

DISTRICT COURT: FIRST DISTRICT  
COUNTY OF SUFFOLK: STATE OF NEW YORK  
-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

**NOTICE OF MOTION**

Docket #

Defendant  
-----X

S I R S:

PLEASE TAKE NOTICE that upon the annexed affirmation of John A. Bray, attorney for the defendant herein, and upon all the pleadings and proceedings heretofore had, the defendant will move this Court on the 5<sup>th</sup> day of September 2003 at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, at the courthouse at 400 Carleton Avenue, Central Islip, New York for an order dismissing the above-referenced information pursuant to CPL Sections 170.30, 170.35 and 100.15 and for such other and further relief as to the Court may seem just and proper.

Dated: Commack, New York  
August 26, 2003

Yours, etc.,

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

DISTRICT COURT: FIRST DISTRICT  
COUNTY OF SUFFOLK: STATE OF NEW YORK  
-----X  
THE PEOPLE OF THE STATE OF NEW YORK

**AFFIRMATION IN  
SUPPORT OF MOTION**

-against-

Defendant  
-----X

JOHN A. BRAY, an attorney admitted to practice before the Courts of the State of New York, affirms and says in support of defendant's motion for dismissal as follows:

The information and supporting deposition are facially defective within the meaning of CPL 170.30, 170.35 and 100.15 in that they do not spell out the crime alleged. In order for a charge of Driving While Intoxicated to be sustained two elements are necessary. First, the defendant must have been operating the vehicle at the time of his arrest and second that the officer must have probable cause to believe that the defendant was intoxicated.

There being no supporting deposition which spells out the crime alleged, reference may be made to the alcohol influence report, which is blank, except for the pedigree information at the top of the form. The entire page is devoid of information except for the handwritten notation "defendant orally consented but was unable to sign." If in fact consent was given, no test of any kind was administered. The police are authorized to obtain a court order to take blood by a certified technician. This obviously was not done. In addition, defendant was injured in the accident, seriously enough to be removed from the scene by helicopter and transported to Stony Brook Hospital. Since the law required either a chemical test or refusal in order to support a charge of Driving While Intoxicated and since none of these occurred, a mere conclusory allegation by the

officer of an odor emanating from a seriously injured motorist is facially insufficient to support a charge of Driving While Intoxicated. A mere odor of alcohol falls far short of sufficient grounds for an arrest, especially since the defendant was seriously enough injured to require weeks of hospitalization.

WHEREFORE, your affirmant requests an order dismissing the information referenced above and for such other and further relief as to the Court may seem just and proper.

Dated: Commack, New York  
August 26, 2003

---

JOHN A. BRAY