

At a Term of the District Court held in and for the District Court House for the First District, County of Nassau, at 99 Main Street, Hempstead, New York, on the 3rd day of February 2004

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Docket No: 023484/03

against

:

AFFIRMATION

:

DEFENDANT

:

----- X .

STEVEN B. KLINE, ESQUIRE, an attorney at law and duly admitted to the practice of law before the courts of this state, hereby affirms the facts set forth in the following under penalty of perjury:

1. I was appointed by the District court to represent xxxxxxx pursuant to Article 18B of the County Law.
2. This affirmation is filed in support of the defendant's annexed notice of motion seeking various forms of relief from the court.
3. Defendant was arrested on November 5, 2003 and charged with a violation of section 165.40 of the Penal Law, Criminal Possession of Stolen Property in the 5th Degree a class A misdemeanor and 8 Traffic Violations pursuant to the Vehicle and Traffic Law of the State of New York.
4. The facts set forth in the following are based upon information and belief, the sources of which are conversations with my client, the District Attorney, my review of all the papers including the initial file turned over to me by Legal Aid and later the voluntary disclosure forms mailed to my residence by the District Attorney's Office. My client asserts that at or about the time of his stop by the arresting officers, on or about 10:28 PM on November the 5th, 2003 that he was then visibly in conformance with all traffic laws, that the stop was nothing but a pretext to stop his vehicle.
5. Based upon all of the above, a police officer must have probable cause to believe and to articulate that the accused has at least violated traffic laws under Whren v. United States 517 U.S. 806 (1996), Deleware v. Prouse 440 U.S.648 (1979) before stopping a motor vehicle.
6. The People have served the defendant with notice pursuant to C.P.L. Section 710.30 of

their intent to offer at trial evidence of a statement made by my client. On November 5, 2003 at approximately 10:30 PM

7. It is the defendant's contention that said statement was involuntarily made within the meaning of C.P.L. 60.45. and accordingly ,is subject to suppression pursuant to C.P.L. 710.20(3). No sworn allegations of fact are required in support of the Court's grant of a hearing on suppression of statements alleged to have been involuntarily made. (CPL 710.60 (3) (b)). The defendant in the annexed motion for relief will be seeking to obtain a pre-trial Huntley Hearing, (People v. Huntley, 15 N.Y. 2. 72) and Dunaway Hearing pursuant to Dunaway v. New York 442 U.S. 200 (1979) in order to suppress the use of any statements allegedly made by the defendant after his car was stopped.

8. Additionally, the defense will be seeking a Sandoval Hearing pursuant to People v. Sandoval, 34 N.Y.2d 371 precluding the people from seeking to impeach the defendant by use of any prior convictions for crimes.

9. Defendant will be seeking , on a continuing basis, all evidence or information which may tend to exculpate or assist the Defendant either by indication of innocence or by potential impeachment of a prosecution witness, within the meaning of Brady v. Maryland, 373 U.S. 83 (1963), People v. Rosario, 9 N.Y. 2d 286 (1961) People v. Wright, 74 Misc. 2d 419 (1973) and U.S. v. Agurs, 427 U.S. 97...

WHEREFORE, your affirmant respectfully requests that an order be entered consistent with the foregoing affirmation and motion for a Huntley Hearing and further discovery as requested in the notice of Motion..

Respectfully Submitted,

To: Clerk, District Court
Nassau County District Attorney
Paul Potz, Assistant District Attorney

Steven B. Kline, Esq.
Attorney for the Defendant
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