before the Courts of the State of New York under penalty of perjury that:

1. I am the Assistant District Attorney in New York County assigned to this case and am familiar with its facts.
2. This affirmation is submitted in response to the defendant's omnibus motion in which the defendant seeks inspection of the grand jury minutes and the dismissal of the indictment, a bill of particulars, pretrial discovery, suppression of physical evidence recovered pursuant to a search warrant, a *Sandoval* hearing, and in support of the People's request for reciprocal discovery.

PEOPLE'S RESPONSE TO THE DEFENDANT'S MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS THE INDICTMENT

3. The People consent to the Court's *in camera* review of the grand jury minutes. A copy of the grand jury minutes has been provided to the court on February 6, 2023 for *in camera* review. Inspection will reveal that the evidence before the grand jury amply supports the offense(s) charged, that the grand jury was properly instructed on the law, and that the

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

THE PEOPLE OF THE STATE OF NEW YORK

-against-

STEVEN MCENANEY,

Defendant.

AFFIRMATION IN
RESPONSE TO THE
DEFENDANT'S
OMNIBUS MOTION

IND-70297-22

Keith Savino, an attorney admitted to practice before the Courts of this State, affirms under penalty of perjury that:

1. I am the Assistant District Attorney in New York County assigned to this case and am familiar with its facts.
2. This affirmation is submitted in response to the defendant's omnibus motion in which the defendant seeks inspection of the grand jury minutes and the dismissal of the indictment, a bill of particulars, pretrial discovery, suppression of physical evidence recovered pursuant to a search warrant, a *Sandoval* hearing, and in support of the People's request for reciprocal discovery.

PEOPLE'S RESPONSE TO THE DEFENDANT'S
MOTION TO INSPECT THE GRAND JURY
MINUTES AND TO DISMISS THE INDICTMENT

3. The People consent to the Court's in camera review of the grand jury minutes. A copy of the grand jury minutes has been provided to the court on February 6, 2023 for in camera review. Inspection will reveal that the evidence before the grand jury amply supports the offense(s) charged, that the grand jury was properly instructed on the law, and that the

integrity of the proceedings was unimpaired. The People deny all allegations to the contrary and oppose disclosure all non-testimonial portions of the instruction portions of the grand jury minutes to the defense. The issues raised in the defendant's motion are straightforward, and disclosure is not necessary to their resolution. CPL §210.30(3).

PEOPLE'S RESPONSE TO THE DEFENDANT'S REQUEST FOR A BILL OF PARTICULARS

4. The facts set forth in the indictment, the discovery provided pursuant to CPL Article 245, and the Automatic Discovery Form ("ADF"), which was previously served upon defendant, provide all the particulars to which the defendant is entitled. *See* CPL §200.95. They specify "the substance of defendant's conduct ... which the People intend to prove at trial on their direct case" The other information requested is evidentiary detail beyond the scope of a bill of particulars. *See, People v Davis*, 41 NY2d 678, 680 (1977) ("[a] bill of particulars serves to clarify the pleading; it is not a discovery device"). Accordingly, defendant's motion for further particulars should be denied.

PEOPLE'S RESPONSE TO THE DEFENDANT'S MOTION FOR PRETRIAL DISCOVERY

5. The People have provided all the discovery to which the defendant is entitled under Article 245. The additional items that the defendant seeks are not in the People's possession, custody or control, or persons under the People's direction or control. The People are aware of our obligation, under CPL § 245.20(2) to "make a diligent good faith effort to ascertain the existence of material or information discoverable under CPL § 245.20(1) where it exists but is not within" our control, and will provide such discovery under the timelines established in CPL § 245.20(1).

6. The defendant requests exculpatory material within the meaning of *Brady v Maryland*, 373 US 83 (1963). The People are aware of their continuing duty under *Brady* and CPL § 245.20(1)(k) to disclose exculpatory evidence to the defense and will continue to honor that obligation.

**PEOPLE'S RESPONSE TO THE DEFENDANT'S
MOTION TO SUPPRESS DEFENDANT'S
STATEMENTS**

7. The People do not intend to offer in their direct case at trial statements that the defendant made to a law enforcement officer. A *Huntley* hearing is therefore unnecessary.

**PEOPLE'S RESPONSE TO THE DEFENDANT'S
MOTION TO SUPPRESS IDENTIFICATION
EVIDENCE**

8. The People do not intend to introduce at trial testimony of any witness who previously identified the defendant. A *Wade* hearing is therefore unnecessary.

**PEOPLE'S RESPONSE TO THE DEFENDANT'S
MOTION TO CONTROVERT A SEARCH WARRANT
& SUPPRESS PHYSICAL EVIDENCE**

9. The People intend to offer at trial certain tangible evidence that was recovered during a search warrant execution at the defendant's residence, 22 Molly's Way, Salt Point, New York 12578. During the search, a large trunk and banker's box was recovered from the defendant's home. The trunk contained numerous BDSM items, sex toys, lingerie, and other items used for sex work. The banker's box included similar items and also an envelope containing a letter and materials the defendant prepared to intimidate and threaten a witness in this case. Finally, a laptop was recovered that contained sexually explicit materials that

further support the charge that the defendant operated a high-end prostitution enterprise from 2012 through 2018. The People submit that this evidence was lawfully obtained and deny all allegations to the contrary.

10. On March 3, 2022, New York Supreme Court Justice Melissa Jackson authorized the search warrant to search the defendant's residence in Salt Point, New York. The defendant alleges that the search warrant executed during the investigation of this case was issued without reasonable cause. Examination of the warrant affidavit, which is provided for the Court's review, belies that claim. The warrant application provides reliable facts and circumstances that are collectively of such weight and persuasiveness as to convince a prudent person that it was reasonably likely that the evidence sought would be found at the designated location. CPL §§690.10, 70.10(2).

11. The defendant alleges that the search warrant was overbroad and based on stale, unreliable information. The warrant application is based on sound, detailed accounting from Complainant-1, as to why probable cause existed to believe the defendant's primary residence would contain evidence of his prostitution enterprise, which dated back to 2012. While certain portions of the application provided to the defendant were redacted, pursuant to a protective order, the Court will find that the application included more than sufficient reasonable cause to believe the defendant maintained dominion and control over the residence during the period charged in the indictment. Importantly, the items detailed in the warrant application are not the type of possessions that the defendant would share, explain or otherwise expose the complainant to when complainant visited the defendant's home.

12. The items sought in the warrant were of a nature that the defendant took great care in concealing from the women in his organization, including hidden camera footage, laptops and photographic evidence that could be used to extort or blackmail the women. The warrant application explained this in great detail and was based on probable cause and common-sense conclusions that can be drawn from the facts. It is important to note that many of the items the People sought to locate were indeed found in the defendant's residence, including the items listed in paragraph 9.

13. The warrant application was based on probable cause and accordingly, the defendant's motion to controvert and suppression of the physical evidence recovered should be denied.

**PEOPLE'S RESPONSE TO THE
DEFENDANT'S REQUEST FOR A SANDOVAL
HEARING**

14. The People respectfully request that this matter be deferred for consideration by the trial judge. Within 15 days of trial, the People will provide notice of prior uncharged criminal, vicious, or immoral acts that the prosecutor intends to use at trial to impeach the credibility of the defendant. CPL § 245.20(1)(b).

**PEOPLE'S REQUEST FOR RECIPROCAL
DISCOVERY**

15. Pursuant to CPL §250.20, the People hereby demand that the defendant supply (a) the place or places where the defendant claims to have been at the time of the commission of the crime, and (b) the names, residential addresses, places of employment and addresses

thereof of every alibi witness upon whom the defendant intends to rely to establish the defendant's presence elsewhere than at the scene of the crime at the time of its commission.

Wherefore, it is respectfully requested that, except as consented to herein, the defendant's motion should be denied.

Dated: New York, New York
 February 6, 2023

Respectfully submitted,

Alvin L. Bragg, Jr.
District Attorney
New York County

By: Keith Savino
Keith Savino
Assistant District Attorney
Of Counsel
(212) 335-9581

NEW YORK COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK - 23rd Judicial District

THE PEOPLE OF THE STATE OF NEW YORK,

EXHIBIT 4

DECISION AND ORDER

Ind. No. 70297-22

STEVEN MCNANEY,

Defendant

X

FELICIA A. MENNIN, AJSC:

Defendant's omnibus motion is decided as follows:

1. The motion to inspect the Grand Jury minutes is granted. The motion to dismiss or reduce the indictment for legal insufficiency of the evidence or defects in the proceedings is denied. The Court has inspected the Grand Jury minutes and finds that they are legally sufficient to support the charges and that the proceedings were properly conducted.
2. The People do not intend to offer statements made by defendant to a law enforcement officer at trial and therefore a Wade hearing is not necessary.
3. The People do not intend to offer identification evidence at trial and therefore a Muller hearing is not necessary.
4. The motion to suppress physical evidence recovered from the defendant's residence is denied. The physical evidence was obtained upon execution of a search warrant which authorized a search of the target premises. The defendant has moved to controvert the warrant. This Court has examined the warrant affidavit and finds that reasonable cause was sufficiently established to justify the warrant's issuance by the judge. See CPL 690.10(1), *People v. Tambe*, 71 NY2d 472 (1985). The information given in the affidavit does not provide sufficient detail to determine if evidence of the alleged crimes were being kept at the target residence. The warrant sufficiently particularized the place to be searched and what was to be seized. The informer was not stale.
4. The *Giudice and Vassallo* motions will be heard immediately before trial.

This shall constitute the decision and order of the court.

David, New York, New York
February 23, 2023


FELICIA A. MENNIN
AJSC

Case No. Indictment Number 70297-2022

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

STEVEN MCENANEY,

Defendant

DECISION AND ORDER

Ind. No. 70297-22

FELICIA A. MENNIN, AJSC.: -----X

Defendant's omnibus motion is decided as follows:

1. The motion to inspect the Grand Jury minutes is granted. The motion to dismiss or reduce the indictment for legal insufficiency of the evidence or defects in the proceedings is denied. The Court has inspected the Grand Jury minutes and finds that they are legally sufficient to support the charges and that the proceedings were properly conducted.
2. The People do not intend to offer statements made by defendant to a law enforcement officer at trial and therefore a *Huntley* hearing is not necessary.
3. The People do not intend to offer identification evidence at trial and therefore a *Wade* hearing is not necessary.
4. The motion to suppress physical evidence recovered from the defendant's residence is denied. The physical evidence was obtained upon execution of a search warrant which authorized a search of the target premises. The defendant has moved to controvert the warrant. This Court has examined the warrant materials and finds that reasonable cause was sufficiently established to justify the warrant's issuance by the magistrate. CPL 690.10(2); *People v. Tambe*, 71 NY2d 492 [1988]. The information given by the affiant detective provided reasonable cause to believe that evidence of the alleged crimes were being kept at the target premises. The warrant sufficiently particularized the place to be searched and what was to be seized. The information was not stale.
4. The *Sandoval* and *Ventimiglia* motions will be heard immediately before trial.

This shall constitute the decision and order of the court.

Dated: New York, New York
February 23, 2023


FELICIA A. MENNIN
AJSC

EXHIBIT 5

B035

1 SUPREME COURT OF THE STATE OF NEW YORK r 1 on the calendar,
2 COUNTY OF NEW YORK - CRIMINAL TERM - PART 62
3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK
5 of record, Richard Southard, S O U T H A R D, 291 Broadway,
6 New York. Good morning. INDICTMENT #
7 STEVEN MCENANEY, HE COURT: Good morning 70297/2022
8 MR. SAVINO: For the People Keith Savino,
9 S A V I N O. Defendant.

10 -----X the Court People's
11 100 Centre Street
Motion for Protection
New York, New York 10013
April 12, 2023

12 Without getting into the factual assertions you

13 B E F O R E: ng to protect, why don't you make a record of the
14 grou HONORABLE FELICIA MENNIN establish your entitlement to this

15 A P P E A R A N C E S:

16 ALVIN BRAGG, ESQ.: Yes, Your Honor. I will go through a
17 District Attorney, New York County
BY: hon: KEITH SAVINO, ESQ.
Assistant District Attorney

18 So, the People will primarily rely on the motion

19 RICHARD SOUTHARD, ESQ.
Pepa Attorney for the Defendant guments under CPL 245.70 sub
291 Broadway
21 New York, New York

22 We are seeking the delay, until commencement of

23 jury selection, disclosure of the names and contact

24 information and other PHYLIS DAURIA information of 11 witnesses
SENIOR COURT REPORTER

25 that will either be called to testify or whose names will

appear throughout the trial, in various forms of evidence.

B036

Phyllis Dauria, Senior Court Reporter

3 Appearances, please.

4 MR. SOUTHARD: On behalf of Mr. McEnaney, attorney
5 of record, Richard Southard, S O U T H A R D, 291 Broadway,
6 New York, New York. Good morning.

7 THE COURT: Good morning.

8 MR. SAVINO: For the People Keith Savino,
9 S A V I N O. Good morning.

10 THE COURT: So, we have before the Court People's
11 Motion for Protective Order.

Without getting into the factual assertions you are seeking to protect, why don't you make a record of the grounds that you believe establish your entitlement to this order.

16 MR. SAVINO: Yes, Your Honor. I will go through a
17 short but detailed account here.

18 So, the People will primarily rely on the motion
19 papers setting forth fact as arguments under CPL 245.70 sub
20 1.

21 We are seeking the delay, until commencement of
22 jury selection, disclosure of the names and contact
23 information and other identifying information of 11 witnesses
24 that will either be called to testify or whose names will
25 appear throughout the trial, in various forms of evidence.

B037

Phyllis Dauria, Senior Court Reporter

1 We are also requesting that once disclosed, the
2 information and materials be kept in defense counsel's sole
3 possession and not copied, disclosed or disseminated. We are
4 also requesting that the defendant only review the material
5 in the presence of defense counsel and not copy, photograph
6 or disclose any of the information. And, finally,
7 prohibiting any person who receives the information from
8 posting any of the information on a multitude of social media
9 sites.*are seeking to withhold at this time?*

10 We have already provided defense counsel with all
11 the discovery in the case that is not included within the
12 Protective Order. I would like to file and serve a copy.

13 THE COURT: With respect to statements made by the
14 witnesses who identities you are seeking to protect, have you
15 provided him with the substance of those statements as well
16 as a way to identify witness one and the attribution of those
17 statements, for example. *been between the different accounts.*

18 MR. SAVINO: We have not, Judge.

19 THE COURT: And why is that?

20 MR. SAVINO: The majority of the evidence that we
21 are seeking to withhold is e-mail content that was received
22 through search warrants. So, there is really no way to kind
23 of label the different e-mail addresses or different e-mail
24 returns by each person. It would just be all the e-mails
25 included in those accounts. *anybody willing to*

1 THE COURT: Have any of those witnesses whose
2 identities you are seeking to protect until jury selection,
3 made statements that would be discoverable?

4 MR. SAVINO: Yes.

5 THE COURT: And have you provided those statements
6 to defense counsel yet?

7 MR. SAVINO: Not yet.

8 THE COURT: And those are part of the materials
9 that you are seeking to withhold at this time?

10 MR. SAVINO: Correct.

11 THE COURT: And why could the substance of those
12 statements or testimony not be revealed now, at least to
13 defense counsel, for his eyes only?

14 MR. SAVINO: A limited summary of that could be
15 turned over. I did not want to do that until we actually had
16 this hearing. I submitted this Protective Order almost a
17 year ago. So, it's just been between the different Judges.

18 THE COURT: I just received it.

19 MR. SAVINO: I understand.

20 THE COURT: I want the record to be clear that I
21 was not the first Judge on this case, and there had been
22 several changes in defense counsels, then a change in Judges.
23 So, this is the first opportunity I have had to review the
24 materials.

25 MR. SAVINO: Yes. I am certainly willing to

1 provide summaries once we figure out what can be disclosed.
2 possession. THE COURT: That should be done as expeditiously as
3 possible.

4 MR. SAVINO: Yes, Judge.

5 THE COURT: And briefly, for the record, state the
6 basis for your belief that you have established the necessary
7 standard for withholding the other information until the
8 start of jury selection.

9 MR. SAVINO: As I just mentioned I filed and served
10 the discovery list. So, defense counsel now has voluminous
11 bank records which record the proceeds the defendant received
12 from this prostitution organization; voluminous phone
13 records, apartment leasing records, all the photographs and
14 inspecting documents recovered from a search warrant at the
15 defendant's home.

16 Also extractions from the District Attorney's
17 Office HTAU Unit on the devices recovered, the investigative
18 reports from the human trafficking investigators and most
19 importantly all of the G-mail records and e-mails that were
20 associated with the defendant's multiple e-mail addresses.

21 These are all received through search warrants. The
22 defendant also has records for one of the primary clients,
23 Joseph Demena.

24 So, these are e-mail search warrant returns that
25 span over six years, and e-mail responses between dozens of

B040

Phyllis Dauria, Senior Court Reporter

1 different parties. This is all in the defendant's
2 possession. That would be more than enough to prepare for
3 trial.

4 As I mentioned, the evidence is very e-mail heavy
5 and the defendant has all of his e-mail addresses and all
6 these e-mails, as well as the client, Joseph Demena.
7 Defendant has notes from his proffer session where he
8 admitted to organizing, recruiting, facilitating, managing
9 and profiting from prostitution.

10 The People believe the factors outlined in CPL
11 245.70 support a good cause showing for the Protective Order.
12 The defendant is charged with Criminally Promoting
13 Prostitution in the Third Degree.

14 This was a prostitution organization that had very
15 high-end clientele with wealthy clients paying thousands of
16 dollars per date, and often times had unlimited access to the
17 women the defendant trafficked.

18 Based on the e-mail returns that I mentioned, the
19 defendant planned the dates, told the women where to go, then
20 received thousands of dollars, almost on a weekly basis, for
21 his cut. The clients, particularly Joseph Demana, were
22 anything but normal. They were often sadistic and physically
23 abusive and the defendant even built a sex dungeon in an
24 apartment in Midtown, complete with a crucifix like structure
25 so that clients could act out their warped sexual desires.

B041

Phyllis Dauria, Senior Court Reporter

Case No. Indictment Number 70297-2022

7

The evidence from the e-mail returns also shows
that when the women would complain of the intense physical
toll, which included anal probing with gynecological tools,
electroshock treatment and flogging with whips and other
devices, the defendant essentially told the women to suck it
up because they were making so much money. And this lasts
for almost six years.

I believe there is legitimate concern that should
the witnesses' information be turned over before the start of
trial, measures will be taken to intimidate or harm the
witnesses.

I went through a number of these in the partial
ex parte motion with Your Honor, which included an exhibit
that we discovered when the defendant was arrested.

15 He essentially had an envelope that was an
16 extortion packet for one of the people that will be a witness
17 in this trial. And this was complete with letters,
18 surveillance photographs that were taken of this person,
19 which included threats and other potential consequences,
20 should they continue to go forward, which was a separate
21 matter at the time, but also would be part of this case.

22 The defendant's e-mails going back for years also
23 show how he manipulated and controlled the various women. He
24 had access to their e-mail accounts, keys to their
25 apartments, and knew intimate details about their lives.

B042

Phyllis Dauria, Senior Court Reporter

1 I believe now that the defendant is facing prison
2 time, measures could be sought to intimidate or harass them,
3 as well as to call into question their safety.
4 Finally, I believe the utility of the information
5 which is sought to be withheld is outweighed by the risk of
6 exposure and potential harm and intimidation to those
7 witnesses. Given the nature of these charges, the defendant's
8 conduct throughout the Indictment period, risk to the
9 witnesses and the defendant's interest in harming or
10 intimidating them, outweighs the disclosure of their names,
11 contact information and other identifying information.
12 THE COURT: Thank you.

13 I'll hear from you, Mr. Southard.
14 MR. SOUTHDARD: Your Honor, defense seeks full
15 disclosure of the identities of the names of the witnesses,
16 and the statements of witnesses. In the alternative, we seek
17 that the redactions be directed to be as minimally invasive
18 as necessary to protect the witnesses' identity, but not to
19 obliterate any semblance of what the evidence is.
20 Even, by way of example, the application to Your
21 Honor, there are some upwards of 20 pages that were
22 through.

B043

Phyllis Dauria, Senior Court Reporter

1 completely blacked out. So, what Your Honor sees in support
2 of the affirmation, I'm seeing blank pages.

3 THE COURT: I understand, and there was a reason
4 for that, but I do understand your point, counsel.

5 MR. SOUTHARD: And that was the case with the
6 search warrant application. And when I was a prosecutor we
7 were taught to redact as little as possible to balance the
8 interests of the government, but also to protect the identity
9 of the witness.

10 Here we haven't been provided, as Your Honor has
11 inquired, with even some of the statements of the witnesses.
12 And why that is important is because this is a case where the
13 impeachment of the witnesses is going to be very important
14 because there is a vast difference between the role that my
15 client has even proffered to, and what the state is now
16 claiming his role is.

17 So, a lot of this information about, he's in a
18 position where he is the only one that has exclusivity to
19 their accounts and e-mails and all this stuff, is a fact in
20 dispute.

21 The fact he's being paid 25 percent for their
22 dates with their sugar daddies is a fact in dispute, but I
23 need to know what the statements are so we can prepare for
24 them, and not on the eve of trial with a sole practitioner
25 who has hundreds of thousands of text messages to go through.

1 THE COURT: I get it.

2 MR. SOUTHARD: As far as the threats or the threat
3 package, there is a collateral matter where one of the sugar
4 babies was asking for millions of dollars from the one client
5 they mentioned, this Joe Demena, who was into BDSM, bondage
6 and sadomasochism.

7 As far as my client knew there was never any
8 violence that wasn't, I don't want to say acceptable, but
9 there was never any complaint that the violence had gone too
10 far, to my client. And this person is not before the Court.
11 This person has not been arrested.

12 So, their efforts to try and understand why this
13 person was, in a sense, hiring a lawyer to extort money from
14 a client that she had, who she called her boyfriend for over
15 a year, you know, it just didn't make sense to them.

16 So, there was some involvement, but this was
17 before any investigation ever existed. If this was a
18 criminal investigation he certainly wouldn't have gone to try
19 and influence a witness.

20 This case has been on, and he's never intimidated
21 or spoken to anyone. The Court of Appeals has said, merely
22 asserting that a witness could be harmed and intimidated
23 without evidence to support it, in People versus - -

24 THE COURT: I'm familiar with the standard. The
25 People do lay out some basis in their papers. So what my

1 thinking is at this time, counsel, is that the People should
2 turn over to the Court the witness statements with their
3 proposed redactions and I will review them, and I'll see what
4 can be disclosed to the defense at this time.

5 MR. SOUTHARD: Any reason, Your Honor, why the
6 defense can't see those, or either be provided with them. I
7 have had cases where I kept it in my file in sealed
8 envelopes.

9 THE COURT: I understand that. I think at this
10 time, since we are not yet quite close to trial, based upon
11 the showing made by the People, they have established good
12 cause for the issuance of the Protective Order in the form
13 that they have proposed.

14 And based on their showing that establishes that
15 there is, based on the nature and circumstances of the crimes
16 charged, that there is a danger to the safety of the
17 witnesses, risk of intimidation and harassment, and the
18 reduced likelihood of witness cooperation with law
19 enforcement now and in the future, I find they have
20 established a basis for withholding that information at this
21 time, until the commencement of jury selection.

22 Now, once we have a firm trial date established I
23 may revise that ruling and require the People to turn over
24 that information well in advance of trial, to give you
25 sufficient time to look at it. It may be an order that is

B046

Phyllis Dauria, Senior Court Reporter

1 for attorney's eyes only, at that point in time.

2 But I think right now, since we have not set a
3 firm trial date, there are no hearings in this case, so as
4 soon as you have been given all of the discovery that you are
5 entitled to, subject to the issuance of this Protective
6 Order, you will be given a chance to move to strike the
7 Certificate of Compliance.

8 I will rule, and you will file your defense
9 Certificate of Compliance, then we'll set a date for trial.
10 Well in advance of that trial date I will consider, seriously
11 consider, revising that order and requiring the People to
12 provide it to you, at least some of that information.

13 MR. SOUTHARD: I understand.

14 THE COURT: So, Mr. Savino, I would like you to get
15 me, within two weeks, the documents with the proposed
16 redactions so that I can review them. And after that they
17 can be turned over to the defense. If I have questions I may
18 ask you to go on the record and defend those redactions to
19 me.

20 So, the Protective Order hearing was really the
21 next Court date here. I don't think we need to be back in
22 Court before May 4th.

23 Is that a good date?

24 COURT CLERK: Yes.

25 MR. SOUTHARD: That's fine.

B047

Phyllis Dauria, Senior Court Reporter

1 THE COURT: That's my calendar day. Apparently the
2 Brady orders were not signed when this case was
3 arraigned, so I'm signing them now.
4 MR. SOUTHARD: Thank you.

5 THE COURT: So, May 4th to review discovery
6 compliance. Be here at 9:30 and I will have you out by 9:40.
7 MR. SOUTHARD: One more matter.
8 When I had first taken over the case, since the
9 People have not made any offer in the case whatsoever, I
10 asked if Your Honor would consider probation. You said you
11 hadn't read the Grand Jury minutes.

12 THE COURT: But now I have. So, the answer is no
13 at this time.
14 THE COURT: So, May 4th to review discovery
15 compliance, MR. SOUTHARD: Would Your Honor be amenable to my --
16 since we have this time now -- would Your Honor be
17 amenable to my preparing a pre-pleading memorandum?
18 THE COURT: I will consider that.

19 What is the People's position? Where are you in
20 terms of any offer or recommendation?

21 MR. SAVINO: We have not made an official
22 recommendation, but we are not going along with probation at
23 this time. THE COURT: So, this appears to be an E Felony.

24 MR. SAVINO: D Felony. THE COURT: All right.

1 MR. SAVINO: Maximum, I believe, is two and a half
2 to seven.

3 THE COURT: Two and a third because he's not a
4 predicate.

5 I'm not going to offer a probation plea based on
6 what I read at this time, but I will always consider anything
7 you put in writing to me. I have been known to be persuaded
8 before, but I think based on the Grand Jury minutes I would
9 be hard pressed to be convinced that probation would be an
10 appropriate disposition. But if there are things you want me
11 to consider, please file that and send it to me.

12 MR. SOUTHARD: Yes, Your Honor.

13 THE COURT: So, May 4th to review discovery
14 compliance, then we'll adjourn for any motion you may be
15 choosing to make.

16 MR. SAVINO: Does Your Honor have a copy of the
17 order to sign?

18 THE COURT: I do have a copy, but it's double
19 sided. If you have a single sided version I will sign that
20 now.

21 Counsel, since we haven't worked together before,
22 if there is a time you want to set up a conference between
23 scheduling, off schedule, feel free.

24 MR. SAVINO: We spoke about that actually, outside,
25 prior to the case. We will continue to speak about that.

B049

Phyllis Dauria, Senior Court Reporter

1 THE COURT: That's fine. Contact my Court
2 Attorney. I'm always happy to do those at lunch time.

3 MR. SOUTHARD: I appreciate that.

4 THE COURT: Thank you.

5
6 This is certified a true and accurate transcript
7 of my stenographic notes taken in the above captioned matter.

8
9 *Phyllis Dauria*

10 -----
11 PHYLLIS DAURIA
12 SENIOR COURT REPORTER

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B050

Phyllis Dauria, Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

EXHIBIT 6

Plaintiff:

R.D.70102.21

STEVEN MCENANEY,

Defendant.

The Court, being satisfied based upon the application of Assistant District Attorney Keith Saylor, dated July 7, 2022, that good cause exists for an order to debar, restrict, condition, defer, and enjoin such other order as is appropriate with respect to disclosure and inspection of discoverable material and information, pursuant to Section 245.70 of the Criminal Procedure Law, it is hereby:

ORDERED that disclosure to the defense of the names and adequate contact information of the witnesses listed in Paragraph 5(a) of the People's affidavit, as well as other discoverable information and material that identifies or tends to identify those witnesses is delayed until "the commencement of jury selection"; it is further

ORDERED that, once disclosed, the information and material subject to this protective order shall be kept in the sole possession of defense counsel and shall not be copied, disseminated, or disclosed in any form, or by any means, by defense counsel, except to those employed by counsel or appointed to assist in the defense of the above-captioned criminal proceeding, or otherwise by court order, and shall not be used for any purpose other than in connection with preparing a defense in this matter; it is further

B051

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

PROTECTIVE ORDER

-against-

IND-70102-21

STEVEN MCENANEY,

Defendant.

The Court, being satisfied based upon the application of Assistant District Attorney Keith Savino, dated July 7, 2022, that good cause exists for an order to deny, restrict, condition, defer, and make such other order as is appropriate with respect to disclosure and inspection of discoverable material and information, pursuant to Section 245.70 of the Criminal Procedure Law, it is hereby:

ORDERED that disclosure to the defense of the names and adequate contact information of the witnesses listed in Paragraph 5(a) of the People's affirmation, as well as other discoverable information and material that identifies or tends to identify those witnesses is delayed until "the commencement of jury selection"; it is further

ORDERED that, once disclosed, the information and material subject to this protective order shall be kept in the sole possession of defense counsel and shall not be copied, disseminated, or disclosed in any form, or by any means, by defense counsel, except to those employed by counsel or appointed to assist in the defense of the above-captioned criminal proceeding, or otherwise by court order, and shall not be used for any purpose other than in connection with preparing a defense in this matter; it is further

ORDERED that, once disclosed, defendant may review the information and material subject to this protective order only in the presence of counsel or another person employed by or assigned to assist counsel, and that defendant is not permitted to copy, photograph, transcribe or otherwise independently possess or disseminate such material; it is further

ORDERED that any person who receives any information or material subject to this protective order is prohibited from posting any of that information or material to any social media platforms, including, but not limited to, Facebook, Instagram, WhatsApp, Twitter, Tik Tok, and YouTube, without prior approval from the Court; it is further

ORDERED that, in the event the defendant seeks expedited review of this protective order under CPL § 245.70(6)(a), any obligation that would exist on the part of the People to produce the information and materials that are the subject of this order is held in abeyance pending the determination of the intermediate appellate court; and it is further

ORDERED, that the People's Motion in Support of a Protective Order dated June 30, 2022, and any accompanying documents, exhibits, or transcripts, are sealed pursuant to CPL § 245.70(1).

DATED: New York, New York
April 12, 2023

So Ordered:

HON. FELICIA A. MENKEN

Justice of the Supreme Court

Part 62 JUN 22 2023

SUPERIOR COURT OF THE STATE OF NEW YORK

IN THE CITY OF NEW YORK

THE BOROUGH OF BRONX

THE PEOPLE,

Plaintiff,

v.

STEVEN MULHANNEY,

Defendant.

APPEAL #77
Indictment No. 70297-2022

STATEMENT OF DEFENDANT

DEFENDANT'S STATEMENT OF DEFENSE

I, Mr. Steven Mulhannay, do hereby swear under the penalty of perjury that the following facts are true:

1. I am submitting this affidavit in support of the motion to withdraw my plea of guilty.
2. I was brought to Court, for the first time, on 9 March 2022. I was represented by a public defender.
3. I originally retained a civil attorney, who had done business with my family in the past, to represent me in this case. His name is Mr. James Nemis.
4. Mr. Nemis, during our discussions about the case, informed me that there might be a statute of limitations issue related to the charges, and that the statute of limitations issue could be addressed in a motion.
5. I eventually retained Mr. Richard Sutherland to represent me because I wanted an experienced criminal attorney, and he stated that he had an extensive background practicing criminal law in the State of New York.
6. The first time I went to Mr. Sutherland's office, with Mr. Alexander Sherry, I asked

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

brought suit against me in Court on March 9, 2022, for the case I called Mr. Southard

v.

AFFIDAVIT

Indictment No. 70297-2022, Assistant

Def. STEVEN MCENANEY. An Assistant District Attorney had told him that there was no

issue related to the statute of Defendant

I, Mr. Steven McEnaney, do hereby swear under the penalty of perjury that the following

facts are true: As an Assistant District Attorney, I know that the statute of limitations has expired with

1. I am submitting this affidavit in support of the motion to withdraw my plea of guilty.
2. I was brought to Court, for the first time, on 9 March 2022. I was represented by a public defender. all proceedings regarding my case. Mr. Southard did not have my permission to
3. I originally retained a civil attorney, who had done business with my family in the past, to represent me in this case. His name is Mr. James Nemia. ~~and with the Judge, and the~~
4. Mr. Nemia, during our discussions about the case, informed me that there might be a statute of limitations issue related to the charges, and that the statute of limitations issue could be addressed in a motion. ~~I recall Mr. Southard also told me that he talked to the Judge~~
5. I eventually retained Mr. Richard Southard to represent me because I wanted an experienced criminal attorney, and he stated that he had an extensive background practicing criminal law in the State of New York.
6. The first time I went to Mr. Southard's office, with Mr. Alexander Sibezsky, I asked ~~and~~

Case No. Indictment Number 70297-2022

about the statute of limitations. I informed Mr. Southard that my prior attorney said that there might be a statute of limitations issue related to the case. I asked Mr. Southard several times, on numerous occasions, how could I be accused of something that happened years ago, and could he make a motion to dismiss the case because the allegations were so old. Mr. Southard told me that he had spoken with the Assistant District Attorney, and that the Assistant District Attorney had told him that there was no issue related to the statute of limitations.

7. Mr. Southard also told me that he had a video conference with the District Attorney, and the Judge, and that the Judge asked why Mr. Joe DiMenna was not being prosecuted, and that the Assistant District Attorney said that the statute of limitations has expired with regard to Mr. DiMenna. I was not present when my attorney met with the Assistant District Attorney, and the Judge. I had previously told Mr. Southard that I wanted to be present at all proceedings regarding my case. Mr. Southard did not have my permission to meet with the Judge and the District Attorney without me being present.
 - a. When I found out from Mr. Southard that he had met with the Judge, and the District Attorney, to discuss the case without me being present, I asked what happened. Mr. Southard told me that the Judge hated me, and that the Judge wants to put me away for a lot of stuff. Mr. Southard also said that he talked to the Judge about excluding everything related to Mr. Joe DiMenna, and that the Judge cut him off and said "let's talk about jail time." Mr. Southard also said that they discussed plea bargaining in the conference.
8. I asked Mr. Southard why the statute of limitations had not expired for me, since he said

Case No. Indictment Number 70297-2022

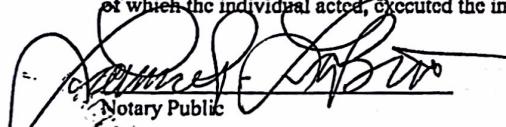
that the statute of limitations had expired for Mr. DiMenna, and he repeated that the District Attorney told him that the statue of limitations had expired for Mr. DiMenna and not for me.

9. Mr. Southard and I rarely had any discussions about the case. He was always very hard to contact, and the few times that we did speak about the case, the conversations were not productive. I never fully understood what was happening in my case. He just kept telling me that the Judge hates me and wants to put me in jail. I have attached a couple of e-mails that I sent Mr. Southard expressing my concerns about my case.
10. **Mr. Southard told me that my best bet was to take a plea, because the Assistant District Attorney said that I admitted to a crime.**
11. I want to withdraw my guilty plea.


Mr. Steven McEnaney

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 1st day of February 2024, before me appeared Mr. Steven McEnaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

LAWRENCE P. LABREW
Notary Public, State of New York
No. 02LA6121533
Qualified In Bronx County
Commission Expires 1-18-2025

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B057

Case No. Indictment Number 70297-2022



Steve McEnaney <stevemcenaney7@gmail.com>

Meeting...

Steve McEnaney <stevemcenaney7@gmail.com>
 To: Richard Southard <southardlaw@gmail.com>

Tue, Mar 14, 2023 at 1:01 PM

Richard,

I went through your motion. I do not understand how this motion could have been submitted without you having all the evidence at your disposal or an affidavit from me. My Brady rights are being trampled not only by attorney incompetence but the protective order. If I have NO access to my emails, do not know who is accusing me of salacious garbage (most of which has already been disproven) how do I gather evidence to defend myself? I will be extremely behind the 8 ball if this goes to trial. I didn't pay you 25k to pull me aside 2 minutes before a hearing and ask me if I'm willing to destroy my life with my son, sanctuary and everything I worked for. To date you have not asked me a question about anything involving my case or evidence you have seen. I offered up witnesses on my behalf who can counter the narrative the ADA took from Joseph Fan and Asheleigh Scott. I have not been able to have my voice heard aside from telling bits and pieces during the proffer in-between hearing the word fuck saw 500 times. Here are some glaring issues you may or may not be aware of. The ADA had not disclosed (unless something not opened yet) evidence pertaining to :

- BRADY (1) f,g, h and i.
- At least 1 of their witnesses (Asheleigh Scott) has been paid to the best of my knowledge (NDA needs to see daylight and probably one of the things they have within the protective order)
- Joseph Fan referred to Asheleigh as crazy on the recording in NY and also says she had a mental breakdown from alcohol, drugs and her gender issues. After all of this started my friend Alex (whose) building she rented in told me a bunch of instances where neighbors called the cops on her and she almost blew the building up by leaving the gas on. It is thought she was trying to kill herself. Fire department was called and they almost broke the door down.
- I question if there has been any consideration to witnesses and/or threats made by the ADA towards witnesses (no one has said anything to me directly)
- (h) they need to disclose if they are going after Joe DiMenna. They certainly were making threats at the proffer towards him indirectly. As you mentioned, why is he not in cuffs or a co-conspirator if he is such a monster.

we need to list everything we feel is missing from BRADY rights...specifically itemized. This gets me to the next point. Why have you still not seen all of the evidence? It is a simple trip down the block to the ADA office? Best Buy is not a reasonable place to open my case info.

These are all the things they are trying to cover with their protective order because their case becomes a mess of epic proportions if they don't keep it in place. They are also at risk of ruining countless lives for what is truly the equivalent to Amber Heard/Johnny Deep drama, not the "takedown of some escort enterprise". This goes back to what you stated last time I saw you when you mentioned if this goes public people will start poking and prodding. The truth then comes out.

What the judge needs to hear is the truth and not the narrative that the ADA took from Joseph Fan. They literally used the same words as him during the proffer. Joseph Fan on tape says (the idea is to make Joe DiMenna "Look like a monster". The main guy in the proffer said Joe DiMenna was a monster at least 100 times. I can only imagine the crap the grand jury heard based on what was in warrants.

I do not see any reason for them to have a protective order. The last time I discussed this crap with anyone was in 2018 (I think) until the time they indicted me. I had not spoken to anyone aside from Kim about any of this. I had seen Lisa, Julie, Sahrir, and Ksenia many times but nothing about anything was discussed. Since my indictment I have seen Sahrir and Julie. They are very concerned and Sahrir wants to make a statement. No one was ever threatened or coerced. Cindy and Julie contacted me before they spoke to investigators asking what they should do. I told them to tell the truth.

We need to meet. I can not today because of the storm. Let me know when this order is being argued. If it is this week we need to sit down prior and have a well thought out direction moving forward.

B058

Case No. Indictment Number 70297-2022
Steve McEnaney <stevemcenaney7@gmail.com>
To: Richard Southard <southardlaw@gmail.com>

Wed, Jul 26, 2023 at 8:13 AM

Richard

I have no idea what the issue is but why would you have me pay Kathy and then consistently ignore her needs to help me. I truly seems like you are working counter to my cause. It is concerning and suspicious. There is no good excuse for this behavior although there is an excuse everytime you disappear. You have put such little effort into any of this. Do you have notes from conversations you have had with ADA Savino? I need to see them.

Steve

B059

Case No. Indictment Number 70297-2022

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

v.

AFFIDAVIT OF SERVICE
Indictment No. 70297-2022

STEVEN MCENANEY

Defendant

I, Lawrence P. LaBrew, an attorney admitted to practice in all New York State Courts, do hereby swear under the penalty of perjury, pursuant to N.Y. C.P.L.R. 2106, that the following facts are true:

1. I am not a party to the action, and I am over 18 years of age. My office is located at 30 Wall Street 8th Floor, New York, New York 10005.
2. I am the attorney for Defendant Steven McEnaney.
3. On 2 February 2024, at 7:45 p.m., I served the Defendant's Motion to Withdraw his Plea of Guilty, with the attached Exhibits, on the New York County District Attorney's Office. A true copy of the above-referenced document was e-mailed to the e-mail address designated for service by the New York County District Attorney's Office.
4. All parties have consented to service by e-mail. A true copy of the above-referenced document was e-mailed to the New York County District Attorney's Office at the following e-mail addresses:

a. New York County District Attorney's Office, 1 Hogan Place, New York, New York 10013-4311, motions@dany.nyc.gov, savinok@dany.nyc.gov.

DATE: 2 February 2024
New York, New York

Respectfully,

Lawrence P LaBrew

Lawrence P. LaBrew, Esq.
Attorney & Counselor-at-Law
Law Office of Lawrence LaBrew
Attorney for Defendant Steven McEnaney
30 Wall Street FL 8
New York, New York 10005
Tel: (212) 385-7500
Fax: (212) 385-7501
Cell: (917) 280-6239
E-mail: labrewlaw@gmail.com

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

v.

NOTICE OF MOTION
Indictment Number: 70297-2022

STEVEN MCENANEY

Defendant

PLEASE TAKE NOTICE, that upon the annexed affidavit, and all the prior papers and proceedings herein, Lawrence P. LaBrew, Esq., of the Law Office of Lawrence LaBrew, will move this Court, at Part 62, at the Courthouse at Courthouse at 100 Centre Street, New York County, New York, New York 10013, on the 11th day of January 2024 at 9:30 in the morning, or as soon thereafter as counsel can be heard, for an order – pursuant to N.Y. RULE OF PROF.

CONDUCT R. 1.16 (d) granting the following relief:

1. An Order allowing Lawrence P. LaBrew, Esq., of the Law Office of Lawrence LaBrew, to represent Defendant Steven McEnaney in the above-captioned matter,
2. That the Court allow new Counsel a reasonable time to draft and file a motion to withdraw the Defendant plea of guilty pursuant to to N.Y. CRIM. PROC. LAW § 220.60 (3), and

Indictment Number 70297-2022

3. PRI That the Court grant any other relief that it deems just proper, and equitable.

NEW YORK COUNTY CRIMINAL TERM FACT

DATE: 8 January 2024

New York, New York

THE PEOPLE OF THE STATE OF NEW YORK, Yours,

Lawrence P LaBrew

Plaintiff
Lawrence P. LaBrew, Esq.
Attorney for Mr. Steven McEnaney
30 Wall Street 8th Floor
New York, New York 10005-2205
Tel: (212) 385-7500 777-2022
Fax: (212) 385-7501
Cell: (917) 280-6239
e-mail: labrewlaw@gmail.com

TO: District Attorney Alvin Bragg
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013
by: ADA Keith Savino
Tel: 212-335-9581
Lawte e-mail: savinok@dany.nyc.gov duly admitted to practice in the Courts of this

Sac, hereby swear under the penalty of perjury, pursuant to N.Y. C.P.L.R. § 2106, that the following statements are true, and as to those made upon information and belief that he believes them to be true:

4. I am the attorney for the Defendant Steven McEnaney. All citations in this affidavit have been verified by Lexis plus, and this motion was not created with artificial intelligence.
5. A Notice of Appearance was previously filed with the Court.
6. Mr. McEnaney's prior attorney was terminated by the client. *Teicher v. W.A. Holmes*, 14 N.Y.2d 977, 979, 489 N.Y.S.2d 36, 37 (1974) ("A client has an absolute right to discharge an attorney at any time."). U.S. CONST amend VI, U.S. CONST amend XIV, NY CONST art 1 sec 6. Unpublished Case No. 548 U.S. 119, 514, 120 S.

Indictment Number 70297-2022

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

vs. Plaintiff referred to in Criminal Term Part 62, Indictment No. 70297-2022.

The People of the State, 227 U.S. 43, 33, 53 **ATTORNEY AFFIDAVIT**

Indictment Number: 70297-2022

hereby swear under the penalty of perjury that the attorney who has been retained by the defendant

is fully responsible to ensure that all documents filed by The Government hereinafter are true and accurate.

14 STEVEN MCENANEY, an attorney duly admitted to practice in the Courts of this

State, hereby swear under the penalty of perjury, pursuant to N.Y. C.P.L.R. § 2106, that the

following statements are true, and as to those made upon information and belief that he believes

them to be true:
to NY STATE OF PROBABILITY DETERMINED BY THIS COURT THERE IS NO

4. I am the attorney for the Defendant Steven McEnaney. All citations in this affidavit have been verified by Lexis plus, and this motion was not created with artificial intelligence.
5. A Notice of Appearance was previously filed with the Court.
6. Mr. McEnaney's prior attorney was terminated by the client. Teichner v. W & J Holsteins, 64 N.Y.2d 977, 979, 489 N.Y.S.2d 36, 37 (1985) ("A client has an absolute right to discharge an attorney at any time."), U.S. CONST. amend VI, U.S. CONST. amend. XIV, N.Y. CONST. art I, sec. 6, United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 126 S.

Ct. 2557, 2561 (2006) ("The Sixth Amendment provides that '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.' We have previously held that an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. See Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988). Cf. Powell v. Alabama, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932) ('It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice'). The Government here agrees, as it has previously, that 'the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds.' Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-625, 109 S. Ct. 2646, 109 S. Ct. 2667, 105 L. Ed. 2d 528 (1989).") N.Y. RULE OF PROF. CONDUCT R. 1.16 (b) (3),

7. Notwithstanding a client's right to terminate his attorney, Court approval is still required pursuant to N.Y. RULE OF PROF. CONDUCT R. 1.16 (d). In this case there is no prejudice involved because the Defendant has entered a plea of guilty, and is awaiting sentencing. This substitution of Counsel is no taking place on the eve of trial.
8. The Defendant would like to make a motion to withdraw his guilty plea pursuant to N.Y. CRIM. PROC. LAW § 220.60 (3). See e.g., People v. Ladd, 220 A.D.2d 849, 850, 632 N.Y.S.2d 233, 235 (3rd Dept. 1995). ("The People's argument that defendant waived the right to challenge the constitutionality of his June 10, 1993 conviction of attempted assault in the second degree, because it was based on a bargained plea of guilty, is

without merit. Defendant's plea of guilty on June 10, 1993 was not a waiver of his right to claim ineffective assistance of counsel since "the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases'" (People v Ferguson, 192 AD2d 800, lv denied 82 NY2d 717, quoting Hill v Lockhart, 474 US 52, 56, quoting McManus v Richardson, 397 US 759, 771).")

- a. People v. Shakur, 215 A.D.2d 184, 185, 627 N.Y.S.2d 341, 342 (1st Dept. 1995)

("Trial courts within this Department must follow the determination of the Appellate Division in another Department until such time as this Court or the Court of Appeals passes on the question (1 Carmody-Wait 2d, NY Prac § 2:63, at 75 [now contained in 1 Carmody-Wait 2d, NY Prac § 2:249 (1994 ed)]; People v Anderson, 151 AD2d 335, 338 [1st Dept 1989]; Mountain View Coach Lines v Storms, 102 AD2d 663 [2d Dept 1984]).")

9. Counsel was recently retained, and Counsel just received the Defendant's file – with discovery – from the prior attorney on Thursday, 4 January 2024: it consists of a hard drive with 168 Gigabytes.
10. The Court has to approve the substitution of Counsel pursuant to N.Y. RULE OF PROF. CONDUCT R. 1.16 (d), and that the Defendant requires a reasonable amount of time to draft a motion for the Defendant to withdraw his plea of guilty pursuant to N.Y. CRIM. PROC. LAW § 220.60 (3).

WHEREFORE, the Defense respectfully requests that the Court allow the substitution of Counsel, and that Counsel be allowed a reasonable amount of time to file a motion to withdraw the Defendants' guilty plea, and that the Court grant any other relief that it deems just, proper,

and equitable.

DATE: 8 January 2024
New York, New York

Respectfully,

Lawrence P LaBrew

Lawrence P. LaBrew, Esq.
Attorney for Mr. Steven McEnaney
30 Wall Street 8th Floor
New York, New York 10005-2205
Tel: (212) 385-7500
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Cell: (917) 280-6239
e-mail: labrewlaw@gmail.com