

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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

**NOTICE OF OMNIBUS
MOTION**

-against-
xxxxxxxxxxx
Defendant.

Indictment # 000000

-----X

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 Center Drive, Riverhead, New York, on the 2nd day of May, 2003 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.

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;
- d) Pursuant to Section 700 of the Criminal Procedure Law, controverting the eavesdropping warrant used to overhear conversations of the of the defendant on the grounds that the eavesdropping warrant was obtained without valid grounds or showing that probable cause existed to overhear defendant's or that the informant used to obtain the warrant was reliable

and to expunge all reference to the defendant on the tapes as beyond the scope of the warrant.

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
April 22, 2003

Yours, etc.,

JOHN A. BRAY, ESQ.
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-

XXXXXXXXXXXXX

Defendant.

-----X

AFFIRMATION

Indictment # 000000

JOHN A. BRAY, an attorney admitted to practice in the Courts of the State of New York, affirms under 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 on September 18, 2002 when defendant was arrested for the crimes of Criminal Possession of a Controlled Substance Third Degree, Criminal Sale of a Controlled Substance Third Degree. A copy of the aforesaid indictment is annexed hereto as Exhibit "A." It alleges that on September 18, 2002 in Suffolk County, the defendant committed the

crimes of Criminal Sale of a Controlled Substance and Criminal Possession of a Controlled Substance.

5. 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 charge of Criminal Sale and Criminal Possession.
6. 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.
7. 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.

8. Defendant sets forth that if any voice recording of him was obtained pursuant to an eavesdropping warrant such recording was beyond the scope of the original warrant and no probable cause existed to record defendant's voice to form the basis for obtaining any eavesdropping warrant. Any informant used was inherently unreliable as having not furnished any previous reliable information to the police. 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
April 22, 2003

JOHN A. BRAY

COUNTY COURT: COUNTY OF SUFFOLK
STATE OF NEW YORK

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

DEMAND

-against-

Indictment # 0000000

XXXXXXXXXX,

Defendant.

-----X

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 codefendant 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;

(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 proceedings, 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 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;
 - (f) 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);
 - (g) 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.
 - (h) 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
April 22, 2003

JOHN A. BRAY
Attorney for Defendant