To be argued by:

[ATTORNEY]

*15 mins. requested*

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent*,

-against-

[APPELLANT-CAPS],

*Defendant-Appellant*.

BRIEF FOR DEFENDANT-APPELLANT

[APPELLANT-CAPS]

[COUNTY] Cty. Ind. No. [INDICTMENT]

CHRISTINA SWARNS, ESQ.

Attorney for Defendant-Appellant

[SUPERVISOR-CAPS], ESQ.

Supervising Attorney

By: [ATTORNEY-CAPS]

[TITLE]

OFFICE OF THE APPELLATE DEFENDER

11 Park Place, Suite 1601

New York, NY 10007

(212) 402-4100 [EMAIL]

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# PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on [JUDGMENTDATE], by Supreme Court, [COUNTY] County. [APPELLANT] was convicted after [GUILTY PLEA/TRIAL] of [COUNTS]. [MR/MS LAST NAME] received [SENTENCE].

[JUSTICE STATEMENT]. Timely notice of appeal was filed. No stay of execution has been sought. [STATUS].

# QUESTIONS PRESENTED

# INTRODUCTION

# STATEMENT OF FACTS

Citations to “H.” refer to hearing proceedings held on [HEARING-DATE]. Citations “VD.” refer to *voir dire* proceedings held on [VOIRDIRE-DATE]. Citations “[T-P]” refer to [GUILTY PLEA/TRIAL] proceedings held on [PLEA-TRIAL DATE]. Citations to “S.” refer to the sentencing on [SENTENCE DATE].

Place Holder for footnote.[[1]](#footnote-1)

# ARGUMENT

# CONCLUSION

Dated: New York, New York  
[SERVE DATE]

Christina Swarns, Esq.  
Attorney for Defendant-Appellant

[SUPERVISOR], Esq.

Supervising Attorney

by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ATTORNEY], Esq.

Staff Attorney

[EMAIL]

Office of the Appellate Defender  
11 Park Place, Suite 1601  
New York, New York 10007  
212.402.4100

|  |  |
| --- | --- |
| Supreme Court of the State of New York  Appellate Division: First Department | |
| The People of the State of New York,  Respondent,  — against —  [APPELLANT],  Defendant-Appellant. | Ind. No. [INDICTMENT] |

# ADDENDA

## Statement Pursuant to Rule 5531

1. The indictment number in the court below was [INDICTMENT].
2. The full names of the original parties were “The People of the State of New York” against “[APPELLANT].”
3. This action was commenced in Supreme Court, [COUNTY] County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered on [JUDGMENTDATE], by Supreme Court, [COUNTY] County. [APPELLANT] was convicted after [GUILTY PLEA/TRIAL] of [COUNTS]. [MR/MS LAST NAME] received [SENTENCE]. [JUSTICE STATEMENT].
6. [MR/MS LAST NAME] has been granted leave to appeal as a poor person on the original record and typewritten briefs.

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| Supreme Court of the State of New York  Appellate Division: First Department | |
| The People of the State of New York,  Respondent,  — against —  [APPELLANT],  Defendant-Appellant. | Ind. No. [INDICTMENT] |

## Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.
2. [MR/MS LAST NAME]’s brief was prepared with Microsoft Word 2010 with Garamond typeface 14 point in the body and 12 point in the footnotes.
3. The text of the brief has a word count of [WC], as calculated by the processing system and is [#] pages.

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| --- | --- |
| Supreme Court of the State of New York  Appellate Division: First Department | |
| The People of the State of New York,  Respondent,  — against —  [APPELLANT],  Defendant-Appellant. | Note of Issue  Ind. No. [INDICTMENT] |

For the [TERM] Term

This is an appeal from a judgment rendered on [JUDGMENTDATE], by Supreme Court, [COUNTY] County. [APPELLANT] was convicted after [GUILTY PLEA/TRIAL] of [COUNTS]. [MR/MS LAST NAME] received [SENTENCE]. [JUSTICE STATEMENT].

Notice of appeal filed: [APPEAL DATE]

Record filed with Appellate Division: [RECORD DATE]

Note of issue filed by attorney for Defendant-Appellant.

Christina Swarns

Attorney for Defendant-Appellant

by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David Billingsley

[TITLE]

Office of the Appellate Defender

11 Park Place, Suite 1601

New York, NY 10007

212.402.4100

|  |  |
| --- | --- |
| Supreme Court of the State of New York  Appellate Division: First Department | |
| The People of the State of New York,  Respondent,  — against —  [APPELLANT],  Defendant-Appellant. | Affirmation of Service  Ind. No. [INDICTMENT] |

David Billingsley, Esq., an attorney duly admitted to practice in the State of New York, hereby affirms the following under penalties of perjury:

1. I am associated with the Office of the Appellate Defender, which has been assigned to represent the defendant-appellant in the above-captioned case.
2. On [SERVE DATE], I served a Note of Issue and Brief on the attorney for the respondent, the People of the State of New York, at the Office of District Attorney, Bronx County,198 E. 161st St., 10th Floor, Bronx, New York 10451, by mailing said copies in a depository designated by the United States Postal Service. Respondent has consented to service by mail on the date of filing.

Dated: New York, New York  
 [SERVE DATE]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David Billingsley

|  |  |
| --- | --- |
| Supreme Court of the State of New York  Appellate Division: First Department | |
| The People of the State of New York,  Respondent,  — against —  [APPELLANT],  Defendant-Appellant. | Stipulation  Ind. No. [INDICTMENT] |

It is hereby stipulated and agreed, by and between the attorneys for Defendant-Appellant and Respondent, the People of the State of New York, that subject to the approval of the Court, that Defendant-Appellant’s time to file a Brief in the above-captioned case be extended to [TERM DATE] for the [TERM] Term of the Court.

Dated: New York, New York

[SERVE DATE]

|  |  |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Christina Swarns, Esq.  Attorney for Defendant-Appellant  Office of the Appellate Defender  11 Park Place, Suite 1601  New York, New York 10007  212.402.4100 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Nancy Killian, Esq. Attorney for Respondent District Attorney Bronx County Appeals Bureau 198 E. 161st. Street, 10th Floor Bronx, New York 10451 718.838.7494 |

April 6, 2018

Clerk

Supreme Court of the State of New York

Appellate Division: First Department

27 Madison Avenue

New York, New York 10010

Re: *People v. [APPELLANT]*

Ind. No. [INDICTMENT]

Dear Madam:

I am submitting the following documents as part of the record on appeal:

1. [SEPARATE COVER MATERIALS]

These materials were not included with the record on appeal given to my office and are now being provided to this Court and the District Attorney under separate cover as part of the record in this case.

Sincerely,

[ATTORNEY]

[TITLE]

cc: District Attorney

[COUNTY] County

[SERVE DATE]

Clerk

Supreme Court of the State of New York

Appellate Division: First Department

27 Madison Avenue

New York, New York 10010

Re: *People v. [APPELLANT]*

Ind. No. [INDICTMENT]

Dear Madam:

Please accept this letter as an application for permission, pursuant to New York Rules of Court § 600.10( d)(l )(i), to file an oversized brief in the above-captioned case. The proposed brief, which is currently [65 pages and 15,496 words, is enclosed with this letter. We respectfully request permission to file a brief of approximately that length for the **Error! Reference source not found.** Term of the Court.

**Error! Reference source not found.** was convicted after **Error! Reference source not found.**, of **Error! Reference source not found.**. He was sentenced to **Error! Reference source not found.**.

The proposed brief — in addition to recounting the pertinent events of the factual history, which involves over 500 pages of financial and other commercial exhibits — raises four independent and complex legal issues: an issue involving errors in voir dire; an evidentiary issue of improper use of prior bad acts by the prosecution; a jury instruction issue about a missing witness charge; and a *People v. O’Rama*, 78 N.Y.2d 270 (1991), issue in how a jury note was handled. Each of these legal issues relies on a distinct part of the record below with very little overlap between them.

We have closely edited the proposed brief to be submitted on behalf of **Error! Reference source not found.** to be concise and non-repetitive. Nevertheless, because this case raises significant legal issues and requires a full recitation of the factual history, we will be unable to comply with the 14,000 word limit. We do note, however, that, despite exceeding the word count, the proposed brief is within the page limit set forth by this Court’s Rules. We therefore respectfully request the Court’s permission to file an oversized brief.

Thank you in advance for your consideration of this matter.

Sincerely,

[ATTORNEY]

[TITLE]

cc: District Attorney

[COUNTY] County

[SERVE DATE]

Clerk

Supreme Court of the State of New York

Appellate Division: First Department

27 Madison Avenue

New York, New York 10010

Re: *People v. [APPELLANT]*

Ind. No. [INDICTMENT]

Dear Madam:

I represent appellant [APPELLANT] in the above-referenced appeal, which is scheduled for argument during the Court’s [TERM] Term. By letter dated **Error! Reference source not found.**, I previously requested that the above-captioned case be set for oral argument, and that Appellant be allocated 15 minutes.

I will be unavailable [UNAVAILABLE DATES] and therefore request that the argument in this case be calendared for any other date during the Term.

If the case is adjourned to the [NEXT TERM] term, I will be unavailable on [NEXT TERM UNAVAILABLE DATES]

Sincerely,

[ATTORNEY]

[TITLE]

cc: District Attorney

[COUNTY] County

August 13, 2019

Hon. Janet DiFiore

Chief Judge

Court of Appeals of the State of New York

20 Eagle Street

Albany, New York 12207

Re: *People v.* ***Error! Reference source not found.***

Ind. No. 3730-2007 (**Error! Reference source not found.** County)

Application for Leave to Appeal

Your Honor:

**Error! Reference source not found.** respectfully asks for the issuance of a certificate pursuant to N.Y. Crim. Proc. Law § 460.20, granting permission to appeal, and certifying that there is a question of law in the above-captioned case as stated in appellant’s brief, which ought to be reviewed by the Court of Appeals. Counsel makes this application in accordance with his obligations pursuant to Rule 606.5(b)(2) of the Rules of the Appellate Division, First Department.

**Error! Reference source not found.** requests that an appeal be allowed to this Court from an order of the Supreme Court, Appellate Division, First Department, entered on March 10, 2016, which was served upon appellant by mail on March 14, 2016, affirming the order of the Supreme Court, **Error! Reference source not found.** County (Carruthers, J.), entered on **Error! Reference source not found.**. **Error! Reference source not found.** was convicted after **Error! Reference source not found.** of **Error! Reference source not found.**. **Error! Reference source not found.** received **Error! Reference source not found.**.

There were no co-defendants. No application has been made to a Justice of the Appellate Division.

Appellant respectfully requests the opportunity to file a supplemental letter with the judge to whom this matter is assigned, addressing in greater detail the reasons why the Court should review his case and how the issues are preserved for this Court’s review.

Copies of the Appellate Division’s order and all briefs submitted below are enclosed.

Respectfully yours,

Rosemary Herbert

Attorney for Defendant-Appellant

by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Error! Reference source not found.**  
**Error! Reference source not found.**

cc without enclosure: John T. Hughes, Esq.

Assistant District Attorney

**Error! Reference source not found.** County

<<USE THIS LEAVE APP FOR EXCESSIVE SENTENCE CASES>>

August 13, 2019

Hon. Janet DiFiore

Chief Judge

Court of Appeals of the State of New York

20 Eagle Street

Albany, New York 12207

Re: *People v.* ***Error! Reference source not found.***

Ind. No. 3730-2007 (**Error! Reference source not found.** County)

Application for Leave to Appeal

Your Honor:

**Error! Reference source not found.** respectfully asks for the issuance of a certificate pursuant to N.Y. Crim. Proc. Law § 460.20, granting permission to appeal, and certifying that there is a question of law in the above-captioned case which ought to be reviewed by the Court of Appeals.

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Counsel makes this application in accordance with his obligations pursuant to Rule 606.5(b)(2) of the Rules of the Appellate Division, First Department. Copies of the Appellate Division’s order and all briefs submitted below are enclosed.

Respectfully yours,

Rosemary Herbert

Attorney for Defendant-Appellant

by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Error! Reference source not found.**  
**Error! Reference source not found.**

cc without enclosure: John T. Hughes, Esq.

Assistant District Attorney

**Error! Reference source not found.** County

1. [↑](#footnote-ref-1)