

State of New York

Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

RICHIE A. STOKES, JR.,

**ORDER
DISMISSING
LEAVE**

Ind. No. 17-21

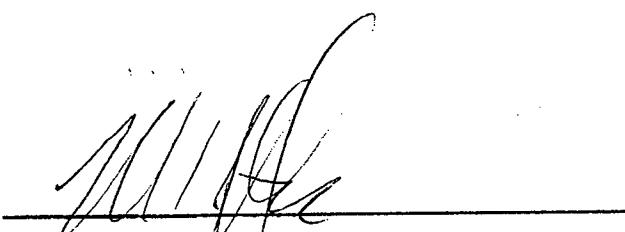
Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law (CPL) § 460.20 from an order in the above-captioned case:*

UPON the papers filed and due deliberation, it is

ORDERED that the application is dismissed because the order sought to be appealed from is not appealable under CPL § 450.90(1).

Dated: 6/21/23



Associate Judge

*Description of Order: Order of a Justice of the Appellate Division, Fourth Department, dated April 4, 2023, denying leave to appeal from an order of County Court, Wayne County, dated February 19, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

KA 23-00246

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

v

RICHIE A. STOKES, JR., DEFENDANT.

Indictment No.: 17-21

Defendant having moved for a certificate granting leave to appeal pursuant to CPL 460.15 from an order of the Wayne County Court, dated February 19, 2021,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied.

DATED: April 4, 2023



Hon. Erin M. Peradotto
Associate Justice

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y. }

I, ANN DILLON FLYNN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.



IN WITNESS HEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this APR 05 2023.

Ann Dillon Flynn
Clerk

(B)

STATE OF NEW YORK
COUNTY COURT

COUNTY OF WAYNE

PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

vs.

ERICHE A. STOKES, JR.

Defendant.

NOTICE OF MOTION

Indict No.: 17-21

Hon. Daniel G. Barrett

WHEREAS, ~~THE PEOPLE~~ by the attorney of Lindsey M. Pieper, Esq., attorney for the above-named Defendant, it is alleged will move this Court, on a limited term thereof, to adjourn the trial of the above cause, to be held at the Superior Court of Wayne County, located at 44 Broad Street, Wayne County of Wayne, New York, on April 27, 2017, at 9:30 a.m., for the following Orders granting the Defendant the following relief:

A. Pursuant to CPL § 21.30, the Court shall grant the Defendant a continuance with the Court and to set a date thereof upon the Defendant.

B. Pursuant to paragraph (b) of Article 240:

B.1. Prohibiting the District Attorney from presenting, in his direct case, any evidence that the Defendant committed any other crime or engaged in any other vicious or felonious conduct (People v. Sandoval, 34 NY2d 371 (1974);

B.2. Prohibiting the District Attorney from presenting, in his direct case, any evidence that the Defendant committed any other crime or engaged in any other vicious or felonious conduct (People v. Sandoval, 34 NY2d 371 (1974); People v. McElroy, 168 NY 264 (1901);

C. Delivery of the Defendant all evidence favorable to the Defendant under the authority of *Brady v. Maryland*, 373 US 83 (1963);

D. Pursuant to CPL § 210.30, providing that the Court examine the stenographic minutes of the Grand Jury proceedings resulting in the Indictment herein and pursuant to CPL §§ 210.20(1)(b) and 210.30, dismissing or reducing the Indictment against the Defendant on the

ground that the evidence before the Grand Jury was not legally sufficient to establish the offenses charged;

G. Pursuant to CPL § 210.30, providing that the Court examine the stenographic minutes of the Grand Jury proceeding resulting in the Indictment herein and pursuant to CPL §§ 210.20(1)(c) and 210.35, dismissing the Indictment against the Defendant on the ground that the Grand Jury proceeding was defective, pursuant to CPL §§ 210.20(1)(a) and 210.25(1), dismissing the Indictment on the ground that it is defective and that it does not substantially conform to the requirements of CPL Article 200;

H. Pursuant to CPL §§ 210.20(1)(a), 210.25(1), (2), and/or 200.70(2)(a) and/or (b), dismissing the Indictment upon the ground that the factual allegations made in the Indictment demonstrate that it is defective on its face.

I. Pursuant to CPL § 710.30, precluding the introduction of any evidence of the Defendant at trial on the grounds the prosecution has not timely served notice as required by the statute;

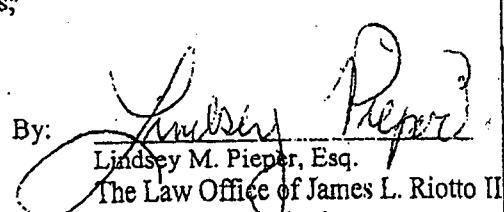
J. Pursuant to CPL §§ 710.20(1), 710.20(4) and 710.60(1), suppressing from use at trial certain tangible property and other evidence, or a hearing upon the issue pursuant to CPL § 710.60(4);

K. Pursuant to CPL §§ 710.20(6) and 710.70(1), suppressing potential testimony regarding an observation of the Defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case upon the grounds such testimony would not be admissible at trial because of an improperly made previous identification of the Defendant, or a hearing upon the issue;

L. Pursuant to *People v. Sanders*, requiring that any hearings granted in this case be held at least twenty days prior to the commencement of the trial in order to allow sufficient time for the transcription of the minutes. *People v. Sanders* 31 NY2d 463 (1973);

M. Permitting the renewal of all motions;

April 21, 2017
Rochester, New York

By: 
Lindsey M. Pieper, Esq.
The Law Office of James L. Riotto II
Attorneys for Defendant
30 W. Broad Street, Suite 306
Rochester, NY 14614
(585) 546-4001
Lindsey@RiottoLaw.com

To: District Attorney, Christopher Bokleman

STATE OF NEW YORK
COUNTY COURT

COUNTY OF WAYNE

PEOPLE OF THE STATE OF NEW YORK, }

Plaintiffs,

) AFFIRMATION OF COUNSEL

vs.

) Indict No.: 17-21

RICHIE A. STOKES, JR.

) Hon. Daniel G. Barrett

Defendant.

Lindsay J. Preper, Esq., an attorney admitted to practice in the State of New York affirms the following under the penalty of perjury:

1. I represent the Defendant in this matter and make this affirmation in support of the relief sought in the annexed Notice of Motion. Statements as to legal authority are made on information and belief based upon legal research. All opinions as to the possible defense based upon information and belief the sources being review of the accusatory instruments and other papers filed in connection with this action, discovery received thus far, conversations with my client and my own investigation. Whether or not the defense is based upon a defense raising both state and federal bases. No previous request for the relief sought was previously made, except as noted.

2. Upon information and belief, on or about December 13, 2016, at approximately 1:06am, in Lyons, New York, the Defendant, Richie A. Stokes, Jr. was arrested and charged *inter alia*, with *Per se* Driving While Intoxicated in violation of New York State Vehicle and Traffic Law § 1192(3). The Defendant was arraigned and entered a plea of "not guilty" to the charge.

3. Upon information and belief, on or about February 2, 2017, at approximately 1:00am, in Galen, New York, the Defendant, Richie A. Stokes, Jr., was arrested and charged *inter alia*, with Felony Driving While Intoxicated in violation of New York State Vehicle and Traffic Law § 1192(3). The Defendant was arraigned and entered a plea of "not guilty" to the charge.

4. On or about February 9, 2017, the Defendant received two (2) letters informing him his cases were being presented to the Wayne County Grand Jury. Exhibit A. Subsequently, your affiant advised the District Attorney, Christopher Bokelman, that the Defendant wanted to testify before the Grand Jury regarding his use in Lyons only.

5. On or about February 27, 2017, both of the Defendant's matters were presented to the same Grand Jury at the same time, despite your affiant's request that the cases be presented one at a time.

6. Upon both cases being presented at once, the Defendant chose not to testify before the Wayne County Grand Jury, because he felt this method of presentation was prejudicial.

7. On or about February 27, 2017, a three (3) Count Indictment was filed with the Court charging Mr. Stokes with two (2) counts of Felony Driving While Intoxicated,² in violation of New York State Vehicle and Traffic Laws §§ 1192(3) and 1193(1)(c)(i), and the traffic violation of Consumption or Possession of Alcohol in a Motor Vehicle, in violation of New York State Vehicle and Traffic Laws § 1227(1).

¹ Defense counsel suggested presenting one case to the Grand Jury, having the jurors vote on that case, then presenting the second case after a vote was taken.

² The first count occurring on December 13, 2016, in the Town of Lyons. The second count occurring on February 2, 2017, in the Town of Galen.

8. On or about March 9, 2017, the Defendant was arraigned on the Indictment and plead "Not Guilty" to all offenses.

9. The following exhibit is attached in support of the relief sought herein:

Exhibit A – Letter from District Attorney, Christopher Bokelman, dated February 9, 2017

Exhibit B – CPL § 710.30 Notice

A. DISMISSAL OF INDICTMENT

10. The Defendant moves the Indictment against him be dismissed pursuant to CPL Article 210 based on the grounds that the evidence before the grand jury was not legally sufficient to establish the offense(s) charged, or any lesser included offense, and the grand jury proceeding itself was defective.

11. Defendant requests 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 § 210.31(5), so that I might more effectively represent the accused on this motion to dismiss.

12. I respectfully request to be furnished by Court letter from the prosecution and the court's office as to the date when the grand jury minutes are provided to the Court.

Incurable Prejudice to the Defendant

13. Specifically, the Grand Jury proceeding failed to conform to the requirements of Article 190 of the CPL to such degree that the integrity thereof was impaired and prejudice to the defendant resulted. CPL § 210.35(5).

14. It is well established a person has a right to be a witness in his own behalf in a Grand Jury proceeding, if a criminal charge pending against him is to be submitted to a Grand Jury and he notifies the District Attorney of his intention to testify. CPL § 190.50(5).

15. On or about February 9, 2017, the Defendant received two (2) separate letters informing him his cases were being presented to the Wayne County Grand Jury. Exhibit A. Subsequently, your affiant notified the District Attorney, Christopher Bokelman, the Defendant wanted to testify before the Grand Jury regarding his case allegedly occurring in Lyons only, which allegedly occurred on December 13, 2016.

16. The defendant and his Counsel were on notice that the Grand Jury would hear the charges separately, due to the separate correspondence from the District Attorney. Exhibit A. Your affiant did not know that these cases would be presented together, but at a vote taken, the Grand Jury separated the presentation of the cases.

17. On or about February 27, 2017, with your affiant present, the Defendant executed a Waiver of Immunity, and prepared to testify before the Grand Jury. However, on this day, the District Attorney informed your affiant that the Defendant was not available to testify before the Grand Jury at that time. Your affiant then asked the District Attorney whether he could reschedule the date to another time. Your affiant requested that the cases be presented one at a time,³ to no avail.

18. Your affiant is being interviewed by the Grand Jury, and your affiant chose not to testify before the Wayne County Grand Jury, and has withdrawn from the Grand Jury, and was compelled to withdraw his previously executed Waiver of Immunity.

19. The Defendant asserts the cumulative result of the procedure is injury to justice during the presentation of the case to the Grand Jury sufficient to impaired the integrity of the proceedings to such a degree that the Defendant was prejudiced, and dismissal of the indictment is warranted.

³ Your affiant's Counsel suggested presenting one case to the Grand Jury, following the jurors vote in that case, then presenting the second case after a vote was taken.

20. Dismissal of an indictment is appropriate "where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury. CPL § 210.35(5). The likelihood of prejudice turns on the particular facts of each case, including the weight and nature of the admissible proof adduced to support the indictment and the degree of inappropriate prosecutorial influence or bias. *People v. Huston*, 88 N.Y.2d 400 (1996).

21. The Grand Jury is deemed an extension of the Court and its powers are to investigate, rather than prosecute. CPL § 180.05; *People v. Matthews*, 27 N.Y.2d 553 (1970).

22. Grand Jury proceeding should not be a "game," incant to deceive or entrap. It should be a proceeding conducted with the utmost fairness. Because of the extremely powerful and pivotal position held by the District Attorney, his responsibility to supervise these proceedings achieves a quasi-judicial status. *Id.*

23. In *People v. Hirschberg*, the Defendant was arrested for similar charges on two different dates, in two different years, for two separate offenses, which occurred in two different towns, months apart from each other. The two offenses were not transactional, and unrelated to one another. Yet, the District Attorney's Office presented these two cases to the Grand Jury together, creating irreparable harm, causing extreme prejudice to the Defendant.

24. By having the same jurors hear similar charges alleged against the Defendant, an Indictment was almost guaranteed. Hearing both cases at once created an improper influence and exposure to bias, which undermined the integrity of the Grand Jury.

25. In *People v. Hirschberg*, a defendant was arrested for larceny, and questioned about other, unrelated matters. Since the Grand Jury was informed of unrelated matters, the Court dismissed the Indictment against the Defendant.

26. In reaching its decision, the Court stated. "This line of cross-examination must have tended to poison the minds of the grand jurors to the prejudice of the defendant and was wholly improper. It imputed to him other improper and even criminal acts and such cross-examination would not be permitted by a trial court. *People v. Hirschberg*, 37 N.Y.S.2d 861 (N.Y. Gen. Sess. 1942).

27. *Hirschberg* is similar to the case at hand, because if the Defendant continued with testifying before the Grand Jury, he would have been subjected to questioning regarding the alleged offense in Galen, when he did not wish to testify about this offense. It was clear from the moment your affiant notified the District Attorney's Office that the Defendant wished to testify at Grand Jury, that he only wanted to waive immunity for the matter occurring in Lyons, and that he did not wish to testify before a Grand Jury regarding the matter in Galen.

28. If the same Grand Jury heard the Defendant testify at his own behalf before one case, but not another case, this would undoubtedly cause an inference of guilt, regardless of what curative instructions were given, resulting in incurable prejudice. Presenting both cases at once, to the same Grand Jury, was wholly improper.

29. Assuming arguendo, curative instructions were given during the Grand Jury proceedings, your affiant submits the prejudice injuring the Defendant was so overwhelming that the Grand Jury could not humanly ignore the damage that had already occurred.

30. Furthermore, the Grand Jury had already heard most, if not all, of the evidence regarding two alleged Felony DWI's, as well as a misdemeanor DWI in 2014. Consequently, this caused the inference that any allegations the Defendant was operating a motor vehicle while intoxication must be true.

31. It is clear from the Grand Jury minutes, and the Indictment eventually returned against the defendant, that the District Attorney exercised bad faith in presenting two unrelated cases to the same group of jurors at once.

Further Grounds for Dismissal of Indictment

32. In addition to any other grounds for dismissal revealed by the Court's inspection of the grand jury minutes, defense requests the Court to consider the following grounds:

(1) The District Attorney's legal instruction to the grand jury was not specific as to each element of the offense charged failing to mind that the grand jury being legally insufficient. *People v. Parry*, 19 NY2d 806 (1975); *People v. Kennedy*, 127 Misc2d 712 (Monroe County Ct. 1985); *People v. Nelein*, 127 Misc2d 583 (Sup Ct 1985);

(2) The necessary burden of proof was not laid on the defendant as never explained was not properly given. *Matter of the Report of the Special Grand Jury of the County of Nassau, New York, Part 3, Special Report No. 647*, 102 A.D.2d 111 (2d Dept 1981).

(3) The District Attorney failed to inform the County Court Judge, before the trial, to the grand jury that the Defendant is entitled to a presumption of innocence as to each charge. *People v. Barekta*, 13 A.D.2d 760 (2d Dept 1960);

(4) The instructions by the District Attorney to the grand jury was incomplete and insufficient as to impair the ability of the grand jury to intelligently or properly consider the evidence presented. *People v. Cutibid, Inc.*, 49 NY2d 389 (1980); *People v. Valles*, 62 NY2d 36 (1984); *People v. Soto*, 104 Misc2d 422 (Sup Ct 1984);

(5) If the evidence was presented to the grand jury over a period of more than one day, I request that this Court verify at least sixteen grand jurors were present on each day that the evidence relating to this charge was presented and that at least twelve grand jurors who heard all of the evidence on each day in question voted to indict. If the Court finds any one of the forgoing necessities was violated, then under the CPL, the Indictment must be dismissed. CPL § 190.25(1);

(6) A quorum of grand jurors was not present prior to both hearing evidence and voting. CPL § 190.25; *People v. Collier*, 72 NY2d 298 (1988);

(7) The Indictment was voted by an extended term of the grand jury. *People v. Williams*, 73 NY2d 84 (1989) (extended term may not consider new matters not pending during original term);

(8) The grand jury was not properly instructed with regard to whom decides the legal sufficiency of the evidence. *People v. Battista*, 75 NY2d 206 (1990) (Grand jurors, not the prosecutor, decide sufficiency of evidence – improper for prosecutor to inform the Grand Jury he determined enough evidence existed to warrant an Indictment);

(9) The District Attorney did not properly answer questions put forth by the grand jurors or respond to grand juror requests for lesser charges. CPL § 190.25(6);

People v. Francis, 166 Misc2d 476 (Sup Ct 1995); *People v. Morrell*, 134 Misc2d 1011 (Sup Ct, 1987) (The District Attorney failed to answer questions regarding possible lesser included offenses);

(10) The District Attorney did not inform the grand jurors a prosecution witness testified under a grant of immunity, a cooperation agreement, or private understanding had been reached, to the extent the failure to inform materially influenced

the grand jury. *People v. Corso*, 135 AD2d 551 (2d Dep't 1987) (rev'd on other grounds); *People v. Bartolomeo*, 126 AD2d 375 (2d Dep't 1987); *People v. Warmus*, 148 Misc2d 374 (Westchester County Ct 1990);

(11) The grand jury was not correctly informed of the corroboration rule if accomplice testimony was given. CPL § 60.22; *People v. Ehrlich*, 136 Misc2d 514 (Sup Ct 1987);

(12) The grand jury was not instructed as to the law in connection with the particular case other than at the beginning of the term. *People v. Gaxman*, 137 Misc2d 129 (Sup Ct 1987);

(15) The secrecy and confidentiality of the grand jury was compromised and/or unauthorized persons were present in the grand jury or during videotaping made elsewhere, but presented to the grand jury. CPL §§ 190.21-190.22(1); *People v. Sayar*, 42 NY2d 762 (1994); *People v. DiFalco*, 11 NY2d 402 (1973);

(16) CPL § 210.20 -- Permitting the Court to reduce indicted charges upon motion to dismiss;

(17) The District Attorney rejected his personal opinions, beliefs, or feelings for the credibility of a witness. *People v. Paperno*, 54 NY2d 294 (1981);

(18) The District Attorney administered the oath to any witness. CPL § 190.25; *People v. Rivers*, 145 AD2d 319 (1st Dept 1988) (oath may only be administered by grand jury foreperson or other grand juror);

(19) The District Attorney improperly introduced comments on Defendant's failure to testify before the grand jury. *People v. Colban*, 151 Misc2d 32 (Sup Ct 1991), aff'd 186 AD2d 8 (1st Dept 1992);

(27) Upon information and belief, the evidence presented to the grand jury was insufficient pursuant to CPL § 210.20(1)(b) or the prosecutor elicited inadmissible hearsay evidence. *People v. Houston*, 88 NY2d 400 (1996).

(28) Upon information and belief, the evidence presented to the grand jury was not sufficient to establish the commission by the Defendant of the offense charged but was legally sufficient to establish a lesser included offense. The Defendant requests the Court enter an order reducing the charge pursuant to CPL § 210.20(1-a);

(29) The prosecutor fully introduced the inculpatory portions of the Defendant's statement and failed to introduce exculpatory portions which were part of a continuous interrogation. *People v. Mitchell*, 82 NY2d 509 (1983); *People v. Rodriguez*, 188 AD2d 566 (2d Dep't 1992);

(30) The prosecutor heckled questioning of a witness by a member of the grand jury or prevented a witness from answering a question posed by a member of the grand jury. *People v. Placencia*, 157 Misc2d 397 (Sup Ct 1993); *People v. Dukes*, 156 Misc2d 386 (Sup Ct 1992); Or the prosecutor claimed to have testimony read back to the grand jury. *People v. Jackson*, 148 Misc2d 366 (Sup Ct 1990);

(31) The grand jury was not properly instructed that statutory presumptions are not conclusive. *People v. Bacote*, 143 Misc2d 535 (Sup Ct 1988);

(32) The grand jury was not presented independent evidence to corroborate the Defendant's statement. CPL § 60.50; *People v. Darby*, 75 NY2d 449 (1990); *People v. Lipsky*, 57 NY2d 560 (1982);

(33) Unauthorized persons were present in the grand jury. CPL § 190.25(3); *People v. Verkey*, 185 AD2d 622 (1992);

(34) The grand jury proceeding was defective because the District Attorney presented improper evidence regarding the information which served as the police officer's determination he had probable cause to arrest. Probable cause evidence is not an element of a charge is inadmissible even at trial and is therefore not relevant evidence to be brought forth to grand jury. *People v. Thomas*, 70 NY2d 823 (1987); If this information was presented to potentially prejudice the ultimate decision reached by the grand jury, the proceeding was defective, thus warranting dismissal of the Indictment. CPL § 210.35(3); *People v. DiAntico*, 261 AD2d 633 (2d Dept 1999)

33. Upon information and belief, the prosecution improperly presented the case to another grand jury without court approval. CPL § 190.75(3).

34. The Defendant moves that the Indictment against him be dismissed because it fails to substantially conform to the requirements of Article 87 of the CPL.

BILL OF PARTICULARS

35. With respect to that portion of this Motion which seeks a Bill of Particulars, I believe I can not adequately prepare or conduct a defense without being supplied with the following by the District Attorney:

(1) The date, place and approximate time at which the offenses allegedly occurred. *People v. Sedlock*, 8 NY3d 535 (2007). If the prosecutor is unable to delineate a more sufficiently narrow time frame than that set forth in the Indictment, the Defendant requests the Court to order a hearing for the prosecution to demonstrate good cause for its inability to do so. *People v Morris*, 61 NY2d 290, 296 (1984);

(2) A factual description of the substance of Defendant's conduct encompassed by the charge(s) which the prosecution intends to prove at trial on its direct case. CPL § 200.95 (1)(a); *People v. Iannone*, 45 NY2d 589 (1979);

(3) Whether the prosecutor intends to prove that the Defendant acted as principal, accomplice, or both. CPL § 200.95 (1)(a);

(4) Disclosure and identification of any informer or witnesses, times, places and persons present when informer or witnesses disclosed information and the exact content of the disclosure.

(5) A description of any property taken from the Defendant and/or accomplices during the investigation of the alleged offense, the person or place from whom taken, the person effecting the seizure, the date of the seizure, whether the seizure was pursuant to a warrant.

(6) An itemized description of the object(s) allegedly possessed by the Defendant and/or accomplice in connection of the commission of the offenses charged.

(7) A description of any and all instrumentalities allegedly used by the Defendant or accomplice during the commission of the offenses charged and the exact current location of said items.

(8) The exact current location of any and all items seized from the Defendant's person, residence and/or vehicle.

36. The defense requires this information and believes is necessary because I cannot adequately prepare or conduct a defense without being supplied more particularization.

C. DISCOVERY

37. With respect to that portion of this Motion seeking an Order of Discovery, the Defendant requests to be supplied with the following, pursuant to CPL § 240.40, which is or with the exercise of due diligence could come, within the possession or control of the People:

- (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 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;
 - a. Specifically, upon information and belief, the Defendant requests the Court to direct the People to provide all investigation action reports from all members of law enforcement relevant to the defendant, including, but not limited to, the following Crime Report numbers ("CR"), 16-42760 and 16-42761.
 - b. Any and all reports, statements or otherwise relating to this incident including, but not limited to, the Wayne County Sheriff's Office.
- (2) Any transcript of testimony, relating to this criminal action or any other 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).
- (3) Any statement by any co-defendant, co-conspirator, or witness, whether or not the prosecutor intends to introduce the same at trial as well as any notes concerning such statements made by any law enforcement officers (*see Will v. United States*, 389 U.S. 90 (1967)).

(4) 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 such witness and the circumstances under which the observations took place.

(5) 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.

(6) Any photograph or drawing purporting to contain the face of a person being which was shown to prospective witness or made with the participation of such witness (including the names of the all persons participating in the preparation of such sketches or compositions, the names and addresses of all persons to whom the photograph or drawing was exhibited, the date and place of preparation, the date and place of exhibition and name of such exhibitor, as well as any questions asked or statements made at any such preparation or exhibition).

(7) Any work notes or rough drafts of composite sketching or drawings, as well as any notes containing any information obtained from the person providing the information from which the composite was constructed.

(8) All booking forms completed by police officers after taking Defendant into custody, as well as defendant's mug shot.

(9) Any photograph, photocopy or other reproduction made by or at the direction of the People of any property prior to its release pursuant to Penal Law § 450.10, regardless of whether the People intend to introduce at trial the property, or the photograph, photocopy or other reproduction.

(10) Any audio or video tapes or other electronic recordings made of the defendant, including the name of the person who made the recording, as well as any other electronic recordings which the prosecutor intends to introduce at trial regardless of whether such recording was made during the course of the criminal transaction.

(11) All information provided media to personnel, either orally or in writing, which was broadcast relating to this case.

(12) Copies of all documents, police reports, notes, or memoranda, prepared or maintained by police officials containing information relating to the above-captioned matter 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 which 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;

c. tape recordings, complaint logs, and transcripts relating to any
"911" call or call to the police relating to the crime charged;

d. tape recordings, dispatcher logs, transcripts or memoranda
recording any police communications during the investigation of the crime
charged;

e. any portion of any police department manual, directive, or policy
statement governing the police conduct of this investigation in any

respect.

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

- a. the field and subject matter of the expert's expected testimony;
- b. a copy of the resume or curriculum vitae of the expert;
- c. for each scientific examination or test performed, the name, author and chapter of any reference manual or authoritative text referred to or relied upon;
- d. if the 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.

(14) Disclosure of the criminal record of the Defendant within the possession or control of the prosecution.

(15) Defendant requests that the People provide complete information concerning all specific instances of defendant's prior uncharged criminal, violent, or immoral conduct which the People intend to introduce as direct evidence at trial, or upon cross examination to impeach the credibility of the defendant, should he choose to testify at trial (CPL § 240.43; *People v. Betts*, 70 NY2d 289 (1987); *People v. Ventimiglia*, 52 NY2d 350 (1981)). Defendant requests that the Court direct the People to provide this information at least three (3) business days before commencement of jury selection.

(16) Defendant also requests that the Court direct the prosecution to provide any discovery to which the Defendant is entitled pursuant to *People v. Rosario* (9 NY2d

286 (1961) and CPL § 240.45 at least three (3) business days before the commencement of any hearing or trial.

(17) While such disclosure is not mandated by Article 240 of the CPL, counsel believes that it is essential to effective representation of the defendant. Providing the previous statements or testimony of witnesses in the course of trial guarantees that the defense will not have an opportunity to thoughtfully analyze those statements at the time they are provided, and may not have an adequate opportunity to do so prior to questioning the witness to whom they relate, without asking the Court for an unnecessary adjournment.

(18) There would be no burden to the People in making such disclosure. Any such statements are normally within their possession weeks or months prior to trial. Otherwise, in the trial of this case it would be better to do so before the People's witness would begin. It is the People's right, at this early date, to know what the People's witness will say. The People have no legitimate interest in attempting to conceal this information from the defense, but it is not possible to make fully certain of the defense's ability to prepare this case for trial that this information be provided earlier than the date which permits careful study, rather than in the midst of trial when it cannot be given proper attention and consideration.

(19) Defendant requests disclosure of all other information required to be disclosed by the People pursuant to the New York and United States Constitution.

D. BRADY

38. Pursuant to *Brady v. Maryland*, 373 US 83 (1963), the Defendant requests the People to provide all information, in whatever form available, supporting the position that the Defendant did not commit the crime charged, including but not limited to:

- (1) 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", military records, police personnel records, or other memoranda (see, *United States v. Bagley*, 473 US 667 (1985));
- (2) 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;
- (3) Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witness on any occasion gave false, misleading or contradictory information regarding the underlying circumstances of this case or any related matters, to persons involved in law enforcement or to their agents or informers;
- (4) Any evidence, testimony, transcript, statement or information indicating that any prospective prosecution witnesses have given statements which are or may be contradictory to each other;
- (5) Any information recounting a misidentification of the Defendant as

a perpetrator of the crimes charged or indicating a failure on the part of any potential witness to identify the Defendant as the perpetrator of the crimes charged;

(6) Any information indicating or documenting that any prospective prosecution witness has or had a history of mental or emotional disturbance;

(7) Full disclosure of any consideration, promise of consideration, or expectation of consideration offered to any prospective prosecution witness, including, but not limited to, leniency, favorable treatment, assistance with respect to any pending legal proceeding, or any reward or other benefit whatsoever which will or could be realized by the witness as a result of their testimony (*Giglio v. United States*, 405 US 150 (1972));

(8) Any threats, express or implied, direct or indirect, made to any prosecution witness, including criminal prosecution or investigation, any change in the probationary, parole, or custodial status of the witness, or any other criminal or potential legal disputes between the witness and the prosecution or over which the prosecution has a real, apparent, or perceived influence;

(9) 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;

(10) Any repetition of any scientific test and any differing results obtained;

(11) Any lack of qualification by any person performing any scientific test in connection with this matter;

(12) Any information to the effect that all or some of the evidence

which 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;

(13) 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 could 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.

(14) Any medical information, testimony, transcript, statements, or other records indicating that any psychiatric, psychological or mental health records existed or have existed on any prospective prosecution witness in the past ten (10) years; Court of Berlin will endeavor to procure Order per CPL § 240.50(2) of this material if requested by the People.

(15) Any information pertaining to the credibility of complainant with regard to those or any other allegations. The request concerns to any indication that either complainant was coerced into making statements or testifying, or that either complainant was exposed to suggestive questioning by any party.

(16) Any information pertaining to improper questioning of either complainant by any police officer or agent thereof, particularly to the statement provided to CPS and law enforcement which was upon information and belief, actually provided by complainant's mother and sworn to by complainant's mother.

E. SANDOVAL & MOLINEUX

39. Pursuant to *People v. Sandoval*, 34 NY2d 371 (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 the purpose of cross examinations pursuant to CPL § 240.43 before asking for preclusion of specific crimes or acts pursuant to *People v. Ventimiglia*, 52 NY2d 350 (1981). The Defendant requests that the Court order such notifications to be given at least three days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

40. Pursuant to CPL § 160.40 the defense requests that the Court provide Defendant with a copy of defendant's Division of Criminal Justice Services criminal history report to enable Defendant to prepare for a *Sandoval* hearing.

41. The Defendant requests the Court to preclude the People from presenting any evidence at trial upon its direct case concerning any allegation of uncharged criminal, vicious or immoral conduct by the Defendant pursuant to *People v. Molineux*, 168 NY2d 264 (1901).

F. PRECLUSION OF STATEMENTS

42. At arraignment, the Defendant was served with a notice prepared pursuant to CPL § 710.30 advising the Defendant of the People's intention to introduce statements the Defendant allegedly made to Officers of the Greece Police Department on December 5, 2016.

43. The statements made by the Defendant to said Officers were made involuntarily. *People v. Huntley*, 15 N.Y.2d 72 (1965). A hearing must be conducted whenever a Defendant claims his statements were involuntary, regardless of the facts put forth to support such a claim. *People v. Weaver*, 49 N.Y.2d 1012 (1980).

44. The alleged statements also were made without the Defendant having received adequate advice as to his constitutional rights during questioning. *Mirandu v. Arizona*, 384 U.S. 436 (1966).

45. Based on the foregoing, a hearing is required so this Court may determine whether the statements being attributed to the Defendant should be suppressed. CPL § 710.60(3)(b); *People v. Weaver*, 49 N.Y.2d 1012 (1980).

46. At such hearing, the People bear the burden of *proving beyond a reasonable doubt* that the statements made were voluntary. *People v. Wittenberg*, 10 N.Y.2d 913 (1965).

SUPPRESSION OF STATEMENT

47. The People have served upon the Defense a Notice of the People's intention to offer at trial evidence of a statement allegedly made by the Defendant to a law enforcement officer.

48. The Plaintiff's attorney has to suppress the specific statement contained in such Notice based upon the following legal ground: Such evidence consists of a record or potential testimony reciting or describing a statement of Defendant involuntarily made, within the meaning of CPL § 60.45.

49. The Defendant's statement was "involuntarily made" because it was obtained from him in violation of due process, by the use or threatened use of physical force upon the Defendant or another person, and by means of other improper conduct or undue pressure which impaired the Defendant's physical or mental condition to the extent of undermining his ability to

make a choice whether or not to make a statement. (see e.g. CPL § 60.45(2)(a); US Const 5th, 14th Amends; NY Const art I, § 6).

50. The Defendant's statement was "involuntarily made" because it was obtained from him in violation of due process, by a public servant engaged in law enforcement activity or by a person then acting under his direction or in cooperation with him, by means of a promise or a statement of fact, which promise or statement created a substantial risk that the Defendant might falsely incriminate himself. (see e.g. CPL § 60.45(2)(b)(I); US Const 5th, 14th Amends; NY Const art I, § 6).

51. In addition to the Constitutional violation specified above, the Defendant's statement was also "involuntarily made" because it was obtained from him in violation of certain other Constitutional rights under the United States and New York State Constitutions. (see CPL § 60.45(2)(b)(ii)), including but

A. the statement constitutes the fruit of an unlawful seizure and/or of the Defendant's person which was made without reasonable suspicion and probable cause to believe that the Defendant had engaged in any unlawful activity, the reliability and sufficiency of any hearsay information allegedly relied upon by the arresting officers are hereby challenged;

B. The Defendant was not advised or was improperly advised of his *Miranda* rights prior to making the statement;

C. the statement was obtained in violation of the Defendant's right to remain silent; and

D. the statement was obtained in violation of Defendant's right to counsel because:

- i. the Defendant requested an attorney;
- ii. formal adversary proceedings had already been initiated;
- iii. counsel had entered into the case prior to or during the interrogation;
- iv. the Defendant was actually represented by counsel on a related, pending case;
- v. there was an undue delay between the seizure of the Defendant and the filing of an accusatory instrument designed to deprive the Defendant of her right to counsel.

52. Unless the People stipulate that they will not offer any evidence of a statement allegedly made by the Defendant to a public servant or her agent in any criminal action or proceeding against the Defendant for any purpose, including both the People's direct case and any potential cross-examination of the Defendant, it is requested that the Court conduct a hearing. (see CPL §§ 710.60(2)(b),(4)).

53. Your affiant requests an Order, pursuant to CPL § 710.70(1), that the evidence in question, the statements allegedly made by the Defendant, be excluded in the criminal action pending against the Defendant, for all purposes, or, in the alternative, pursuant to CPL § 710.60(4), that a hearing on these issues be held.

H. PRECLUSION OF PHYSICAL EVIDENCE

54. The People have not provided any discovery regarding physical evidence seized in this matter. If the People intend to offer at trial property seized from the Defendant by law enforcement personnel or their agents, then the defense reserves the right to have such evidence precluded. The basis for such preclusion includes, but is not limited to, the following:

55. Upon information and belief, such property was seized in violation of the Fourth and Fourteenth Amendment of the United States Constitution and Constitution and the laws of the State of New York.

56. More particularly, the evidence was obtained unlawfully because:

- (1) It was seized without a warrant, or consent, or any other lawful authority.
- (2) The warrant under which the property was seized was issued without probable cause.
- (3) The affidavit or sworn statement on which the warrant was issued contained material false allegations that were made knowingly and in reckless disregard for the truth.
- (4) The warrant under which the property was seized fails to describe the place to be searched with particularity.
- (5) The warrant under which the property was seized fails to describe the things to be seized with sufficient particularity.
- (6) The warrant under which the property was seized was issued beyond its scope with regard to the property authorized to be seized.
- (7) The warrant under which the property was seized was executed beyond its authorized scope.
- (8) The officers executing the warrant failed to make a proper and timely return of the warrant.
- (9) The warrant fails to contain a direction that the warrant be returned to the Court without regard to whether any property is seized as a result of the search pursuant to CPL § 690.45(8).

(10) The warrant was issued upon the illegal acquisition of privileged testimony between a child and a CPS worker by unlawful eavesdropping by the police.

I. PRETRIAL IDENTIFICATIONS

57. The Defendant moves to preclude any evidence by any eyewitness or "earwitness" who has previously identified the accused as present at any place or time relevant to this charge and any evidence concerning any such prior identification for failure to comply with the statutory requirements of CPL § 710.30.

J. HEARINGS

58. 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.

59. More specifically, the Defendant requests the following hearings:

- (1) Sandoval hearing
- (2) Discovery

60. Pursuant to *People v. Sanders*, 31 NY2d 463 (1973), 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.

K. SUBSEQUENT MOTIONS

61. I have attempted 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 additional relief may be warranted.

SUMMARY GRANT OF THE REQUESTED RELIEF

62. In the event that the prosecution fails to submit responsive pleadings contesting the factual assertions set forth above, the Defendant respectfully requests that this Court summarily grant the relief sought herein. *People v. Gruden*, 42 N.Y.2d 214 (1977).

WHEREFORE, your Plaintiff respectfully requests the Court grant the relief sought in the notice in its entirety.

By:

Lindsey Pieper, Esq.
The Law Office of Julian J. Riotto, Esq.
Attorneys for Defendant
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April 21, 2017
Rochester, New York

To. District Attorney, Christopher Beklemian

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

RESPONSE TO
MOTION
Indictment No. 17-21

RICHIE A. STOKES, JR.,
Defendant.

SIRS:

THE PEOPLE OF THE STATE OF NEW YORK, by Jacqueline McCormick, Assistant District Attorney of the County of Wayne, as and for a Response to the Demand for Discovery and Bill of Particulars alleges, upon information and belief:

A. DISMISSAL OF INDICTMENT

The People consent to the Court's *in camera* review of the Grand Jury minutes. Inspection will reveal that the evidence before the Grand Jury amply supports the offenses 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 of the Grand Jury minutes to the defense. The issues raised in defendant's motion are straightforward, and disclosure is not necessary to their resolution. CPL §210.30(3).

B. BILL OF PARTICULARS

35. 1. See Indictment.
2. See Indictment.
3. Principal.
4. Not discoverable per CPL 200.95.
5. N/A.
6. N/A.
7. Vehicle.
8. N/A

C. DISCOVERY

37. 1. See 710.30 Notice previously provided. The People intend to comply with CPL sections 240.44(1) and 240.45(1)(a) unless otherwise ordered by the Court.
a. &b. The People intend to comply with CPL Sections 240.44(1) and 240.45(1)(a) unless otherwise ordered by the Court.
2. N/A.

People will provide notice of prior uncharged criminal, vicious, or immoral acts which the prosecutor intends to use at trial for purposes of impeaching the credibility of the defendant. See CPL §240.43.

40. NYSID Report available for review at the District Attorney's Office upon appointment.

G. SUPPRESSION OF STATEMENTS

The People contend that the statements at issue were lawfully obtained and controvert any allegations to the contrary. Consent to hearing.

H. PRECLUSION OF PHYSICAL EVIDENCE

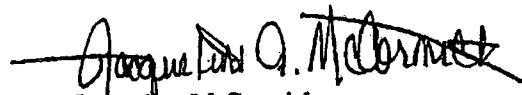
No property recovered from the defendant.

I. PRETRIAL IDENTIFICATIONS

No identification procedure utilized.

Dated: May 11, 2017
Lyons, New York

Very truly yours,


Jacqueline McCormick
Assistant District Attorney

To: Wayne County Clerk
Lindsey Pieper, Esq.

**Additional material
from this filing is
available in the
Clerk's Office.**