

DISTRICT COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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

NOTICE OF OMNIBUS  
MOTION

against -

Index No. \*\*\*

\*\*\*

Defendant.

-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation of JEFFREY GRODER, an attorney admitted to practice in the Courts of the State of New York, duly affirmed the \*\*th day of \*\*, 200\*, the undersigned will move the District Court, County of Nassau, Part \*\*, on the \*\*\* day of \*\* 200\*, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for the following designated Orders:

- I. REQUEST FOR A BILL OF PARTICULARS;
- II. DEMAND FOR DISCOVERY;
- III. MOTION FOR DISCOVERY PURSUANT TO C.P.L. §240.40(1)(c);
- IV. MOTION TO DISMISS AS JURISDICTIONALLY INSUFFICIENT PURSUANT TO C.P.L. §170.35;
- V. MOTION TO PRECLUDE EVIDENCE OF IDENTIFICATION PURSUANT TO C.P.L. §710.30;
- VI. MOTION TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE UNLAWFUL ARREST OF THE DEFENDANT PURSUANT TO C.P.L. §710.20;
- VII. MOTION TO SUPPRESS EVIDENCE OF STATEMENTS PURSUANT TO C.P.L. §710.20(3);
- VIII. RESERVATION OF DEFENDANT'S RIGHT TO SUPPLEMENT THESE MOTIONS OR MAKE FURTHER MOTIONS and
- IX. SUCH OTHER AND FURTHER RELIEF AS TO THE COURT DEEMS JUST AND PROPER

Dated: Mineola, New York

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DEVANE & GRODER  
Attorneys for Defendant  
114 Old Country Rd., Suite 345  
Mineola, NY 11501

To:  
NASSAU COUNTY DISTRICT ATTORNEY  
99 Main Street  
Hempstead, NY 11550

CRIMINAL CLERK NASSAU COUNTY  
99 Main Street  
Hempstead, NY 11550

DISTRICT COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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

AFFIRMATION IN  
SUPPORT OF  
OMNIBUS MOTION

against -

\*\*\*

Defendant.

-----X  
 STATE OF NEW YORK    )  
                                   ) SS:  
 COUNTY OF NEW YORK   )

Jeffrey Groder, an attorney admitted to Practice in the Courts of the State of New York, affirms the following allegations under the penalties of perjury:

1. Defendant is charged with .
2. Defendant was arraigned on
3. This affirmation is made on information and belief the sources of which are official Court papers, interviews with the defendant, copies of various official documents pertaining to this case and discussions with Assistant District Attorneys.

I.                    **BILL OF PARTICULARS**

In order for the defendant to defend against the charges in the complaint, it is necessary to the defense that specific items of factual information, not recited in the complaint including the substance of the defendant's conduct be supplied to defense counsel. This is necessary because the accusatory instruments are lacking in factual detail and conclusory in nature. Consequently, pursuant to Criminal Procedure Law Section 100.45, the defendant requests that the following particulars be ordered:

1. Specify whether the prosecution intends to prosecute the defendant as an accomplice or principal or both.
2. If the prosecution intends to prosecute the defendant as an accomplice, specify the exact acts which constitute the allegation of accomplice.

II. **DEMAND FOR DISCOVERY**

Pursuant to C.P.L. §240.20(1), the defendant demands the prosecution disclose and/or make available for inspection, photographing, copying or testing the following:

1. Any written, recorded or oral statement of the defendant, or a co-defendant 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.
2. Any transcript of testimony relating to the criminal action or proceeding against the defendant, given by the defendant, or a co-defendant to be tried jointly, before any grand jury.
3. 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

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.

4. 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 a's a witness at trial, or which the People intend to introduce at trial.

5. 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 §450.10 of the Penal Law, irrespective of whether the People intend to introduce at trial the property or the photograph, photocopy or other reproduction.

6. Any other property obtained from the defendant, or a co-defendant to be tried jointly.

7. Any tapes or other electronic recordings which the prosecutor intends to introduce at trial, irrespective of whether such recordings were made during the course of the criminal transaction.

8. Anything required to be disclosed, prior to trial, to the defendant in accordance with Brady v. Maryland 373 U.S. 83 (1963).

9. The name and date of birth of any witness who was not able to identify the defendant as the perpetrator of the crimes charged and the circumstances thereof [People v. Andre W., 44 N.Y.2d 179 (1978)].

10. The name, and date of birth of any witness who identified a person other than the defendant as the perpetrator of the crimes charged and the circumstances thereof.

11. The name of any witness (including, but not limited to, any undercover Police Officer) who gave a physical description from the actual physical pedigree of the defendant and the description's given.

12. The name, and date of birth of any witness who has provided a factual account of the alleged crime incident which differs from or contradicts the factual account of any other witness to the incident, and the details of such different accounts [People v. Simmons, 36 N.Y.2d 126 (1975)].

13. The name, address and date of birth of any witness who has provided a description of the perpetrator of the crimes which differs from or contradicts the description of any other witness, and the different descriptions.

14. Any prior inconsistent statements of a witness or discrepancies in identification testimony [People v. Ambrose, 52 A.D.2d 850 (2nd Dept. 976), People v. Turner, 48 A.D.2d 674 (2nd Dept. 1975)].

15. The name, and date of birth of any witness to the alleged criminal incident who the prosecutor does not intend to call as a witness at trial and any statement of such witness [People v. Boone, 49 A.D.2d 559, (1st Dept. 1975)].

16. The name, and date of birth of any witness who has changed or recanted his testimony and the details of such change [People v. Carrion, 54 A.D.2d 884 (1st Dept. 1976)].

17. The name, and date of birth of any person other than the defendant or co-

defendant who is or has been considered by any law enforcement official to be a suspected perpetrator of the crimes charged.

18. Any facts or information which indicate that any evidence (including, but not limited to, tangible property, statement or identification evidence) which the People intend to introduce at trial was obtained unlawfully or was obtained as a "fruit" of some other unlawfully obtained evidence.

19. All reports, notes, memoranda, or other documents containing or referring to the above evidence.

20. All evidence which tends to impeach the credibility of any prosecution witness. United States v. Giglio, 405 U.S. 150 (1972).

21. The criminal record of each witness the prosecutor intends to call at trial, including any conviction, pending and prior criminal charges [People v. Howard, 392 N.Y.S.2d 558 (Onondaga County Ct. 1977)].

22. Any information affecting the credibility of any witness which the prosecution intends to call at trial including, but not limited to, prior bad acts or immoral acts [People v. Testa and Riggio, 40 N.Y.2d 1018 (1976)].

23. Any information concerning any law enforcement officer involved in the investigation or prosecution of this case who has been cited for any type of misconduct including, but not limited to, any violation of Police Department regulations and civilian complaints resulting in disciplinary action of any kind [People v. Vasquez, 49 A.D.2d 490 (2nd Dept. 1975)].

24. Any information concerning treatment or institutionalization for

psychiatric or psychological disorders of any witness the prosecutor intends to call at trial, including date, place and nature of treatment [People v. Mgynard, 80 Misc. 2nd 279 (Sup. Ct. N.Y. Cty. 1974)].

25. Any information concerning treatment or institutionalization for alcohol or drug abuse of any witness the prosecution intends to call at trial including date, place and nature of treatment.

26. Any plea bargaining agreements, promises, grants of immunity or other agreements made, with respect to either witnesses which the prosecution intends to call or co-defendants, in return for testimony or cooperation with the investigation of prosecution of this or any other case [People v. Cwikla and Ford, 46 N.Y.2d 434 (1979)].

27. The approximate date, time and place of the offense charged and of defendant's arrest.

28. Pursuant to C.P.L. §240.20(2), I demand that the prosecutor make a diligent good faith effort to ascertain the existence of the demanded information and property and to cause it to be made available for discovery where it exists but is not within the prosecutor's custody, possession or control.

### **III. MOTION FOR DISCOVERY**

Pursuant to C.P.L. §240.40(1)(c), defendant moves for discovery of the following on the grounds that the information requested is material to the preparation of the defense and the requests are reasonable.

### **WITNESSES**

1. State the names of all eyewitnesses to the offenses charged and the addresses



(to be kept confidential by counsel) and dates of birth of civilian witnesses and the shield numbers and commands of a law enforcement witnesses.

2. State the names, addresses and dates of birth of all civilian witnesses the prosecutor intends to call at trial.

3. State the names, shield numbers and commands of all law enforcement witnesses the prosecutor intends to call at trial.

4 State whether the complaining witness filed a complaint against either the defendant or any co-defendant prior to the complaint in this proceeding. If so, state:

- a. the date of that complaint;
- b. the names of the defendants against whom he filed the complaint;
- c. the nature of the charges;
- d. the disposition of the case;
- e. the docket or indictment numbers of the case.

5. State whether the complainant or any of the witnesses filed. criminal charges against anyone prior to the instant proceeding. If so, state:

- a. the date, nature, docket number and disposition of the case;
- b. the name of the defendant and his counsel.

### **IDENTIFICATION**

6. State the time, date, place and manner in which the defendant was identified as the perpetrator of the crimes charged and whether the defendant was subjected to any out-of court identification procedure including, but not limited to, "show-up", "line-up" or "photo identification".

7. With respect to any such identification procedure:

- a. state the date, time, place and nature of the procedure;
- b. state the names, shield numbers and commands of all law

enforcement officials (including, but not limited to, Assistant District Attorneys) involved in the procedure;

- c. state the names, addresses and dates of birth of all civilians

involved in the procedure including all witnesses, and specifically all stand-ins at any line-up, and physical characteristics;

- d. state whether or not defendant was identified and who identified

him or failed to do so,

- e. provide copies of any Police Department documents, photographs

and transcripts made in connection with any identification procedure.

- 8. State whether or not anyone viewed photographs in connection with this

case, and if so:

- a. state when and where these photographs were viewed;

- b. state how the law enforcement agency came to have these

photographs in its possession;

- c. state the names of all people who viewed the photographs;

- d. state whether an identification was made, or and if a

misidentification occurred;

- e. provide copies of all photographs used, (xerox copies not

acceptable) and specify which photographs were selected by the witnesses;

- f. provide all transcripts, reports and documents made in connection

with this identification.

9. State whether any physical description of the alleged perpetrators was given by any witness (including an undercover officer) to any law enforcement official (including, but not limited to, any Assistant District Attorney). If so, for each description:

a. state whether the description was given before or after defendant was arrested;

b. state the names, shield numbers and commands of all law enforcement officials to whom the description was given;

c. state the names, addresses and dates of birth of all persons who gave the description;

d. state the names, shield numbers and commands of any law enforcement officials who gave the description;

e. state the date, time and place the description was given;

f. state the particulars of the description;

g. provide all reports or documents containing or referring to the description.

10. State the following with respect to each complainant's or witness' earliest indication that he recognized defendant for the first time:

a. the date, time and place of this identification;

b. whether the complainant or witness observed the defendant being arrested, and if so, where.

11. State whether the complainant or any witnesses knew any of the defendants prior to the criminal transaction. If so, state:

a. which complainant or witness and which defendant knew each

other;

- b. how long they knew each other;
- c. the nature of the relationship.

12. State whether any law enforcement officers knew of the defendants prior to this incident, and if so, state:

- a. which officer and which defendant knew each other;
- b. how long they knew each other;
- c. the nature of the relationship.

13. State whether any witness who furnished information to the District Attorney or any other law enforcement officer was an informant to any law enforcement agency, and if so whether he was registered. State his name, address, date of birth, criminal record and pending criminal charges, and the substance of the information furnished.

### **REPORTS**

14. Provide all Police Department reports, forms and documents prepared in connection with the criminal transaction, including, but not limited to arrest reports, complaint follow-up reports, pre-arraignment forms, officer's memo book entries, and Precinct Complaint Reports.

15. Provide all Police Department reports, forms and documents prepared in connection with this case, including, but not limited to, arrest reports, complaint reports, police service request cards and officers memo book entries.

### **ARREST INFORMATION**

16. State whether the defendant was arrested pursuant to a warrant. If so, state the warrant number and court of issuance and provide the warrant and all affidavits and

documents submitted in support thereof

17. State whether a search warrant was executed in connection with this case.

If so, state the warrant number and the court of issuance and provide the warrant and all affidavits and documents submitted in support thereof

18. State the time and manner by which a law enforcement agency was first alerted to the criminal transaction, including, but not limited to:

a. the time, date and place that the information concerning the criminal transaction was received;

b. the means by which the information was received (911 call, etc.);

c. the name, address and date of birth of the person furnishing the information and the substance of the information;

d. the name of the person to whom the information was furnished, and if to a police officer, the officer's shield number and command.

19. State the information received by the arresting officer which constituted probable cause to arrest defendant, and, state the sources of the information.

20. State the names, shield numbers and commands of all law enforcement either present at or involved in the arrest of defendant.

21. State the names, addresses and dates of birth of all civilians who were present at or who witnessed the arrest of defendant.

22. State whether any person other than defendant:

a. has ever been arrested for any of the crimes which defendant is charged, and if so, state the name of that person and the docket number of any pending case;

b. has ever been questioned or considered as a suspect in this case,

and;

c. if so, state the name of that person, when, where and by whom he was questioned or considered, and the crimes for which questioned or considered.

### **STATEMENTS**

23. State whether defendant was advised of his rights pursuant to [Miranda v. Arizona, 384 U.S. 436 (1966)]. If so, state the date, time and place he was advised, the name, shield number and command of the officer who advised him, and the names, shield numbers and commands of any police officers, and the names, addresses and dates of birth of other persons, who were present when he was advised.

24. State whether the defendant requested a lawyer. If so, state the date, time and place of his request, the name of the lawyer and the name of the person to whom the request was made.

25. State whether a lawyer was provided for defendant and when.

26. State the names, shield numbers and commands of all law enforcement officers (including Assistant District Attorneys) present during any questioning of defendant.

27. State the names, addresses and dates of birth of all civilians present during any questioning of defendant.

28. State the contents of any oral statements of defendant And any co-defendant concerning the alleged criminal transaction which were made to any person who is not a law enforcement officer or agent, the date, time and place of the statement and the name, address and date of birth of the person to whom the statement was made.

29. State whether the defendant or any co-defendant signed any reports,

statements or other documents in connection with this criminal proceeding. If so:

- a. state the date, time and place the documents were signed;
- b. state the names (and shield numbers and commands, if applicable),

addresses and dates of birth of all persons present when the documents were signed;

- c. provide all documents.

30. State whether defendant, or any co-defendants, witnesses, or law enforcement personnel made videotaped statements concerning the alleged criminal transaction.

If so:

- a. state the time, date and place the statement was made;
- b. state the names of all law enforcement personnel to whom the

statement was made;

- c. provide the videotape, or in the alternative, an opportunity to view

and copy the videotape.

### **PROPERTY**

31. State whether any property involved in the criminal transaction, including, but not limited to, fruits, instrumentalities, weapons, currency, controlled substances or other contraband, was recovered. If so, state:

- a. the date, time and place, including the place on a person's body or in a vehicle, the property was recovered;

- b. the names of any persons, including defendant or any co-defendant, from whom such property was recovered, and by whom it was recovered;

- c. the identifying numbers or voucher numbers of the property and permit inspection of the property;

d. the serial numbers of any currency recovered.

32. If it is alleged that defendant stole property:

a. state the time and place defendant allegedly took the property;

b. state how defendant secreted or attempted to secrete such property;

c. permit inspection of the property.

33. If it is alleged that property was damaged:

a. specify the nature and extent of the damage;

b. state the method and means by which the property was damaged

and by whom;

c. state the cost of repair or replacement;

d. permit inspection of the damaged property.

**V. MOTION TO PRECLUDE EVIDENCE OF IDENTIFICATION**  
**PURSUANT TO C.P.L. §710.30**

1. The defendant was arraigned on \*\*\*. To date, more than fifteen days from the date of arraignment, defendant has not been served with proper and timely notice that the People intend to offer at trial testimony regarding an observation of the defendant by a witness who took part in a pre-trial identification procedure.

2. C.P.L. §710.30 provides that two requirements must be met if the People are to be permitted to introduce such testimony at trial: (a) notice of the identification must be served on the defendant within fifteen days of arraignment, and (b) the notice must "specify" the identification evidence intended to be offered.

3. On July 3, 2003 the District Attorney served upon the defendant a



710.30 CPL notice indicating **evidence of an oral statement only**. There is no indication on the 710.30 form which is utilized by the People that there was any identification procedures. On August 22, 2003 the undersigned received the People's Voluntary Disclosure Forms. In the Voluntary Disclosure there is an indication that show up identifications took place. This notice coming over one month after arraignment clearly is outside the strictures of 710.30 of the Criminal Procedure Law. Copies of the 710.30 notice which was served at arraignment and the People's Voluntary Disclosure Forms are annexed hereto and made a part hereof.

3. The remedy for the failure to serve timely notice is that the People are precluded from introducing the identification evidence. at trial, unless they can show "good cause" for their failure. [People v. Spruill, 47 N.Y.2d 869 (1979); People v. Briggs, 38 N.Y.2d 319 (1975)]. Preclusion must be ordered irrespective of whether the defendant is found to have been prejudiced by the lack of notice. [People v. O'Doherty, 70 N.Y.2d 497 (1987); People v. McMullin, 70 N.Y.2d 855 (1987)].

4. The failure of a police officer to inform the prosecutor of the occurrence of a pre-trial identification procedure does not constitute "good cause" for the People's failure to serve timely notice. [People v. Spruill, 47 N.Y.2d at 870].

5. The defendant therefore moves, pursuant to C.P.L. §710.30(3), to preclude the People from introducing at trial any testimony regarding an observation of the defendant by any witness who took part in any pre-trial identification procedure such as a line-up, show-up or photographic identification.

**V. MOTION TO SUPPRESS ALL EVIDENCE  
OBTAINED AS A RESULT OF THE UNLAWFUL ARREST  
OF THE DEFENDANT PURSUANT TO C.P.L. §710.20**

1 On \*\*\*, the defendant was arrested, without a warrant, by officers of the Nassau County Police Department at \*\*\*.

2. The arresting officers did not observe the defendant commit a crime nor did they have any reasonably trustworthy information which supported the conclusion that the defendant had committed a crime. The arrest was thus without probable cause and in violation of the defendant's Constitutional rights. *United States Constitution, Amendments IV and XIV; New York Constitution, Article I, Section 12.*

3 . All evidence obtained from the exploitation of an unlawful arrest must be suppressed as "tainted fruit" of the Constitutional violation. [Wong Sun v. United States, 371 U.S. 471 (1963) (tangible property seized subsequent to an unlawful arrest); Dunaway v. New York, 442 U.S. 463 (1980) (statement evidence). U.S. v. Crews, 445 U.S. 436 (1980) (identification evidence)].

4. Defendant therefore moves, pursuant to C.P.L. §710.20 subdivisions (1), (3) and (6), to suppress all evidence (including physical evidence, statements and identification evidence) obtained. from the exploitation of his unlawful arrest.

5. Defendant requests that this Motion to Suppress be granted summarily pursuant to C.P.L. §710.60(2). In the alternative, the defendant requests a hearing pursuant to §710.60(4) to aid the Court in determining the issues raised herein. [Dunaway v. New York, 442 U.S. 463 (1980)]. The defendant further requests that the hearing be held sufficiently prior to commencement of trial to permit transcription of the hearing minutes for use at trial. People v. Sanders, 31 N.Y.2d 463 (1973); People v. Peacock, 31 N.Y.2d 907 (1972)].

## **VII MOTION TO SUPPRESS EVIDENCE OF STATEMENTS PURSUANT TO C.P.L. §710.20(3)**

1. Paragraphs V and VI of defendant's Motion to Suppress Evidence, supra, are incorporated by reference herein.

2. The defendant has received notice of the People's intentions to introduce at trial evidence statements allegedly made by defendant.

3. The defendant alleges that this statement was made involuntarily and in violation of the defendant's Constitutional rights. United States Constitution, Amendments V, VI and XIV; New York Constitution, Article 1, Section 6; C.P.L. §60.45(2); [People v. Huntley, 15 N.Y.2d 72 (1965); Miranda v. Arizona, 384 U.S. 436 (1966); Jackson v. Denno, 378 U.S. 368 (1964)].

4. The defendant therefore moves, pursuant to C.P.L. §§60.45(a) and 710.20(3) to suppress the statements.

5. This motion is made on information and belief that any such statement would have been made while the defendant was in custody as a result of police interrogation and prior to the defendant having been advised of his rights under the United States Constitution and that defendant did not knowingly and intelligently waive such rights. Furthermore, upon information and belief the statements were obtained from defendant in violation of Dunaway v. New York, 442 U.S. 200 (1979)] in that they were obtained subsequent to, and as a result of, an illegal seizure of the defendant, there having been no probable cause for, or consent to the seizure.

6. Defendant also moves, pursuant to C.P.L. §710.20(4) to suppress all evidence (including, identification evidence and any other statement of defendant) which was / were obtained from exploitation of the unlawfully obtained statement. [Wong Sun v. United States, 371 U.S. 471 (1963); People v. Valerius, 31 N.Y.2d 51 (1972)].

7. Defendant requests that this Motion to Suppress be granted summarily pursuant to C.P.L. §710.60(2). In the alternative, the defendant requests-a hearing pursuant to C.P.L. §710.60(4) to aid the Court in determining the issues raised herein. [People v. Huntley N.Y.2d at 78; People v. Weaver, 49 N.Y.2d 1012, 1013 (1980)]. The defendant further requests that such hearing be held sufficiently prior to the commencement of trial as to allow for the transcription of the hearing minutes for their use at trial. [People v. Sanders, 31 N.Y.2d 463 (1973); People v. Peacock, 31 N.Y.2d 907 (1972)],

#### **VIII. MOTION TO PRECLUDE PURSUANT TO PEOPLE V. SANDOVAL**

Defendant fears that if he testifies at trial in his own behalf the prosecutor will cross-examine him as to his prior criminal convictions and/or prior specific criminal and immoral acts. The introduction of such evidence would deprive the defendant of a fair trial in that it would have a disproportionately prejudicial impact on the jury while having minimal probative value on the issue of credibility. The defendant therefore moves, pursuant to People v. Sandoval, 43 N.Y.2d 371 (1974), to preclude the prosecutor from cross-examining the defendant as to his prior criminal convictions and prior specific criminal and immoral acts.

Pursuant to C.P.L. §240.43 defendant requests that the prosecution provide notice of all specific instances of defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for purposes of impeaching the credibility of defendant. Defendant requests a hearing to determine the

admissibility of any such evidence and any evidence of prior criminal convictions. [People v. Sandoval, 43 N.Y.2d 371 (1974)].

**IX RESERVATION OF DEFENDANT'S RIGHTS TO SUPPLEMENT THESE  
MOTIONS OR MAKE FURTHER MOTIONS**

Pursuant to C.P.L. §255.20(3), defendant reserves the right to supplement these motions and to make further motions, including those for suppression or preclusion of evidence, until a reasonable time after receipt of the response to these motions and subpoenaed material and additional investigation.

WHEREFORE, the defendant requests that the Court grant the relief sought herein and for such other and further relief as is just and proper.

Dated: Mineola, New York

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Jeffrey Groder, Esq.