

STATE OF NEW YORK
DISTRICT COURT : COUNTY OF NASSAU

<hr/> <p>PEOPLE OF THE STATE OF NEW YORK</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Defendant.</p> <hr/>	} } } } } } } }	<p style="text-align: center;">NOTICE OF MOTION TO DISMISS</p> <p style="text-align: center;">Docket No.</p>
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SIRS AND MADAMS:

PLEASE TAKE NOTICE that upon the annexed **Affirmation** of **RALPH C. MEGNA**, Esq., duly executed on the 29th day of December, 2003 and upon all the papers and proceedings heretofore had herein, a **Motion** will be made in this Court on behalf of Defendant , at a Special Term thereof, to be held on the 14th day of January, 2004, at 9:30 A.M. o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an **Order** granting:

1. An order dismissing the prosecutor's information pursuant to sections 60.22 and 170.30 of the Criminal Procedure Law.
2. For such other relief as to this court seems just and proper.

Dated: December 29, 2003

Glen Cove, New York

Yours Truly,

Ralph C. Megna

Attorney for Defendant

TO:

**Nassau County District Attorney's Office
99 Main Street
Hempstead, New York 11550**

STATE OF NEW YORK
DISTRICT COURT: COUNTY OF NASSAU

<hr/> <p>PEOPLE OF THE STATE OF NEW YORK</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Defendant.</p> <hr/>	} } } } } } } } }	<p>ATTORNEY'S AFFIRMATION</p> <p>Docket No.</p>
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RALPH C. MEGNA, Esq., affirms the following under penalty of perjury:

1. I am an attorney admitted to practice before the Courts of the State of New York, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit, and am the attorney for Defendant herein.
2. This **Affirmation** is based upon personal knowledge of your Affiant except where stated upon information and belief, the sources of which include communications with Defendant , witnesses, prosecuting authorities; the **Complaint** herein, and other pleadings and documents in the Court file.
3. By **Felony Complaint**, dated January 18, 2003, Defendant was charged with one [1] count of Burglary in the Second Degree § 145.25-2 of the Penal Law .
4. On September 12, 2003 the People declined further attempts of prosecution of the foresaid charge against the defendant and filed a **PROSECUTOR'S INFORMATION** charging defendant with (1) count of Petit Larceny under Section 155.25 of the Penal Code of the State of New York.

5. This affirmation is made in support of the defendant's motion for :
 - I. An order pursuant to CPL Section 170.30, dismissing the complaint, in that the factual allegations of the information are not adequately supported with legally sufficient evidence to support the charge(s). The People are advancing a prosecution against the defendant via a co-defendant's deposition that remains unsupported with legally sufficient independent proof that would tend to connect the defendant with the crime. Instead, the People offer a deposition, from the complainant's son, which is based upon pure hearsay and fails to provide any actual knowledge connecting the defendant with the crime. Such an offering by the People renders the information defective and should be dismissed.
 - II. An order pursuant to CPL Section 60.22, dismissing the complaint, in that testimony of an accomplice must be corroborated with legally sufficient independent evidence that would tend to connect the defendant with the crime. The People herein, are offering a deposition by Bradley Fahrnich, the complainant son, that fails to provide sufficient independent proof in order to connect the defendant to the crime. Mr. Fahrnich's deposition is based on hearsay and does not sufficiently corroborate the accomplice's testimony. The people have access to witnesses that can possibly provide independent credible evidence that would tend to corroborate the accomplice's deposition, but have failed to do so. They have the complainant's sister who purportedly was present during the incident at question. Apparently, she could not place the defendant at the scene of the incident in question.
6. That no other application for the relief herein sought has been made to this or to any other court.

WHEREFORE, your deponent respectfully requests that this motion be granted in all respects, together with such other and further relief as to the Court seems just and proper.

Dated: December 29, 2003

Glen Cove, New York

Yours very truly,

Ralph C. Megna

Attorney for Defendant

50 Wolfle Street