

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

**NOTICE OF OMNIBUS
MOTION**

XXXXXXXXXXXX

Indictment # 0000000

Defendant.

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S I R S:

PLEASE TAKE NOTICE that upon the annexed affirmation of JOHN A. BRAY, and upon the indictment and all proceedings previously had, the defendant will move this Court at a Criminal Term, at the courthouse located at 210 Center Drive, Riverhead, New York, on the 20th day of June 2004 at 9:00 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to Criminal Procedure Law Section 210.30, causing a stenographic transcript of the proceedings of the Grand Jury for the County of Suffolk, State of New York, which resulted in the indictment pending against the defendant herein, to be examined upon the ground that there exists reasonable cause to believe that the evidence before the Grand Jury was not legally sufficient to support the charges laid against the defendant in the aforesaid indictment; or in the alternative, for an order dismissing the indictment upon the ground that the evidence before the Grand Jury was not legally sufficient to establish the commission by the defendant of the offense charged or any lesser included offense and to further inspect the record of the Grand Jury to determine whether a legally sufficient number of Grand Jurors were present at all times to hear and vote on the sufficiency of the evidence which resulted in the indictment of the defendant.

1. Pursuant to Article 710 of the Criminal Procedure Law:
 - a) Suppressing the use of evidence consisting of a record or potential testimony reciting or describing a statement of such defendant involuntarily made, within the meaning of Section 60.45; or, in the alternative, an order directing that a hearing be held prior to trial pursuant to Section 710.60(4) of the Criminal Procedure Law for the purpose of finding facts essential to the determination thereof;
 - b) Suppressing the use of evidence consisting of potential testimony identifying the defendant as a person who committed the offense charged, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness; or, in the alternative, an order directing that a hearing be held prior to trial pursuant to Section 710.60(4) of the Criminal Procedure Law for the purpose of finding facts essential to the determination thereof;
 - c) Suppressing the use of evidence consisting of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against defendant; or, in the alternative, an order directing that a hearing be held prior to trial pursuant to Section 710.60(4) of the Criminal Procedure Law for the purpose of finding facts essential to the determination thereof;
2. Pursuant to People v Sandoval (34 NY2d 371), to preclude the District Attorney from cross examining the defendant as to any previous criminal

activities or prior criminal acts if the defendant takes the stand in his own behalf during the trial of the information herein; or, in the alternative, for a pre-trial hearing to determine the extent to which the District Attorney would be allowed to cross examine the defendant concerning prior criminal convictions or bad acts alleged to have been committed by the defendant;

3. Pursuant to Brady v Maryland (373 U.S. 83), for delivery to the defendant of any and all evidence favorable to him.
4. Such other and further relief as this Court may deem just and proper under the circumstances.

Dated: Commack, New York
May 28, 2004

Yours, etc.,

JOHN A. BRAY
Attorney for Defendant
6080 Jericho Turnpike
Suite 216
Commack, NY 11725
631/462-0008

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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

-against-

OLVIN ORTIZ

Defendant.

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AFFIRMATION

Indictment # 1095-2004

JOHN A. BRAY, an attorney admitted to practice in the Courts of the State of New York, affirms under the penalty of perjury as follows:

1. I am the attorney for xxxxxxxx, the defendant herein, and I make this affirmation in support of the annexed motion for inspection of the stenographic transcript of the Grand Jury proceedings, which resulted in the indictment of the defendant.
2. I am fully familiar with the facts and proceedings of this case.
3. This affirmation is based upon information derived from official court papers and conversations with the defendant and additional case investigation.
4. This action was commenced when defendant was arrested on April 27, 2004 for the crimes of two counts of Murder Second Degree.
5. A copy of the aforesaid indictment is annexed hereto as Exhibit "A". It alleges that on April 27, 2004 in Suffolk County the defendant committed the crimes set forth above.
6. The defendant requests, pursuant to Section 240.40 of the Criminal Procedure Law, those items, which are material to the preparation of his defense.

Defendant further requests a hearing to determine the admissibility of evidence seized which forms the basis for the charges set forth above.

7. If the defendant testifies at trial, it is reasonable to assume that the prosecutor would attempt to impeach him with prior immoral or criminal acts. Allowing such cross-examination would be extremely prejudicial to the defendant, far outweighing any probative value, and the people should be barred from utilizing the aforesaid. The People bear the burden of coming forward and advising defense counsel of the specific prior criminal convictions and bad acts, including uncharged crimes that it intends to use at trial. Affirmant requests that this Court order the District Attorney to serve upon the attorney for the defendant a list specifying any and all prior immoral or criminal acts that it intends to use at trial; including the date, time, place and nature of each such act. It is further requested that this Court order that a hearing be held prior to trial to determine the admissibility of any and all prior immoral or criminal acts pursuant to the guidelines enunciated in People v Sandoval 34 NY2d 371.
8. The defendant is entitled to, and the People are required to deliver to defense counsel, any potentially favorable evidence that tends negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment, as required by Brady v Maryland 373 U.S. 83.
9. No previous application for the relief prayed for has been made to the Court or to any Justice thereof.

WHEREFORE, your affirmant respectfully requests that this Court grant the relief requests, and for such other and further relief as the Court deems just and proper.

Dated: Commack, New York
May 28, 2004

JOHN A. BRAY

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

XXXXXXXXXXXX

Defendant.

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DEMAND

Indictment # 00000000

PLEASE TAKE NOTICE that the defendant hereby demands that the District Attorney of Suffolk County:

1. Pursuant to Section 710.30(1) CPL specify in detail particulars of the evidence intended to be offered of statements made by defendant to a public servant and of particulars of evidence identifying the defendant as a person who committed the offense charged by a witness who previously identified the defendant;
2. Pursuant to Criminal Procedure Law Section 240.20, 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 a co-defendant to be tried jointly whether made to a private citizen or to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him;
 - (b) Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant, or by a codefendant to be tried jointly before any Grand Jury;

(c) Any written report of document, or portion thereof, concerning a physical or mental examination, laboratory or scientific test or experiment, relating to the criminal action or proceeding and 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, including reports of the medical examiner or ballistics evidence;

(d) Any photograph or drawing relating to the criminal action or proceeding 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, including but not limited to:

1. Crime scene photographs and drawings.
2. Any arrest photo of the defendant.
3. Photographs of any lineup involving the pending case.
4. Any photographs exhibited to witnesses, including that of the defendant and all 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 a perpetrator of the crimes alleged herein.

6. Photographs of any witness or alleged victim showing the physical condition of that person.
 7. Photographs of any property involved in the pending case, including property alleged to be stolen, or property seized from the defendant or the codefendant.
 8. Any video or audio recordings made at the time of the commission of the alleged crime.
- (e) 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 Section 450.10 of the Penal Law, irrespective of whether the People intend to introduce at trial the property, photograph, photocopy or other reproduction;
- (f) Any other property obtained from the defendant, or a codefendant to be tried jointly and any tangible property which will be offered in evidence against the defendant at trial;
- (g) A copy of all routine police reports concerning the instant case except to the extent that they contain legal opinions or theories which fit within the exclusion for attorney's work-product, CPL 240.10(3);
- (h) The names, addresses and telephone numbers of all witnesses to the crimes enumerated in the information and any and all statements made by such witnesses;

(i) Anything required to be disclosed, prior to trial, to the defendant by the prosecutor, pursuant to the constitution of this state of the United States, including but not limited to:

(1) All material evidence which is in the possession of the District Attorney and which is exculpatory in nature. (See Brady v Maryland, 373 U.S. 83).

(2) The disclosure of any agreement between the District Attorney and any witness in exchange for his testimony at the trial of the information herein. (See People v Cwikla, 46 NY 2d 434).

REQUEST FOR A BILL OF PARTICULARS

PLEASE TAKE NOTICE that the defendant hereby requests that the District Attorney of Suffolk County, pursuant to Criminal Procedure Law Section 200.95, serve upon the defendant and file with the Court a bill of particulars specifying:

- (a) The approximate date, time and place of the offense charged and of the defendant's arrest,
- (b) The substance of each defendant's conduct encompassed by the charges which the People intend to prove at trial on their direct case,
- (c) Whether the People intend to prove that the defendant acted as principal or accomplice or both,
- (d) Whether or not there exists any other persons who aided or abetted said defendant with respect to the alleged commission of this crime and their names and addresses.

(e) Whether any other person has been charged separately for this offense or for any related criminal activity and their names and addresses, the specific charges lodged against them and the court docket numbers for said charges.

Dated: Commack, New York
May 28, 2004

JOHN A. BRAY
Attorney for Defendant

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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

-against-

XXXXXXXXXXXXXX

Defendant.

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REPLY AFFIRMATION

Indictment # 0000000

John A. Bray, an attorney duly admitted to the practice of law before the Courts of the State of New York, affirms and says under penalty of perjury as follows:

Your affirmant most respectfully seeks to draw the Court's attention to the branch of the defendant's motion (paragraph 1 sub d) which requests a hearing on the issue of probable cause to arrest. In your affirmant's affirmation in support of the omnibus motion (paragraph 9) as much information as is available to defendant and counsel as to the events surrounding the arrest was furnished. Defendant is aware that there must be more than just a conclusory statement to justify the Court's ordering a hearing on the issue of probable cause but based upon defendant's personal knowledge and that derived from court documents all the information at defendant's disposal is set forth.

WHEREFORE, your affirmant requests an order for a hearing pursuant to Dunaway v NY 442 US 200(1977) and for such other and further relief as to the Court may seem just and proper.

Dated: Commack, New York
June 5, 2001

JOHN A. BRAY

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

Defendant
-----X

AFFIRMATION IN
SUPPORT OF REQUEST
FOR HEARING

Indictment #0000000000

xxxxxxx, being duly sworn, deposes and says as follows:

At the time of my arrest on March 17, 2003 I was under the influence of several kinds of medication for pain due to a malignant tumor on my brain stem. I had been scheduled for surgery to remove the tumor a few days subsequent to my arrest. The surgery has not taken place.

When I was being questioned by the police, whom I first believed to be private bounty hunters, my thinking was distorted and cloudy and I have no clear recollection of what I told the police and what they said to me.

It is my contention therefore, that any statement obtained from me was in violation of my constitutional rights due to my state of mind at the time of my arrest.

WHEREFORE, your deponent requests suppression of any statement sought to be introduced to the police and any evidence derived therefrom.

Commack, New York
July 7, 2003

JOHN A. BRAY
as Attorney for Floyd Stevenson